

**MEMORANDUM OF UNDERSTANDING
MERCER ISLAND COMMUTER PARKING MIXED USE PROJECT
(Non-binding except Section 16 (re: exclusive negotiations))**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), dated this 20th day of June 2019 (Effective Date) is entered into between the City of Mercer Island, a Washington municipal corporation (City) and MainStreet Property Group, LLC, or a controlled subsidiary thereof (MainStreet). The City and MainStreet are referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

A. In 2008, voters approved a mass transit expansion proposal, Sound Transit 2 that will add 36 miles of light rail to the Sound Transit system. Mercer Island will be served by the East Link extension. Sound Transit’s East Link includes 10 stations from Seattle’s International District to Mercer Island, through downtown Bellevue, terminating at the Redmond Technology Station. When East Link opens in 2023, passengers will be able to ride almost 40 miles of light rail, from the Eastside to downtown Seattle and from there to Northgate or to Sea-Tac Airport and Angle Lake.

B. Of the 39 cities in King County, the City of Mercer Island is among the few jurisdictions that will be directly served by having a new light rail station in 2023.

C. As part of the existing mass transit system and high occupancy vehicle (HOV) network, the Washington State Department of Transportation (WSDOT), Sound Transit, and King County Metro have created Park and Ride lots for commuter parking near access points, including a Sound Transit commuter parking area on North Mercer Way that will also serve Sound Transit’s light rail system.

D. Currently the Park and Ride lot provides 447 spaces and is at capacity. Typically, the lot fills up before 7am on weekdays. Demand will only continue to increase in 2023, when the new light rail station is slated to open.

E. Sound Transit monitors parking use at the Mercer Island Park and Ride lot. On average, approximately half the commuter vehicles that use this lot are vehicles registered outside City limits. These vehicles drive from other jurisdictions to the Mercer Island Park and Ride lot, then commute by bus to Seattle and eastside locations from that lot. Because Sound Transit is a regional agency, it cannot limit use by non-Mercer Island residents. The City expects that parking demand for this lot will increase when Sound Transit’s Mercer Island light rail station opens in 2023.

F. City residents do not have sufficient commuter parking available for their use. The City has a vital need for additional commuter parking. In order to better serve Mercer Island residents, the City sought to construct a separate parking structure that will serve the commuter needs of City residents.

G. The City desires to support the Town Center vision described in the Comprehensive Plan by supporting the provision of commuter parking near transit and Town Center and supporting the creation of well-designed development in the Town Center. The Mercer Island Comprehensive Plan (Land Use Element Goals 1, 6, 7, 9, 10, 11, and 14) directs the City to integrate the design of regional transit into the Town Center to ensure sufficient parking, support multi-modal access to regional transit, and create a walkable pedestrian environment from transit to Town Center.

H. During development of the Project concept and Request for Qualification (RFQ) process, the City used a commuter parking construction cost estimate of \$85,000 per stall. Since selecting MainStreet as the City’s Project partner, the City has obtained Sound Transit’s actual all-in cost (excluding land) to entitle,

design, engineer and construct structured parking in other cities, including Kent, Auburn, and Sumner. Sound Transit's construction cost now exceeds \$100,000 per stall. Using Sound Transit's actual costs, the cost to construct a stand-alone commuter structured parking garage of 100 stalls would equal approximately \$10 million. Considering the City's other budget priorities, the City does not have sufficient funds to construct a stand-alone commuter parking facility.

I. The City has commenced extensive negotiations with a private property owner and the Washington State Department of Transportation with the intent to assemble property and property rights near both the Mercer Island Light Rail Station that the City believes is suitable for commuter parking.

J. The City has determined that the estimated cost to construct structured parking on this site exceeds available City funds, given the City's other budget priorities. In order to address the residents' critical need for additional commuter parking, the City Council developed a vision to enter into a public-private partnership where it could leverage its limited funds available for construction of commuter parking. The city sought to partner with a private developer that would construct at least 100 commuter parking stalls in exchange for property rights to construct an urban, mixed-use development that would act as an inviting gateway between the new light rail station and the Town Center. The City desires to obtain the commuter parking its residents need, plus add housing opportunities in the City's Town Center, provide new retail opportunities, add affordable housing units, and potentially provide a new performance center, studio, and administrative space for the Mercer Island Center for the Arts (MICA) (collectively, the Project), provided MICA meets its funding milestones, creates an appropriate fundraising strategy and schedule, provides a design schedule, completes a project design, defines programmatic elements, and procures adequate funding to construct, operate, and maintain its portion of the project as determined by MainStreet.

