

## CONCOMITANT ZONING AGREEMENT

THIS AGREEMENT entered into this 4<sup>th</sup> day of September, 1987 by and between JEAN S. NELSON, hereinafter referred to as "Owner" and the CITY OF PUYALLUP, WASHINGTON, a municipal corporation, hereinafter referred to as the "City,"

W I T N E S S E T H :

WHEREAS owner has joined in a petition to annex the subject property into the City of Puyallup along with other contiguous properties;

WHEREAS the City has accepted said petition, and by approval of Ordinance No. 2136 has approved the annexation of said property and by said ordinance approved a zoning regulation for the property which is embodied in the terms and conditions of this agreement;

WHEREAS the actions of the City in approving the contract zoning regulation for the subject property are in general conformity with the applicable comprehensive plan within the authority of RCW 35A.14.330 and in furtherance of the policies of the State Environmental Policy Act RCW 43.21C;

NOW, THEREFORE, in consideration of the annexation of subject property into the City by Owner, and the mutual covenants contained herein and other good, valuable and sufficient consideration, receipt of which is hereby acknowledged by the parties, the parties hereto hereby covenant and agree as follows:

1. Subject Property

The property subject to this agreement comprises the south half located within the south half of lot four (4), excluding public roads, the northwest quarter of Section 3, Township 19 North, Range 4 East W.M.

2. Zoning Classification

The subject property shall be classified RB Residential Buffer Zoning District under the current Zoning Code of the City of Puyallup. In the event the City of Puyallup repeals the current Zoning Code and replaces it with a new zoning code, the new zoning classification most nearly matching the requirements of the current RB Residential Buffer Zoning District, as modified by this agreement shall be applied to the subject property; providing that regardless of zoning classification, use of the subject for professional offices shall be permitted or conditionally permitted.

### 3. Landscaping and Buffering

A minimum twenty-five (25) foot wide landscape buffer shall be provided between any new building, improvements or development on the subject property, and any existing adjacent single family residence prior to occupancy. This landscape buffer shall be designed, installed and maintained such that within three years of occupancy, a combination of plants and other landscape elements will exist that have sufficient density and form to screen adjacent properties and mitigate the negative impacts of noise, light, glare and incompatible visual impact. Landscape elements shall include appropriate existing vegetation, introduced vegetation, fencing and may include berming, outdoor furniture, paving and decking used for decorative purposes. A landscape plan shall be subject to approval by the Puyallup Director of Planning and Community Affairs.

### 4. Modification

Except as specifically provided herein, no modifications of this agreement shall be made unless mutually agreed upon by the parties in writing.

### 5. Failure to Perform-Remedies

In the event of default by applicant in the performance of any of the terms and conditions of this agreement, the following notice as hereinafter provided, the City may, in addition to other remedies as provided herein or by law, exercise the remedy set forth in subsections A and B below. Upon determination of default by the applicant, the City shall deliver written notice demanding performance with sixty (60) days of the date of delivery. In the event that medial action has not been commenced by the applicant within said sixty (60) day period, the City may take the following actions.

a. City may elect to commence a lawsuit to compel specific performance of the terms of the agreement.

b. The applicant hereby consents to entry upon the site by the City of Puyallup or any entity, individual, person, or corporation acting on behalf of the City of Puyallup for purposes of curing said defect or default and performing said condition or covenant. Should the City in its discretion exercise the rights granted herein to cure said defect, the applicant, his successors and assigns, consent to the entry of the City on the above described property and waive all claims for damages of any kind whatsoever arising from such activity, and the applicant further agrees to pay the City all costs incurred by the City in remedying said defects or conditions. The obligations contained in this section are covenants running with the land, and burden the successors and assigns of the respective parties.

6. Enforcement

The City may, at its discretion, bring a lawsuit to compel specific performance of the terms of this agreement.

7. Severability

In the event that any term or clause of this agreement conflicts with applicable law, such conflict shall not affect other terms of this agreement which can be given effect without the conflicting term or clause, and to this end, the terms of this agreement are declared to be severable.

8. Benefit

The terms and provisions of this agreement shall inure to the benefit of and become binding upon the heirs, successors and assigns of the parties hereto.

9. Attorney Fees and Costs

In the event that litigation should be commenced between the parties hereto, the prevailing party shall be awarded, in addition to other damages as allowed by law, its reasonable attorney's fees and costs incurred in pursuing such litigation.

10. Effective Date

For purposes of the provisions of this agreement, the "effective date" of this agreement shall be deemed to be that date upon which all governmental approvals have been obtained which are necessary in order to accomplish the annexation of the subject property into the corporate City limits of the City of Puyallup and all appeal periods have expired.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

Attest:

Barbara J. Price

CITY OF PUYALLUP

BY R. S. Howe  
MAYOR

Approved as to Form:

Mark M. [Signature]  
City Attorney

JEAN S. NELSON

Jean Skelson

