

CITY OF FIFE, WASHINGTON

ORDINANCE NO. 1871

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE A RESTATED DEVELOPMENT AGREEMENT WITH C. LEE BROOKE, LLC, JAMES W. ABBOTT, LLC AND PORTSIDE BUSINESS CENTER LLC TO GOVERN THE DEVELOPMENT OF THE PROPERTY KNOWN AS PORTSIDE BUSINESS CENTER

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

WHEREAS, the Original 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; and

WHEREAS, On March 16, 2011, a Second Addendum to Development Agreement (“Second Addendum”) was recorded under Pierce County Auditor Recording No. 2011031603337 removing from the Agreement Parcel C of the BLA recorded under Pierce County Auditor’s Recording No. 200901065001, purchased by the Pierce County Library District for the new library; and

WHEREAS, 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 Original Development Agreement, entitled Sequencing for Front Building Construction; and

WHEREAS, on May 29, 2012, a Fourth Addendum to Development Agreement (“Fourth Addendum”) was recorded under Pierce County Auditor’s Recording No. 201205290277, whereby the Owners agreed to dedicate the west 7 feet of the Property to the City for use as a public open space /pedestrian trail corridor along the western boundary of the Property; and

WHEREAS, the Owners own the Property as tenants in common; the southern portion of

the Property, consisting of Pierce County Tax Parcels Nos. 0420071159 and 0420071160, is located on land zoned Industrial; the remainder of the Property to the north, Pierce County Tax Parcels Nos. 0420071014, 0420071161, 0420071162, 0420071164 and 0420071165 is located on land zoned Community Mixed Use (“CMU”); and

WHEREAS on July 24, 2013 the Owners submitted a revised application for a Restated Development Agreement for the Property based on a revised site plan; and

WHEREAS, the proposed revised site plan involves the construction of approximately 489,941 square feet of commercial and industrial space in six (6) separate buildings on an approximately 27-acre site in accordance with the proposed Restated Development Agreement attached hereto as Exhibit B (the “Project”); and

WHEREAS, the site is completely cleared and graded; and

WHEREAS, there has been no active use of the site since initial development was terminated in 2007 due to the downturn in the economy, and building permits have been submitted to the City for all six (6) Buildings; and

WHEREAS, in accordance with the proposed revised site plan, Building H will be located within the Industrial District, and will be approximately 251,100 square feet. Buildings C, D, F & G will be located in the CMU district and are a combined 220,000 SF with no one building exceeding 55,000 SF. The final building, E-2, will front 20th street and be approximately 17,949 square feet in size. This building is also located within the CMU zone. Uses shall be as permitted in the underlying zoning district; and

WHEREAS, the Project will include a privately owned and maintained park and pond fronting 20th Street East for public use which will also serve as the stormwater facility; and

WHEREAS, the City has, in its Comprehensive Plan, and related documents, set forth its intent to develop a pedestrian oriented mixed use center along 20th Street East, and to provide for truck traffic to be directed away from 20th Street East; and

WHEREAS, the Project provides for a unified, attractive, safe, pedestrian friendly frontage along 20th Street East. Truck and industrial vehicular traffic will be diverted away from 20th Street East, south into the Industrially zoned area of the City. Under the Agreement a new public street is intended to be constructed (the “New 66th Avenue East”) running north to south between 20th Street East and 26th Street East, which is in the industrial area of the City. New 66th Avenue East is included in the City’s 2014-2019 Six Year Transportation Improvement Plan; and

WHEREAS, until such time as the New 66th Avenue East is completed industrial vehicular traffic from the Project will have access to and from 20th Street East; and

WHEREAS, construction of 66th Avenue East will permit the Owners to have truck intensive uses to the rear of the Property as allowed by underlying zoning, without increasing truck traffic on 20th Street East; and

WHEREAS, the proposed restated development agreement is a development agreement, as authorized by RCW 36.70B.170 - .190, and Fife Municipal Code Section 19.42.025, and is intended to replace and supersede the Original Development Agreement and all prior Amendments, and set forth the uses that will be permitted on the Property, the development standards that will apply to the Property, the period of time within which the Property may be developed, and the method and manner in which it may be developed; and

WHEREAS, a revised SEPA MDNS based on the Restated Development Agreement was issued on May 12, 2014; and

WHEREAS, on June 2, 2014, the City of Fife Planning Commission held a public meeting on the Portside Development Agreement Amendment, and voted unanimously (6-0) to recommend that the City Council approve the proposed Restated Development Agreement; and

WHEREAS, the City Council held a public hearing on the proposed Restated Development Agreement on June 10, 2014; now, therefore

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

Section 1. The above recitals are incorporated as the Council's Findings of Fact and Conclusions. The City Council also adopts as additional the Findings, the findings set forth in the Staff Report and attached hereto as Exhibit A.

Section 2. The City Council hereby approves the Restated Development Agreement attached hereto as Exhibit B, hereby authorizes the City Manager to execute the Restated Development Agreement on behalf of the City.

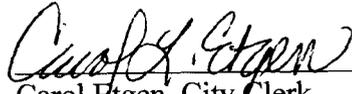
Section 3. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced the 24th day of June 2014.

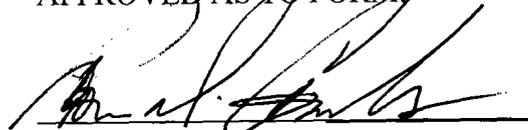
Passed by the City Council on the 24th day of June 2014.


David K. Zibell, City Manager

ATTEST:


Carol Etgen, City Clerk

APPROVED AS TO FORM:


Loren D. Combs, City Attorney

Published: June 26, 2014
Effective Date: July 1, 2014

EXHIBIT A

FINDINGS

(As stated in Staff Report for June 24, 2014 Council Meeting).

1. On June 10, 2014, the City Council held Public Hearing for the proposed amendments to a Development Agreement between C. Lee Brooke, LLC, James W. Abbott, LLC and the Portside Business Center and the City of Fife.
2. On June 2, 2014, the City of Fife Planning Commission held a public meeting on the proposed amendments to the Development Agreement for the Portside Business Center. At that meeting the Planning Commission voted unanimously (6-0) to adopt the findings within the staff report and approve the amendments to the development agreement between C. Lee Brooke, LLC, James W. Abbott, LLC, Portside Business Center, LLC and the City of Fife.
3. On April 8, 2008, the Fife City Council passed Ordinance No. 1667 authorizing the City Manager to execute a development agreement (and First Addendum to the development agreement) (Staff Report Exhibit C-Development Agreement) with C. Lee Brooke, LLC, James W. Abbott, LLC and the Portside Business Center to develop property located on the south side of 20th Street East, between 63rd Avenue East and 70th Avenue East.
4. The proposal at that time (2008), as referenced in the SEPA determination (SEP06-0022), was to develop approximately 454,970 square feet of floor area in nine separate buildings. 158,920 square feet was to be located in a single building in that portion of the Property zoned "Industrial"; 296,050 square feet was to be located in eight buildings to be located in that portion of the Property zoned "Community Commercial". The portion of the proposed development which was zoned "Community Commercial" was subsequently rezoned to "Community Mixed Use" in late 2007.
5. SEPA review on the development agreement was conducted under City File No. SEP06-0022. A Mitigated Determination of Non-Significance (MDNS) was issued on March 13, 2007 with 27 mitigation measures (Staff Report Exhibit D). Based on the revised development agreement proposal, a new Mitigated Determination of Non-Significance (MDNS) (City Case File No. SEP06-0014) was issued on May 12, 2014 (Staff Report Exhibit E).
6. The Property is approximately 29 acres in area and is currently designated both "Mixed Commercial/High Density Residential" and "Industrial" on the Comprehensive Plan Land Use map. The Property is also designated as part of the Comprehensive Plan map "Downtown District Center". That portion of the Property designated "Mixed Commercial/High Density Residential" is zoned "Community Mixed Use"; that portion of the property designated "Industrial" is zoned "Industrial". That portion of the Property fronting 20th Street East is zoned "Community Mixed Use"; that portion of the Property furthest

AMENDMENT 3

Extended the deadlines for when the developer is to apply for building permits for the "Front Buildings".

AMENDMENT 4

Allowed the City to continue the "Sheffield Trail" through the applicant's property to connect to 20th Street East. The applicant dedicated the property to the city for said improvement.

