

PL-PPLAT-21-0002 et al
Hearing Examiner 11.07.2023
Exhibit P

Excise Tax Exempt 202306090257
Pierce County, WA Electronically Recorded
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RETURN ADDRESS:

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Gordon, Thomas, Honeywell, et al
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Tacoma, WA 98401-1157

RECEIVED BY

Michelle Thomas
Planning Division
06.15.2023

CITY OF GIG HARBOR

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

1. Sanitary Sewer Easement
- 2.

Grantor(s) Name (last, first, and initials):

1. Rush Residential Inc.
- 2.

Additional Names on Page _____ of Document

Grantee(s) Name (last, first, and initials):

1. Owners of Lots 1-57 of Pierce County Auditor's No. 200402055024
 2. Horizonwest Homeowners Association
- Additional Names on Page _____ of Document

Legal Description (Abbreviated i.e. lot/block and plat or section, township and range)

Ptn SE SW S25, T22N, R1E, W.M. and Lots 1-57, inclusive, and Tracts A, C, D, E, F, G, AND H, Horizon West, recorded February 5, 2004, Pierce County AFN 200402055024 and Plat Alteration recorded February 8, 2006, Pierce County AFN 200602085007. Pierce County Washington.

Legal Descriptions on pages 5-10 of Document.

Reference Number(s) of Documents Assigned or Released:

- 1.
- Additional Reference Numbers on Page _____ of Document

Assessor's Tax Parcel / Account Number(s)

0122253072; 3000850010 through 3000850570; 3000850590 (Tracts A, C, D, E, F, G, H)

SEWER EASEMENT

This Easement is made this 9th day of June 2023 ("Effective Date") by Rush Residential Inc. ("Rush"), a Washington corporation, the Horizonwest Homeowners Association, a Washington nonprofit corporation ("HOA"), acting on behalf of and the owners of Lots 1-57 of the Horizon West Plat (collectively, the "Parties").

BACKGROUND

- A. Rush is the owner of the property commonly known as Pierce County Parcel No. 0122253072 in Gig Harbor, Washington ("Rush Property"). The Rush Property is legally described on **Exhibit A**.
- B. The HOA is the homeowners' association for the owners ("Owners") of the lots in the Horizon West Plat recorded under Pierce County Auditor's No. 200402055024. The properties that comprise Horizon West Plat are legally described on **Exhibit B** ("Horizon West Property").
- C. In 2003, the prior owner of the Rush Parcel granted a sewer maintenance easement to the City of Gig Harbor under Pierce County Auditor's No. 200310200154 ("City Maintenance Easement").
- D. An existing private sewer line exists in the City Maintenance Easement ("Private Sewer Line"). The Private Sewer Line was designed and constructed for the benefit of both the Horizon West Property and the Rush Property.
- E. The City Maintenance Easement, however, is only for the benefit of the City to provide it access to the Private Sewer Line for inspection and maintenance if others fail to maintain the facilities.
- F. There is no existing easement relating to the Private Sewer Line for the benefit of the Horizon West Property.
- G. The Parties wish to create such a sewer easement for the benefit of the Horizon West Property for the Private Sewer Line.
- H. The Parties also wish to clarify the rights and obligations of the Parties (and any future parties) relating to the Private Sewer Line.

Therefore, in light of this background the Parties agree as follows:

AGREEMENT

1. Grant of Easement. Rush hereby grants to the Owners and the HOA for the benefit of the Horizon West Property a perpetual, non-exclusive easement ("Sewer

Easement") under, over, through and across the real property described on **Exhibit C** ("Easement Area") for the purpose of using, maintaining, and repairing the Private Sewer Line, including the pipeline, manholes, and other appurtenant sewer structures within the Easement Area.

