

RESOLUTION NO. 1518

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON RATIFYING AN AGREEMENT WITH OB FIFE PROPERTY, LLC FOR ACQUISITION OF TAX PARCEL NOS. 0420181002, 0420181003, 0420181016, 0420181030 AND 0420181032

WHEREAS, the City is in need of a suitable wetland mitigation site to provide wetland mitigation for the Port of Tacoma interchange project; and

WHEREAS, TAX PARCEL NOS. 0420181002, 0420181003, 0420181016, 0420181030 and 0420181032, known collectively as "Wapato Uplands" total approximately 13.55 acres and are bordered by Wapato Creek; and

WHEREAS, Wapato Uplands has been partially excavated by the owner as a compensatory storage site; and

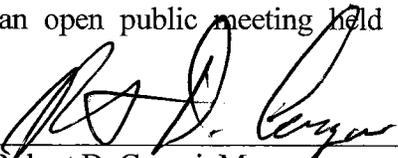
WHEREAS, it is the City's policy to provide wetland mitigation within the City limits for projects within the City limits requiring mitigation; and

WHEREAS, due to its creek border, current use for compensatory storage, and location adjacent to the City's Brookville Garden's park property, Wapato Uplands would be an ideal wetland mitigation site; and

WHEREAS, the City Attorney's office has negotiated an agreement with OB Fife Property, LLC for acquisitions of the Wapato Uplands property for \$1,060,000, which constitutes just compensation based on the City's and owner's appraisals. A copy of the purchase and sale agreement is attached hereto as Exhibit A (the "Agreement"); now, therefore

BE IT RESOLVED that the City Council hereby ratifies and approves the Agreement with OB Fife Property, LLC attached hereto as Exhibit A and authorizes the City Manager to pay the amounts and perform the actions necessary to acquire the property in accordance with the Agreement.

ADOPTED by the City Council at an open public meeting held on the 27th day of November, 2012.



Robert D. Cerqui, Mayor

Attest:



Carol Etgen, City Clerk

**CITY OF FIFE
PURCHASE AND SALE AGREEMENT**

1. **Date and Parties.** THIS PURCHASE AND SALE AGREEMENT ("AGREEMENT"), is dated, for reference purposes only, the 19 day of November, 2012 ("Effective Date"), and is made and entered into by and between OB Fife Property II, LLC ("OB Fife") and City of Fife, a Washington municipal corporation ("City").

2. **Property to be Conveyed.**

2.1 OB Fife is the owner of the real estate legally described in Exhibit A attached hereto and identified as Pierce County tax parcel nos. 0420181002, 0420181003, 0420181016, 0420181030 and 0420181032 (the "Property").

2.2 As a condition of approval of an offsite Lexus dealership development project of OB Fife (the "Lexus Project") and the allowance of 50,900 cubic yards of fill on the Lexus Project property, OB Fife is required to provide 50,900 cubic yards of additional flood storage capacity on the Property to use as compensatory storage pursuant to FMC Chapter 15.40 for the Lexus Project property.

2.3 OB Fife has completed the first phase of the excavation of the Property, which has resulted in the creation of 8,443 cubic yards of additional flood storage capacity for the Lexus Project.

2.4 The City has use for the Property as a wetland mitigation site. The City's wetland mitigation project would be able to provide the additional compensatory storage necessary for the Lexus Project.

2.5 The City intends to use the Property as a wetland mitigation site. The City's development of a wetland mitigation project will provide the additional compensatory flood storage necessary for the Lexus Project (42,457 cubic yards). The City's development of the wetland mitigation project will also provide an additional 13,100 cubic yards of compensatory flood storage (i.e., when fully developed as a wetland mitigation site the Property will provide 64,000 cubic yards of compensatory flood storage capacity, of which 50,900 cubic yards is compensatory flood storage that has been applied to development that has occurred on the Lexus Project property, such that 13,100 cubic yards of compensatory flood storage is available for future development on the Lexus Project property).