(See Exhibits I, J, K and L to staff report)

9. The applicant is proposing to amend an existing development agreement of property. A complete application for the development agreement amendment was submitted December 30, 2013. (Exhibit M)

10. The applicant's site plan (Exhibit N) proposes the development of an approximately 17,949 square foot building (Building "E2") fronting 20th Street East along with a park/pond also along the 20th Street East frontage, with four 55,000 square foot buildings to the south of the pond/20th Street East buildings (Buildings "C", "D", "F" and "G"), with another building further to the south (Building "H"). Buildings E2, C, D, F and G are located in the "Community Mixed Use" zone; Building H is located in the "Industrial" zone. Buildings C, D, F and G are each required to be less than 55,000 square feet pursuant to existing code.

11. Access into the site is proposed from 20th Street East to the north and from 26th Street East to the south. The entry (future 66th Avenue East) from 20th Street East would require the applicant's acquisition of a parcel owned by the City (the Franich Property) at that entrance location.

12. Key features of the proposed development agreement amendment that differ from the current agreement include:

- Removal of two buildings along the 20th Street East frontage and development of that portion of the Property as a storm pond/park. The park would feature a trail, seating and other amenities. The storm pond/park would tie directly into the 20th Street East terminus of the Sheffield trail (which extends southerly to Valley Avenue). It also would provide open space amenities to users of the Fife Library, to multi-family developments on the north side of 20th Street East and to others that reside and work in the area. Landscaping of the park/pond would also serve to buffer/screen the other buildings proposed as part of the development.

The storm pond/park along 20th Street East will not only provide a buffer to the buildings proposed as part of the development to the south of the pond/park, but the pond/park will complement the Sheffield Trail as well as provide an open space amenity for patrons of the library, employees/customers of the development, and nearby residents.

The proposal contributes to implementation of a street improvement (66th Avenue East) identified on the City's 2014-2019 Six-Year Transportation Improvement Program.

B. Is consistent with the city's development regulations.

Development agreements are authorized under FMC Section 19.68.110. The proposal complies with the provisions of that code section. Compliance with detailed zoning and other applicable development regulations will be evaluated during review of building permit applications.

C. The proposal is consistent with the city's comprehensive plan.

As was the case with the original proposal, the amended development agreement proposal is consistent with the following goals and policies of the City of Fife Comprehensive Plan.

Land Use Element:

"Goal 12 Encourage the development of quality industrial areas through master planning."

"Policy 12.1 Require new industrial areas to develop according to a master site plan and include such features as open space, landscaping, integrated architecture and signs, and traffic control."

Transportation Element:

"Policy 1.6 Provide truck routes to ensure that industrial and commercial areas are adequately served, while minimizing the impacts of truck traffic on residential streets."

In addition, the proposal involves the construction of a future 66th Avenue East between 20th Street East and 26th Street East. This is consistent with the 2014-2019 Six-Year Transportation Plan which is adopted as part of the Comprehensive Plan.

**RESTATED
DEVELOPMENT AGREEMENT**

**between
CITY OF FIFE**

and

**C. LEE BROOKE, LLC, JAMES W. ABBOTT, LLC AND
PORTSIDE BUSINESS CENTER LLC**

1. Date and Parties.

1.1 This RESTATED DEVELOPMENT AGREEMENT (the "Agreement"), for reference purposes, is dated the ____ day of _____, 2014, and is entered into by and between CITY OF FIFE, a Washington municipal corporation, 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 ("Original Development Agreement") and a First Addendum to Development Agreement ("First Addendum") with Brooke, Abbott, and Portside. 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 Recording No. 2011031603337 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 Original Development Agreement, entitled Sequencing for Front Building Construction.

2.4 On May 29, 2012, a Fourth Addendum to Development Agreement ("Fourth Addendum") was recorded under Pierce County Auditor's Recording No. 201205290277, whereby the Owners agreed to dedicate the west 7 feet of the Property to the City for use as a public open space /pedestrian trail corridor along the western boundary of the Property.

2.5 This Agreement is an amendment to and restatement of the Original Development Agreement and all prior Addenda. This Development Agreement replaces and supersedes the Original Development Agreement and the First, Second, Third, and Fourth Addenda.

3. Definitions. When used in this document, unless the context clearly indicates otherwise; the following words, when capitalized, shall be defined as set forth in this paragraph.

Agreement.

3.1 "Agreement" means this document entitled "Restated Development Agreement between CITY OF FIFE and C. LEE BROOKE, LLC, JAMES W. ABBOTT, LLC AND PORTSIDE BUSINESS CENTER LLC."

3.2 "City" means the City of Fife.

3.3 "Construction Standards" means the City adopted regulations governing construction standards and specifications, such as, but not limited to, the International Building Code, Uniform Plumbing Code, National Electric Code, the International Fire Code, the Uniform Code for the Abatement of Dangerous Buildings, and such other codes adopted by the City, with or without amendment.

3.4 "Development Standards" means the development requirements and conditions set forth in this Agreement, the SEPA Conditions, and all of the regulations duly adopted by the City, either as a part of the Fife Municipal Code, or adopted therein by reference, and any administrative regulations duly adopted by the City, that relate to the use, alteration or development of real property within the City. (Also see Vested Development Standards, Section 3.13). Development Standards does not include Construction Standards.

3.5 "Franich Property" means the real property commonly known as 6604 20th St. East, Fife, Washington, and identified by Pierce Tax Parcel No. 0420071705. The Franich Property is located within the path of the future 66th Avenue and the City acquired this parcel in order to construct the 66th Avenue connection between 20th Street East and 26th Street East.

3.6 "Owners" means the fee simple title holders of the Property as of the date of this Agreement and any others having an ownership interest in the Property, and their successors and assigns. As of the date of this Amended Development Agreement the Owners of the Property are: C. LEE BROOKE, LLC, a Washington limited liability company, as to an undivided 25% interest; JAMES W. ABBOTT, LLC, a Washington limited liability company, as to an undivided 25%; and PORTSIDE BUSINESS CENTER LLC, a Washington limited liability company, as to an undivided 50% interest.

3.7 "Party" shall mean any of the entities listed in paragraph 1.1. The plural shall mean all of the entities listed in paragraph 1.1.

3.8 "Property" means the real property located within the City, the legal description for which is set forth in Exhibit A, attached hereto and incorporated herein by reference.

3.9 "Revised Site Plan" is the document dated March 11, 2014 prepared by The Ronhovde Architects, LLC, showing the general building layout for development of the Property, and is attached hereto as Exhibit B, and by this reference incorporated herein.

3.10 "SEPA Conditions" means the mitigation conditions attached to the Amended Notice of Final Determination for the Determination of Nonsignificance, dated March 13, 2007, as amended by SEP13-0006 issued May 12, 2014. A copy of the SEPA Conditions is attached

hereto as Exhibit C and incorporated herein by reference.

3.11 "Vesting Date" means the April 12, 2008.

3.12 "Vested Development Standards" shall mean the Development Standards in effect on the Vesting Date, including, but not limited to, the Vested Storm Water Development Standards.

3.13 "Vested Storm Water Development Standards" means the City of Fife storm water and water detention and water quality facility requirements on effect on April 12, 2008, which use the 1992 Department of Ecology drainage manual which uses Santa Barbara methodology releasing one half of the 2 year pre-development condition during the 2 year design storm and matching the pre-developed condition at the 10 and 100 year storm event with a correction factor based on the DOE manual.

4. **General Recitals.**

4.1 The City is the entity with land use and regulatory authority over the Property.

4.2 The Owners own the Property as tenants in common. The southern portion of the Property, consisting of Pierce County Tax Parcels Nos. 0420071159 and 0420071160, is located on land zoned Industrial. The remainder of the Property to the north, Pierce County Tax Parcels Nos. 0420071014, 0420071161, 0420071162, 0420071164 and 0420071165 is located on land zoned Community Mixed Use ("CMU").

4.3 On July 24, 2013 the Owners submitted a revised application for an Amended and Restated Development Agreement for the Property based on the Revised Site Plan.

4.4 The project, as shown in the Revised Site Plan, involves the construction of approximately 489,941 square feet of commercial and industrial space in six (6) separate buildings on an approximately 27-acre site (the "Project"). The site is completely cleared and graded. There has been no active use of the site since initial development was terminated in 2007 due to the downturn in the economy. Building permits have been submitted to the City for all six (6) Buildings.

