

City of Port Orchard
216 Prospect Street
Port Orchard, WA 98366

PORT ORCHARD CITY OF
Ordinance Rec Fee: \$ 47.00
10/29/2007 09:30 AM
Karen Flynn, Kitsap Co Auditor
200710290006
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ORDINANCE NO. 029-07

AN ORDINANCE THE CITY OF PORT ORCHARD DESIGNATING PROPERTY COMMERCIAL ON THE CITY OF PORT ORCHARD COMPREHENSIVE PLAN MAP AND COMMERCIAL-RETAIL AND OFFICE (Co) ON THE CITY OF PORT ORCHARD ZONING MAP, TO BECOME EFFECTIVE UPON ANNEXATION. THE PROPERTY IS LOCATED IN SECTION 10, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON

ASSESSORS ACCOUNT NUMBER: 102301-4-050-2007

WHEREAS, in December 2006 Kitsap County added the property legally described and geographically depicted in Exhibit "A" ("the Property") to the City of Port Orchard UGA and designating the Property on the county comprehensive plan as Urban High Intensity Commercial/Mixed Use; and

WHEREAS, the Property is a .83 acre parcel contiguous to the City limits, located on the northwest side of the intersection of Sidney Road SW and SW Sedgwick Road, and

WHEREAS, the owner of the Property has submitted a Petition for Annexation, to annex the Property to the City of Port Orchard; and

WHEREAS, RCW 35.13.177 allows the City to prepare comprehensive plan and zoning designations to become effective upon the annexation of any area which might reasonably be expected to be annexed by the City at any future time; and

WHEREAS, pursuant to RCW 36.70A.130(2)(b), after appropriate public participation a city may adopt amendments or revisions to its comprehensive plan whenever an emergency exists; and

WHEREAS, the Planning Commission held a Public Meeting for the pre-annexation comp plan/zoning designation on May 21, 2007 and recommended that the City Council designate the Property Commercial on the City of Port Orchard Comprehensive Plan Map and Commercial – Retail and Office (Co) on the City of Port Orchard Zoning Map, to become effective upon annexation; and

WHEREAS, City Council held public hearings on the pre-annexation comp plan/zoning designation on June 25, 2007 and September 24, 2007; and

WHEREAS, being fully advised, the Council finds and concludes as follows:

FINDINGS

1. A Petitioner for Annexation of the Property into the City was received on May 15, 2007.
2. The Property is located with the City's Urban Growth Area and is contiguous to the City limits.
3. The Property is currently designated Urban High Intensity Commercial/Mixed Use in the County Comprehensive Plan and Highway Tourist Commercial in the County zoning map.
4. The Property will be served by adequate public sewer, water supply, roads, and other needed public facilities and services.
5. The Property will have access from SW Sedgwick Road.
6. The Property is adjacent to commercial zoned areas. The applicant proposes to extend commercial development on the Property.
7. If the City does not immediately adopt pre-annexation comp plan/zoning designations for the Property then the Property may be annexed into the City of Port Orchard without any comprehensive plan or zoning designations, which would be contrary to the policies and goals of the Growth Management Act and the City's comprehensive plan.



8. The purpose of the Commercial designation is to provide for the broadest mix of retail, service, office, and commercial recreation/cultural uses serving Port Orchard and surrounding market areas while offering significant employment opportunities.

CONCLUSIONS

1. Commercial is the most appropriate comprehensive plan designation for the Property. Designating the Property Commercial is in conformance with the goals and policies of the Comprehensive Plan and the Growth Management Act.
2. Designating the Property Commercial is in furtherance of the health, safety, and general welfare of the community.
3. Zoning the Property Commercial – Retail and Office (Co), is consistent with the City's Zoning Ordinance and Comprehensive Plan, and is in furtherance of the health, safety, and general welfare of the community.
4. An emergency exists, justifying an exception to the requirement that amendments or revisions to a comprehensive plan be considered no more frequently than once every year.

WHEREFORE, THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City of Port Orchard Comprehensive Plan Map, adopted by Ordinance No. 1634, is hereby amended by adding the property described in Exhibit "A" and designating it Commercial, to become effective upon annexation.

SECTION 2. The amendment to the Comprehensive Plan Map is declared an emergency under RCW 36.70A.130(2)(b).

SECTION 3. The City of Port Orchard Zoning Map, adopted by Ordinance No. 1748, is hereby amended by adding the property described in Exhibit "A" and classifying it Commercial-Retail and Office (Co), to become effective upon annexation.

SECTION 4. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. This Ordinance shall be in full force and effect five (5) days after posting and publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.



