



May 16, 2019

Shoreline Planning Commission
City of Shoreline
17500 Midvale Avenue N
Shoreline, WA, 98133-4905

Dear Chair Montero and Members of the Planning Commission,

Thank you for the opportunity to provide input in advance of the May 16, 2019 meeting. Please consider this letter our formal position on matters related to the proposed Shoreline Place Development Agreement. We ask that the Planning Commission not hold a public hearing on the Shoreline Place Development Agreement until after MGP addresses the concerns identified in this letter.

On May 2, you heard from our Development and Construction Director, Bob Doran, who expressed deep concerns regarding the Development Agreement in its current stage. Our architect team from MG2 and our legal counsel gave additional testimony underscoring the circulation, phasing and other concerns affecting property owners and tenants at the mall. And you heard from members of the community who are keenly interested in ensuring that the project produces the best outcomes for the city. We deeply appreciate the additional time for the Planning Commission to discuss and deliberate on the benefits and deficiencies of the Development Agreement as proposed.

Our key concerns remain, and each should be viewed within the context of the broader Shoreline Place and with the understanding that substantial changes to the built environment, utilities and roadways at the mall cannot be performed without significantly affecting adjacent tenants and properties. Fortunately, as our legal counsel pointed out on May 2, and as outlined in Attachment B to this letter, the Commission can and should approve straightforward amendments that protect all stakeholders at the mall while allowing the redevelopment to proceed.

Our concerns are as follows:

1. **No time limit (or obligation) for Sears box demolition.** The City and Shoreline Place could be left with an abandoned or partially demolished Sears at the heart of Shoreline Place until as late as 2039.
 - a. *Solution: require Sears box to be demolished in Phase 1 and immediately activated for public use or redeveloped.*

Retail Opportunity Investments Corp.

Corporate Office: 11250 El Camino Real, Suite 200, San Diego, CA 92130 Ph: (858) 677-0900 Fx: (858) 408-3668
Northwest Office: 15600 NE 8th Street, Suite K15, Bellevue, WA 98008 Ph: (858) 677-0900 Fx: (206) 274-4884

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2. **Internal circulation.** At various stages of the plan, beginning with its proposed first development, MGP's redevelopment cuts off key internal vehicular circulation and adds circuitous routing that will frustrate shoppers and harm tenants.
 - a. *Solution: Modify the Agreement to provide specific internal circulation in Phase 2.*

3. **Built environment.** It remains unclear what MGP intends to construct and how these structures will relate the pedestrian experience at Shoreline Place.
 - a. *Solution: Require MGP to host a study session that analyzes the height, bulk, scale, and materiality of the proposed structures. Modify the Agreement to require development that is consistent with the renderings and materials shown to the Planning Commission.*

4. **ROIC Property Rights.** As presented, the MGP plan is impossible to develop without adjacent property owner easements. The city is being inappropriately placed in a position where it might illegally approve one private property owner's right to amend another private property owner's land.
 - a. *Solution: Require MGP to negotiate easement uses for each phase with adjacent properties*

A comment of particular concern that our team heard at the May 2 meeting was that Shoreline has never worked through a development agreement process prior. Another concern is that Shoreline has no commercial real estate advisor to guide the city in this negotiation. As our legal counsel described in his comments that evening, development agreements in Washington State commonly include specific language that binds developers to timelines and contractually obligates the developer to provide the promised public benefits. Such obligations are missing from the Shoreline Place Development Agreement.

Development agreements from similar cities or for similar redevelopment proposals could provide a basis of context and assist the City of Shoreline when working through details of its own Shoreline Place Development Agreement. To that end, we asked our legal counsel to provide several examples that, we hope, provide valuable context for you. These are described in Attachment C.

Finally, as we stated on May 2 and as we have acted all throughout the process, ROIC intends to continue to work with the city, MGP and other stakeholders in good faith until an appropriate Development Agreement is finalized. Thus, Attachment A contains a recent letter sent to Merlone Geier Partners representatives describing – and offering solutions for – outstanding issues for property owners and tenants at the mall.

Thank you for your service to the City of Shoreline, and for working with ROIC to shape an outcome that benefits Shoreline and MGP while protecting adjacent private property and beloved tenants at Shoreline Place. We ask that the Planning Commission not advance the Shoreline Place Development Agreement to a public hearing until after MGP has revised its proposal to address these significant issues.

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Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Schoebel", is written over the typed name.