4.5 The uses of the new buildings will vary based on zoning and market demand. Building H is located within the Industrial District, and will be approximately 251,100 square feet. Buildings C, D, F & G are located in the CMU district and are a combined 220,000 SF with no one building exceeding 55,000 SF. The final building, E-2, fronts 20th street and is approximately 17,949 square feet in size. This building is also located within the CMU zone. Uses shall be as permitted in the underlying zoning district. FMC 19.02.030 provides that the Community Development Director to decide matters of interpretation or applicability of any provision of the Zoning Code. The Community Development Director shall have the authority to allow an accessory use which is subordinate and incidental to a principally permitted use.

4.6 The Project will include a privately owned and maintained park and pond fronting 20th Street East for public use which will also serve as the stormwater facility. The public's use

of the trails and other park amenities will be subject to RCW 4.24.210

4.7 The City has, in its Comprehensive Plan, and related documents, set forth its intent to develop a pedestrian oriented mixed use center along 20th Street East, and to provide for truck traffic to be directed away from 20th Street East.

4.8 The Project provides for a unified, attractive, safe, pedestrian friendly frontage along 20th Street East. Truck and industrial vehicular traffic will be diverted away from 20th Street East, south into the Industrially zoned area of the City. Under the Agreement a new public street is intended to be constructed (the "New 66th Avenue East") running north to south between 20th Street East and 26th Street East, which is in the industrial area of the City. New 66th Avenue East is included in the City's 2014-2019 Six Year Transportation Improvement Plan. Until such time as the New 66th Avenue East is completed industrial vehicular traffic from the Project will have access to and from 20th Street East.

4.9 Construction of 66th Avenue East will permit the Owners to have truck intensive uses to the rear of the Property as allowed by underlying zoning, without increasing truck traffic on 20th Street East.

4.10 This Agreement is a development agreement, as authorized by RCW 36.70B.170-190, and Fife Municipal Code Section 19.42.025, and is intended to set forth the uses that will be permitted on the Property, the development standards that will apply to the Property, the period of time within which the Property may be developed, and the method and manner in which it may be developed.

5. **Development Standards.**

5.1 The Property shall be developed in accordance with the Development Standards. The provisions of the Agreement and the Development Standards otherwise adopted by the City shall be read in a manner so that, if at all possible, they are consistent and complementary. However, in case the City determines there is a conflict between the provisions of this Agreement, and any other Development Standard, the provisions of this Agreement shall control.

5.2 The Development Standards set forth in this section shall apply to all of the Property, regardless of the underlying zone, unless a contrary intent is clearly expressed elsewhere in this Agreement.

5.3 The Revised Site Plan shall serve as a conceptual layout of the development that the City Council and the Owners agree is the basis of the Agreement. The development of the Property shall occur consistent with the conceptual layout and the Agreement provisions. Buildings C, D, F and G shall, if they have loading docks, have interior facing loading docks, shall have a maximum building height of fifty feet (50'), shall be setback from the 20th Street East right of way a minimum of one hundred and seventy-five feet (175') and shall each have less than fifty-five thousand (55,000) gross structure floor area. Building H may be fenced so as to restrict vehicular access.

5.4 The Owner's shall construct improvements for the stormwater facility on Pierce

County Tax parcels 0420071161 and 0420071162 that will also serve as a pond, park and pedestrian trail for public use, including benches and picnic tables, substantially in accordance with the park/pond concept plan attached hereto as Exhibit D. The final park/plan shall be subject to the City's approval. The pond shall be designed in accordance with the Vested Development Standards. The stormwater facility will accommodate stormwater from the Property as well as the driveway, parking lot and landscaped areas of the Library property identified as Pierce County Tax Parcel No. 0420071163 (the portions of the property not developed with Library buildings). The pond shall be sized to also accommodate storm drainage for the portions of 20th Street East and 66th Avenue East adjoining the Property, or in the alternative, the Owners shall accommodate the storm drainage for the portions of 20th Street East and 66th Avenue East adjoining the Property, by another method in compliance with the Vested Storm Water Development Standards. A reasonable means of protecting pedestrians from inadvertently entering the pond shall be provided. Each cell of the pond shall include an aeration/fountain. Grass and other duck and goose friendly landscaping shall be avoided. The northern portion of the park walkway shall serve as the sidewalk for the 20th Street frontage and shall include 20th street sidewalk connectivity with parcel no. 0420071011. Upon completion of the park and storm pond facility the Owners shall grant to the City an easement for public access to and on the pedestrian trail and park areas, on a form approved by the City. The public's use of the trails and other park amenities will be subject to RCW 4.24.210 The Owners shall maintain, at Owners' expense, the fountains, trails, landscaping, and other park amenities to the same standards as the City maintains its own parks of similar kind.

5.5 Owners, at Owners' expense, shall construct the portion of the new 66th Avenue East located on the Property and the Franich Property to Commercial and Multifamily Access Street standards in accordance with FMC 12.20.050, including demolition of the existing structures, grading, and construction of curb, gutter, sidewalk, landscape strip, street lighting, and undergrounding of utilities. Owners, at Owners' expense, shall prepare all plans and specifications and obtain all necessary permits for this work. Upon completion of the 66th Avenue improvements on the Franich Property, the City shall convey the western portion of the Franich Property outside the boundaries of the sixty (60) foot right of way to the Owners. The fair market value of the western portion shall be deducted from the value of the portion of the 66th Avenue East improvements located on the Franich Property for purposes of determining impact fee credit under section 5.7 below.

5.6 No temporary or final certificate of occupancy for any building on the Property shall be issued until the construction of the park/pond and the portion of 66th Avenue East described in Section 5.5 are complete, and accepted by the City.

5.7 Owners shall be entitled to a credit against traffic impact fees imposed for the Project for the value of the portion of the 66th Avenue East improvements located on the Franich Property in accordance with FMC 20.10.100. The value of the improvements shall be calculated as an amount equal to all reasonable costs incurred by Owners in constructing the improvements on the Franich Property that would be included in a local improvement district assessment pursuant to RCW 35.44.020 (except land acquisition costs).

5.8 Owners desire that a local improvement district (LID) be formed to finance the cost of acquiring the necessary property for and the construction of the new 66th Avenue East Development Agreement City _____ Developer _____

from the south boundary of the Franich Property to 26th Street East Property to Commercial and Multifamily Access Street standards in accordance with FMC 12.20.050, including demolition, grading, and construction of curb, gutter, sidewalk, landscape strip, street lighting, and undergrounding of utilities, ("LID Improvements") with the LID being comprised of parcels specially benefited by the improvements.

5.9 The City shall expeditiously initiate the LID process by resolution in accordance with RCW 35.43.140. Once the resolution to form the LID is approved, the City shall have a special benefits analysis performed by a qualified appraiser of its choosing, and expeditiously prepare the preliminary cost estimate, preliminary assessment roll, and other documents required by statute for LID formation. Owners shall timely provide the City, upon request, information regarding estimated costs and expenses related to the 66th Avenue East improvements to be constructed by Owners. The appraiser's fees for the special benefits analysis shall be paid by the Owners. If the LID is formed by ordinance pursuant to the resolution describe in this section, and the formation ordinance has become final (either after expiration of the appeal period provided in RCW 35.43.100 or the resolution of all timely appeals), the City shall reimburse the Owners for these fees, and they will be included in the LID assessment amount pursuant to RCW 35.44.020.

5.10 Owners consent to the formation of a local improvement district to finance the cost of acquiring the necessary property for and the construction of the new 66th Avenue East from the south boundary of the Franich Property to 26th Street East, with the LID being comprised of parcels specially benefited by the improvements. Owners specifically waive their right to protest formation of a local improvement district under RCW 35.43.180. This covenant shall be a covenant touching, concerning and running with the land and shall be binding on Owner's heirs, assigns, and successors in interest; however, in no event shall this covenant be valid and binding after expiration of ten (10) years after date of execution of this Agreement.

5.11 Owners, at Owners expense, shall provide, under the supervision of the City Public Works Director, all design, engineering and surveying documents necessary for right of way acquisition for and construction of the LID Improvements. All such documents shall be subject to City review and approval. If the LID is formed by ordinance pursuant to the resolution describe in section 5.9 above, and the formation ordinance has become final (either after expiration of the appeal period provided in RCW 35.43.100 or the resolution of all timely appeals), the City shall reimburse the Owners for these costs, and they will be included in the LID assessment amount pursuant to RCW 35.44.020.