K. With this vision in mind, the City entered into an agreement on June 7, 2018, to purchase downtown property commonly referred to as the "BP/ARCO Property," (formerly known as the "Tully's Property") with Parkway Management Group. By assembling the BP/ARCO Property with an adjacent portion of Sunset Highway, known as Parcel 12 (also described as Parcel A-1), and, if needed, the City's potential purchase of Parcel A-2 (all collectively, the "Property"), the City developed a combined Project site. The City then issued a Request for Qualifications (RFQ), seeking developers to partner with the City to construct commuter parking as part of a mixed-use development.

L. The City completed an open, competitive RFQ process seeking innovative and capable property developers to design and build the Project. The City Council reviewed the draft RFQ criteria and selection process at its July 17, 2018, meeting and approved the RFQ process at its August 28, 2018, meeting (AB 5459). The Council then selected and interviewed two top finalists at its November 26, 2018 meeting (AB 5499), MainStreet Property Group, LLC and Shelter Holdings.

M. The top two finalists elected to merge the proposals, resulting in the City Council's selection of MainStreet Property Group, LLC, ("MainStreet") as its preferred partnership developer, based on MainStreet's proposal and experience in public-private partnerships and on the presentation materials. MainStreet expects to generally utilize the design team of Weinstein A+U as the lead architect and GGLO as the interior designer for the Project.

N. An integral part of one of MainStreet's proposals includes a permanent theater and administrative home for MICA in the City's Town Center. MICA's potential participation and inclusion in the Project is subject to MICA and Mainstreet's good faith negotiation of a separate agreement to develop a theatre, performance, studio and administrative space, and is specifically conditioned on MICA obtaining sufficient capital funding for design, development, construction, operation and maintenance in a timely manner under mutually agreeable terms between MICA and MainStreet. Alternatively, in the event that MICA is not able to obtain sufficient capital funding or is unable for other reasons to participate in the Project, MainStreet

will also submit a plan design that does not include MICA in the Project that may include additional residential, retail, civic, and/or other commercial components, and the City will review both alternatives concurrently.

O. By its Resolution No. 1558, the Council directed the City Manager to enter into direct negotiations with MainStreet to negotiate this non-binding Memorandum of Understanding exclusively with MainStreet as its preferred development partner.

UNDERSTANDINGS

Therefore, the Parties state their understanding of the current situation as follows:

1. The Project. MainStreet will pursue the development of the Project pursuant to the City’s general Project vision described in its RFQ, the scope described in this MOU, the Development Agreement (DA), Purchase and Sale Agreement (PSA) and other related agreements, all generally consistent in intent with the combined November 26, 2018, proposal submitted to, and selected by, Council.

2. Project Components. The Parties currently anticipate the Project will be comprised of the following components:

2.1 The provision of commuter parking spaces, subject to shared-parking during non-peak commuter parking demand, through a recorded perpetual parking stall easement or other mutually acceptable agreement that permanently provides for commuter parking, together with a related “Commuter Parking Easement with Joint Use and Maintenance Provisions” (“Commuter Parking Easement” or “CPE”) that runs with the land and defines the Parties’ ongoing joint use, maintenance responsibilities, signage requirements, capital and operating costs, operating hours, access/restrictions, rates, and enforcement related to commuter parking.¹ The City will be responsible for its share of all post-construction operational and maintenance cost associated with commuter parking. The Commuter Parking Easement will further describe the rights and obligations of the Parties.

