



To: Shoreline Planning Commission

From: Tharsis Law P.S.
Jeremy Eckert

Date: June 6, 2019

RE: ROIC Comment Letter
Draft Revisions to the Development Agreement to Balance Public and Private Benefits

1. ROIC's COMMITMENT TO SHORELINE AND SHORELINE PLACE

ROIC desires a successful Shoreline Place redevelopment and it also desires to support Merlone Geier Partnership's Development Agreement ("DA") proposal. ROIC, however, cannot support a DA that does not address ROIC's consistently stated concerns.

Merlone Geier has rejected ROIC's offers to collaboratively find a path forward. Escalating matters, yesterday Merlone Geier sent a cease and desist letter to ROIC threatening litigation unless ROIC withdraw its pending comments and "demands" set forth in previous ROIC's letters to the City. Despite the applicant's aggressive tactics, ROIC remains committed to the City, the Planning Commission, and this planning process for Shoreline Place. In addition, ROIC is committed to protecting its tenants' interests. ROIC is a long-term property owner in the City of Shoreline and it will not be intimidated from participating and exercising its rights in this public process.

ROIC submits this comment letter to advance and support the City's redevelopment efforts at Shoreline Place. Merlone Geier's recent DA revisions fail to address most of the Planning Commission's and ROIC's concerns. The recent DA also fails to balance the public and private interest.¹ To support the Planning Commission's review, this memorandum identifies the revised DA's shortcomings and proposes edits to the revised DA in the following areas:

- A. Certainty
- B. Phasing: Sears, Circulation, Construction
- C. Security for the Sears removal and redevelopment
- D. Core Retail Tenant Protections
- E. Parking
- F. Property Rights

¹ "Therefore, the Shoreline Planning Commission's role is to ensure that a proper balance of the public (benefit to the citizens of Shoreline as a whole) and private interests are represented in a proposed Development Agreement when making its recommendation to the Council." Staff Report for 5/2 Planning Commission meeting, p. 2 (emphasis added).

G. Future Redevelopment

The items above are essential for the successful continued commercial operations and the continued redevelopment of Shoreline Place. In addition to ROIC's core concerns, this memorandum addresses the following items that would also be beneficial to the redevelopment of Shoreline Place.

- H. Balance of Uses As Contemplated in the Shoreline Place CRA
- I. Green Building, Stormwater, and Deep Green
- J. Public Subsidy for Private Development
- K. Affordable Housing
- L. DA Term

Time and care are necessary to craft a fair Development Agreement that makes the Shoreline Place CRA a reality. ROIC hopes that the proposed revisions help to expedite that process. ROIC thanks the Planning Commission for its participation and attention throughout this review process.²

2. PROPOSED REVISIONS TO THE DEVELOPMENT AGREEMENT TO ADDRESS OUTSTANDING CONCERNS AND TO BALANCE PUBLIC AND PRIVATE INTERESTS

A. CERTAINTY.

Issue: The DA lacks certainty regarding the ultimate layout and height, bulk and scale of the proposed developments. The DA continues to include the broad flexibility and minor modification provision that allows MGP or its assigns to revise its "conceptual" site plans as a minor revision that does not require Planning Commission or City Council review. For example, Section 4 (Flexibility) states:

[The Conceptual Guide Plan] is not intended to require specific uses, square footages, building massing, building design, or specific buildings on specific parcels. Depictions of building footprints, bulk and scale drawings, and numbers of stories in the Conceptual Guide Plan are conceptual only" (emphasis added).

To date, MGP has presented varying "conceptual plans" to the Planning Commission. Thus, it remains unclear what MGP or its assigns intend to construct at Shoreline Place. This approach causes confusion, provides MGP with too much discretion to revise the site plan shown to the Planning Commission and the City Council, and does not ensure sufficient benefit is received by the City of Shoreline.

Solution: Create a new Exhibit that provides a binding plan that identifies the location of buildings, maximum building height bulk and scale, and internal roadways (e.g., "Exhibit: Binding

² To avoid any confusion, the proposed revisions are based upon MGP's revised Development Agreement provided for the June 6th Planning Commission meeting.

Plan”). Strike Section 4 and amend Section 33 (Amendment of the Agreement) so that any amendment to the approved Exhibit: Binding Plan is a major modification that requires Planning Commission review and City Council approval.