Richard Schoebel, Chief Operating Officer
ROIC

Attachments:

A Letter from ROIC to MGP

B Proposed Amendments to Development Agreement

C Additional Washington State Development agreement examples

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Attachment A



May 10, 2019

Jamas Gwilliam
Vice President, Development
Merlone Geier Partners
4365 Executive Drive, Suite 1400
Sand Diego, CA 92121

Re: Shoreline Place Development Agreement

Dear Jamas:

For nearly a year, our team at ROIC has been meeting with you and other representatives from Merlone Geier Partners (MGP) with the express intent to discuss – and solve – outstanding issues brought on by the proposed Shoreline Place redevelopment including phasing and access. And during this time, ROIC has made every effort to prepare for, participate in, and advance potential solutions following each meeting. However, as we shared with the Shoreline Planning Commission on May 2, we discovered in April of this year that MGP did not appear to be acting in good faith in these negotiations.

Since that time, we hired legal, traffic and design consultants to understand how MGP's proposed Development Agreement would impact ROIC's properties and tenants. Fortunately, while our consultants confirmed that several critical issues remain, viable solutions are within reach.

Merlone Geier is requesting a Development Agreement from the City of Shoreline. A Development Agreement is more than just a simple exercise of the City's land use authority. A Development Agreement is a contract that requires give and take. Accordingly, Development Agreements in the Puget Sound region routinely place obligations on the developer to provide public benefits and infrastructure *before* the developer begins other phases of the project.

Consistent with this precedent, the Shoreline Place Development Agreement should identify mandatory phasing of project elements.

As currently drafted, the Development Agreement provides no certainty that MGP or its assigns will remove the Sears, develop internal circulation infrastructure, and respect ROIC's property rights. ROIC will continue to oppose MGP's Development Agreement proposal until it includes five items:

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1. Demolition of the Sears as the first phase. The City and Shoreline Place cannot be left with an abandoned or partially demolished Sears at the heart of Shoreline Place. MGP's argument that it cannot demolish the Sears during the first phase of the project is disingenuous:

- At the May 2nd Planning Commission meeting, MGP stated that tenants are in the Sears through 2023 and that these tenants are generating revenue. MGP created this issue for itself by choosing to rent this space to tenants while it concurrently pursued this Development Agreement.
- At the May 2nd Planning Commission meeting, MGP stated that demolition of the Sears would result in a chain link fence being around the property. MGP's online FAQ now states that the demolition of the Sears will result in "a big hole in the ground for many years." We both know that this is not true. There are numerous approaches to cost-effectively activate this space for community use following demotion.

2. Development of all internal circulation as the second phase. The Shoreline Place CRA calls for "enhanced connectivity and traffic flow on and around site." The CRA specifically identifies the construction of what is commonly known as "C Street", which is a linear roadway connecting the upper and lower portions of Shoreline Place. ROIC has three primary concerns with the Development Agreement's treatment of internal circulation:

- Interim Conditions. MGP is proposing a 20-year Development Agreement that authorizes development in numerous phases. Neither the Development Agreement nor the traffic studies address the interim condition for internal circulation.
- "Conceptual" Circulation. MGP has proposed more than one "conceptual" internal circulation graphic. It is unclear what Merlone Geier intends to build or when it intends to build the conceptual internal circulation improvements. Many of the plans are inconsistent with the circulation identified in the Shoreline Place CRA.
- Easement Use. What is not shown in MGP's images for Shoreline Place are the multitude of easements and other negotiated access that is required for the project to be built as described. To ensure protections for adjacent properties while MGP realizes this vision, the Development Agreement should include language for mandatory negotiation between

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affected parties for each phase of the Development Agreement which affects, impedes on, or requires easements from ROIC.

The Development Agreement should provide a specific internal circulation plan that is consistent with the CRA. The Development Agreement should require MGP or its assigns to complete this infrastructure *before* subsequent phases begin. Following phases 1 and 2, MGP or its assigns may proceed with its envisioned project.

3. **Modifications.** Section 33 of the Development Agreement (modifications) must be amended to effectuate the project phasing identified above.
4. **Development.** MGP has yet to show the Planning Commission its architectural plans for the residential and retail structures at Shoreline Place. It is unclear what MGP intends to construct or how these structures will relate to the existing businesses. MGP should devote at least one Planning Commission study session to address the details of its envisioned structures. The Development Agreement should be amended to identify these architectural concepts reviewed and approved by the Planning Commission.
5. **ROIC Property Rights.** Finally, ROIC has an obligation to protect its property rights. The Development Agreement depicts Merlone Geier violating ROIC's access easement on the northern edge of the property. ROIC fundamentally disagree with Merlone Geier's statement that the City has no authority to consider our property rights. A Development Agreement is a contract. Merlone Geier and the City may not execute a contract that obligates Merlone Geier or its assigns to violate our property rights and to record this violation on the property's title. State law prohibits this act.