2.2 The City and MainStreet will identify the total number of Project parking stalls after completion of a detailed Project parking analysis and after the Mercer Island Design Commission reviews and ultimately approves the Project proposal (the “Approved Stalls”). Of the Approved Stalls, at least 100 stalls will be allocated to commuter parking during dedicated commuter parking hours and a specified number of stalls will be allocated for the code-required residential parking for not less than 120 multifamily units. Twenty-five percent of the residential stalls will be shared with commuters and increase the 100 (or more) commuter parking stalls. The 100 (or more) stalls of commuter parking may be shared with other building uses outside the hours of commuter parking. Retail parking requirements will be the greater of the code or four stalls per 1,000 SF with not less than 3,000 SF of retail. Hours of commuter parking will be determined in the DA or the Joint Use and Maintenance Agreement, subject to the data provided in the detailed Project parking analysis. The commuter parking will be shared with any MICA use. Employees of MICA will be required to park off-site unless otherwise agreed, and adequate proof of sufficient off-site parking availability, by way of a shared parking agreement or other agreement satisfactory to the City, must be provided to demonstrate off-site parking availability.

¹ Because each stall will be subject to use, at various times, by all Project tenants, (unlike a commercial parking lot, which has dedicated, full-time, off-site parking) all parking identified in this MOU is associated with an on-site use. Following the City Council’s approval of this MOU, the Community Planning and Development Department will issue a formal code interpretation determining this issue.

2.3 Not less than 120 multifamily residential units with seventy-five percent of the designated residential parking spaces exclusively for resident use.

2.4 Not less than 3,000 square feet of ground floor commercial retail and/or office space with a minimum number of commercial, retail, and/or office parking space (increased proportionately with increases in retail/office spaces).

2.5 The provision of a MICA performance and administrative space is contingent on MainStreet and MICA reaching an agreement for that space within the Project. In order to finalize this agreement, MICA will be required to timely prepare a design that successfully integrates with the overall Project, to provide a day-to-day operations plan, to provide a fundraising schedule, and to achieve all funding milestones needed to develop, design, construct, operate, and maintain its portion of the Project as determined by Mainstreet. In turn, MainStreet will negotiate regularly and in good faith to include MICA's performance and administrative space and related facilities. Section 7 further explains MICA coordination. If MICA does not achieve its obligations set forth in Section 7, MainStreet will still provide the commuter parking while adding additional residential, retail, civic, and/or commercial space to the Project. The DA will provide greater specificity on this item.

2.6 Because land use and building codes, as well as project financing and MICA's participation, have yet to be finally concluded, these anticipated components are subject to revision.

3. Project Goals and Values. MainStreet and the City intend to develop an outstanding example of a successful public-private partnership. The Project will seek to achieve a design that supports and integrates with the new Sound Transit station, adjoining park facilities, and with pedestrian, and other existing urban elements, subject to Section 5.1.14. This inviting gateway will create a dynamic, vibrant addition to Mercer Island's Town Center that will enliven and activate the Island's downtown core by creating an enduring, mixed-use community that will be built to last. Our vision and goals include:

3.1 First and foremost, providing Island residents more commuter parking;

3.2 Capturing the values expressed in the City's Town Center code and meeting or exceeding Town Center standards;

3.3 If MICA is able to join as a Project partner, creating a new home for MICA, including a permanent and functional theater and administrative space;

3.4 Constructing at least 120 additional mixed income apartment residences in the City's Town Center;

3.5 Adding affordable housing units to the City's Town Center;

3.6 Enhancing the pedestrian walking experience in the City's Town Center, including landscaping, lighting, articulated building frontage, and thoughtful interaction between public space and private theatre, retail, and residential spaces on the Property;

3.7 Honoring existing public art as well as adding, if possible, new art to adjoining or nearby trails and pathways on the Property, including mitigating the portion of Aubrey Davis Park (Parcel A-2, Exhibit C) needed for development through on-Property public art;

3.8 Completing development and opening all facilities concurrently with the completion of Mercer Island’s new light rail station, subject to the City’s timely completion of its Project obligations and unavoidable (“force majeure”) events beyond the control of the Parties;

3.9 Controlling project costs by working together to maintain financial feasibility;

3.10 Designing and constructing an environmentally sustainable development, with a goal to obtain at least a LEED Gold rating. LEED Platinum will be reasonably considered and pursued if economically viable;

3.11 Designing and developing the Project, to the extent feasible and practical, so as to be sensitive to the concerns of neighboring properties; and

3.12 Enhancing the social, cultural, environmental, and economic health of Mercer Island.

3.13 A fundamental concept of the Project is balancing public and private benefit.

4. Community Outreach. MainStreet will be responsible for the following community outreach:

4.1 Two community engagement town hall open house meetings early in the design process to solicit and incorporate public feedback on the proposed design.