2. Maintenance.

- a. The Private Sewer Line shall be maintained to the standards for such facilities as set from time to time by Gig Harbor.
- b. The Parties agree to share the costs of maintaining and repairing the Private Sewer Line proportionately based on the number of "Resident Units" connected to the Private Sewer Line on the Horizon West Property and Rush Property respectively. For the purposes of this Agreement, a single-family residence, a condominium unit, and/or an apartment unit shall each constitute one "Resident Unit".
- c. If a Party believes that repairs, maintenance, or improvements to the Private Sewer Line are needed, that Party shall notify the other Party in writing and provide an estimate, prepared by a reputable licensed contractor(s), of the costs of the proposed work for the other party's review and comment (the "Estimate"). If the non-notifying Party does not respond within twenty (20) days of receipt of the Estimate, such non-response shall be deemed as an acceptance of the need for such work and the amount of the lowest bid. If the Parties cannot agree on the necessity of proposed work, the scope of the proposed work, the cost of the proposed work or the contractor to perform the proposed work, the HOA shall have final decision-making authority on such matters, provided the need for such work is consistent with normal utility and engineering standards, and is consistent with the obligations and standards under the City Maintenance Easement.
- d. Notwithstanding the foregoing, in the event that an emergency repair is necessary, either Party may unilaterally authorize necessary emergency repair.
- e. Each Party's share for any repair, maintenance or improvement work performed pursuant to this Agreement shall be promptly paid either directly to the contractor or, alternatively, in reimbursement to the Party that paid the contractor(s) for the service(s). Payment shall be made, in full, no more than sixty (60) days following the owing Party's receipt of the invoice, or in such other reasonable timeframe as agreed in writing by the Parties.
- f. Any unpaid balance remaining after the payment deadline set forth herein shall accrue interest at twelve percent (12%) per annum. In the

event legal action is required to collect any delinquent amount, the Party in breach shall be obligated to pay all reasonable attorney's fees and costs incurred by the Party seeking collection.

3. Rush Property Connections. Rush, its heirs, successors, and assigns shall have the right to connect to and use the Private Sewer Line in any manner that does not interfere with the easement rights described herein. All costs of connection, and any damage and/or repairs required as a result of such connection, if any, shall be the responsibility of Rush, its heirs, successors, and assigns.

4. Future Third-Party Connections. The Parties contemplate that other properties located "downstream" from the Horizon West and Rush Properties may connect to the Private Sewer Line in the future. Should that occur, the Parties agree that such third-parties may only connect to the Private Sewer Line on the condition that they pay a proportionate share of the maintenance and repair costs as outlined under Section 2 above. Such obligation shall be in writing and recorded with the Pierce County Auditor.

5. Successors and Assigns. The Sewer Easement shall run with the affected properties and be binding upon the Parties, their heirs, successors, and assigns.

6. Indemnification. Rush, its heirs, successors and assigns shall agree to indemnify and hold the HOA harmless from any and all liability, loss, damage, action, proceeding or claim (including, but not limited to, costs and attorney's fees) of any nature whatsoever asserted or arising out of or in connection with its use of, and connection to, the Private Sewer Line from the date this Agreement is entered until a date two (2) years after final plat approval on the Rush Property, except to the extent any such liability, loss, damage, action, proceeding or claim is incurred as a result of the negligence or willful misconduct of the HOA. Thereafter, Parties shall indemnify and hold each other harmless from any and all liability, loss, damage, action, proceeding or claim (including, but not limited to, costs and attorney's fees) of any nature whatsoever asserted or arising out of or in connection with that Party's activities relating to the Easement Area or surrounding property, except to the extent any such liability, loss, damage, action, proceeding or claim is incurred as a result of the negligence or willful misconduct of the Party seeking indemnification.

7. Interference. No buildings or other structures shall be built upon the Easement Area without the prior written consent of the HOA acting on behalf of the Owners.