5.12 Upon completion by Owners of the portion of the new 66th Avenue East located on the Property and acceptance by the City, if the LID has been formed and the formation ordinance has become final at the time of acceptance by the City, the Owners shall sell, and the City shall purchase, such portion of land and improvements, for fair market value in lieu of condemnation. The parties agree that fair market value shall be calculated as follows: appraised land value as unimproved (City shall obtain appraisal from WSDOT approved right of way appraiser, at City expense), plus an amount equal to all costs incurred by Owners attributable to construction of the 66th Avenue East improvements on the Property that would be included in a local improvement district assessment pursuant to RCW 35.44.020 (except land acquisition and except costs reimbursed under section 5.11 above). Purchase shall be in accordance with the City's standard form purchase and sale agreement for right of way, a copy of which is attached

Development Agreement

City _____

Developer _____

hereto as Exhibit E. If the LID has not been formed or the formation ordinance has not become final at the time of acceptance by the City, the Owners shall dedicate to the City by statutory warranty deed as a condition of development, the portion of the 60 foot right of way corridor for 66th Avenue East located on the Property, and the Owners shall be entitled to a credit against traffic impact fees imposed for the Project for the value of the land and improvements so dedicated in accordance with FMC 20.10.100.

5.13 If the special benefits analysis indicates that the total costs and expenses of the LID Improvements exceed the special benefit to the properties within the LID, the Owners, on behalf of themselves, their successors and assigns, freely and voluntarily agree that the excess cost and expense over the total special benefit, shall be added to the assessment amount for the Property, provided that the total assessment for the Property in excess of special benefit shall not exceed \$300,000.00. The additional assessment amount should be distributed proportionately among the Property parcels. Agreeing to this additional assessment amount is not a condition of development of the Property and is made freely and voluntarily by the Owners in furtherance of their desire for 66th Avenue East to be constructed and financed through an LID, in consideration of this Agreement, and for being able to develop the Property prior to completion of the LID Improvements, and in recognition of the burden and expense of necessary right of way acquisition for the LID Improvements that the City is taking on. In consideration of this Agreement, Owners also specifically waive their right to object under RCW 35.44.110 to the final LID assessments for the Property, to the extent the final assessment is less than or equal to \$300,000 over the total special benefit of the Property. This covenant shall be a covenant touching, concerning and running with the land and shall be binding on Owner's heirs, assigns, and successors in interest; however, in no event shall this covenant be valid and binding after expiration of ten (10) years after date of execution of this Agreement.

5.14 Once the LID is formed by Ordinance, the City shall expeditiously commence the process of acquiring the necessary right of way from Pierce County Tax Parcel No. 0420074144 by condemnation or purchase in lieu thereof.

5.15 Owners acknowledges that if the cost benefit analysis determines that the cost of the LID Improvements will exceed the benefits beyond the amount Owners are agreeing to include in their Property's assessment, or if the LID is restrained by protest, or successful appeal, the LID may not be finally formed, and that Owners will not be reimbursed by the City for costs incurred by Owners under sections 5.9, 5.11, and 5.12 above.

5.16 When 66th Avenue East is open from 20th Street to 26th Street, then trucks shall be prohibited from entering and existing 66th Avenue East on 20th Street East except as necessary for emergency or road detours and designated shut downs when no alternative routes are available, and all truck traffic will only enter and exit the Property directly from 66th Avenue East by way of 70th Avenue East. In such event that the LID is not formed, traffic from the Project may be directed through 20th Street until such time as the New 66th Avenue East is constructed.

5.17 There shall be internal pedestrian and vehicle access between adjacent lots fronting on 20th Street East at the time the adjacent lots are developed, including the Library property. If a retail use is developed on part of the Property that does not front on 20th Street,

then the City may, in its discretion, require pedestrian and/or vehicle access to the portion of the Property upon which the retail use is located.

5.18 Minor amendments to the Amended Site Plan may be approved administratively by the City Manager without an amendment to the Agreement. Minor amendments are any changes to the sizes and locations of buildings and/or drive aisles so long as the performance criteria set forth in Agreement paragraph 5 are met. In order to issue such a minor amendment the City Manager must determine that the amendment is consistent with the intent and purpose of this Agreement and the findings set forth in the enabling Ordinance number _____, does not adversely impact the intended pedestrian orientation of development fronting 20th Street East, meets the underlying zoning requirements and the applicable comprehensive plan provisions, and has no adverse impact on public health, safety or welfare.

5.19 The International Building Code, International Fire Code, and related Uniform Building Construction Codes in effect at the time a complete building permit application is submitted shall be the standards applicable to the construction contemplated in that particular application.

5.20 The provisions of the Agreement notwithstanding, the City Council reserves its authority to impose new or different regulations to the extent required by a serious threat to human health, safety, or the environment as authorized by RCW 36.70B.170.

5.21 No deliveries by truck shall be allowed to building G on the east side of building G and to building C on the west side of building C, and the Property shall be appropriately signed on site and on buildings C and G to direct truck deliveries to the west side of building G and the east side of building C.

5.22 No trucks or trailers with operating refrigeration units, compressors or pumps shall be allowed on the west side of Building H between the hours of 10:00 P.M. and 7:00 A.M. on weekdays and 10:00 P.M. and 9:00 A.M. on weekends.

5.23 The buffer on the Property on the west side of Building H shall be 20 feet in width and it shall contain an 8 foot tall earthen berm its entire length, with the berm height measured from the parking lot grade, with an 8 foot tall composite wall on top of the berm, and appropriate plantings as required by City code. If the applicant finds, and the City concurs, that an eight foot tall composite wall cannot safely be placed upon the berm, then the Owner shall instead place an 8 foot tall stockage wood fence on top of the berm, along with appropriate plantings as required by City Code. The Community Development Director shall also have the authority to approve a similar or superior design; so long as the buffer width is a minimum of 20 feet and the height of the berm and wall or fence are a minimum height of eight feet each.

5.24 No fence shall be required on the east side of the Property, adjacent to the Mayfair Place Condominium Project, but the T-6 plantings in the approved planting plan shall be increased to a minimum 8 foot height at planting, with the same spacing between plantings.

5.25 At the time the Owners construct the new 66th Avenue East located on the Franich Property and on the "Property", as set forth in paragraph 5.5 above, then the Owners

shall coordinate with the City and the Library District to allow for a new motor vehicle access to and from the Library Property on to 66th Ave East, at a location agreeable to the City and the Library District. Should the new access cross any portion of the "Property" prior to accessing 66th Ave East, then the Owner shall grant the Library District an access easement to cross the "Property".

6. **Vesting and Phasing.**

6.1 The Owner shall be allowed to develop the Property in phases, with the phases being allowed to occur in such sequence as the Owner deems necessary in order to meet economic demands, provided that no temporary or final certificate of occupancy for any other building on the Property shall be issue by the City until a final certificate of occupancy is issued for building E-2. Provided further that the Owner must complete in each phase the improvements that are determined necessary by the City to adequately protect the public health and safety with regards to pedestrian and traffic circulation, emergency access, stormwater management, and utilities as it relates to the proposed phase.

6.2 Except as provided in Section 5.20, Section 6, and Section 13, Owners shall have the right to develop and use the Property in accordance with the Vested Development Standards, except as otherwise provided in this Agreement or by state or federally mandated laws preempting the City's authority to vest regulations. The Property shall remain subject to all subsequent project approvals required by law or city policy to construct the improvements on the Property, including but not limited to clearing and grading permits and building permits; provided, however, that such subsequent project approvals shall be made pursuant to the Vested Development Standards.

6.3 The following regulations shall not be considered Vested Development Standards, and thus any development shall comply with these standards that are in effect at the time a complete building permit application is submitted:

6.3.1 Any parking requirements set forth in any of the following: the Americans with Disabilities Act (ADA), the State Building Code, or administrative regulations adopted pursuant to either the ADA or the State Building Code.

6.3.2 Building Construction Standards.

6.3.3 New or different officially adopted regulations of general applicability, even if in conflict with the Vested Development Standards, but only to the extent required by a serious threat to public health, safety, and welfare, as determined by the City Council, and only after notice and a meaningful opportunity to be heard has been provided to Owners.

6.3.4 Regulations which the City and Owners mutually agree, by written consent, can be applied to the Development.

6.3.5 Applicable fees in effect at such time the building permit application for a building on the Property is submitted and deemed complete by the City.

