

## RESOLUTION NO. 1147

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO EXTENDING SEWER SERVICE OUTSIDE THE CITY, AUTHORIZING THE EXECUTION OF A SEWER UTILITY EXTENSION AGREEMENT FOR THE HARBOR ESTATES DIVISION 1 SUBDIVISION LOCATED IN THE 11800 BLOCK OF PEACOCK HILL AVENUE, IN PIERCE COUNTY, WASHINGTON.**

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WHEREAS, the City of Gig Harbor received a request for a sewer utility extension agreement (UEA) from CD Investments I, LLC, to connect 8 new residential houses and 14 existing residential houses located in the City's urban growth area to the City's sewer system for the existing Harbor Estates Division 1 Subdivision (Property); and

WHEREAS, the Property, is located in sewer basin No. 3 and has an existing gravity sewer main located to the west of the Property in the 11800 block of Arrowhead Drive; and

WHEREAS, the proposed utility extension agreement requires the owner to pay all costs for designing and constructing any necessary extension of the City's sewer utility and to pay all general facilities charges and monthly services charges for sewer services outside the city limits at 1.5 times the in-city rates; and

WHEREAS, RCW 35.67.310 authorizes the City to provide sewer service to properties beyond the City limits; and

WHEREAS, Ordinance No. 1235 allows the extension of the City's sewer utility to properties outside the City limits without the requirement to first annex and provides conditions for connection to the sewer utility; and

WHEREAS, Chapter 13.34 of the Gig Harbor Municipal Code (GHMC) requires the property owner seeking sewer utility service outside the city limits to enter into a utility extension agreement with the City as a condition of a utility extension; and

WHEREAS, the City Council has reviewed the UEA application and found it consistent with the criteria listed in Section 13.34.040(B); and

WHEREAS, the City currently has capacity to provide the requested sewer utility connection; and

WHEREAS, on June 10, 2019, the Gig Harbor City Council held a public hearing on CD Investments I requested utility extension agreement for Harbor Estates Division 1.

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 Utility Extension Agreement attached hereto as Exhibit A, with the CD Investments I, LLC.

Section 2. The City Council hereby directs the City Clerk to record the Utility Extension Agreement against the Property legally described in Exhibit A at the cost of the applicant.

PASSED by the City Council this 10<sup>th</sup> day of June, 2019.

APPROVED:

  
\_\_\_\_\_  
MAYOR KIT KUHN

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
CITY CLERK

FILED WITH THE CITY CLERK: 06/04/19  
PASSED BY THE CITY COUNCIL: 06/10/19  
RESOLUTION NO. 1147

AFTER RECORDING RETURN TO:

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

**WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM**

**Document Title(s) (or transactions contained therein):**

Utility Extension, Capacity Agreement and Agreement Waiving Right to Protest LID

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

City of Gig Harbor

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

CD Investments I, LLC

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

Section 30, Township 22 N, Range 02 E, Lots 10, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 34, 35, 36, 40, 41, 42, 43, 44, 47, 48, and 49 of Harbor Estates Division 1 According to Plat Recorded under Auditor's No. 8008290366, in Pierce County, Washington.

**Assessor's Property Tax Parcel or Account Number:** \_\_\_\_\_

**Reference Number(s) of Documents assigned or released:** \_\_\_\_\_

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

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the City of Gig Harbor, Washington, a municipal corporation of the State of Washington (the "City"), and CD Investments I, LLC, a Washington limited liability company (the "Owner").

**RECITALS**

WHEREAS, the Owner is the owner of certain real property located in Pierce County which is legally described as set forth in Exhibit "A" and shown in the location map in Exhibit "B" attached hereto and incorporated herein by this reference; and

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

WHEREAS, the Owner desires to connect to the City sewer utility system, hereafter referred to as the "utility," and the City 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; and

WHEREAS, on June 10, 2019, the City Council held a public hearing on this Utility Extension Capacity Agreement; NOW, THEREFORE,

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

**TERMS**

1. Warranty of Title. The Owner warrants that Owner is the owner of the property described in Exhibit 'A', which is attached hereto and incorporated herein by this reference, and is authorized to enter into this Agreement.

2. Extension Authorized; Existing Septic System Abandoned. The City hereby authorizes the Owner to connect the requested 22 residential lots through Pierce County right of way to the existing gravity main sewer at the following location: 11800 block of Arrowhead Drive. The 14 residential lots that have existing single family residences must also abandon the septic tanks and drain fields associated with the residence within 3 months of connecting to the City's sewer system in accordance with Tacoma-Pierce County Health Department requirements.

3. Costs. Owner will pay all costs of designing, engineering and constructing the extension. All construction shall be done to City standards and Pierce County roadway standards and according to plans approved by the City Engineer. Any and all costs incurred by the City in reviewing plans and inspecting construction shall be paid for by the Owner. Owner will also pay the cost of the general facilities change prior to connecting to the utility.

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 sewage system twenty (22) ERU's; 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

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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 modification 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 sewage system. The City agrees to reserve to the Owner this capacity as set forth in GHMC 13.34.030.