8. Attorney's Fees. In the event it becomes necessary for any party to defend or institute legal proceedings as a result of the failure of either Party to comply with the terms, covenants, agreements and/or conditions of this Agreement, the substantially prevailing party in such proceedings shall be reimbursed by the substantially non-prevailing party for all costs incurred or expended in connection

10. Waiver. No delay in exercising any right or remedy with respect to this Agreement shall constitute a waiver.

11. Headings. The headings in this Agreement are for convenience only and do not in any way limit or affect the terms and provisions of the Agreement.

12. Severability. If any term, covenant or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision and this Agreement shall be construed as if the invalid or unenforceable provision did not exist.

13. Entire Easement. This easement agreement and all exhibits attached constitute the entire agreement of the parties with respect to the subject matter contained herein, and all prior understandings and agreements of the parties are merged into this agreement. This agreement may not be modified in any manner except by written instrument signed by all of the parties.

14. Costs Related to Drafting of This Agreement. Rush agrees to reimburse the HOA for any and all costs incurred by the HOA in the drafting, revising, negotiating and/or recording of this Agreement including, but not limited to, attorney's fees and costs, not to exceed a total of \$2,000.

15. Counterparts. This Agreement may be signed in any number of counterparts each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument

ACCEPTED BY:

RUSH RESIDENTIAL, INC.

HORIZONWEST HOMEOWNERS
ASSOCIATION


By: Scott A. Walker
Its: Vice President

By: _____
Its: _____

Dated 5-24-23

Dated _____

therewith including, but not limited to, reasonable attorney's fees (including appellate fees) and court costs.

9. Applicable Law. This Agreement shall be governed by and interpreted in accordance with the Laws of the State of Washington.

10. Waiver. No delay in exercising any right or remedy with respect to this Agreement shall constitute a waiver.

11. Headings. The headings in this Agreement are for convenience only and do not in any way limit or affect the terms and provisions of the Agreement.

12. Severability. If any term, covenant or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision and this Agreement shall be construed as if the invalid or unenforceable provision did not exist.

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ACCEPTED BY:

RUSH RESIDENTIAL, INC.

HORIZONWEST HOMEOWNERS
ASSOCIATION

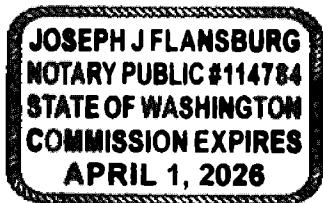
By: _____
Its: _____
Dated: _____

By: Chris Boyle
Its: President
Dated: June 9, 2023

STATE OF WASHINGTON)
:ss.
County of Pierce)

On this day personally appeared before me, Scott A. Walker to me known to be the Vice President of Rush Residential Inc, the company that executed the within and foregoing instrument and acknowledged that the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute and in fact executed said instrument on behalf of the corporation.

GIVEN under my hand and official seal this 24th day of May, 2023.



Joseph J. Flansburg
Type/Print Name: Joseph J. Flansburg
Notary Public in and for the State of
Washington,
residing at Puyallup
My appointment Expires: 4-1-26

STATE OF _____)
:ss.
County of _____)

On this day personally appeared before me, _____, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged it as the _____ of Horizonwest Homeowners Association, and that he/she signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 2023.

Type/Print Name: _____
Notary Public in and for the State of
Washington,
residing at _____
My appointment Expires: _____

STATE OF WASHINGTON

)

County of Pierce :ss.)

On this day personally appeared before me, _____, to me known to be the _____ of Rush Residential Inc, the company that executed the within and foregoing instrument and acknowledged that the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute and in fact executed said instrument on behalf of the corporation.

GIVEN under my hand and official seal this _____ day of _____, 2023.

Type/Print Name: _____

Notary Public in and for the State of Washington,

residing at _____

My appointment Expires: _____

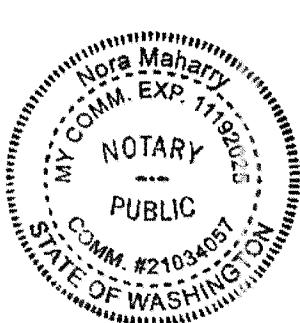
STATE OF Washington)

:ss.