6.4 The Vested Development Standards shall apply to all uses and development activity on the Property for 15 years from Agreement Date, subject to the provisions set forth in the Agreement. At the end of said 15 year period the future use and development activity on the Property shall be subject to the regulations duly adopted by the City, either as part of the Fife Municipal Code, or adopted therein by reference, and any administrative regulations duly adopted by the City, that relate to the use, alteration or development of real property with the City, without regard to the Agreement terms and conditions. Provided, however, if a complete building permit application is submitted prior to the end of said 15 year period, the Owner shall be allowed to construct and occupy the improvement covered by said building permit application so long as the building permit issued on said application remains in full force and effect and construction is substantially completed within 18 months of the date the City notifies the Owner that the building permit is ready to be issued.

7. **Default: Notice: Rights on Default.**

7.1 No party shall be in default under this Agreement unless it has failed to perform following written notice of default from the other party. Notice of default shall allow for a thirty (30) day period of cure for the non-defaulting party. Each notice of default shall specify the nature of the alleged fault and the manner in which the default may be cured satisfactorily. A party not in default under this Agreement shall have all rights and remedies provided by law or equity, including without limitation: issuance of a stop work order, injunction, damages, action for specific performance, or to require action consistent with this Agreement. Nothing herein will operate to prevent the City from taking legal action regarding noncompliance that threatens public health, safety or welfare prior to the expiration of the thirty (30) day cure period following notice of default. No such action or proceeding will operate to automatically terminate this Agreement, nor shall it release either party from any promise or obligation herein nor shall it release either party from any liability or obligation with respect to any breach of this Agreement occurring prior to the commencement of any legal action by the City.

8. **Notices.**

8.1 All notices required by this Agreement shall be deemed delivered to the respective party on the date that is it personally delivered to the address(es) set forth below, or on the date that it is successfully sent by facsimile transmission to the facsimile number(s) set forth below:

City: David K. Zabell
City Manager
City of Fife
5411 23rd Street East
Fife, WA 98424
Telephone: (253) 922-2489
dzabell@cityoffife.org

With a copy to: Loren D. Combs
VSI Law Group, PLLC
3600 Port of Tacoma Road, Suite 311

Tacoma, WA 98424
Telephone (253) 922-5464
ldc@vsilawgroup.com

Owner: Jeffrey E. Davis, Owner's Representative
Davis Property & Investment, LLC
22757 72nd Avenue South, Suite E106
Kent, WA 98032
Telephone: (253) 872-9522
E-mail: jeffd@davispropertiesllc.com

With a copy to: Dave W. Bever, Esq.
Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite #3600
Seattle WA 98104
Telephone: (206) 622-8020
E-mail: bever@carneylaw.com

9. **Assignment: Covenant to Run With the Land.**

9.1 The rights, obligations, conditions and interests under this Agreement shall run with the land and shall inure to the benefit of and be binding upon the Owner and his successors and assigns. The Owner shall have the right to convey, assign, apportion or otherwise transfer any and all of its rights, obligations, conditions, and interests under this Agreement. Within three (3) days of the effective date of Owner's conveyance, assignment, apportionment, or other transfer of its rights under this Agreement, the Owner must provide notice to the City of the same. Owner must also, within this three (3) day period, provide the City with a copy of the legal documents that indicate the conveyance, assignment, apportionment or other transfer. From and after the effective date of such conveyance, assignment, apportionment or other transfer, any reference to Owner in this Agreement, as it relates to the portions of the Property in which he no longer has an ownership interest, shall be deemed to be a reference to the conveyee, assignee, apportionee or transferee and will release Owner from legal action under this Agreement that arises after the effective date of such conveyance, assignment, apportionment, or other transfer to the extent the legal action relates to the portion of the Property in which he no longer has an ownership interest. Provided, however, this Agreement creates no in personam right, responsibility or obligation, except to the extent the person has an ownership interest in the Property.

9.2 A successor or proposed successor to a legal lot within the Property, but not the entire Property, may request that the City remove all or a portion of the burden of this Agreement from the lot it is acquiring. The City agrees to consider such a request in good faith. If Owners demonstrate that City has sufficient assurances that the obligations of the Owners set forth in the Agreement will be fulfilled, and compliance with the Agreement terms will be met for the remainder of the Agreement term even if the Agreement, in whole or in part, is removed as an encumbrance on the lot of the proposed successor, then the City shall execute a release of the burdens of this Agreement for which adequate assurances have been provided, to such proposed successor sufficient to clear this Agreement from the title records for the lot to be acquired, and

the release will be recorded in the Pierce County records.

10. **No Third Party Beneficiaries.**

10.1 This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11. **Interpretation.**

11.1 This Agreement has been reviewed and revised by legal counsel for both parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Agreement.

12. **Entire Agreement.**

12.1 This Agreement constitutes the entire, agreement of the parties and incorporates all prior discussions and agreements. The City and the Owners participated in the negotiation and drafting of this Agreement. If a dispute should arise with regards to the meaning or interpretation of any Agreement provision there shall be no presumption of draftsmanship as to the Agreement provision.

13. **City's Reservation of Rights.**

13.1 This Agreement shall be construed to exclude from its scope, and to reserve to the City, the police power authority which is prohibited by law from being subject to a mutual agreement with consideration.

13.2 This Agreement shall not limit the City's authority to exercise its power of eminent domain.

14. **Severability.**

14.1 If any provisions of this Agreement are determined to be unenforceable or invalid pursuant to a final decree or judgment by a court of law with jurisdiction, then the remainder of this Agreement not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect.

15. **Changes; Agreement to be Recorded.**

15.1 This Agreement may be modified, including termination of the Agreement or any part thereof, at any time, but only by the Parties by written agreement. Provided, however, the consent of Parties owning portions of the Property not affected by such amendment shall not be required. This Agreement or a memorandum thereof shall be recorded against the Property as a covenant running with the land which touches and concerns the Property and shall be binding upon the City and Owners, their heirs, successors and assigns and all future owners of the Property. Owners shall be responsible for the costs of recording this Agreement, and any subsequent amendments thereto.

16. **Jurisdiction and Venue.**

16.1 This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party that this Agreement shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Pierce County, Washington.

17. **Estoppel Certificate.**

17.1 Owners may, at any time, and from time to time, deliver written notice to the City requesting the City to certify in writing that, to the knowledge of the City (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. The City shall execute and, upon payment of the City's costs associated with researching and preparing the certificate, return such certificate within thirty (30) days following the receipt thereof. The City shall not have any liability to the requesting Party, the Owners, or to any third party for inaccurate information if it provides the estoppel certificate in good faith.

18. **Authority to Execute.**

18.1 The City was authorized to execute this Agreement pursuant to the authority granted to the City Manager by the adoption of City of Fife _____.

18.2 The Owners were authorized to execute this Agreement pursuant to the terms of their respective Operating Agreement, or resolution of the members. Proof of Owners' signatory authority shall be provided to the City, and remain on file with the City as a public record.

DATED: This ____ day of _____, 2014.

CITY OF FIFE:

By: _____
David K. Zabell, City Manager

ATTEST:

By: _____
Carol Etgen, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

OWNERS:

By and through each of its tenants in common:

C. LEE BROOKE, LLC
a Washington limited liability company

By: _____
C. Lee Brooke
Its: Trustee

JAMES W. ABBOTT, LLC
a Washington limited liability company

By: _____
James W. Abbott
Its: Member

PORTSIDE BUSINESS CENTER, LLC
a Washington limited liability company

By: _____
James W. Abbott
Its: Managing Member

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged this instrument, on oath stated that he/she 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 corporation for the uses and purposes therein mentioned, and on oath stated he/she was duly elected, qualified and acting as said office of the municipal corporation, that he/she was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

Dated: _____, 2014.

_____(Print Name)
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 and deed of such corporation for the uses and purposes mentioned in the instrument.

Dated: _____, 2014.

_____(Print Name)
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 **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 and deed of such corporation for the uses and purposes mentioned in the instrument.

Dated: _____, 2014.

(Print Name)
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 **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 and deed of such corporation for the uses and purposes mentioned in the instrument.

Dated: _____, 2014.

(Print Name)
Notary Public in and for the State
of Washington, residing at _____
My Commission Expires: _____

EXHIBIT A

Legal Description of Property

Parcel 0420071161

LOT A OF BOUNDARY LINE ADJUSTEMENT LLA08-0007 RECORDED JANUARY 6, 2008 UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 200901065001.

Parcel 0420071162

LOT B OF BOUNDARY LINE ADJUSTEMENT LLA08-0007 RECORDED JANUARY 6, 2008 UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 200901065001.

