

CITY OF FIFE, WASHINGTON

ORDINANCE NO. 1773

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE A FOURTH ADDENDUM TO THE DEVELOPMENT AGREEMENT WITH C. LEE BROOKE, LLC, JAMES W. ABBOTT, LLC AND PORTSIDE BUSINESS CENTER LLC TO REMOVE THE TRAIL CONSTRUCTION REQUIREMENT

WHEREAS, on April 8, 2008 the City passed ordinance 1667 which authorized the City Manager to execute a Development Agreement and a First Addendum to Development Agreement with C. LEE BROOKE, LLC, JAMES W. ABBOTT, LLC, and PORTSIDE BUSINESS CENTER LLC regarding development of approximately 30 acres of land on 20th Street East between 63rd Avenue East and 70th Avenue East; and

WHEREAS, on March 16, 2011 a Second Addendum to Development Agreement was recorded removing from the Agreement a parcel purchased by the Pierce County Library District for the new library, and on June 21, 2011 a Third Addendum to Development Agreement was recorded extending the deadlines in Section 6 of the Development Agreement for construction of the front buildings; and

WHEREAS, Mitigation Measure No. 19 of the SEPA MDNS requires the owners to dedicate to the City a 7 foot public open space/pedestrian trail corridor along the western edge of the development and construct a five foot pedestrian trail within the corridor. However, section 4.9 of the Development Agreement provides that the trail improvements are not required to be completed until Building H of the development is ready for occupancy; and

WHEREAS, the council has allocated \$70,000 in the 2012 budget to construct the trail on the western edge of the development. The owners have expressed a willingness to dedicate the 7 foot public open space/pedestrian trail corridor to the City now so that the City may construct the trail, provided that the requirement in Section 4.9 for construction of the trail improvements is removed from the Development Agreement; and

WHEREAS, the proposed Fourth Addendum to Development Agreement would remove the requirement in section 4.9 for construction of the trail improvements, conditioned on the owners

granting the City an easement for a public open space/pedestrian corridor along the western property line of the development. Pursuant to RCW 36.70B.200; and

WHEREAS, a public hearing on the proposed amendment was held April 10, 2012; now, therefore

THE CITY COUNCIL OF THE CITY OF FIFE, WASHINGTON
DO ORDAIN AS FOLLOWS:

Section 1. The City Council hereby authorizes the City Manager to execute on behalf of the City the Fourth Addendum to Development Agreement Between City of Fife and C. Lee Brooke, LLC, James W. Abbott, LLC., and Portside Business Center, LLC attached hereto as Exhibit A.

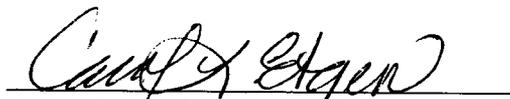
Section 2. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced the 8th day of May 2012.

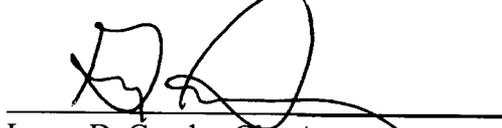
Passed by the City Council on the 22nd day of May 2012.


David K. Zabell, City Manager

ATTEST:


Carol Etgen, City Clerk

APPROVED AS TO FORM:


Loren D. Combs, City Attorney
att. to City Clerk

Published: 5/24/12
Effective Date: 5/29/12, 2012

After Recording Return to:

Public Works Director
City of Fife
5411 23rd St. E
Fife, WA 98424-2061

FOURTH ADDENDUM TO DEVELOPMENT AGREEMENT BETWEEN CITY OF FIFE AND C. LEE BROOKE, LLC, JAMES W. ABBOTT, LLC, AND PORTSIDE BUSINESS CENTER, LLC

GRANTORS: C. LEE BROOKE, LLC, JAMES W. ABBOTT, LLC and PORTSIDE BUSINESS CENTER, LLC

GRANTEE: CITY OF FIFE, a Washington municipal corporation

LEGAL DESCRIPTION: S ½ of NE ¼ Sec.7 Township 20N Range 4E W.M.

Complete legal description is described in page 2 below.

ASSESSOR'S TAX PARCEL ID#: 0420071014, 0420071159, 0420071160, 0420071161, 0420071162, 0420071164, and 0420071165

AUDITOR'S REFERENCE NUMBER: Amends 200805020202, 200805020203, 201103160318, and 201106210337.