County of Pierce)

On this day personally appeared before me, Chris Boyle, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged it as the President of Horizonwest Homeowners Association, and that he/she signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 9 day of June, 2023.



Nova Maharry

Type/Print Name: NOVA MAHARRY

Notary Public in and for the State of Washington,

residing at Pierce County

My appointment Expires: 11-19-2025

EXHIBIT A

LEGAL DESCRIPTION OF RUSH PROPERTY

APN: 012225-3072

That Portion of the Southeast quarter of the Southwest quarter of Section 25, Township 22 North, Range 1 East of the Willamette Meridian, Pierce County, Washington lying northerly of 112th Street NW and lying northerly, easterly, and southerly of the following described line:

COMMENCING at the South quarter corner of said Section 25;
THENCE North 88°14'09" West, along the South line of said Southwest quarter, 493.13 feet to the Southeast corner of Plat Alteration of Horizon West as shown on the plat thereof recorded under AFN 200602085007;
THENCE North 02°16'29" East 150.82 feet;
THENCE South 86°50'41" East 11.32 feet;
THENCE North 02°16'29" East 55.50 feet;
THENCE South 86°50'41" East 48.54 feet to the Point of Beginning;
THENCE North 54°16'31" West 62.70 feet;
THENCE North 88°39'04" West 159.07 feet;
THENCE North 02°26'35" East 16.26 feet;
THENCE North 88°14'09" West 93.21 feet;
THENCE North 02°16'41" East 10.00 feet to an angle point in Tract C of the aforementioned Plat Alteration of Horizon West;

THENCE along the boundary of said plat the following courses:

North 02°16'41" East 686.83 feet;
North 48°02'05" East 336.42 feet;
South 58°38'37" East 227.14 feet;
South 89°33'05" East 302.68 feet to the North-South centerline of said Section 25 and the terminus of this line description.

ALSO KNOWN AS Revised Parcel A, City of Gig Harbor Boundary Line Adjustment recorded under Recording No. 201007285003, in Pierce County, Washington.

EXHIBIT B
HORIZON WEST PROPERTY

LOTS 1 THROUGH 57, INCLUSIVE, AND TRACTS A, C, D, E, F, G, AND H, HORIZON WEST, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 5, 2004 UNDER RECORDING NO. 200402055024, AND PLAT ALTERATION RECORDED FEBRUARY 8, 2006 UNDER RECORDING NO. 200602085007, RECORDS OF PIERCE COUNTY, WASHINGTON.

EXHIBIT C
EASEMENT AREA

June 11, 2003
File #1531198

Exhibit C

**UTILITY EASEMENT
LEGAL DESCRIPTION**

A STRIP OF LAND IN THE SOUTH ONE HALF OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST, OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, THE CENTERLINE OF WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 25; THENCE NORTH 02°30'16" EAST 515.49 FEET ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 25; THENCE SOUTH 87°29'44" EAST 974.67 FEET TO THE WESTERLY MARGIN OF BURNHAM DRIVE NORTHWEST AND THE POINT OF BEGINNING OF THE CENTERLINE OF A STRIP OF LAND, 15.00 FEET IN WIDTH, THE SIDE LINES OF WHICH TERMINATE AT THE WESTERLY MARGIN OF BURNHAM DRIVE NORTHWEST;
THENCE SOUTH 00°16'57" EAST 205.86 FEET;
THENCE SOUTH 89°30'35" WEST 187.81 FEET;
THENCE NORTH 86°42'51" WEST 281.40 FEET;
THENCE SOUTH 84°54'21" WEST 399.97 FEET;
THENCE NORTH 16°19'12" WEST 258.58 FEET;
THENCE NORTH 26°21'40" WEST 120.32 FEET;
THENCE NORTH 02°30'15" EAST 859.04 FEET;
THENCE NORTH 88°00'19" WEST 168.68 FEET;
THENCE NORTH 64°21'13" WEST 57.97 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT A" AND THE BEGINNING OF THE CENTERLINE OF A STRIP OF LAND, 51.00 FEET IN WIDTH, THE SIDE LINES OF WHICH TERMINATE AT A LINE WHICH BEARS NORTH 01° 41'49" WEST;
THENCE SOUTH 86°18'11" WEST 46.73 FEET;
THENCE NORTH 88°04'39" WEST 360.00 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT B";
THENCE SOUTH 02°16'41" WEST 309.86 FEET;
THENCE NORTH 87°42'40" WEST 10.64 FEET TO THE BEGINNING OF A 260 FOOT RADIUS CURVE, THE CENTER POINT OF WHICH BEARS SOUTH 02°17'20" WEST;
THENCE ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 43° 55'52", A DISTANCE OF 199.35 FEET;
THENCE SOUTH 48°21'27" WEST 34.85 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT C";
THENCE CONTINUING SOUTH 48°21'27" WEST 179.72 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT D";
THENCE CONTINUING SOUTH 48°21'27" WEST 120.44 FEET TO THE BEGINNING OF A 260 FOOT RADIUS CURVE, THE CENTER POINT OF WHICH BEARS SOUTH 41°38'33" EAST;