Parcel 0420071164

LOT D OF BOUNDARY LINE ADJUSTEMENT LLA08-0007 RECORDED JANUARY 6, 2008 UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 200901065001.

Parcel 0420071165

LOT E OF BOUNDARY LINE ADJUSTEMENT LLA08-0007 RECORDED JANUARY 6, 2008 UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 200901065001.

Parcel 0420071159

LOT B OF BOUNDARY LINE ADJUSTMENT LLA07-0004 RECORDED SEPTEMBER 11, 2008 UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 200809115001.

Parcel 0420071160

LOT C OF BOUNDARY LINE ADJUSTMENT LLA07-0004 RECORDED SEPTEMBER 11, 2008 UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 200809115001.

Parcel No. 0420071014

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).

EXHIBIT B

Revised Site Plan

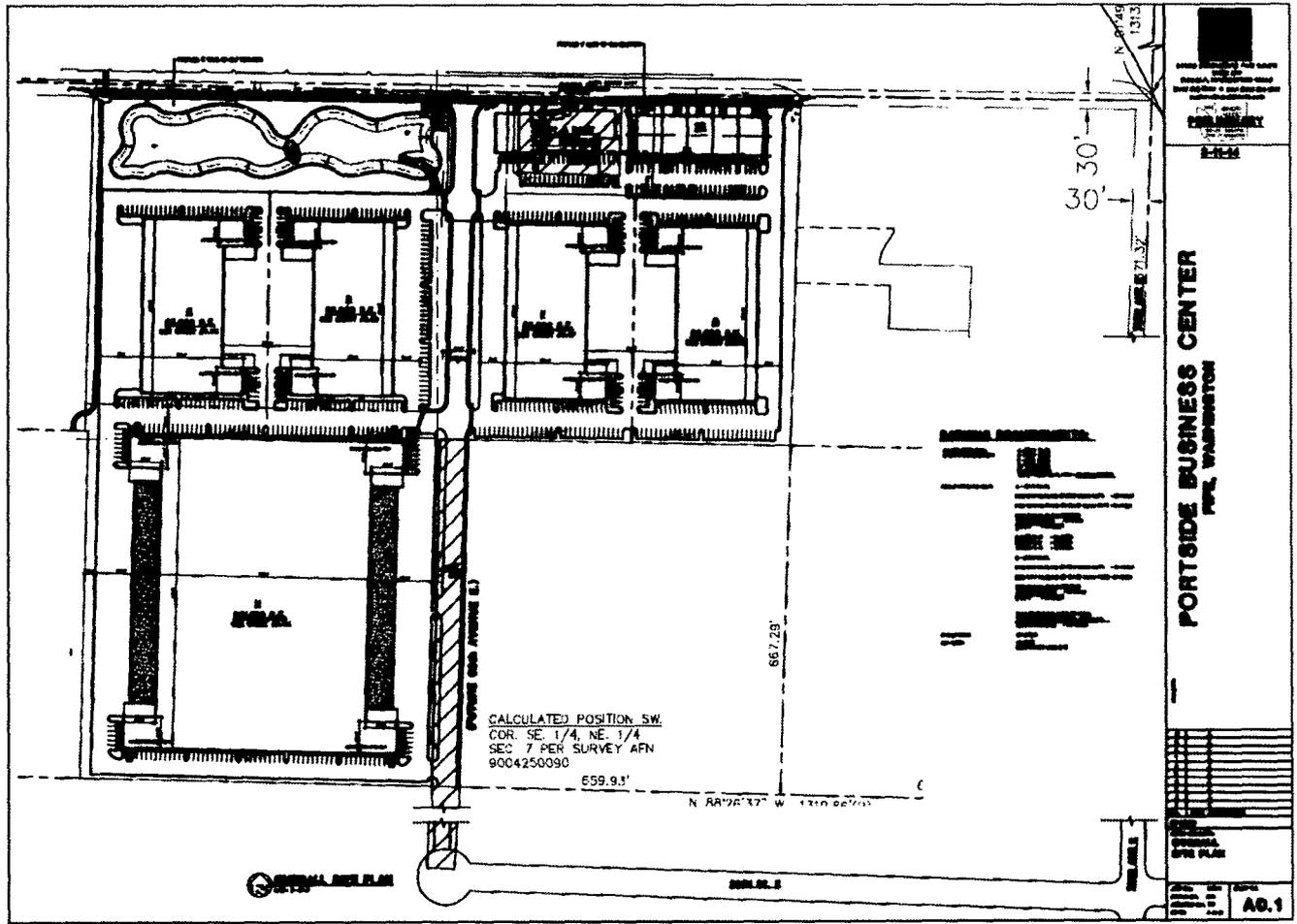


EXHIBIT C

SEPA Conditions
MITIGATION MEASURES

Portside Business Center Development Agreement – SEP13-0006

The probable environmental impacts of this proposal have been documented and are found in the environmental checklist and other information on file with the City of Fife. Mitigation measures are permitted under the substantive authority of SEPA in accordance with Section 17.04.190 of the Fife Municipal Code (FMC).

The following mitigation measures are based on the environmental checklist and other information on file with the city:

1. As a result of the consultation with the Puyallup Tribe of Indians (“Tribe”) on February 20, 2003, the applicant will contact and work with the Tribe to have an artifact discovery plan in place during construction. If there is the discovery of any artifacts, it will be brought to the Puyallup Tribe of Indians attention immediately and the project area affected by the discovery will be protected until an assessment can be conducted of the artifact and mitigation measures undertaken. The applicant shall provide the artifact discovery plan to the City prior to release of the grading permit.
2. All demolition material including, but not limited to, wood waste, sheetrock, roofing material and concrete, must go to a licensed solid waste handling or disposal facility. Asbestos containing material shall be removed prior to demolition and disposed of in accordance with the requirements of the Puget Sound Clean Air Agency, Washington State Department of Labor and Industries and the Tacoma Pierce County Health Department.
3. The applicant proposes a cut of approximately 21,000 cubic yards and fill of approximately 38,000 cubic yards. The applicant shall provide the City with a traffic plan for review associated with the import or export of any fill. The traffic plan shall identify the source of fill, routes for the trucks, and times of operation. The plan shall be approved prior to the issuance of a grading permit.
4. The proposal shall comply with all applicable codes and requirements.

ADVISORY NOTES TO APPLICANT

The following notes are supplemental information of code based requirements and are being provided in conjunction with the SEPA threshold determination as information to the applicant. They are not intended to be comprehensive, but are intended to inform the applicant of code requirements to facilitate the permit process. Because these notes are provided as information only, they are not subject to the SEPA appeal process.

Plan Review- Streets and Transportation:

1. The applicant shall pay traffic impact fees pursuant to FMC Chapter 20.25. Credits against traffic impact fees will be in accordance with FMC Section 20.10.100. In accordance with FMC Chapter 12.20 and FMC Chapter 12.16, street frontage improvements and a five (5) foot wide right-of-way dedication and undergrounding of overhead utilities shall be provided along project 20th Street East frontage. The street frontage improvements shall include street illumination, concrete curb/gutter, a cement sidewalk five (5) feet in width, an irrigated landscape/planter strip four (4) feet in width and drainage consisting of concrete stormwater catch basins with connecting piping for half street improvements in accordance with the street section shown in FMC Section 12.20.070 "Minor arterial" and approved by the public works director. These improvements shall be completed or bonded prior to issuance of occupancy of any buildings located on Pierce County Assessor Parcel Numbers 0420071161, 0420071162, 0420071164, 0420071165, and 0420071159. All parcels listed in the previous sentence are owned by C LEE BROOKE LLC/JAMES W ABBOTT LLC ETAL and PORTSIDE BUSINESS CENTER LLC ETAL according to the Pierce County Assessor Treasurer office.

3. Pursuant to FMC Section 12.20.090, a ten (10) foot wide utility/slope easement (or other width as approved by the Public Works Director) shall be provided in addition to and south of right-of-way dedicated along 20th Street East for the purpose of underground utilities.

4. The applicant proposes to use existing concrete piping (located at the proposed curb line) west of 66th Avenue East to convey 20th Street East stormwater downstream. The existing twelve (12) inch stormwater concrete piping currently only conveys stormwater from the agriculture fields and is very old; portions may be failing or reverse slope. The City will clean and TV the line for defects in slope. Pursuant to FMC Chapter 12.14, the applicant shall be

responsible for replacing any existing 20th Street East storm piping section that has a deflection greater than one inch.