PASSED by the City Council of the City of Port Orchard, signed by the Mayor and attested by the City Clerk in authentication of such passage this 24th day of September 2007.

Kim E. Abel
Kim Abel, MAYOR

ATTEST:

Michelle Merlino
Michelle Merlino, City Clerk

APPROVED AS TO FORM:

GA Jandy
Asst. City Attorney

Sponsored by:
Rita DiIenno
Rita DiIenno, Councilmember



Exhibit A

102301-4-050-2007

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON; LYING NORTHWEST OF THE SOUTHERLY RIGHT OF WAY MARGIN OF SEDGWICK ROAD; EXCEPT THE NORTH 375 FEET THEREOF.

PORT ORCHARD CITY OF

200710290006

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**NOTICE OF CITY OF PORT ORCHARD
ORDINANCE**

The following is a summary of Ordinances approved by the Port Orchard City Council at their regular Council meeting held July 23, 2007.

ORDINANCE NO. 029-07

AN ORDINANCE THE CITY OF PORT ORCHARD DESIGNATING PROPERTY COMMERCIAL ON THE CITY OF PORT ORCHARD COMPREHENSIVE PLAN MAP AND COMMERCIAL-RETAIL AND OFFICE (Co) ON THE CITY OF PORT ORCHARD ZONING MAP, TO BECOME EFFECTIVE UPON ANNEXATION. THE PROPERTY IS LOCATED IN SECTION 10, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON

Copies of Ordinance No. 029-07 are available for review at the office of the City Clerk of the City of Port Orchard. Upon written request a statement of the full text of the Ordinance will be mailed to any interested person without charge. Thirty days after publication, copies of Ordinance No. 029-07 will be provided at a nominal charge.

City of Port Orchard



Patti Kirkpatrick
Deputy City Clerk

Publish: Port Orchard Independent *mailed 9/25/07*
September 29, 2007

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Patti Kirkpatrick

From: Kitsap Legals [kitsaplegals@soundpublishing.com]
Sent: Wednesday, September 26, 2007 1:15 PM
To: Patti Kirkpatrick
Subject: Re: Legal Ads

Thank you Patti,
All 6 Ordinances (027-07, 028-07, 029-07, 030-07, 031-07 and 032-07) are scheduled for publication this Saturday 9/29/07.

Sincerely,
Malia Parrish
Kitsap Legals
Sound Publishing, Inc.
19351 8th Ave NE, Suite 205
Poulsbo, WA 98370
p: 360-394-8714
**f: 360-598-4611 (new as of 9/6/07)

From: Patti Kirkpatrick [mailto:pkirkpatrick@ci.port-orchard.wa.us]
To: Legals Port Orchard Independent (E-mail) [mailto:kitsaplegals@soundpublishing.com]
Sent: Tue, 25 Sep 2007 13:36:14 -0700
Subject: Legal Ads

Hello,

Please run the attached legal ads in Saturday, September 29th's paper.

Please let me know if you have any questions or need anything further.


**Patti Kirkpatrick, CMC
Deputy City Clerk
City of Port Orchard
360.876.4407**

"You cannot do a kindness too soon because you never know how soon it will be too late." **Ralph Waldo Emerson**



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ORDINANCE NO. 030-07

AN ORDINANCE THE CITY OF PORT ORCHARD, WASHINGTON, ANNEXING CERTAIN REAL PROPERTY TO THE CITY, REQUIRING THE ANNEXED PROPERTY TO BE ASSESSED AND TAXED AT THE SAME RATE AND BASIS AS OTHER PROPERTY WITHIN THE CITY, AND ESTABLISHING COMPREHENSIVE PLAN AND ZONING DESIGNATIONS FOR THE PROPERTY. THE PROPERTY IS LOCATED IN SE ¼ OF SECTION 10 TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON

ASSESSORS ACCOUNT NUMBER: 102301-4-050-2007

WHEREAS, The City Council was notified in writing by the owner of 100% in value of the real property legally described and geographically depicted in Exhibit "A" attached hereto, of the owner's intention to commence annexation proceedings; and

WHEREAS, a meeting was held on the 23rd day of April, 2007, between the initiating party of this annexation and the Council of the City of Port Orchard, at which time the Council accepted the notice of intention to commence annexation proceedings and authorized the circulation of an annexation petition for annexation of the real property legally described and geographically depicted in Exhibit "A" attached hereto. At the meeting the Council also determined that it would require the simultaneous adoption of comprehensive plan and zoning regulations, and the assumption of city indebtedness by the area to be annexed upon annexation; and