THENCE ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 46° 04'46", A DISTANCE OF 209.10 FEET;
THENCE SOUTH 02°16'41" WEST 499.41 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT E";
THENCE SOUTH 88°14'09" EAST 256.01 FEET TO A POINT HEREINAFTER REFERRED TO AS "POINT F";
THENCE CONTINUING SOUTH 88°14'09" EAST 256.01 FEET;
THENCE SOUTH 86°50'41" EAST 105.23 FEET AND THE TERMINUS OF THIS CENTERLINE DESCRIPTION;

TOGETHER WITH THE FOLLOWING STRIP OF LAND 15.00 FEET IN WIDTH, THE CENTERLINE OF WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE AFOREMENTIONED "POINT A"; THENCE NORTH 04°17'44" EAST 58.38 FEET TO ITS TERMINUS, EXCEPT ANY PORTION ALREADY DESCRIBED HEREIN;

TOGETHER WITH THE FOLLOWING STRIP OF LAND 15.00 FEET IN WIDTH, THE CENTERLINE OF WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE AFOREMENTIONED "POINT B"; THENCE NORTH 18°06'01" WEST 63.96 FEET TO ITS TERMINUS, EXCEPT ANY PORTION ALREADY DESCRIBED HEREIN;

TOGETHER WITH THE FOLLOWING STRIP OF LAND 51.00 FEET IN WIDTH, THE CENTERLINE OF WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE AFOREMENTIONED "POINT C"; THENCE NORTH 41°38'35" WEST 141.00 FEET TO ITS TERMINUS, EXCEPT ANY PORTION ALREADY DESCRIBED HEREIN;

TOGETHER WITH THE FOLLOWING STRIP OF LAND 80.00 FEET IN WIDTH, THE CENTERLINE OF WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE AFOREMENTIONED "POINT D"; THENCE SOUTH 37°11'09" WEST 51.00 FEET TO ITS TERMINUS, EXCEPT ANY PORTION ALREADY DESCRIBED HEREIN;

TOGETHER WITH THE FOLLOWING STRIP OF LAND 51.00 FEET IN WIDTH, THE CENTERLINE OF WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE AFOREMENTIONED "POINT F"; THENCE NORTH 02°16'41" EAST 570.07 FEET TO THE BEGINNING OF A 260 FOOT RADIUS CURVE, THE CENTER POINT OF WHICH BEARS NORTH 11°14'19" WEST; THENCE ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 43° 55'14", A DISTANCE OF 199.31 FEET;
THENCE NORTH 41°38'33" WEST 24.33 FEET TO THE AFOREMENTIONED "POINT D" AND ITS TERMINUS, EXCEPT ANY PORTION ALREADY DESCRIBED HEREIN.

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