We drafted this letter with the express intent to provide clarity and context. We appreciate your request to meet and look forward to doing so at a time when Merlone Geier Partners is prepared to address each outstanding issue in turn. As a starting point, our legal counsel has written draft amendments that we believe address items 1-3 while allowing MGP to advance its project; those can be found in the attachment to this letter.

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Thank you for your understanding.

Sincerely,

A handwritten signature in blue ink, appearing to be "Stuart Tanz".

Stuart Tanz, Chief Executive Officer
ROIC

A handwritten signature in blue ink, appearing to be "Rich Schoebel".

Rich Schoebel, Chief Operations Officer
ROIC

Enclosure:

Amendments to Development Agreement

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**AMENDMENTS TO THE SHORELINE PLACE DEVELOPMENT AGREEMENT
(TO ADDRESS THE SEARS DEMOLITION AND
INTERNAL CIRCULATION DURING CONSTRUCTION)**

Revised Section 5. Phasing

Phasing. The Parties agree that the Project ~~may~~ shall be undertaken over multiple phases as follows; ~~and the timing of each phase and its final configuration will be at the sole election of Developer in response to its development goals, business judgment, and market dynamics.~~

- Phase 1: Demolition of the Sears site as depicted on p. 11 of the CRA. Following the Sears demolition, the Developer will immediately activate the site for public use as approved by the City. The activation will continue until a subsequent development phase redevelops the Sears site.
- Phase 2: Construction of the internal circulation roadway commonly known as C Street as depicted on p. 11 on the CRA. 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.
- 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

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 with the goal that certain components related to commercial/retail/restaurant space, the Open Space System, and the Westminster Way connections occur within the first 10 years of the Agreement term.

The following Project Components depicted in the Conceptual Guide Plan, Exhibit D, are priorities the City has identified for the realization of the Planned Action.

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Corporate Office: 11250 El Camino Real, Suite 200, San Diego, CA 92130 Ph: (858) 677-0900 Fx: (858) 408-3668
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A. Commercial, Retail, and Restaurants. 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 Proposed Shoreline Place Development Agreement - Attachment E -7- 51411639.11 shops clustered around the Open Space System and connecting to Westminster Way.

B. Open Space System. Developer acknowledges the importance of there being publicly accessible open space incorporated into the Project. The Conceptual Guide Plan depicts Developer's approach to creating a series of these spaces spread throughout the Project. These spaces vary from green lawns for summer day picnics, outdoor movies and concerts in the park areas, to intimate plazas and paseos adjacent to lively restaurants and retail shops, well-appointed with comfortable seating areas and creative landscape and hardscape elements. Exhibit E refines the Open Space System. Subject to Section 4, Flexibility, and the Supplemental Site Design Guidelines, Open Space System components shall be provided as follows:

- i. Westminster Plaza - with the construction of Block E.
- ii. East Plaza - with the construction of Block D.
- iii. West Plaza- with the construction of Block C.
- iv. Community Open Space – with the construction of Blocks A and B.
- v. Pedestrian Shared Street - with the construction of Block C.

C. Westminster Way Connection. The City has identified Westminster Way as a key component of the CRA and, in connection with the Alexan project, is investing City resources towards the creation of a more pedestrian-friendly environment. The City expects the Project to leverage enhancements along Westminster Way, providing for enhanced pedestrian connections and introducing gathering areas and retail spaces within the buildings along Westminster Way.

D. Supplemental Site Design Guidelines. Each phase of the Project shall comply with the applicable Supplemental Site Design Guidelines.

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Revised Section 33. Amendment of Agreement.

Amendment of Agreement. Amendment of this Agreement is subject to the provisions of Section 56 (Final and Complete Agreement). Amendments to the Agreement shall be designated as either minor or major amendment by the Director of Planning and Community Development, in consultation with affected City Departments.

A. Minor Amendments. A minor amendment is an amendment that is not defined below as a major amendment.

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

1. Changing the term of the Agreement as set forth in Section 17 Vesting;
2. Modifying the Open Space requirements set forth in Section 5.B Phasing or Section 9, Open Space System;
3. Increasing the square footage or the number of residential dwelling units set forth in Section 3 Development Approvals by more than ten percent (10%);
4. An amendment that would cause an exceedance of the "CRA Trip Budget" as defined in the Agreement;
5. Proposing a land use that is not allowed in the zone;
6. An amendment to any of the modifications set forth in Section 12 Modifications to Land Use Regulations; or
7. An amendment creating new significant environmental impacts not evaluated in the Aurora Square Planned Action FEIS.
8. Modifying the phasing requirements set forth in Section 5.