WHEREAS, the petition was circulated, filed with the City Council, and certified by the County Assessor as containing the signatures of owners as set forth in RCW 35.21.005, of 100% in value, according to the assessed valuation for general taxation, of the property to be annexed; and

WHEREAS, the City properly filed a Notice of Intention and related documents with the Kitsap County Boundary Review Board, and the proposed action was deemed approved by the Board on September 13, 2007; and

WHEREAS, pursuant to RCW 35.13.177 and 35.13.178, the City Council adopted Ordinance No. 029-07, designating the proposed annexation area Commercial on the City of Port Orchard Comprehensive Plan Map and Commercial—Retail and Office on the City of Port Orchard Zoning Map, to become effective upon annexation; and

WHEREAS, pursuant to RCW 35.13.140, a public hearing was held on September 24, 2007, which hearing was duly noticed by the City Clerk through publication in a newspaper of general circulation in the City and the proposed annexation area, and through posting of a hearing notice in three public places within the territory proposed for annexation, specifying the time and place of the hearing and inviting interested persons to appear and voice approval or disapproval of the annexation; and

WHEREAS, the City Council has been fully advised and finds that all statutory requirements have been satisfied in order to accomplish the proposed annexation; now therefore

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON DO
ORDAIN AS FOLLOWS:**

Section 1. The unincorporated real property located in Kitsap County, Washington, contiguous to the City of Port Orchard and legally described and geographically depicted in Exhibit "A" attached hereto and incorporated herein by this reference, is hereby annexed to and made part of the City of Port Orchard, Kitsap County, Washington, provided the applicant executes a Release and Indemnification Agreement in the form attached hereto as Exhibit "B."

Section 2. As provided in the annexation petition, all property within the territory annexed shall be assessed and taxed at the same rate and on the same basis as other property within the City of Port Orchard, including assessments or taxes in payment of all or any portion of the outstanding indebtedness of the City contracted for, incurred prior to, or existing on, the date of annexation.

Section 3. As provided in Ordinance No. 019-07, all property within the territory annexed is hereby designated Commercial on the City of Port Orchard Comprehensive Plan Map and Commercial—Retail and Office on the City of Port Orchard Zoning Map.

Section 4. Upon receipt of the executed Agreement described in Section 1, above, The City Clerk is hereby directed to file a certified copy of this Ordinance with the Kitsap County Board of Commissioners. The Clerk is further directed to file a certificate of annexation

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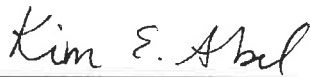


with the State Office of Financial Management as directed by RCW 35.13.260, and to provide such other notice of this annexation as required by law.

Section 5. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 6. Effective Date of Annexation. This Ordinance shall be in full force and effect upon receipt of the executed Agreement referenced in Section 1, above, and five (5) days after posting and publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

PASSED by the City Council of the City of Port Orchard, signed by the Mayor and attested by the City Clerk in authentication of such passage this 24 day of September, 2007.



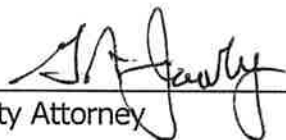
Kim Abel, MAYOR

ATTEST:




Michelle Merlino, City Clerk

APPROVED AS TO FORM:



Asst. City Attorney

Sponsored by:



Rita DiIenno, Councilmember

Exhibit A

102301-4-050-2007

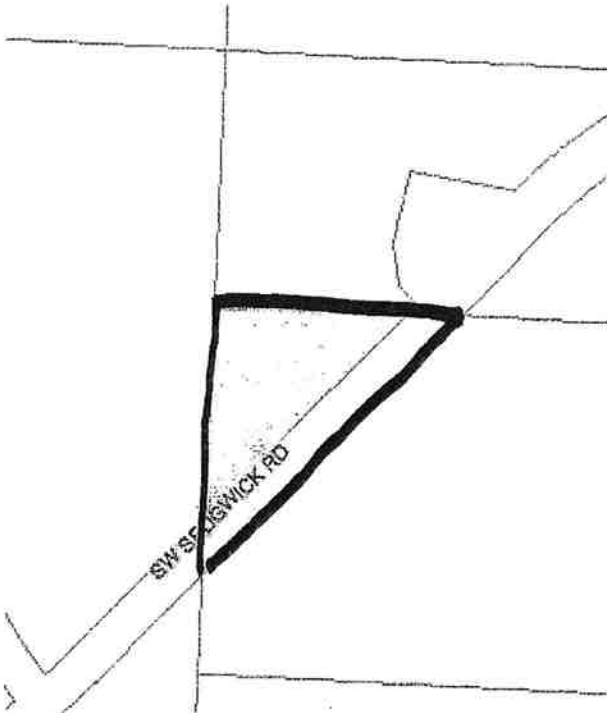
THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 23 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON; LYING NORTHWEST OF THE SOUTHERLY RIGHT OF WAY MARGIN OF SEDGWICK ROAD; EXCEPT THE NORTH 375 FEET THEREOF.