~~2.6 The Property includes a claim for a 240 gpm 395 AF/year ground water right, G2-00721CWRIS, for domestic, irrigation, commercial and industrial use (the "Water Right"). OB Fife has not put the Water Right to a beneficial use. The Water Right is subject to claims of forfeiture and abandonment by reason of lack of use thereof by OB Fife and OB Fife's predecessors in interest for a period of five or more years.~~

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2.7 OB Fife agrees to sell and convey, and the City agrees to purchase and accept conveyance of the Property on the terms and conditions set forth herein.

3. **Purchase Price.** As consideration for the conveyance of the Property, and the Water Right, the City shall pay OB Fife the sum of One Million Sixty Thousand Dollars (\$1,060,000.00) cash (the "Purchase Price"), payable at Closing. ("Closing" shall mean the closing of the transaction contemplated by this Agreement as provided in Section 9). In addition, the City shall pay at Closing an additional amount not to exceed \$750.00 pursuant to RCW 8.25.020 for various expenditures actually and reasonably incurred by OB Fife in the process of evaluating the City's offer. There is no earnest money required for this Agreement. Both parties acknowledge that there is legally sufficient consideration for entering into this Agreement.

4. **Title and Title Review.**

4.1 OB Fife shall convey title to the Property by statutory warranty deed, subject to Permitted Exceptions. Title shall be free of all liens, encumbrances or defects, except as expressly approved by the City as Permitted Exceptions in accordance with Section 4.2. Covenants, conditions, restrictions and easements that do not interfere with the City's intended use of the Property shall not be considered defects of title. Monetary encumbrances to be discharged by OB Fife shall be paid out of the Purchase Price at date of Closing. OB Fife shall convey title to the Water Right by quit claim deed.

4.2 OB Fife authorizes the City to order from Chicago Title Insurance Company, Tacoma, Washington (the "Title Company") a preliminary commitment for a standard coverage owner's policy of title insurance covering the Property in the amount of the Purchase Price (the "Preliminary Commitment"). The City shall have ten (10) business days after the City has received the Preliminary Commitment from the Title Company to notify OB Fife in writing of its objections to any liens, encumbrances, defects or other exceptions to title set forth in the Preliminary Commitment. If the City fails to so notify OB Fife before the expiration of such ten (10) business day period, then the City shall be deemed to have approved all such liens, encumbrances, defects and exceptions to title as "Permitted Exceptions". If the City timely notifies OB Fife in writing of any such objections and OB Fife does not agree to remove such liens, encumbrances, defects or other exceptions to title prior to Closing, then the City may elect by written notice to OB Fife to terminate this Agreement. If the City so elects to terminate this Agreement, the escrow shall be terminated, all documents and funds shall be returned to the party that deposited them, the parties shall ~~each pay one-half of the fees associated with terminating escrow and the Preliminary Commitment~~, and neither party will have any further rights or obligations under this Agreement. Notwithstanding the foregoing, OB Fife shall not be required to remove: (i) the standard printed exceptions set forth in the Preliminary Commitment; and (ii) easements, encroachments, rights, reservations, covenants, conditions and restrictions presently of record,

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not materially affecting the value of the Property or unduly interfering with City's intended use of the Property.

5. **Title Insurance.** Fees for standard coverage owner's title insurance policies shall be paid by OB Fife. 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 as Permitted Exceptions in Section 4 above.

6. **Legal Description.** The Parties hereby authorize the Closing Agent to insert, attach, or correct the legal description of the Property as required to consummate the conveyance thereof in accordance with the intent of this Agreement.

7. **Included Items.** This transaction includes any improvements and appurtenances, if any, on the Property.

8. **City Council Approval.** The purchase of the Property 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. If such ratification is not made by the City Council on or before November 30, 2012, then OB Fife shall have the right to terminate this Agreement upon written notice to the City. At Closing, the City shall deliver to Closing Agent evidence of such ratification as reasonably requested by OB Fife.

9. **Closing.** Closing shall occur within 60 days after ratification by the City Council, in the office of the Title Company, or such other place or location as the parties may mutually agree (the "Closing Agent"). The City and OB Fife will, on demand, deposit in escrow all documents, 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 OB Fife.