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Attachment C

Tharsis Law P.S.
jeremy@tharsis.land
206.579.2397
tharsis.land

To: Shoreline Planning Commission

From: Tharsis Law P.S.
Jeremy Eckert

Date: May 16, 2019

RE: Analysis of Development Agreements in the Puget Sound Region

1. DEVELOPMENT AGREEMENT OVERVIEW

Merlone Geier Partners (“MGP”) has requested that the City of Shoreline approve its first Development Agreement for Shoreline Place. The proposed Development Agreement provides significant value to MGP. For example, the proposed Development Agreement:

- Authorizes significantly more residential units than envisioned in the Shoreline Place Plan
- Rewrites the zoning code to authorize taller buildings and narrower parking stalls
- Provides public subsidies for private development in the form of impact fee credits
- Provides a 20-year vesting period and no construction benchmark for MGP to construct anything over the next two decades

The proposed Development Agreement does **not** require MGP or its assigns to:

- Demolish the Sears or provide other public benefits identified in the Shoreline Place Plan
- Develop internal circulation as required by the Shoreline Place Plan
- Develop Shoreline Place in a phased, predictable manner
- Develop *any* of the “conceptual” plans in the Development Agreement. Section 33 of the agreement authorizes MGP to modify the “conceptual” plans as a minor modification that does not require further Planning Commission or City Council review
- Develop new structures pursuant to standards that are reviewed and approved by the Planning Commission
- Provide a bond as security for performance

A Development Agreement is a contract between the developer and the City of Shoreline. Contracts require give and take. On May 2nd, the Shoreline City Attorney correctly noted that the Planning Commission and the City Council have the legal authority to include requirements in this

contract to protect the public's interest in Shoreline Place. *See e.g.*, RCW 36.790B.170(4) ("The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities."). Revising the proposed Development Agreement to include mandatory phasing will help, in part, to protect the public's interest in Shoreline Place:

- Phase 1: Demolition of the Sears site as depicted on p. 11 of the CRA. Following the Sears demolition, the Developer will immediately activate the site for public use facility as approved by the City. The activation will continue until a subsequent development phase redevelops the Sears site.
- Phase 2: Construction of the internal circulation roadway commonly known as C Street as depicted on p. 11 on the CRA. 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.
- 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.

To date, MGP has opposed these obligations. On May 2, 2016, the applicant argued that its proposed market-based "flexibility" is consistent with Development Agreements from this region. In reality, Development Agreements throughout the Puget Sound region routinely contractually obligate the developer to provide the identified public benefits and necessary infrastructure. Development Agreements often require these public benefits as the first phase of the project. Development Agreements also routinely obligate the developer to satisfy architectural standards that are reviewed and approved before the City executes the Development Agreement.

The Shoreline Planning Commission's role is to ensure that a proper balance of the public (benefit to citizens of Shoreline as a whole) and private interests are represented in a proposed Development Agreement when making its recommendation to the Council. To inform the Planning Commission's review, this memorandum analyzes selected Puget Sound Region Development Agreements that either include mandatory phasing requirements or contractually obligate the developer to provide identified public benefits. For example, the identified Mill Creek Town Center project is similar to the Shoreline Place project. However, the Mill Creek Development Agreement provides many public protections that are not included in the proposed Shoreline Place Development Agreement. The proposed Shoreline Place Development Agreement is a one-sided contract when compared to other Development Agreements around the region. ROIC has provided the Planning Commission with proposed revisions that are consistent with other Development Agreement that, if adopted, would help to level this imbalance.

We hope that the following analysis helps to inform the Planning Commission’s review of the proposed Development Agreement. Additional Development Agreement examples are available upon request.

2. DEVELOPMENT AGREEMENTS FROM THE PUGET SOUND REGION

A. City of Mill Creek Development Agreement – Town Center, Phase III

The Development Agreement authorized the development of a 6.6-acre parcel of land planned for a new commercial, retail, and residential center pursuant to an adopted Town Center Plan and Town Center Design Guidelines. The agreement required consistency with the Town Center Plan and Design Guidelines. The agreement included phasing requirements and site-specific design requirements to effectuate the Town Center Plan:

Phasing Requirements, Sections 15 and 9.1. The agreement phased the project “to expedite site preparation and ensure a strong pedestrian presence with the completion of initial buildings and uses.”