Proposed Revision:

Amended Section 2. Project Components. The Project will be developed consistent with **Exhibit: Binding Plan** and be comprised of the following components as further depicted in Exhibit D, the Conceptual Guide Plan: ...

Strike Section 4. [Strike entire section].

Amended Section 33.B Major Amendments. A major amendment shall require an amendment to the Agreement and expressly includes: ...

...

8. Any amendment to **Exhibit: Binding Plan**

9. Any amendment to Sections 5 (Phasing), [new section placeholder] (Bond), [new section placeholder] (Core Retail Protections), Section 17.B (Parking), and [new section placeholder] (property rights).³

B. PHASING.

Issue: The DA provides the City with no certainty when or if redevelopment will occur at Shoreline Place. For example, there remains no definitive date to demolish the Sears. Although ROIC appreciates the new internal circulation diagram in Exhibit N, ROIC’s has concluded that the proposed circulation plan results in new conflicts and challenges to internally navigating Shoreline Place.

Solution: Revise the DA to create mandatory phasing with associated timelines for Sears removal, internal roadway construction, and construction of key Shoreline Place spaces. The DA terminates if MGP does not achieve development within the specified timelines, while providing for an extension of these timelines if a recession occurs in the Puget Sound region.

Proposed Revision:

Section 5. Phasing. The Parties agree that the Project may be undertaken over multiple phases and the timing of each phase as set forth in this Section, and its final configuration will be at the sole election of Developer in response to its development goals, business judgment, and market dynamics. The Parties agree that the 20-year vesting in Section 17, *Vesting*, is based on a shared intent and motivation for the Conceptual Guide Plan to be accomplished as expeditiously as possible. More specifically, phases 1 and 2 shall be completed within the first 7 years of the Agreement term, and with the goal that certain

³ Phasing, bond, core retail protection, and property rights are addressed in subsequent sections.

components related to commercial/retail/restaurant space, the Open Space System, and the Westminster Way connections shall occur within the first 10 years of the Agreement term. The following Project Components depicted in the **Exhibit: Binding Plan** as further described in the Conceptual Guide Plan, **Exhibit D**, are priorities the City has identified for the realization of the Planned Action. This Development Agreement terminates at year 7 and at year 10, respectively, if the Developer does not achieve the Shoreline Place development objectives specified in this Section. The Parties may administratively extend these timelines for two additional years if the Puget Sound region enters a technical recession, which is defined as two consecutive quarters of negative economic growth as measured by CPI – Seattle area (all items).

Phase 1. Commercial, Retail, and Restaurants and Vehicular Access. The Parties recognize the need to redevelop a functionally obsolete department store while at the same time creating a new tax base for the City. Developer, as an industry recognized leader in owning, operating and leasing retail and retail-driven mixed-use properties has identified the current appropriate retail and restaurant configuration based on the adjacency to Central Market and other market factors. These retail spaces and restaurants will generally follow the Conceptual Guide Plan, with the first phase including approximately 17,000 square feet of commercial space for a café, brew pub, restaurant and dessert shops clustered around the Open Space System and connecting to Westminster Way. These building are identified as E1 and E2 on the **Exhibit: Binding Plan**

Concurrent with the construction of E1 and E2, the Developer will construct C street as depicted on **Exhibit: Binding Plan** to facilitate the flow of internal Shoreline Place traffic. The internal circulation roadway must be consistent with and conditioned upon granting by MGP of new cross parking and access easement agreement executed between the owners of Shoreline Place and must provide that customer and delivery access are maintained at all times. Developer will also construct the Westminster Plaza Open Space as identified in this section.

Phase 2. Demolition and Activation of the Sears Site Concurrent with Construction of Block C. Demolition of the Sears site as depicted on p. 11 of the CRA. Following the Sears demolition, the Developer will immediately construct Block C. Developer is required to activate the site if Block C construction is delayed for more than six months.

Phase 3. Following phases 1 and 2, redevelopment of the Shoreline Place pursuant to the provisions of this Development Agreement, the CRA, and the Planned Action Ordinance. The Parties agree that phase 3 may be split into sub-phases

[reviser's note to Planning Commission: the remainder of Section 5 follows here]

C. SECURITY FOR THE SEARS REMOVAL OR REDEVELOPMENT.

Issue: The DA provide no financial guaranty that the Sears will be removed or redeveloped.

Solution: The provision of a bond that provides security for the removal of the Sears.