4.2 Preparation of a MainStreet sponsored website that includes frequent updates to Project-related information and Project contacts. This website shall be marketed to the community as available for review on demand and will allow the community to submit comments and feedback on the Project.

4.3 Project briefings before the City Council at key milestones.

5. City Project Obligations.

5.1 The Project requires the City accomplish the following, subject to amendment in the DA by mutual agreement:

5.1.1 BP/ARCO Hazardous Waste Remediation. Resolve hazardous waste contamination claim against BP/ARCO and complete cleanup operations consistent with Department of Ecology (DOE) requirements. The Parties expect that remediation will largely consist of complete site characterization, removal of contaminated soils, disposal of those soils at an approved offsite location, and subsequent extraction and/or monitoring activities. Remediation generally will occur concurrently with Project development.

5.1.2 Hazardous Waste Remediation Cost Allocation. Provide payment, through BP/ARCO or other sources, for all incremental costs incurred to remediate and monitor the Property. Contamination.

5.1.3 DOE Approval. The City will obtain the Department of Ecology’s approval of a hazardous waste cleanup plan and provide MainStreet with protection from all third-party claims or regulatory enforcement related to hazardous waste cleanup in a form that is acceptable to MainStreet and the City.

5.1.4 WSDOT Transfer Approval; Parcel A-1. Obtain WSDOT approval to transfer the property identified as Parcel A-1 (also known as Parcel 12) as identified on the Terrane survey dated 11/2/18

(attached as Exhibit A and as shown on the survey attached as Exhibit D) to MainStreet for Project construction, subject to appropriate preservation of commuter parking restrictions.

5.1.5 Land Use Appeals. Resolve comprehensive plan appeals to allow development consistent with the current Project proposal.

5.1.6 BP/ARCO Site Conveyance. The fee simple conveyance from the City to MainStreet of the BP/ARCO Property (attached as Exhibit B and as shown on the Exhibit D survey) with appropriate zoning in place after completion of all appeals, if any.

5.1.7 Potential Parcel A-2 Property Purchase. If needed to incorporate MICA’s Project requirements or to address total Project parking demand as determined by MainStreet, Parcel A-2 (attached as Exhibit C and as shown on the Exhibit D survey) may be purchased by the City. WSDOT currently owns Parcel A-2.

5.1.8 Parcel A-1/Parcel 12/Parcel A-2 Property Transfer. Concurrent with the BP/ARCO Property conveyance, the fee simple conveyance or transfer, with mutually agreed and recorded commuter parking use restrictions, of Parcel A-1 and Parcel A-2 (if applicable) with appropriate zoning in place after completion of all appeals, if any. The Parcel A-1 deed also has a provision regarding the “revenues resulting from any vacation, sale, or rental of this property.” The City must remove this restriction from the deed prior to conveyance to MainStreet.

5.1.9 Indemnification. Indemnification from the City to MainStreet regarding remaining potential liability, if any, for existing contamination after property transfer.

5.1.10 Easements, Covenants, Licenses. City issuance of all necessary easements, covenants, or licenses for the Project at no cost to MainStreet.

5.1.11 Mitigation. At this time, the parties anticipate no off-Property mitigation or improvements are required for the Project. This item must be supported by necessary studies during the SEPA review for the DA.

5.1.12 Permit Processing. Timely processing of permits and administrative appeals.

5.1.13 Multifamily Tax Exemption (MFTE). If the development meets all existing affordable housing requirements, meets MFTE eligibility criteria under the Mercer Island City Code (MICC), and completes an application as defined in the MICC, the City will approve a 12-year MFTE for the Project.

5.1.14 Off-Property Improvements. The City will be responsible for the design and completion of all off-Property improvements, except MainStreet may construct some off-Property improvements if required by the City’s SEPA determination or by City code regulations.