10. **Closing Costs & Pro-Rated Items.** OB Fife shall be responsible for payment of title insurance premiums (except the City shall be responsible for any increased premium as a result of an ALTA extended coverage policy and any endorsements issued therewith), excise tax and one-half of the Closing Agent's fee. The City shall be responsible for the recording fees, and one-half of the Closing Agent's fee. Property taxes for the current year and water and other utilities constituting liens shall be prorated as of the date of Closing.

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

12. **Additional Compensatory Storage.** Upon closing, the City shall assume the obligation to provide the additional compensatory storage necessary for the Lexus Project property up to 55,557 cubic yards (in addition to the 8,443 cubic yard of compensatory storage already created on the Property and allocated to the Lexus Project property), and the City shall deem the condition of approval of the Lexus Project to provide compensatory storage


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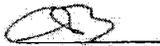

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pursuant to FMC Chapter 15.40 satisfied. Such approval includes the right of OB Fife (or its successor) to a credit of 13,100 cubic yards of compensatory flood storage capacity to be applied prospectively, pursuant to FMC Chapter 15.40 (or any similar zero-rise compensatory flood storage requirements now or hereinafter administered by the City), in connection with any proposal to place fill upon the Lexus Project property.

13. **Environmental Representations and Warranties.** OB Fife warrants that, except as otherwise disclosed on Schedule A, to the best of its knowledge: (i) there are no Hazardous Substances (as defined below) currently located in, on, or under the Property in a manner or quantity that presently violates any Environmental Law (as defined below); (ii) there are no underground storage tanks located on the Property; and (iii) there are no pending or threatened investigation or remedial action by an government agency regarding the release of Hazardous Substances or the violation of Environmental Law on the Property. As used herein, the term "Hazardous Substances" shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation, or ordinance governing any substance that could cause actual or suspected harm to human health or the environment ("Environmental Law"). The term "Hazardous Substance" specifically includes, but is not limited to, petroleum, petroleum by-products, and asbestos. The representation and warranty made by OB Fife set forth in this Section 13 shall survive closing.

14. **Property Conveyed "AS IS".** EXCEPTING ONLY THE ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE PROPERTY EXPRESSLY SET FORTH IN SECTION 13, THE CITY IS PURCHASING THE PROPERTY AND THE WATER RIGHT IN THEIR "AS-IS, WHERE IS" CONDITION "WITH ALL FAULTS" AS OF THE CLOSING DATE, AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, QUALITY, SUITABILITY, OR ANY OTHER WARRANTY OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF OB FIFE. EXCEPTING ONLY THE ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE PROPERTY EXPRESSLY SET FORTH IN SECTION 13, OB FIFE SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY AND THE WATER RIGHT, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY AND THE WATER RIGHT, (C) THE SUITABILITY OF THE PROPERTY AND THE WATER RIGHT FOR ANY AND ALL ACTIVITIES AND USES WHICH THE CITY MAY MAKE THEREOF OR CONDUCT THEREON, INCLUDING THE POSSIBILITIES FOR FUTURE DEVELOPMENT OF THE PROPERTY AND THE WATER RIGHT, (D) THE COMPLIANCE OF OR BY THE PROPERTY AND THE WATER RIGHT (OR THE OPERATION THEREOF) WITH ANY LAWS, RULES,

ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY AND THE WATER RIGHT, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY AND THE WATER RIGHT, (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY AND THE WATER RIGHT, OR (H) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY AND THE WATER RIGHT. THE CITY ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED BY OR ON BEHALF OF OB FIFE WITH RESPECT TO THE PROPERTY AND THE WATER RIGHT WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT OB FIFE HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. OB FIFE SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY AND THE WATER RIGHT, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, TRUSTEE, SERVANT OR OTHER PERSON. THE CITY FURTHER ACKNOWLEDGES AND AGREES THAT THE CITY IS A SOPHISTICATED AND EXPERIENCED PURCHASER OF PROPERTY SUCH AS THE PROPERTY AND THE WATER RIGHT AND HAS BEEN DULY REPRESENTED BY COUNSEL IN CONNECTION WITH THE NEGOTIATION OF THIS AGREEMENT AND THE OTHER PURCHASE DOCUMENTS. THE PROVISIONS OF THIS SECTION 14 SHALL SURVIVE THE CLOSING DATE OR TERMINATION OF THIS AGREEMENT.