5. Capacity Commitment Payment.

A. The Owner agrees to pay the City within 30 days of execution of this Agreement and prior to the recording of this agreement the sum of \$47,718.00, which is fifteen percent (15%) of the current general facilities charge, to reserve the above specified capacity. This payment shall reserve the specified capacity for a period of up to three years.

B. In the event the Owner has not made connection to the City's utility system by the date set forth above and no extension of the commitment period occurs as outlined below, 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.

C. In the event the Pierce County Boundary Review Board should not approve extension of the City's sewer system prior to the expiration of the commitment period, the Owner shall be entitled to a refund of the capacity commitment payment (without interest), less a five percent (5%) administrative fee.

6. Extension of Commitment Period. The Owner may extend the capacity commitment period for the life of the underlying development application or the underlying development approval upon payment of a capacity commitment payment of 100% of the value of the current general facilities charge. At the time of actual connection, per GHMC 13.34.040(7), if the sewer general facilities charge has increased, the Owner shall pay the difference between what was paid for the capacity commitment payment and the actual cost of the current general facilities charge.

7. Permits; Easements. Owner shall secure and obtain, at Owner's sole cost and expense, any and all necessary permits, easements, approvals, 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, but no limited to, 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.

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. Record drawings in a form acceptable to the City Engineer;

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;

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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 Engineer, ensuring that the facilities will remain free from defects in workmanship and materials for a period of two years.

9. General Facilities Charges. The Owner agrees to pay the applicable general facilities 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 physically connects his/her property to the system. Any commitment payment that has not been forfeited shall be applied to the City's general facilities charges. Should the Owner not connect 100% of the Sewer Capacity Commitment, the Capacity Commitment payment shall be credited on a prorated percentage basis to the general facilities charges as they are levied.

10. Service Charges. In addition to the general facilities charges, 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.

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

- i. Pierce County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;
- ii. City of Gig Harbor ordinances, resolutions, rules and regulations will apply to the property upon the effective date of annexation;
- iii. 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;
- iv. 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;
- v. Zoning and land use regulations applicable to the property after annexation may be different from those applicable to the property prior to annexation; and
- vi. 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.

B. 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 RCW 35.14.120, 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

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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. Public Works Standards and Utility Regulations. Owner agrees to comply with all of the requirements of the City's public works standards relating to sewer and utility regulations when developing or redeveloping all or any part of the property described on Exhibit "A", and all other applicable sewerage standards in effect at the time.

13. Liens. The Owner understands and agrees that delinquent payments under this agreement shall constitute a lien upon the above-described property. The lien shall be as provided in RCW 35.67.200, and shall be enforced in accordance with RCW 35.67.220 through RCW 35.67.290, all as now enacted or hereafter amended.

14. Termination for Noncompliance. In the event Owner fails to comply with any term or condition of this Agreement, the City shall have the right, at any time, to enter onto the Owner's property and for that purpose disconnect the sewer, in addition to any other remedies available to the City.

15. Waiver of Right to Protest LID.

A. Owner agrees to sign a petition for the formation of a sewer LID or ULID for the sewer 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.

B. 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. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Owner, and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of the Owner contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it. All costs of recording this Agreement with the Pierce County Auditor shall be borne by the Owner.

18. Attorney's Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. 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. Venue of such action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

19. Notices. Notices and correspondence to the City and Owner shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated below. Notice to any person who purchases any portion of the Property from the Owner shall be required to be given by the City only for those property purchasers who provide the City with written notice of their address. The parties hereto may, from time to time, advise the other of any new addresses for notice and correspondence.

TO THE CITY:

City Clerk  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

TO THE OWNER:

John Holmaas  
CD Investments I, LLC  
PO Box 206  
Gig Harbor, WA 98335

20. Severability and Integration. This Agreement and the Exhibits attached hereto constitute the agreement between the parties on this subject matter, and there are no other understandings, verbal or written, that modify the terms of this Agreement. 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 this Agreement, such invalidity shall not affect the other terms of this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

OWNER:

CITY OF GIG HARBOR

By: \_\_\_\_\_  
John Holmaas, Managing Member

By: \_\_\_\_\_



Attest:

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

Approved as to form:  
Office of the City Attorney

\_\_\_\_\_

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF \_\_\_\_\_        )

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

DATED: \_\_\_\_\_

\_\_\_\_\_  
Printed: \_\_\_\_\_  
Notary Public in and for Washington  
Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

[Notary continues on next page]

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF P I E R C E        )

I certify that I know or have satisfactory evidence that Kit Kuhn is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he 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: \_\_\_\_\_

\_\_\_\_\_  
Printed: \_\_\_\_\_  
Notary Public in and for Washington  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**EXHIBIT A**  
**PROPERTY LEGAL DESCRIPTON**