Proposed revision:

New Section. Bond. As a condition for the City’s execution of this Agreement, the Developer will provide the City with a bond in the amount of \$5 million as security for the demolition of the central Sears site if it is not demolished and activated pursuant to Section 5 (phasing).

D. CORE RETAIL TENANT PROTECTIONS.

Issue: The DA revisions also fall short in addressing basic tenant needs necessary to promote the anchor tenant’s success. MGP’s June 6th presentation materials state that “grocers are key to successful mixed use” and MGP has repeatedly stated that the grocer is the anchor tenant for Shoreline Place. MGP’s June 6th presentation explains that lack of freeway visibility harms the viability of retail at Shoreline Place. The City agrees that a grocer should be the anchor tenant. The June 6th Staff Report states: “the site plan maintains Central Market as the “anchor” for the project which inherently places emphasis on maintaining the viability of Central Market in terms of parking, access and signage.” Unfortunately, the DA lacks the protections necessary to facilitate the long-term duration of a core grocer tenant.⁴

Solution: Provide core tenant protections in the DA.

Proposed Revision:

New Section. A grocery tenant currently exists at 15505 Westminster Way (the “Grocery”). The City and the Developer agree that the Grocery is the desired core retail tenant of Shoreline Place. The following provisions provide core retail tenant protections for the Grocery.

- A. New grocery uses in excess of 5,000 SF are prohibited at the Property so long as the Grocery remains in operation at 15505 Westminster Way.
- B. The Grocery must remain visible from all streets surrounding Pacific Place. The height, bulk, and scale of any new development must provide this visibility, which must be demonstrated by the applicant before permit approval. Building D and E

⁴ MGP comments from the June 6, 2019 presentation, p. 111 (titled Market Analysis Summary).

may not exceed 35' to maintain encourage street-level views to the Grocer, its parking, and the Grocer's signage.⁵

- C. Any development that blocks any street view of the Grocery and its parking must provide Grocery signage, at its own cost, that is visible from the street and approved by the Grocery.
- D. Any new development must receive the core retail tenant's review and approval of parking management plan identified in Section 19.B.

E. PARKING.

Issue: Section 19.B addresses parking management at the "Property." The DA defines the "Property" as the MGP-owned property. This section does not address parking management at Shoreline Place located outside of the "Property", *i.e.* MGP's ownership. Thus, the DA's parking provisions do not address new residents and visitors poaching existing parking associated with ROIC's tenants, including the core grocer tenant, which is located off the "Property."

Solution: Expand the parking protections in Section 19.B to all property within Shoreline Place and provide other parcel owners within Shoreline Place the ability to comment on the proposed parking plan.

Proposed Revision:

Section 19.B. With each building permit application for a new structure, Developer shall demonstrate adequate parking and a parking management plan based on all of the uses at Shoreline Place of the Property at the time of permit application. Developer shall provide all Shoreline Place owners with advance notice and a copy of its parking management plan before submitting the plan to the City. The owners shall have 30 days to submit comments to the Developer and City. The Developer may formally submit the parking management plan to the City for review once the 30-day comment period is complete.

F. PROPERTY RIGHTS AND EXISTING LEASES.

Issue: Several "conceptual plans" have shown new improvements being located on top of existing access property rights in favor of ROIC and its tenants. For example, the Development Agreement Design Submittal 12.21.19, p. 9-10 depicts improvements located on ROIC's access easement. Section 7.E was recently amended to acknowledge ROIC's easement. However, even a plan that explicitly prohibits improvements on ROIC's easement area would not be satisfactory under the proposed DA because none of the conceptual site plans or other verbiage regarding the

⁵ The restriction in this provision does not apply to Block C, recognizing the importance of demolishing the Sears and proceeding with redevelopment on this block.

easement are binding under the DA.⁶ It remains unclear how ROIC's easement rights will be treated after Development Agreement approval.

In addition to easement rights, ROIC's leases at Shoreline Place contractually obligate ROIC to maintain certain access and parking rights for tenants. For example, the ROIC-Marshall's lease obligates ROIC to provide access, loading, and parking pursuant to other encumbrances across Shoreline Place. Marshall's has the contractual right to act on behalf of ROIC through litigation or otherwise to protect its leasehold interests.

Solution: Require Exhibit Binding Plan to identify the easement and leasehold rights. Prohibit any planned development that would interfere with the recorded property rights and leasehold interests. Include a provision that the Exhibit Binding Plan may not be modified through the flexibility or minor modification procedures.