City's Initials

15. **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 Property, 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.

16. **Notice.** All notices required by this Agreement shall be deemed delivered to the respective party on the date that it is personally delivered to the address set forth below, or two days after the document is mailed first-class U.S. Mail to the addresses set forth below:

City: City Manager
City of Fife
5411 23rd Street East
Fife, WA 98424

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With a copy to: Loren D. Combs
VSI Law Group, PLLC
3600 Port of Tacoma Road, Suite 311
Tacoma, WA 98401-1317

OB Fife: Michael O'Brien
PO Box 726
Bellevue, WA 98009

With a copy to: Markham A. Quehrn
Perkins Coie LLC
10885 N.E. 4th Street, Suite 700
Bellevue, WA 98004

17. **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.

18. **Governing Law.** This Agreement shall be governed by the laws of the State of Washington.

19. **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.

20. **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, including without further consideration, the execution, delivery and acknowledgement of all such further documents as either party may reasonably request to effectively carry out the intent of this Agreement.

21. **Commissions.** It is acknowledged by OB Fife that any and all commissions related to this transaction are the sole responsibility of OB Fife and OB Fife's realtor of choice, agents or assigns, and not the responsibility of the City.

22. **Remedies.** Both parties acknowledge that specific performance of this Agreement is an appropriate remedy should either party fail to perform under the terms of the Agreement.

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

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

25. **Facsimile and Electronic Transmission.** Facsimile or other electronic transmission, including the transfer of pdf files, of any signed original document, and retransmission of any signed facsimile, or other electronic, 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 or electronic transmitted signatures by signing an original document.

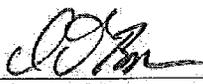
26. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

27. **Form 17.** City and OB Fife agree and acknowledge that the Property constitutes "Commercial Real Estate" as defined in RCW 64.06.005. City has been advised of its right to receive a completed seller disclosure statement (the "Seller Disclosure Statement") about the Property pursuant to RCW Chapter 64.06. To the extent permitted by applicable law, City hereby waives (A) the right to receive such a Seller Disclosure Statement under RCW Chapter 64.06, and (B) the right to rescind this Agreement based on any or all of the following: (x) any Seller Disclosure Statement received from OB Fife, (y) any amendment to any Seller Disclosure Statement that OB Fife may hereafter provide, and (z) OB Fife's failure to provide a Seller Disclosure Statement with respect to anything other than the section thereof entitled "Environmental."


City's Initials

OB FIFE:

OB FIFE PROPERTY II, LLC

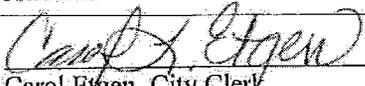
By: 
Michael O'Brien, Member

THE CITY:

City of Fife, Washington

By:  11/19/2012
David K. Zabell, City Manager
Russ Blount, Acting City Manager

ATTEST:


Carol Egen, City Clerk

APPROVED AS TO FORM:

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Gregory F. Amann
Assistant City Attorney