Several items listed above are addressed in greater detail below. Section 11 and its referenced Exhibit E provide a timeline of the City’s obligations.

5.2 City Project Obligations and the Project Schedule.

5.2.1 The Parties acknowledge that the Project is contingent upon the City completing each of the items listed in Section 5.1, above. The failure of the City to successfully and timely achieve these items pursuant to the entitlement schedule in Section 11 and its referenced Exhibit E could result in MainStreet not being able to deliver commuter parking before the opening of the Sound Transit light rail

stations on Mercer Island. If the City is not successful in completing these items, the Project may become infeasible to complete before or after the opening of the Mercer Island light rail stations.

5.2.2 The Parties further acknowledge that MICA may not be a component of the Project if the City is unsuccessful in the Comprehensive Plan appeal pending before the Growth Board (Section 5.1.5), to the extent the appeal affects the Project site.

6. MainStreet Project Obligations. The Project requires MainStreet accomplish the following, subject to amendment in the DA by mutual agreement:

6.1 Provide at least 100 dedicated commuter parking stalls which will be made available at mutually agreed times for Mercer Island commuters, and twenty-five percent of all residential stalls for preferential Island commuter use. These spaces may be shared by MICA or other users during non-commuter hours.

6.2 Provide the City with non-exclusive easement rights to the commuter parking spaces. The Parties currently anticipate that this easement would be included in the Commuter Parking Easement, which specifies other rights and obligations associated with the commuter parking. In order to guarantee perpetual commuter parking rights in favor of the City, the Commuter Parking Easement will require the remedy of specific performance in the event any Project owner attempts to diminish or eliminate the City’s easement rights. With specific performance, the City can demand—and a court must direct—that the Project owner provide the parking, rather than try to substitute a monetary payment to compensate the City for lost or diminished commuter parking.

6.3 Submit two Project design proposals. The first proposal will be generally consistent with MainStreet’s proposal, using the combined MainStreet/Shelter/Weinstein A+U development proposal and include space for MICA on the ground floor. The second proposal will include a different use with a mix of residential, retail, civic and/or commercial spaces in the event that MICA withdraws or does not satisfy its obligations under the MICA-MainStreet MOU. Section 7 provides additional details regarding MICA.

6.4 Complete Project construction before opening of the Sound Transit Light Rail station, which is slated to occur in 2023, subject to the City’s timely completion of its Project obligations and unavoidable (“force majeure”) events beyond the control of the Parties.

6.4.1 Pre-Construction. If, before MainStreet purchases the Property, MainStreet fails to commence construction on the Project within agreed timelines, subject to the City’s timely completion of its Project obligations and force majeure events, MainStreet will provide the City all development plans, due diligence materials, third-party studies, and any other intellectual property developed or used to prepare the Project for construction.

6.4.2 Pre-Construction/Post-Sale. If, after MainStreet purchases the Property but before Project construction begins, MainStreet fails to commence construction on the Project within agreed timelines, subject to the City’s timely completion of its Project obligations and force majeure events, fee title to the Property will revert to the City, and MainStreet will provide the City all development plans, due diligence materials, third-party studies, and any other intellectual property developed or used to prepare the Project for construction.

6.4.3 During Construction. In order to begin Project construction, MainStreet will provide the City security, such as a Completion Guaranty or bond, obligating MainStreet to complete Project construction, subject to the City’s approval in its sole and absolute discretion. In the event MainStreet obtains construction financing from a lending institution, MainStreet’s delivery of a Completion

Guaranty in favor of the City that is in substantially similar form to the Completion Guaranty delivered to the lending institution will be deemed reasonably satisfactory to the City. In all cases, the City will subordinate its rights to that of any construction lender.

6.5 Construct the Project consistent with the requirements of the DOE-approved remediation plan to capture incremental cost savings for removal of contaminated soils.

6.6 Satisfy its MICA-related obligations set forth in Section 7.

6.7 Comply with currently applicable City code, as applied through the DA, in its submission of all permits or approvals needed to construct and complete the Project.

Several items listed above are addressed in greater detail below.