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102301-4-050-2007
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**CITY OF PORT ORCHARD
RELEASE AND INDEMNIFICATION AGREEMENT**

This Release and Indemnification Agreement is dated for reference purposes October 1, 2007 and is entered into by and between the City of Port Orchard, a municipal corporation (the City) and Harvey and Terry Cousins, husband and wife, (the Petitioner).

Recitals

WHEREAS, Petitioner is the owner of real property in Kitsap County, as legally described on Exhibit A, attached hereto and incorporated by this reference (the subject property); and

WHEREAS, Petitioner submitted a notice of intent to petition for annexation, which notice was accepted by the City Council on April 23, 2007; and

WHEREAS, Petitioner submitted a formal petition for annexation in May 2007, which was reviewed and approved by Kitsap County and the Boundary Review Board in accordance with the requirements of Chapter 35.13 RCW; and

WHEREAS, prior to the City Council's adoption of an ordinance approving the annexation, the Central Puget Sound Growth Management Hearings Board issued a written decision on September 13, 2007 in a proceeding known as Suquamish II, which decision invalidated Kitsap County's expanded urban growth areas (UGA) on the grounds that there was no provision in the County's Capital Facilities Element for public facilities and services being adequate and available to support the planned for development; and

WHEREAS, the subject property lies within one of the UGAs invalidated by the Suquamish II decision and, pursuant to RCW 35.13.005, cities may only annex areas that lie within an urban growth area; and

WHEREAS, Petitioner contends that its right to annex is vested because the annexation proceeding was initiated prior to the Suquamish II decision; and

WHEREAS, although the case law regarding the application of vesting rights to annexation proceedings is uncertain, water facilities and sanitary sewer facilities are available and adequate to meet existing needs within the unexpanded Port Orchard UGA, and planning is underway to ensure these urban services will be available to the subject property at the time the development is ready for occupancy and use ; and

WHEREAS, for the above-stated reasons, the City Council has approved the ordinance allowing the annexation of the subject property subject to the Petitioner executing this Agreement.

EXHIBIT " B "

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NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements contained herein, the parties agree as follows:

Agreement

1. Petitioner, and the heirs, executors, administrators, successors and assigns of Petitioner, agree to indemnify, defend, and hold harmless the City, its elected and appointed officials, agents, attorneys, and employees, from and against any and all claims, liabilities, losses, judgments, awards, causes of actions, demands, damages, expenses (including attorney fees), and compensation brought by third parties and which arise out of or relate in any way to the City's decision to approve the annexation of the subject property.

2. Petitioner, and the heirs, executors, administrators, successor, and assigns of Petitioner, release and forever discharge the City from and against any and all claims, liabilities, losses, judgments, awards, causes of actions, demands, damages, expenses (including attorney fees), and compensation that Petitioner and the heirs, executors, administrators, successor, and assigns of Petitioner, have now or may acquire in the future arising from or relating in any way to the City's decision to approve the annexation of the subject property. This release shall survive the termination of this Agreement.

3. In the event the City is named in any lawsuit arising from or relating to the decision to annex the subject property, the City shall be entitled to select its own attorney and all costs of the City's defense, including attorney fees, shall be paid by Petitioner.

4. Petitioner acknowledges that this release and obligation to indemnify and hold harmless is given willingly, that it is based on Petitioner's independent judgment, that Petitioner has read this Agreement and fully understands it, and that Petitioner has been provided with an opportunity to consult with independent legal counsel prior to executing this Agreement.

5. The City's failure to exercise or delay in exercising any right or remedy hereunder, at law or in equity, shall not operate as a waiver thereof; nor shall the City be estopped to exercise any such right or remedy at any future time because of any such failure or delay.

6. Petitioner may not assign its interests or obligations under this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld.

7. Petitioner warrants and represents that Petitioner is the owner of the subject property.



8. Petitioner's obligations set forth in paragraph 1 above shall extend to all claims, demands, or causes of action that are filed on or before October 30, 2008, after which this Agreement shall expire by its own terms.