1. Date and Parties

1.1 This Fourth Addendum to Development Agreement ("Fourth Addendum"), for reference purposes only, is dated the _____ day of February, 2012, and is entered into by and between the CITY OF FIFE, a Washington municipal corporation ("City"), and C. LEE BROOKE, LLC ("Brooke"), JAMES W. ABBOTT, LLC ("Abbott") and PORTSIDE BUSINESS CENTER LLC ("Portside").

2. Prior Agreements

2.1 On April 8, 2008 the City passed ordinance 1667 which authorized the City Manager to execute a Development Agreement ("Development Agreement") and a First Addendum to Development Agreement ("First Addendum"). The Development Agreement was recorded May 2, 2008 under Pierce County Auditor's Recording No. 2008050202 and the First Addendum was recorded May 2, 2008 under Pierce County Auditor's Recording No. 2008050203.

2.2 On March 16, 2011 a Second Addendum to Development Agreement (“Second Addendum”) was recorded under Pierce County Auditor’s Recording No. 201103160318, removing from the Agreements Parcel C of the BLA recorded under Pierce County Auditor’s Recording No. 200901065001.

2.3 On June 21, 2011 a Third Addendum to Development Agreement (“Third Addendum”) was recorded under Pierce County Auditor’s Recording No. 201106210337, extending the deadlines in Section 6 of the Development Agreement, entitled Sequencing For Front Building Construction.

2.4 The Development Agreement and the First-Third Addendums are collectively referred to herein as “the Agreements.” The legal description of the property subject to the Agreements is as follows:

LOTS A, B, D, AND E OF BOUNDARY LINE ADJUSTMENT LLA08-0007
RECORDED JANUARY 6, 2008 UNDER PIERCE COUNTY AUDITOR’S
FILE NUMBER 200901065001;

LOTS B AND C OF BOUNDARY LINE ADJUSTMENT LLA07-0004
RECORDED SEPTEMBER 11, 2008 UNDER PIERCE COUNTY AUDITOR’S
FILE NUMBER 200809115001;

THE WEST 6 FEET OF THE NORTHEAST QUARTER OF THE
SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 7,
TOWNSHIP 20 NORTH, RANGE 4 EAST, OF THE WILLAMETTE
MERIDIAN, IN PIERCE COUNTY, WASHINGTON, EXCEPT 20TH STREET
EAST (MILTON AVENUE ON THE NORTH);

AND

THE EAST 6 FEET OF THE NORTHWEST QUARTER OF THE
SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 7,
TOWNSHIP 20 NORTH, RANGE 4 EAST, OF THE WILLAMETTE
MERIDIAN, IN PIERCE COUNTY, WASHINGTON, EXCEPT 20TH STREET
EAST (MILTON AVENUE ON THE NORTH).

(the “Property”).

3. Purpose of this Fourth Addendum

3.1 Mitigation Measure No. 19 of the SEPA Conditions requires the Owners to dedicate to the City a 7 foot public open space/pedestrian trail corridor along the western edge of the Property and construct a five foot pedestrian trail within the corridor. Section 4.9 of the

Development Agreement provides that the trail improvements are not required to be completed until Building H is ready for occupancy.

3.2 The City has funds available for construction of public trails and would like to construct the trail on the western edge of the Property. The Owner is willing to dedicate the 7 foot public open space/pedestrian trail corridor to the City so that the City may construct the trail, provided that the requirement in Section 4.9 for construction of the trail improvements is removed from the Development Agreement.

4. Amendment to Development Agreement.

4.1 Section 4.9 of the Development Agreement is hereby deleted.

5. Contingent Effect of this Fourth Addendum.

5.1 This Fourth Addendum shall take effect upon the recording with the Pierce County Auditor of an easement, in a form approved by the City, dedicating the west 7 feet of the Property to the City of Fife for a nonexclusive public open space/pedestrian corridor along the western property line of the Property. Upon recording of the Easement the Owners shall be relieved of its obligation under Mitigation Measure No. 19 of the SEPA Conditions to construct a trail within the corridor.

6. Modification of Agreements.

6.1 The Agreements are deemed modified by this Fourth Addendum, as set forth herein. In the event of a conflict between this Fourth Addendum and the Agreements, this Fourth Addendum shall control.