7. MainStreet Expectations Regarding MICA Obligations. The City, MainStreet, and MICA desire to include MICA in the Project if feasible as identified in this section. As outlined in this MOU, the Project requires the successful execution of numerous City obligations, including, conveyance of real property, environmental contamination clean-up, and resolution of outstanding zoning appeals. Each item is currently outstanding. In addition, MICA's involvement in this Project requires MICA's timely and successful execution of a fundraising strategy and schedule, a design schedule, design and programmatic elements that can be successfully incorporated into the Project, and procurement of adequate funding to include MICA as part of the Project.

7.1 MICA-MainStreet MOU. To advance the Project, MainStreet will execute this MOU with the City and anticipates a separate MOU with MICA. MainStreet will begin MOU negotiations with MICA once: (1) MICA has a professionally prepared design schedule, programming requirements, and funding strategy and schedule; (2) the BP settlement is complete; (3) the City has confirmed and solidified the right to convey the necessary property to MainStreet as identified in this MOU, and (4) the rezone of the property is complete, with the City successful in resolving all pending appeals.

7.2 MICA-MainStreet MOU Contents. At this time, the MainStreet envisions that the MICA-MainStreet MOU will identify the following: (1) MICA project physical and programmatic needs, including: theatre, administrative offices, and parking; (2) key MICA-MainStreet agreement terms; (3) MICA's financial obligations and fundraising plan and schedule; (4) MICA's schedule of MICA activities to achieve its obligations under the MICA-MainStreet MOU; (5) dates certain for MICA to provide MainStreet with project specifications and succeed identified fundraising goals; (6) evidence, satisfactory to MainStreet, that MICA can demonstrate adequate parking for its intended use, operation, and hours of activity via a detailed parking analysis; and (7) any other items included by MICA and MainStreet.

7.3 MICA Fundraising Goals. At the time of this City-MainStreet MOU, MICA's fundraising target is \$35-40 million based upon MICA's estimated development costs, although that figure is subject to modification. MICA's estimated development costs include construction costs (70%); soft costs, including architect, interiors, consultants, etc. (20%); and fundraising and administration costs (10%). In order to provide timely commuter parking, unless MICA and MainStreet agree otherwise, MICA must achieve the following fundraising schedule:

7.3.1 Not less than \$7.5 million of dedicated, confirmed, and non-revocable funding within six months from the effective date of this MOU.

7.3.2 An additional \$22.5 million or 56.25% of dedicated, confirmed and non-revocable funding within twelve months from the effective date of this MOU, for a total of \$30 million.

7.3.3 All remaining amounts needed to construct, operate, and maintain MICA's portion of the Project in dedicated, confirmed, non-revocable funding within eighteen months from the effective date of this MOU, for a total of 100% (currently estimated at \$35-\$40 million) in dedicated, confirmed, non-revocable funding.

7.3.4 The figures in Section 7.3.2 and 7.3.3 will be adjusted upward or downward if MICA's project cost increases or decreases from \$40 million.

7.3.5 If the City's Section 5.1.1 and 5.1.2 hazardous waste remediation obligations are not resolved within six months from this MOU's Effective Date via a signed governing agreement or substantially similar document, the Section 7.3.1 six-month fundraising deadline and the Section 16 exclusivity provision each will be extended on a day-for-day basis for each day the City's Section 5.1.1 and 5.1.2 obligations are delayed beyond six months. Similarly, the subsequent six-month time periods in Sections 7.3.2 and 7.3.3 will not begin until the Section 7.3.1 fundraising time period expires.

7.4 MICA's Participation in the Project. MainStreet desires to have MICA as a Project partner and, ultimately, as a Project participant. MICA's participation in the Project is dependent upon MICA achieving its obligations in the MICA-MainStreet MOU, including MICA achieving its financial and other obligations in the Project. MICA will not be a participant in the Project if it fails to achieve the goals, obligations, and timelines (including fundraising requirements of 7.3) set forth in this MOU.

7.5 Two Design Proposals. The DA will identify two design proposals. The first proposal will include space for MICA and the other will not, in the event that MICA withdraws or does not satisfy its obligations under the MICA-MainStreet MOU.