Phase 1: Infrastructure Phase. The agreement required the developer to construct all necessary interior streets, right-of-way improvements, and lighting improvements as the first phase (Section 9.1). The first phase also required the developer to construct storm water facilities for the entire site (Section 15).

Phase 2: Building Phase. The building construction phase shall include construction of a combination of structures, uses and tenants sufficient to stimulate pedestrian activity. Such combination shall implement a specified tenant mix. The Developer shall use its best efforts to construct in the building phase of development three retail buildings, one residential building and one parking garage. Subsequent building phases required additional agreement between the City and developer

Open Space, Section 11. Open spaces open to the public and the City provide a central feature of the Town Center Plan. The agreement required the developer to provide the open space and authorized the City to control and regulate the Open Space to protect the public’s interest. The agreement required the developer to execute an operational agreement with the City to coordinate events, activities, and maintenance of the open space. Finally, the agreement obligated the developer to grant pedestrian access easements across the open space.

Design Requirements, Section 8. The agreement included site specific design requirements to implement activation goals of the Town Center Plan. Some design requirements include:

- Ground floor retail use
- Additional building articulation
- Building rotation to allow for additional openings
- Project lighting
- Project landscaping
- Project landscaping maintenance and performance bonds

The City reviewed specific and building designs to develop these building-specific conditions.

Bond, Section 16. The agreement required the developer to post a bond to guarantee compliance with the Development Agreement terms.

Link to the Mill Creek Town Center Development Agreement:

<http://mrsc.org/Corporate/media/MediaLibrary/SampleDocuments/Contracts/m52phaseiii.pdf>

B. City of Redmond and Group Health Development Agreement

The City of Redmond and Group Health executed a Development Agreement to redevelop a 27-acre site with 1,400 residential units, a hotel, office, retail, restaurants, and a 2.67-acre major public park. The Development Agreement required consistency with the adopted Master Plan. Like the City of Shoreline, the City of Redmond also adopted a planned action for the environmental review of the area, but the Development Agreement acknowledged that the implementation of the Master Plan required additional conditioning and binding contractual obligations.

Phasing, Section 7. The City recognized that site development must be phased in a predictable manner to avoid conflicts. The agreement did not allow phase II until necessary transportation improvements were funded or complete.

Public Parks and Recreation, Section 8. The agreement required the development to convey 2.64 acres to the City for a major public park along with all necessary easements for the city to access the new park property. The developer agreed to fund \$2.4M in park mitigation payments.

Affordable Housing, Section 2.9. The Development Agreement required the provision of affordable housing.

Storm water, Section 5. The Development Agreement specified storm water flow control and runoff treatment. It identified approach for regional storm water facilities and addressed interim on-site treatment and flow control.

Link to the City of Redmond Development Agreement:

<http://mrsc.org/getmedia/09871875-3427-4e37-8f96-c6546fc10c02/r42r1369.pdf.aspx>

C. City of Seattle and Sound Transit Development Agreement

The City of Seattle and Sound Transit executed a Development Agreement to control the subsequent development of five development sites surrounding the Capitol Hill light rail station.

Open Space, Section 4. The agreement required two large open space areas. The agreement specified that the public had the right to use the open space that was to be maintained by the subsequent owner of the development sites.

Development Standards For Each Site, Sections 6-9. The agreement provided specific development standards for each site to create an integrated design for surrounding the light rail station.

Affordable Housing Commitment, Section 13. The agreement required Sound Transit to sell one of the five sites to a not-for-profit developer.

Amendments, Section 21. Amendments to the agreement required approval of the City of Seattle and Sound Transit Board

Link to the Development Agreement:

<http://www.seattle.gov/dpd/blog/capitol-hill-light-rail-station-sites-development-agreement.pdf>

D. City of Issaquah Talus Development Agreement

The City of Issaquah and the Talus Master Developer executed the Talus Development Agreement to complete a master planned community for residential, office, and retail uses. The plan called for extensive transportation improvements, health and safety improvements, significant open space, and interconnected trails. The Talus Development Agreement includes numerous provisions to protect the City and the public. For example, the Talus agreement required the Master Developer to “pre-pay” to the City necessary mitigation at the outset of the 15-year Development Agreement before construction began.

Link to the Development Agreement:

<https://www.issaquahwa.gov/DocumentCenter/View/1836>

3. NEXT STEPS

ROIC’s proposed amendments to the Development Agreement address phasing and restrict MGP’s ability to modify a City Council-approved Development Agreement. Consistent with other Development Agreements, the Planning Commission may desire to include additional requirements in the Development Agreement to protect the public’s interest in the successful redevelopment of Shoreline Place.