DATED: This ___ day of _____, 2012.

CITY OF FIFE:

By: _____
Dave Zabell, City Manager

ATTEST:

By: _____
Carol Etgen, City Clerk

OWNERS:

By and through each of its tenants in common
C LEE BROOKE, LLC
a Washington Limited Liability Company

By: Lee and Claudia Brooke Living Trust
Its: Member

By:  _____
C. Lee Brooke
Its: Trustee

APPROVED AS TO FORM:

By: _____
Loren D. Combs
City Attorney

JAMES W. ABBOTT, LLC
a Washington Limited Liability Company

By: James W. Abbott
James W. Abbott
Its: Member

PORTSIDE BUSINESS CENTER, LLC
a Washington Limited Liability Company

By: James W. Abbott
James W. Abbott
Its: Managing Member

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that David K. Zabell 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 City Manager of the City of Fife, a Washington municipal corporation, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said office of the municipal corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

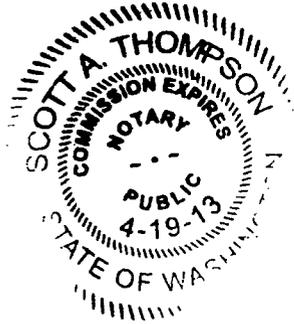
Dated: _____, 2012.

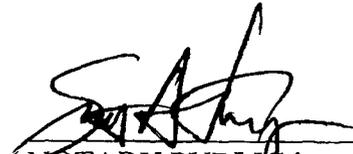
NOTARY PUBLIC in and for the State of
Washington
Residing at: _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that C. Lee Brooke is the person who appeared before me, and he acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Trustee of the Lee and Claudia Brooke Living Trust, the member of C. LEE BROOKE, LLC, a Washington limited liability corporation, and acknowledged it to be the free and voluntary act of such corporation for the uses and purposes mentioned in this instrument.

Dated: Apr 30, 2012.




NOTARY PUBLIC in and for the State of
Washington
Residing at: Shoreline
My Commission Expires: 4-19-13

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that James Abbott is the person who appeared before me, and he acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the managing member of JAMES W. ABBOTT, ;LLC, a Washington limited liability corporation, and acknowledged it to be the free and voluntary act of such corporation for the uses and purposes mentioned in this instrument.

Dated: Apr 30, 2012.

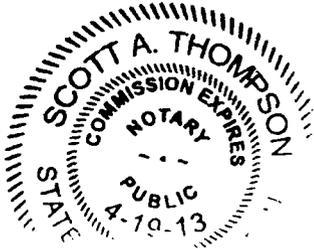



NOTARY PUBLIC in and for the State of
Washington
Residing at: Shoreline
My Commission Expires: 4-19-13

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that James Abbott is the person who appeared before me, and he acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the managing member of PORTSIDE BUSINESS CENTER, LLC, a Washington limited liability corporation, and acknowledged it to be the free and voluntary act of such corporation for the uses and purposes mentioned in this instrument.

Dated: April 30, 2012.



[Signature]
NOTARY PUBLIC in and for the State of
Washington
Residing at: Seacliff
My Commission Expires: 4-19-13

**NOTICE OF ORDINANCES PASSED BY
THE CITY OF FIFE**

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A COMPLETE COPY OF THE ORDINACNE IS ON THE City of Fife website, www.cityoffife.org

Carol Etgen
City Clerk

Ad Order Confirmation

Ad Order Number 0001314519
PO Number ORD 1773
Customer Account 220218AIM
Customer CITY OF FIFE
ACCOUNTS PAYABLE, 5411 23RD ST E,
FIFE WA 98424-2061 USA

Phone Number 253-922-2489
Phone Number 2
Customer Fax

Payment Method
Total Amount \$96.95
Payment Amt \$0.00
Amount Due \$96.95

Ad Number 0001314519-01
Sales Rep. legals
Blind Box
Tear Sheets 3
Proofs 0
Ad Size 1.0 X 15 Li
Invoice Text: ORD 1773
Affidavits 1
Placement Legal
Position Legals-001

Product	Start Date	Stop Date	# Inserts
The News Tribune	5/24/2012	5/24/2012	1

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ORDINANCE NO. 1773

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Carol Eigen
City Clerk