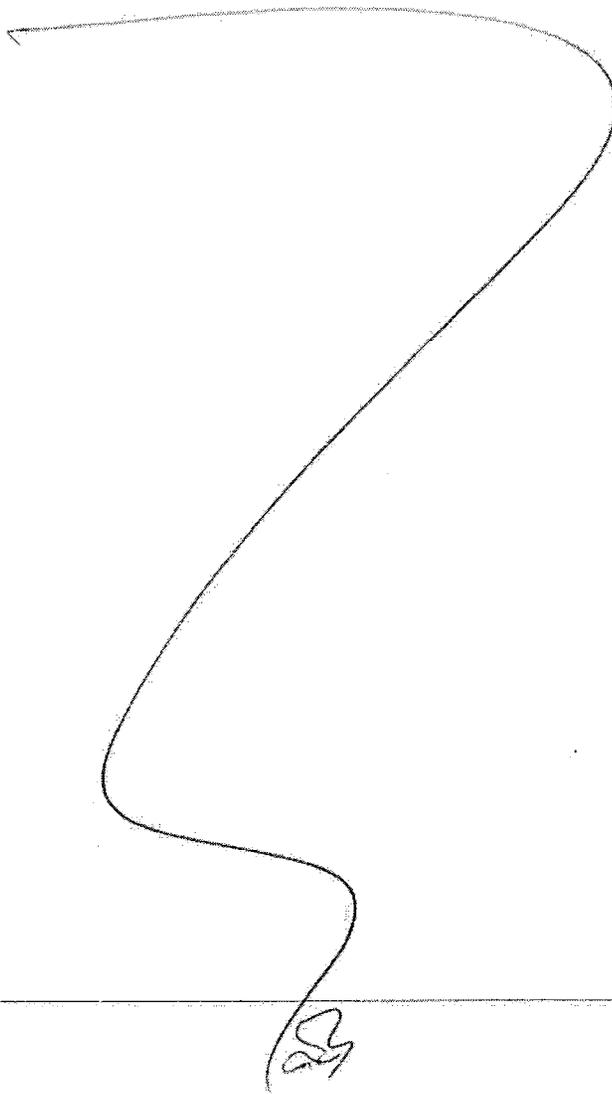
A large, stylized handwritten signature or scribble that starts with a large loop at the top, descends, and ends with a small flourish at the bottom. It is positioned in the center of the page.

EXHIBIT A

LEGAL DESCRIPTION

That portion of the Northeast Quarter of the Northeast Quarter of Section 18, Township 20 North, Range 4 East of the Willamette Meridian in Pierce County, Washington, lying southerly of the southerly line of the Chicago-Milwaukee-St. Paul and Pacific Railroad right-of-way and Easterly of the center of the Westerly channel of Wapato Creek in said Northeast Quarter of the Northeast Quarter.

Together with that portion of the Southeast Quarter of the Northeast Quarter of Section 18, Township 20 North, Range 4 East of the Willamette Meridian in Pierce County, Washington described as follows:

Beginning 815 feet West of the Northeast Corner of the Southeast Quarter of the Northeast Quarter of said Section 18; thence West to the centerline of Wapato Creek; thence Southerly, Southeasterly, Easterly, Northeasterly, and Northerly following said centerline of creek to a point 16.8 feet South of the North line of said Southeast Quarter of the Northeast Quarter; thence East to a point 16.5 feet Southwesterly at right angle from the Southerly line of the Chicago-Milwaukee St. Paul and Pacific Railroad right-of-way; thence southeasterly parallel with and 16.5 feet distant Southerly from said right-of-way line, to the East line of said Section 18; thence North along the East line of said Section 18 to the Southerly line of said railroad right-of-way; thence Northwesterly along said railroad right-of-way line to the North line of the Southeast Quarter of the Northeast Quarter of said Section 18; thence West along said North line to the Point of Beginning.

Except right-of-way for 70th Avenue East.

Also except any portion thereof lying within the Plat of Radiance Division 1, according to the Plat thereof recorded October 28, 2004 under recording number 200410285003, records of Pierce County Auditor.

Also except any portion thereof lying within the Plat of Radiance Division 2, according to the Plat thereof recorded October 3, 2005 under recording number 200510035006, records of Pierce County Auditor.

Situate in the City of Fife, County of Pierce, State of Washington.

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Schedule A
(Environmental Information)

1. Washington State Department of Ecology "No Further Action" determination (January 23, 2012).
2. Robinson Noble "Additional Site Characterization for the Sunrise at Radiance development, Fife, Washington" (June 28, 2007).
3. Robinson Noble "Groundwater Monitoring" (July 7, 2008).
4. Robinson Noble "Groundwater Monitoring" (October 7, 2008).
5. Robinson Noble "Groundwater Monitoring" (January 15, 2009).
6. Robinson Noble "Additional Site Characterization and Recommendations for Remedial Action, Sunrise at Radiance, Fife, Washington" (December 18, 2006).
7. Libby Environmental, Inc. (April 14, 2009).