7.6 MainStreet Obligations to the City and MICA. First and foremost, MainStreet is obligated to timely provide commuter parking. To maintain the Project schedule, MainStreet will prepare only two designs for Design Commission review. In addition, neither the City nor MainStreet are responsible for directly or indirectly assisting MICA to achieve its obligations under the MainStreet-MICA MOU, including MICA's fundraising obligations.

8. City and MainStreet Mutual Obligations. The Project requires the Parties to accomplish the following, subject to amendment in the DA by mutual agreement:

8.1 Subject to completion or MainStreet's waiver of Section 5 City Project Obligations, execution of PSA and a Project-specific DA and a SEPA threshold determination that formalizes the terms of this MOU with any and all applicable appeal periods having expired without appeal or successful resolution of any filed appeals.

8.2 Timely and efficiently process and response to all permits and other City approvals pursuant to the schedule set forth in Section 11 and its attached reference Exhibit E.

8.3 Ultimately, development and opening of all facilities concurrently with the completion of Mercer Island's new light rail station, subject to the City's timely completion of its project obligations and unavoidable ("force majeure") events beyond the control of the Parties.

9. Real Property / Purchase & Sale Agreement. The City and MainStreet will enter into a definitive PSA for the Property under which the City will convey the Property to MainStreet at no cost on the condition that MainStreet commits, through the PSA or a separate, binding agreement, to construct required commuter parking and other agreed Project components within agreed Project schedules. The PSA shall

include the form of the DA that the Parties will execute after the Parties execute the PSA. Closing on the PSA shall occur upon the completion of the following:

9.1 The City has issued all permits necessary for the Project, with any and all applicable appeal periods having expired without appeal or successful resolution of any filed appeals.

9.2 A mutually acceptable DOE approval has been issued following all appeal periods, and the City has obtained or set aside appropriate funding to complete the remediation activities.

9.3 All associated agreements supporting the DA have been executed with any and all applicable appeal periods having expired without appeal or with successful resolution of any filed appeals.

9.4 Delivery of clean title of the Property except as agreed by MainStreet, including a legal opinion on title delivery.

9.5 The City providing MainStreet with all necessary easements or licenses at no cost to MainStreet.

MainStreet may waive any of the closing conditions identified above in its sole and absolute discretion.

10. Development Agreement Terms / Vested Regulations / Permit Approvals. The City and MainStreet intend to enter into a DA with a vesting term of 10 years from its Effective Date. The DA will identify all applicable zoning code, environmental regulations, development regulations (such as international building and fire codes), permit fees, impact fees, and other exactions applicable to the Project. MainStreet will be vested to the provisions in effect on the date of the DA, except (1) by mutual consent of all Parties; (2) to the extent required to address a serious threat to public health and safety, amendments to the applicable International and Uniform Building codes; and (3) new stormwater regulations mandated by state or federal law that are not addressed through the City's stormwater regulations that are in effect at the time this MOU is executed. The DA will be subject to City SEPA review. The City will issue a threshold determination for the DA that analyzes project-level impacts.

10.1 The Project requires a SEPA Determination, Transportation Concurrency Approval, and a Design Review Approval (under the conditions described below), prior to issuance of the construction permits.

10.2 The City will conduct a SEPA review and issue a SEPA threshold determination for the DA that analyzes project-level impacts.

10.3 Because of the public-private scope and its community-wide significance, the Project will be processed as a Type IV land use review, subject to approval by the Design Review Commission.

10.4 In order to achieve successful Project completion by the time Sound Transit opens the Mercer Island light rail station, the City must process approvals expeditiously, make decisions quickly and at the earliest possible time, make consistent and predictable decisions, and process Type IV land use decisions in a timely manner that is consistent with the code and law applicable to open public record hearings. To that end, the DA will amend City staff's administrative practice to direct the Design Commission to issue a decision after no more than one study session and one final hearing, consistent with the schedule and process established in Section 11 and its referenced Exhibit E.²

² The Community Planning and Development Department's code interpretation will also determine whether Design Commission hearings are procedural and not development regulations.

10.5 The City’s Hearing Examiner will hear administrative appeals of the Project, if any. Any administrative appeal shall be conducted expeditiously. At every stage in the proceedings, all parties shall make every effort to avoid delay. The Hearing Examiner will promptly issue the decision consistent with the timeline established by the Hearing Examiner’s rules of procedure.