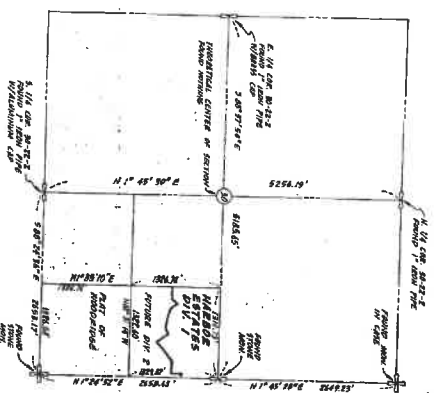
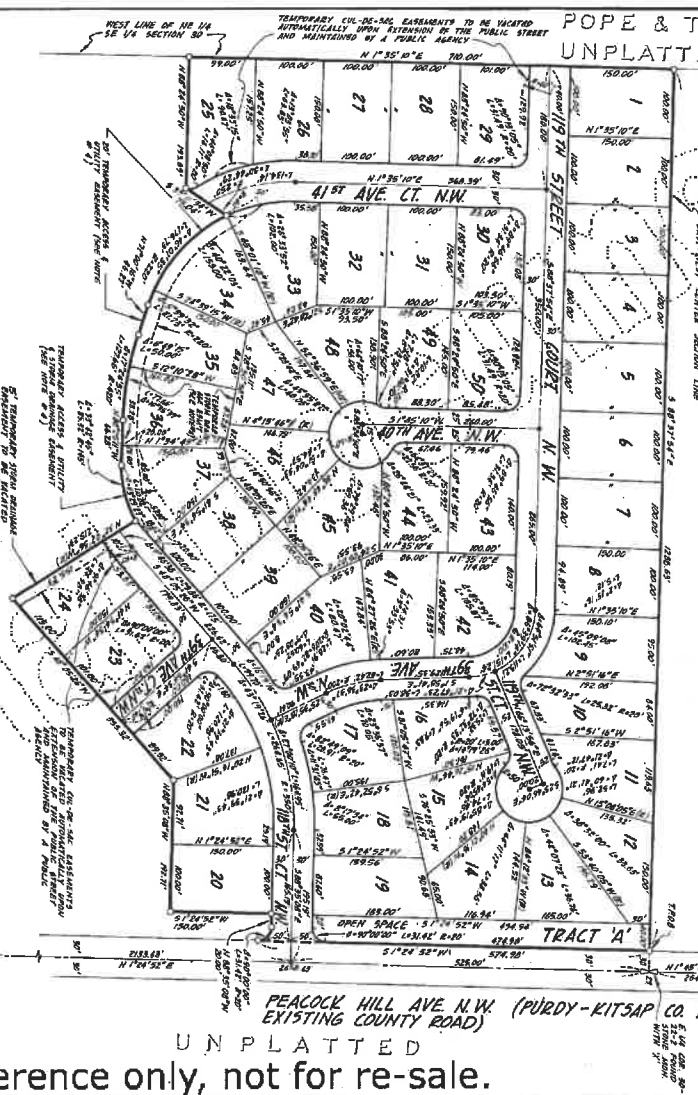
Lots 10, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 34, 35, 36, 40, 41, 42, 43, 44, 47, 48, and 49 of Harbor Estates Division 1 According to Plat Recorded under Auditor's No. 8008290366, in Pierce County, Washington.

EXHIBIT B  
PROPERTY LOCATION MAP

**HARBOR ESTATES DIVISION 1**

A PORTION OF THE NE 1/4 OF THE SE 1/4  
OF SECTION 30, T.22 N., R.2 E., W.M.  
PIERCE COUNTY, WASHINGTON

UNPLATTED  
JOAN JOHNSON - TACOMA, WA.



UNPLATTED  
TALMO, INC.

- NOTES**
1. BASIS OF RECORDING IS IDENTICAL TO THE BASIS OF THE UNDERLYING INSTRUMENT.
  2. ALL MEASUREMENTS ARE IN FEET AND INCHES.
  3. ALL MEASUREMENTS ARE TO THE CENTER OF THE LINE UNLESS OTHERWISE SPECIFIED.
  4. THE STIPPLED AREAS REPRESENT THE UNPLATTED PORTION OF THE SECTION 30, T.22 N., R.2 E., W.M.
  5. THE STIPPLED AREAS REPRESENT THE UNPLATTED PORTION OF THE SECTION 30, T.22 N., R.2 E., W.M.
  6. THE STIPPLED AREAS REPRESENT THE UNPLATTED PORTION OF THE SECTION 30, T.22 N., R.2 E., W.M.
  7. THE STIPPLED AREAS REPRESENT THE UNPLATTED PORTION OF THE SECTION 30, T.22 N., R.2 E., W.M.
  8. THE STIPPLED AREAS REPRESENT THE UNPLATTED PORTION OF THE SECTION 30, T.22 N., R.2 E., W.M.
  9. THE STIPPLED AREAS REPRESENT THE UNPLATTED PORTION OF THE SECTION 30, T.22 N., R.2 E., W.M.
  10. THE STIPPLED AREAS REPRESENT THE UNPLATTED PORTION OF THE SECTION 30, T.22 N., R.2 E., W.M.

STEPHAN & ASSOC., LLC  
3800 PACIFIC AVE. SUITE 200  
TACOMA, WA 98404

SEPT. 1, 1979

UNPLATTED  
For reference only, not for re-sale.