5. Pursuant to FMC Section 17.08.040(B), the applicant shall construct 66th Avenue East from 20th Street East to 26th Street Court East from Pierce County Assessor Parcel Number 0420071705. The City acquired this parcel in order to construct the 66th Avenue East connection between 20th Street East and 26th Street East. The applicant shall construct the portion of the new 66th Avenue East located on the this property to “Commercial and Multifamily Access Street” standards in accordance with FMC Section 12.20.050, including demolition of the existing structure, grading, and construction of curb, gutter, sidewalk, landscape strip, street lighting, and undergrounding of utilities. If the improvements are constructed under the proposed 66th Avenue East LID, it will address the construction of 66th Avenue East. Details regarding the construction of the improvements are described in a Draft RESTATED DEVELOPMENT AGREEMENT between CITY OF FIFE and C. LEE BROOKE, LLC, JAMES W. ABBOTT, LLC AND PORTSIDE BUSINESS CENTER LLC.

6. Pursuant to FMC Chapter 17.08.040 (B), the applicant shall complete the construction of a signalized intersection at 26th Street East and 70th Avenue East. The City has installed mast arms and conduit for this purpose; it is currently being used as flashing yellow or traffic calming device. If the improvements are constructed under the proposed 66th Avenue East LID, it will address completing the signalization of 70th Avenue East and 26th Street East. Details regarding the construction of the improvements are described in a Draft RESTATED DEVELOPMENT AGREEMENT between CITY OF FIFE and C. LEE BROOKE, LLC, JAMES W. ABBOTT, LLC AND PORTSIDE BUSINESS CENTER LLC.

Plan Review – Water and Sewer and Stormwater:

1. All water mains shall be designed in accordance with current standards available at:
http://www.cityoffife.org/downloads/public_works/standards/Water_Standards_2012.pdf. Applicant shall provide a bill of sale for water mains and shall dedicate a water easement in accordance with said standards.
2. Prior to connecting to the city’s water and sewer system (at permit issuance), the applicant shall pay General Facility Charges in accordance with FMC Sections 13.04.095 and 13.08.465.
3. The applicant shall install a looped twelve (12) inch diameter ductile water main in accordance with Chapter 5 of The City of Fife Water Main Design and Construction Standards. The applicant shall connect to existing water main stubs located on Pierce County Assessor Parcel Numbers 0420071163 (Pierce County Rural Library District), 9004280024 and 9004280020 (Mayfair Condos),

0420074044 (Teachers Insurance & Annuity Association) and 0420071012 (Sixty Second Avenue Associates LLC & Boitano ET AL).

4. The applicant proposes to relocate an existing deep (15 feet) gravity sewer main north away from a proposed building foundation. Near surface groundwater requires dewatering the excavation prior to construction. We expect the excavation will require temporary restraint and bypass of the existing water main in 20th Street East so that it does not fall into the excavation and service is maintained during the relocation. Pursuant to FMC Section 13.08.580, the applicant shall submit a dewatering plan for approval, prepared by a geologist licensed in the State of Washington prior to release of the grading permit.

5. The applicant proposes to construct shallow conventional spread footings for the north building footing (of building E-2) about twenty (20) feet away from the relocated deep gravity sewer main. Poor soil conditions in Fife require shoring and driven steel sheets to support an excavation to maintain the public sewer main. The Fife Library located west of proposed building E-2 supported their north building foundation with pin piles to allow the City to excavate and maintain this deep gravity sewer main in accordance with the existing easement. Pursuant to FMC Chapter 15.04, the applicant shall construct a similar footing at the proposed north footing locations parallel to the proposed fifteen (15) foot wide sanitary sewer easement or as designed and recommended by a qualified geotechnical or civil engineer licensed in the State of Washington and approved by the City of Fife Public Works Director.

6. We understand the project is vested with the 1992 Ecology Stormwater Manual. Upon completion and acceptance of the proposed stormwater pond and pursuant to FMC Section 13.18.080 entitled "Reduced rates – Discounts", the applicant is encouraged to execute an access agreement, in the form provided by the city, which allows the city to enter the property to inspect the construction and maintenance of the drainage facility.

7. Applicant proposes to discharge stormwater to a facility constructed to serve the warehouse complex located to the south of this project on Pierce County Assessor Parcel Numbers 0420074047, 0420074046 and 0420074045. This piping in this stormwater facility that conveys stormwater under the Sheffield Trail, 63rd Avenue Court East and connection to 62nd Avenue East is set too high of an elevation to protect the single family residences located south of 20th Street East between 62nd Avenue East and the applicants project based on personal communication and the opinion of two professional engineers licensed in the State of Washington. Pursuant to FMC Chapter 15.34, the applicant shall modify this system to function properly or convey the stormwater to a system that the applicant will construct in 20th Street East.

8. Pursuant to FMC Chapter 15.34, clearing limits and/or any easements or required buffers shall be identified and marked in the field, prior to the start of any clearing, grading, or construction. Some suggested methods are staking and

flagging or high visibility fencing. A permanent vegetative cover shall be established on denuded areas at final grade if they are not otherwise permanently stabilized.

9. Pursuant to FMC Chapter 15.34, properties adjacent to the site of a land disturbance shall be protected from sediment deposition through the use of buffers or other perimeter controls, such as filter fence or sediment basins.

10. Pursuant to FMC Chapter 15.34, all temporary erosion control systems shall be designed to contain the runoff from the developed two year, 24-hour design storm without eroding.

11. Pursuant to FMC Chapter 15.34, this project may require a construction stormwater permit (also known as National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated with Construction). This permit is required for projects which meet both of the following conditions: (1) One or more acres of soil surface area will be disturbed by construction activities. (2) The site already has offsite discharge to waters of the state or storm drains or will have offsite discharge during construction. An application with instructions can be downloaded from Ecology's website at:

<http://www.ecy.wa.gov/programs/wq/stormwater/construction>. Construction site operators must apply for a permit at least 60 days prior to discharging stormwater.

12. Pursuant to FMC Chapter 15.32, provisions should be made to minimize the tracking of sediment by construction vehicles onto paved public roads. If sediment is deposited, the streets will be cleaned every day by shoveling or sweeping. Water cleaning should only be done after the area has been shoveled out or swept.

13. Pursuant to FMC Chapter 15.32, wash water from paint and wall finishing equipment should be disposed of in a way which will not adversely impact waters of the state. Untreated disposal of this wastewater is a violation of State Water Quality laws and statutes and, as such, would be subject to enforcement action.

14. The proposed action is adjacent to a previously contaminated site. Contaminants may be present at the site of the proposed action. Pursuant to FMC Section 15.32.055 if environmental contamination is caused, discovered, or suspected during the proposed SEPA action, the applicant shall notify the Department of Ecology by contacting the Environmental Report Tracking System Coordinator in the Southwest Regional Office at (360) 407-6300. For assistance and information about the subsequent cleanup and to identify the type of testing contact Marv Coleman with the SWRO, Toxics Cleanup Program at (360) 407-6259.

Plan Review- Planning:

1. The site shall be landscaped in accordance with all landscape regulations (FMC Chapter 19.64). A landscaping plan must be approved by the city prior to building permit issuance.

2. Pursuant to FMC Section 19.68.030(G), an onsite and offsite street lighting plan is required at building permit application. The plan shall include light dispersion patterns. No direct lighting can leave the site or encroach on neighboring properties. The city shall review the parking lot lighting to ensure that the lighting only illuminates the parking lot. Pursuant to FMC Section 19.56.080(E) the director may require a reduction in the wattage, height of the standards and/or light shields in order to ensure that lighting remains on-site.

3. The applicant shall go through the Administrative Design Review (ADR) process as defined in FMC Chapter 19.60. This process shall be submitted and approved prior to building permit issuance.

4. The site shall comply with the Low Impact Development (LID) Facility Detail, FMC Title 21.

5. Pursuant to FMC Section 15.32.050(D) all grading and filling of land must utilize only clean soil as defined by the Board of Health Resolution 2004-3530. All other materials, including waste concrete and asphalt, are defined to be solid waste and approval must be obtained through the Tacoma-Pierce County Health Department prior to filling. Please contact David Bosch at (253) 798-6574 for further information.