Proposed Revision:

New Section. Property Rights. The Parties acknowledge that state law does not allow a Development Agreement to impair existing property rights. To avoid future property disputes, Exhibit: Binding Plan will identify all relevant property rights and leasehold interests and avoid any infringement of those right for as long the rights remain valid.

G. FUTURE REDEVELOPMENT.

Issue: It is likely that ROIC will redevelop its holdings are Shoreline Place during the 20-year DA term. Tonight's Staff report opens the door for ROIC and other property owners at Shoreline Place to rely upon the Planned Action Ordinance ("PAO"), stating that 67% of the PAO capacity remains.⁷ However, the proposed PAO amendment potentially shuts the door for additional redevelopment. A memo from Heffron Transportation Inc. explains that the allocated PAO trips might be used entirely by MGP's proposal.⁸ Thus, it remains unclear whether 67% of the PAO capacity remains under the PAO. The PAO cannot encourage new development if the MPG project exceeds the trip thresholds.⁹

⁶ This uncertainty is a result of Section 4 (flexibility) and Section 33 (amendment of agreement). To address this uncertainty, ROIC proposes striking section 4 and revising section 33, as identified in Section 2.A of this memorandum.

⁷ The June 6 Staff Report provides: "It is staff's hope the environmental study performed in the Planned Action, and certainty as to specific mitigations required of developers, will encourage other property owners to advance renewal plans of their own. Renewal of significant portions of the adjacent properties can still occur within the Planned Action, capacity of which will be 67% after MGP's redevelopment."

⁸ "The MGP Shoreline Place project with a Transportation Analysis by TENW3 showed a year 2039 total PM peak hour traffic volume (entering and exiting the site) that would **exceed** the amended trip thresholds in the PAO (see Figure 3 of the TENW report)." Heffron Transportation Inc. letter dated June 5, 2019 (provided to Planning Commission as comment on the Planned Action Ordinance update).

⁹ Appendix K of the Development Agreement is intended to track trips, but it does not identify the trips allocated to MGP or the number of remaining trips under the PAO.

Solution 1: Identify (1) the total trips allowed under the PAO, (2) the total trips allocated to MGP under this DA, and (3) the number of trips remaining for trip and the remaining trips available under the PAO. As identified in the Heffron memo, this analysis requires making publicly available: (1) the underlying trip generation calculations that show the total, internal, and pass-by trips and (2) that the PAO include details about the assumed pass-by trip and total trips at the driveway(s) to improve the ability to monitor future trips.

Solution 2: If no or limited trips are available or to expedite Shoreline Place redevelopment, the Planning Commission should consider including “no squatting” provisions in the proposed DA. These provisions would encourage MGP to expeditiously proceed with the development or to allow another developer to rely upon the PAO to redevelop Shoreline Place. The proposed revisions to Section 5 (above) includes such provisions to encourage timely development.

Items A through G are essential for the successful continued commercial operations and the continued redevelopment of Shoreline Place. In addition to ROIC’s core concerns, items H through L addresses concerns raised by the Planning Commission that would also be beneficial for the continued redevelopment of Shoreline Place. Items H through L are also informed by other Development Agreements in the Puget Sound region as reviewed in the City Attorney’s memo to the Planning Commission dated May 30, 2019. This memo correctly notes that these agreements are site specific and based upon a variety of factors. Ultimately, items H through L, along with the remainder of the Development Agreement, require the Planning Commission to balance of public and private interests, which require give and take, based upon the circumstances presented here.

H. BALANCE OF USES AS CONTEMPLATED IN THE SHORELINE PLACE CRA.

Issue: The Shoreline Place CRA planned for redevelopment that would encourage jobs and increase the tax base (“trading surface parking for jobs”).¹⁰ As identified by the Planning Commission on May 16th, the DA does not provide the planned jobs and tax revenue. MGP’s 6/6 presentation materials include a market analysis that generally concludes the market disfavors office and large retail, but strongly supports residential. MGP’s public materials do not include a supporting financial analysis.

It is ROIC’s understanding that the City has not hired an independent third-party consultant, such as Heartland LLC or Leland Consulting Group, to “trust but verify” MGP’s conclusions. Many cities use a commercial real estate consultant to help balance the public and private interests when creating a Development Agreement, which would help to refine and elaborate on the short response to the tax question on p. 6 of the 6/6 Staff report.

