LATECOMERS AGREEMENT FOR REIMBURSEMENT
OF MUNICIPAL WATER

AGREEMENT, made this 4th day of April 1995 between
John and Judy Godulas (Owner) and the City of Gig Harbor, situate in Pierce County,
Washington, the parties respectively referred to herein as “Owner” and “City”.

WITNESSETH:

RECITALS

1. The City owns and operates a water system within and adjacent to its limits;

2. The Owner has constructed, under agreement with the City, pursuant to the
Municipal Water and Sewer Facilities Act, RCW 35.91.010. et seq., certain extensions to
said system more particularly described on Exhibit “A” attached hereto and incorporated
herein by this reference, which additions are capable of serving areas now owned by the
Owner; and

3. The area capable of being served by the extensions to said systems described
in Exhibit “A”, is herein referred to as the “benefitted property”, and is more particularly
described in Exhibit “B”, attached hereto and by this reference incorporated herein; and

4. The extensions to said system described in Exhibit “A” are located within the
area served by the City and have not been accepted by the City for maintenance and
operation; and

5. The cost of construction of the extensions described in Exhibit “A” under the
provisions of said Municipal Water and Sewer Facilities Act amounts to $28,667.00 and

6. The City has determined and the Owners have agreed that the area benefitted
by said extensions amounts to 1,244.90 lineal front feet and 335,943 square feet of area of
which 1,244.90 lineal front feet and 335,943 square feet of area is directly attributable to the
and Owner and the remaining benefitted property, resulting in a fair prorata share of the cost

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the cost of construction of said extensions, to be collected from the owner or owners of any parcel benefited thereby, and who tap on or connect to said system of $\frac{5.1938}{\text{per lineal foot}}$ and $\frac{0.0564114}{\text{per square foot}}$ said front footage and area charges being computed as shown on Exhibit "B"; and Exhibit "E".

7. The City and Owner desire and intend by this Agreement to provide for collection of the fair prorata share of the cost of construction of said extensions from the owners of the benefitted properties (as described on Exhibit "B") who did not contribute to the original cost thereof, under the provisions of the Municipal Water and Sewer Facilities Act, PROVIDED, that nothing contained herein shall be construed to affect or impair in any manner the right of the City to regulate the use of its said system of which the extensions described in Exhibit "A" shall become a part under the terms of this Agreement, pursuant to the provisions of any ordinance, resolution, or policy now or hereafter in effect. The imposition by City of any such requirement shall not be deemed an impairment of this Agreement though it may be imposed in such a manner as to refuse service to an owner of the benefitted property in order to secure compliance with such requirements of the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereafter set forth, it is agreed by and between the parties hereto as follows:

A. All of the recitals set forth above are adopted by the parties as material elements of the Agreement.

B. The Owner shall transfer title, free and clear of all encumbrances to the extensions described in Exhibit "A" by a Bill of Sale to be executed and delivered by Owner to the City upon acceptance of said extensions for maintenance by the City. This Bill of Sale shall contain the Owner's warranty that it has good title and the right to convey said extensions, that it will warrant and defend the City against the claim of interest herein asserted by any third person, that it will guarantee the workmanship and materials in said facility for a period of one year after the date of acceptance by the City and that it warrants said extensions to be fit for the use for which they are intended.

C. Owner further warrants that it is the owner in title absolute of the extensions described in Exhibit "A", that it has neither permitted or suffered any person or other entity to tap onto said extensions prior to the date of this agreement: that the sum of $28667.00 is
a fair prorata charge to be assessed against the owner of each subsequent parcel within the benefitted premises, as described in Exhibit "A", who subsequently tap on to or connect to said facility, and do further warrant that there are no persons, firms or corporations who have filed or have the right to file a lien against said extensions pursuant to the provisions of Title 60 of the Revised Code of Washington, other than those heretofore filed which have been satisfied. In the event that any lien or other claim against said extensions are asserted after conveyance to the City, (which Owner shall defend and save harmless the City from loss on account thereof), and in the event the City shall be put to any expense of such claim or otherwise, then the City shall have a lien against any funds then or thereafter deposited with it pursuant to this Agreement.

D. In consideration of the conveyance of the extensions described in Exhibit "A", the City agrees to accept said extensions for maintenance as part of its facility, after inspection and testing by the Utilities Engineer and his recommendation of acceptance, and further agrees to collect from the owners of the realty benefitted by said lien who have not heretofore contributed to the cost of construction thereof, and who subsequently tap onto or use the same, a fair prorata share of the cost of such construction based upon the sum of which unit charge shall be conclusively presumed to be a fair prorata charge against the benefitted parcels. The City shall charge, in addition to its usual and ordinary charges make against persons applying for service from said facility and in addition to the amount agreed to be collected by the City in this paragraph, sum equal to fifteen percent (15%) to be collected from owners or persons tapping onto said facility, which sum shall be used by the City to defray the cost of labor, bookkeeping, and accounting, pursuant to the terms of this Agreement.