9. A fully executed copy of this Agreement shall be recorded with the Kitsap County Auditor.

10. This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof and it may be amended or modified only by an instrument in writing which by its express terms refers to this Agreement and which is duly executed by the party bound thereby.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

CITY OF PORT ORCHARD

PETITIONER

Kim E. Abel

By: Kim Abel, Mayor

By: Harvey Cousins

ATTEST:

By: Terry Cousins

Michelle Merlino, City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

PORT ORCHARD CITY OF **200710290007**

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**CITY OF PORT ORCHARD
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Recitals

WHEREAS, Petitioner is the owner of real property in Kitsap County, as legally described on Exhibit A, attached hereto and incorporated by this reference (the subject property); and

WHEREAS, Petitioner submitted a notice of intent to petition for annexation, which notice was accepted by the City Council on April 23, 2007; and

WHEREAS, Petitioner submitted a formal petition for annexation in May 2007, which was reviewed and approved by Kitsap County and the Boundary Review Board in accordance with the requirements of Chapter 35.13 RCW; and

WHEREAS, prior to the City Council's adoption of an ordinance approving the annexation, the Central Puget Sound Growth Management Hearings Board issued a written decision on September 13, 2007 in a proceeding known as Suquamish II, which decision invalidated Kitsap County's expanded urban growth areas (UGA) on the grounds that there was no provision in the County's Capital Facilities Element for public facilities and services being adequate and available to support the planned for development; and

WHEREAS, the subject property lies within one of the UGAs invalidated by the Suquamish II decision and, pursuant to RCW 35.13.005, cities may only annex areas that lie within an urban growth area; and

WHEREAS, Petitioner contends that its right to annex is vested because the annexation proceeding was initiated prior to the Suquamish II decision; and

WHEREAS, although the case law regarding the application of vesting rights to annexation proceedings is uncertain, water facilities and sanitary sewer facilities are available and adequate to meet existing needs within the unexpanded Port Orchard UGA, and planning is underway to ensure these urban services will be available to the subject property at the time the development is ready for occupancy and use ; and

WHEREAS, for the above-stated reasons, the City Council has approved the ordinance allowing the annexation of the subject property subject to the Petitioner executing this Agreement.



NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements contained herein, the parties agree as follows:

Agreement

1. Petitioner, and the heirs, executors, administrators, successors and assigns of Petitioner, agree to indemnify, defend, and hold harmless the City, its elected and appointed officials, agents, attorneys, and employees, from and against any and all claims, liabilities, losses, judgments, awards, causes of actions, demands, damages, expenses (including attorney fees), and compensation brought by third parties and which arise out of or relate in any way to the City's decision to approve the annexation of the subject property.

2. Petitioner, and the heirs, executors, administrators, successor, and assigns of Petitioner, release and forever discharge the City from and against any and all claims, liabilities, losses, judgments, awards, causes of actions, demands, damages, expenses (including attorney fees), and compensation that Petitioner and the heirs, executors, administrators, successor, and assigns of Petitioner, have now or may acquire in the future arising from or relating in any way to the City's decision to approve the annexation of the subject property. This release shall survive the termination of this Agreement.

3. In the event the City is named in any lawsuit arising from or relating to the decision to annex the subject property, the City shall be entitled to select its own attorney and all costs of the City's defense, including attorney fees, shall be paid by Petitioner.

4. Petitioner acknowledges that this release and obligation to indemnify and hold harmless is given willingly, that it is based on Petitioner's independent judgment, that Petitioner has read this Agreement and fully understands it, and that Petitioner has been provided with an opportunity to consult with independent legal counsel prior to executing this Agreement.

5. The City's failure to exercise or delay in exercising any right or remedy hereunder, at law or in equity, shall not operate as a waiver thereof; nor shall the City be estopped to exercise any such right or remedy at any future time because of any such failure or delay.

6. Petitioner may not assign its interests or obligations under this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld.

7. Petitioner warrants and represents that Petitioner is the owner of the subject property.



8. Petitioner's obligations set forth in paragraph 1 above shall extend to all claims, demands, or causes of action that are filed on or before October 30, 2008, after which this Agreement shall expire by its own terms.

9. A fully executed copy of this Agreement shall be recorded with the Kitsap County Auditor.

10. This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof and it may be amended or modified only by an instrument in writing which by its express terms refers to this Agreement and which is duly executed by the party bound thereby.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

CITY OF PORT ORCHARD

PETITIONER

Kim E. Abel
By: Kim Abel, Mayor

Harvey Cousins
By: Harvey Cousins

ATTEST:

Terry Cousins
By: Terry Cousins

Michelle Merlino
Michelle Merlino, City Clerk

APPROVED AS TO FORM:

M. Jewley
Assistant City Attorney