6. Pursuant to FMC Chapter 15.70, the buildings will be required to install all hazard radio(s) in the buildings in the public and/or employee areas. Pursuant to FMC Section 15.70.020, each radio shall be equipped with S.A.M.E. technology (single area message encoding) and shall be a 120-volt unit with an automatic battery back-up that shall exceed 24 hours in alert standby mode when there is an AC failure. No other technology will be accepted without the prior approval of the chief of police or director of emergency management.

7. Pursuant to FMC Section 15.70.040, in addition to the installation of emergency radios, all new or remodeled nonresidential developments located within the city of Fife shall be required to pay area fee into the city's dedicated emergency notification system fund.

The current fee schedule relating to this section of the Fife Municipal Code is available at Fife City Hall and at the city of Fife's website: www.cityoffife.org.

8. Pursuant to FMC Section 15.70.050, all radios must be installed, tested, and verified by the city of Fife and all fees must be paid in full and received by the city of Fife prior to a certificate of occupancy being granted. The city may withhold the issuance of a certificate of occupancy until all requirements of this chapter have been satisfied.

9. As required by FMC Section 9.56.085, yard vehicles shall utilize broadband (white noise) sound alarms or self-adjusting tone alarms that continuously monitor background sound and automatically adjust the alarm volume to no more than 10 decibels above the sampled noise level. For the purpose of this requirement, a yard vehicle shall mean: "a motor vehicle used primarily on-premises, and not used on public highways, for carrying or moving materials or property, including forklifts, truck lifts, yard hostlers, or yard tractors."

10. Pursuant to FMC Section 19.60.050(A)(4), all visible roof-mounted mechanical devices, including communication structures and antennas, shall be set back as far as practicable from public rights-of-way or residential zoning districts. Mechanical equipment less than or equal to 1.5 feet in height above the roof shall be painted a color which blends with the roof structure. Mechanical equipment greater than 1.5 feet above the roof shall be decoratively screened. Required screening for noise impacts shall also be considered for all mechanical equipment.

11. All outdoor refuse containers (excluding recycling containers) shall be completely screened from public or private streets, including freeways and from adjacent property by an opaque screen per FMC Section 19.68.030(D).

General:

1. Pursuant to FMC Section 15.32.050(D) and WAC 173-350-990, all grading and filling of land must utilize only clean fill, i.e., dirt or gravel. All other materials, including waste concrete and asphalt, are considered to be a solid waste and permit approval must be obtained through the Tacoma-Pierce County Health Department prior to filling. Demolition debris generated on-site must be disposed of at a permitted facility.

2. Any abandoned well (as defined by WAC 173-160) must first be decommissioned. The Tacoma Pierce County Health Department must be contacted at least 48 hours prior to decommissioning. Existing septic systems shall also be abandoned in accordance with TPCHD requirements.

EXHIBIT E

Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

1. **Date and Parties.** THIS PURCHASE AND SALE AGREEMENT ("AGREEMENT"), is dated, for reference purposes only, the ____ day of _____, _____, and is made and entered into by and between _____ ("Owners") and City of Fife, a Washington municipal corporation ("City").

2. **Property to be Conveyed.**

2.1 Owners are the owners of the real estate legally identified as Pierce County tax parcel nos. _____ located at _____ (the "Property").

2.2 It is necessary for the City to acquire a portion of the Property for right of way ("Right of Way") for the extension of 66th Avenue East (the "Project"). The portion of the Property to be acquired by the City for Right of Way is legally described in Exhibit A and graphically depicted in Exhibit B attached hereto.

2.3 This acquisition is made pursuant to the terms of that certain Restated Development Agreement between Owners and the City dated _____.

2.3 Owners agree to sell and convey and the City agrees to purchase and accept conveyance of the Right of Way on the terms and conditions set forth in this Agreement.

3. **Purchase Price.** As consideration for the conveyance of the Right of Way, and for any damages and loss of value to the remaining portion of the Property as a result of the Project and the acquisition of the Right of Way, the City shall pay Owners the sum of \$ _____ cash, payable at Closing. ("Closing" shall mean the closing of the transaction contemplated by this Agreement as provided in Paragraph 9). The Purchase price consists of \$ _____ for the land, plus \$ _____ for the improvements. Owners acknowledge that they are receiving just compensation for the Right-of-Way, and for any damages and loss of value to the remaining portion of the Property as a result of the Project and the acquisition of the Right of Way. There is no earnest money required for this Agreement. Both parties acknowledge that there is legally sufficient consideration for entering into this Agreement.

4. **Legal Description.** The Parties hereby authorize the Closing Agent to insert, attach, or correct the legal description of the Right-of-Way as required to consummate the conveyance thereof.

5. **Title.** Owners shall convey title to the Right-of-Way by statutory warranty deed. Title shall be free of all liens, encumbrances or defects, except as expressly approved by the City in writing. Covenants, conditions, restrictions and easements that do not interfere with the City's intended use of the Right of Way shall not be considered defects of title. Monetary encumbrances to be discharged by Owners shall be paid or discharged by Owners at or before Closing.

6. **Title Insurance.** Fees for standard coverage owner's title insurance policies shall be paid by the City. The title policies to be issued shall contain no exceptions other than the usual general exceptions provided for in the specified title policy form, plus encumbrances or defects approved by the City in Paragraph 5 above.

7. **Included Items.** This transaction includes any landscaping, improvements and appurtenances on or in the Right-of-Way area.

8. **City Council Approval.** This Agreement is subject to ratification by the Fife City Council. This matter shall be submitted to the City Council for ratification within thirty (30) days after signature by both parties.

9. **Closing.** Closing shall occur within 30 days after approval by the City Council, in the office of Old Republic Title & Escrow, University Place, Washington, ("Closing Agent"), or such other place or location as the parties may mutually agree. The City and Owners will, on demand, deposit in escrow all instructions and moneys necessary to complete the purchase in accordance with this Agreement. Closing shall be deemed to have occurred when all documents are recorded and the sale proceeds are available to Owners.

10. **Closing Costs & Pro-Rated Items.** The City shall pay the escrow fee, reconveyance fees, any real estate excise tax due, and the recording fees. Owners shall pay any real estate taxes due, if any. Rather than paying the real estate taxes, Owners may elect to set over the taxes applicable to the Right of Way to the remaining portion of Owners' property.

11. **Possession.** The City shall be entitled to possession and use of the Right-of-Way at Closing.

12. **Environmental Representations and Warranties.** Owners warrant that they have not caused or permitted the Right of Way to be used as a site for generation, manufacture, refining, transportation, transfer, treatment, storage, handling, disposing or processing of hazardous substances, or other dangerous or toxic materials or solid waste except in compliance with applicable federal, state and local laws or regulations. Owners have not caused or permitted and has no knowledge of the release of any hazardous substance on any of the Property at any time.

13. **Obligations to Survive Closing.** It is mutually agreed by the Parties that any provision contained in this Agreement which shall by its nature or terms impose any obligation or duty upon any party hereto, or give any right or benefit to any party hereto, continuing beyond the date of conveyance of the Right of Way, will not be cancelled, but will instead survive such

conveyance and will continue in full force and effect until all such obligations and duties are fully performed and all such rights and benefits are fully realized.

14. **Attorneys' Fees and Expenses.** In the event any Party brings a lawsuit to enforce or defend any rights herein, the prevailing party shall be awarded all costs and expenses and reasonable attorney fees.

15. **Successors and Assigns.** This Agreement and all of the terms and provisions set forth herein shall inure to the benefit of and be binding upon the Parties, their heirs, successors, legal representatives and assigns.

16. **Further Acts.** In addition to the acts specifically required in this Agreement, the Parties agree to perform or cause to be performed at and after Closing any and all further acts as may be reasonably necessary to consummate the transaction described herein.

17. **Conveyance in Lieu of Condemnation.** This conveyance is being made under immediate threat of and in lieu of condemnation.

18. **Complete Agreement.** The Agreement and any addenda and exhibits to it state the entire understanding of SBS and the City regarding this transaction. There are no verbal or written agreements which modify or affect the Agreement.

19. **Time of the Essence.** Time is of the essence as to each provision of this Agreement.

20. **Facsimile Transmission.** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the escrow agent, the parties will confirm facsimile transmitted signatures by signing an original document.

OWNERS:

THE CITY:

City of Fife, Washington

By: _____
David K. Zabell, City Manager

APPROVED AS TO FORM:

Gregory F. Amann
Assistant City Attorney

**EXHIBIT A
LEGAL DESCRIPTION OF RIGHT OF WAY**

EXHIBIT B
MAP OF RIGHT OF WAY