E. The City shall pay to the Owner the sums agreed by it to be collected pursuant to the provisions of the preceding paragraph, within sixty (60) days after receipt thereof at the address of the Owner as set forth hereinafter or at such other addresses as the Owner shall provide by Certified Mail. If said payments are returned to the City unclaimed by the Owner or if the City is unable to located the Owner after six (6) months, the City shall retain all sums then received and all future sums collected under this Agreement.
F. In the event of the assignment or transfer of the rights of the Owner voluntarily, involuntarily, or by operation of law, then the City shall pay all benefits accruing hereunder, after notice, to such successor of the Owner as the City, in its sole judgment, deems entitled to such benefits; and in the event conflicting demands are made upon the City for benefits accruing under this Agreement, then the City may, at its option, commence an action in interpleader joining any party claiming rights under this contract, or other parties which the City believes to be necessary or proper, and the City shall be discharged from further liability upon paying the person or persons whom any court having jurisdiction of such interpleader action shall determine, and in such action the City shall be entitled to recover its reasonable attorney's fees and cost, which fees and costs shall constitute a lien upon all funds accrued or accruing pursuant to this Agreement.

G. The City agrees not to allow an Owner or user of any benefitted property as described in Exhibit "A" to tap onto said facility without such owner or user having first paid to the City a sum equal to the fair prorata charge hereinabove set forth.

H. In the event of any claims arising as a result of the negligent acts or omissions of the City, its officers, officials, employees representatives and agents, in the performance of the services described in this Agreement, the Owner hereby agrees to release, indemnify, defend and hold the City, its officers, officials, employees, agents and representatives, harmless from any and all claims, costs, judgments, awards or liabilities to any person.

I. The City shall be entitled to rely with acquittance on the provisions of this Agreement with respect to the fairness of the prorata charge herein provided, and upon the description of the benefitted properties set forth in Exhibit "B".

J. This Agreement shall become operative upon its being recorded with the Auditor of each County in which any of the benefitted lands are situated, at the expense of the Owner, and shall remain in full force and effect for a period of fifteen (15) years after the date of such recording, or until the Owner, or its successors or assigns, shall have been fully reimbursed as aforesaid, whichever event occurs earlier; provided, that in the event the additions described in Exhibit "A" or any portions thereof shall, during the term of this Agreement, be rendered useless by the redesign or reconstruction of a portion of the City's
facility, such determination of uselessness to be in the absolute discretion of the City’s Engineer, then the City’s obligation to collect for the Owner of the tapping charges provided pursuant to this Agreement shall cease.

K. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Owner.

L. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary.

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City of Gig Harbor  John & Judy Godulas (Owner)
M/A: P.O.Box 145  3708-130th St. Ct. NW
Gig Harbor, WA 98335  Gig Harbor, WA 98335
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M. All of the provisions, conditions, regulations and requirements of this Agreement shall be binding upon the successors and assigns of the Owner, as if they were specifically mentioned herein.

N. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any resulting dispute shall be in Pierce County Superior Court, Pierce County, Washington. The prevailing party in any legal action shall be entitled to all other remedies provided herein, and to all costs and expenses, including attorney’s fees, expert witness fees or other witness fees and any such fees and expenses incurred on appeal.

O. Any invalidity, in whole or in part, of any of the provisions of this Agreement shall not affect the validity of any other of its provisions.

P. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.
Q. This Agreement, including its exhibits and all documents referenced herein, constitutes the entire agreement between the City and the Owner, and supersedes all proposals, oral or written, between the parties on the subject.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF GIG HARBOR

By: [Signature]

OWNERS

[Signature]

ATTEST:

[Signature]
City Clerk, Mark Hoppen

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY

John D. Wallace

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STATE OF WASHINGTON )
COUNTY OF KING (PIERCE) ss.

I certify that I know or have satisfactory evidence that John Godula 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 Owner 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.

Date: 4/14/95

Molly M. Towle
Molly M. Towle

(print or type name)
NOTARY PUBLIC in and for the State of Washington, residing at: Gig Harbor
My Commission expires: 12/2/95

STATE OF WASHINGTON )
COUNTY OF KING (PIERCE) ss.

I certify that I know or have satisfactory evidence that Breckin 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) was authorized to execute the instrument and acknowledged it as the Mayor and City Administrator 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.

Date: 4/14/95

Molly M. Towle
Molly M. Towle

(print or type name)
NOTARY PUBLIC in and for the State of Washington, residing at: Gig Harbor
My Commission expires: 12/2/95

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