Solution: Engage a commercial real estate consultant to review MGP’s analysis and inform the City. Ask the commercial real estate consultant to evaluate the value of the real estate

¹⁰ Shoreline Place CRA, p. 14.

entitlements and evaluate the potential to construct non-residential improvements, such as office, through the some of the value generated by the residential and other entitlements in the DA.

Potential Amendment: Revise the DA to establish a residential to non-residential ratio based upon the consultant’s independent findings. The ratio would connect the amount of approved residential SF to the amount of constructed non-residential SF, such as office.

I. GREEN BUILDING, STORMWATER, AND DEEP GREEN.

Issue: The Planning Commission desires to encourage green building and enhanced storm water treatment at the Shoreline Place redevelopment. The DA now commits to “incorporate a list of LEED ND Credit categories” into its development. Many of these categories are related to the building’s location, not green building techniques. For example, the LEED ND credit categories include: smart location, access to quality transit, and housing and jobs proximity. These elements already exist at this location. The DA includes a vague provision on “rainwater management”, but it does not explain whether this “rainwater management” means compliance with the existing stormwater manual (as identified in Section 22) or whether “rainwater management” means exceeding today’s requirement. It remains unclear what sustainability provisions will be included for stormwater.

The Planning Commission inquired about Deep Green. The June 6th Staff report notes that the City adopted Deep Green standards after the MGP applied for the Development Agreement. This fact does not preclude using Deep Green development standards at Shoreline Place. Development Agreements, which require a legislative action, do not vest upon submittal.¹¹ There is ample flexibility here to include Deep Green or other green building standards in the Development Agreement.

Solution: The Planning Commission could establish standards that exceed the building code and the current stormwater manual. For example, the Planning Commission could include a requirement that all developments achieve a specified Deep Green tier. This issue requires balancing public and private benefits.

Potential Amendment:

Section 28 Sustainability. As required by SMC 20.30.355.C.2, the Project will provide innovative, aesthetic, energy-efficient and environmentally sustainable architecture and site design as demonstrated in the Exhibit: Binding Plan and the Conceptual Guide Plan. The Developer desires to participate in the City’s new Deep Green program, which the City enacted before approval of this Development Agreement. All development will satisfy City of Shoreline Deep Green Tier [Planning Commission to determine the tier]. [strike or maintain the remainder of the section].

¹¹ The Code provides that “The City Council shall take action on the proposal in accordance with state law.” SMC 20.30.070 (procedures applicable to Development Agreement approval). State law does not allow a Development Agreement applicant to vest upon submittal.

J. PUBLIC SUBSIDY FOR PRIVATE DEVELOPMENT.

Issue: The DA continues to include impact fee waivers that support private development. The Planning Commission questioned these waivers. Pages 13-15 of the June 6th Staff report identify the impact fee waivers for the project. This issue requires balancing public and private benefits.

Solution: If desired, the Planning Commission may strike the impact fee waivers for parks.

K. AFFORDABLE HOUSING.

Issue: The Planning Commission inquired about affordable housing. The Staff Report notes that MGP will providing affordable housing if it receives tax exemptions through MFTE,¹² although this obligation is not included in the current draft DA. Ultimately, the Planning Commission may include affordable housing requirements regardless of whether there is an associated tax exemption or not. This issue requires balancing public and private benefits.

Solution: If desired, the Planning Commission may impose affordable housing requirements (such as 10% of the units at 60% AMI or 80% AMI).

L. DA TERM.

Issue: The Planning Commission inquired about the 20-year DA term and associated construction timeline. On 5/16, the Planning Commission correctly noted that the 20-year term provides significant value and certainty to MGP. In response to Planning Commission questions, the Staff Report notes that flexibility over the 20-year DA is necessary, in part, because economists are forecasting an economic downturn during the next 10 years.¹³

Solution: The DA can provide flexibility, address a recession, and provide the City with certainty that development will occur at Shoreline Place within specified time periods. This is not an “all or nothing” issue.

Proposed revision:

Enact the certainty and phasing revisions identified in Section 2.A and 2.B in this memorandum.

ROIC hopes that this memorandum assists the Planning Commission with its review of the proposed Shoreline Place Development Agreement.

¹² June 6th Staff report, p. 19.

¹³ June 6th Staff report, p. 23.