10.6 The Parties agree that no other land use decisions are required for this Project, independent of construction permits (for example, building permits, right-of-way use permits, etc).

11. Schedule and Process (MOU / DA / PSA / Land Use / Consent Decree). Because neither Party has complete control over Ecology or WSDOT approvals for clean-up and transfer or for the outcome of the current Comprehensive Plan appeal, an exact schedule cannot, at this date, be confirmed. The Entitlement Schedule attached as Exhibit E provides the expected process for Project progress once the City Project Obligations defined in Section 5 are met or are waived by MainStreet; however, the Exhibit E Entitlement Schedule is an example of the Parties’ best estimate as of the date of this MOU and remains subject to further change and refinement as Project development progresses.

To accommodate MICA’s desire for space in the Project, MainStreet will prepare two Project designs that meet the requirements of the DA. For both designs, the City will conduct concurrent review of land use, building permit, and civil permits as well as Design Commission review and approval of such. The City also will expedite the entitlement process as identified in this section, including providing MainStreet with any necessary comments or corrections on permit submittals within 14 days of receipt. The City will continue permit and project review during any pending appeals. Throughout the Entitlement Schedule, MainStreet and the City commit to holding weekly telephonic or in-person meetings that include a MainStreet Principal (either President and/or Vice President) and the Director of Community Planning and Development, City Manager, and City’s Project Manager.

12. Required MainStreet Responsibilities and Investments. MainStreet will diligently pursue the entitlement and construction of the Project. MainStreet will record an easement against the property that articulates the City’s rights to parking. This easement will be in perpetuity and run with the land.

13. No Land Speculation. If MainStreet fails to timely construct the Project generally in accordance with the schedule, as may be mutually amended, the City will have repurchase rights at an agreed purchase price established in the PSA or other acceptable agreement. Repurchase price will be based on Mainstreet’s costs to date of exercise of repurchase rights and will not allow for profit, incidental, or consequential costs, and upon repurchase, Mainstreet will transfer title and ownership to all intellectual property and any site improvements constructed on or added to the Property.

14. Required City Responsibilities and Investments. The City will convey the Property to MainStreet and timely process all entitlements pursuant to the terms of this MOU. The City will join MainStreet in the defense of the Project for any and all appeals.

15. MOU Intent. This MOU is intended to outline the process, discussions, and review between the Parties thus far. and These elements will be set forth, consistent with this MOU, in the DA, the PSA, the Commuter Parking Easement, and other related documents, all of which are expected to be completed at the earliest practical date. This MOU does not constitute or guarantee approval of the Project by the City or City Council and it does not constitute any waiver.

16. Exclusive Negotiations. Upon mutual execution of this MOU, the City agrees to negotiate exclusively with MainStreet on the redevelopment of the Property. Because of the uncertainty regarding the dates for completion of City’s Project Obligations in Section 5.1.1—5.1.12, MainStreet may elect to

defer or reduce some or all of its efforts to prepare the Project for development and to fulfill its Project Obligations until the City achieves further resolution of these issues. Recognizing these uncertainties, the City promises to refrain from marketing the Property and will not engage in discussions with other potential developers concerning the potential redevelopment of the Property, until the earlier of 36 months from the date of signing the MOU, or the execution of the PSA or the DA. In the event a SEPA appeal or an appeal of any of the permits under the heading, "Land Use Permits," in the Exhibit E Entitlement Schedule occurs, the 36 month exclusive negotiation period will be extended by the lesser of the additional days of delay caused by the appeal(s) or 180 calendar days.

17. **Nonbinding Provisions.** Except for Section 16, no other obligation or liability is intended to be created by this MOU or any written communication or negotiations between the Parties and that each Party is proceeding at its own risk, subject to the specific binding provision. Neither Party will be bound by the terms of this MOU until the DA has been executed. Each Party shall bear its own costs and expenses incurred in connection with the negotiation, preparation, and execution of the DA.

18. **Feasibility Documents.** Subject to MainStreet's obligations in subsection 6.4, MainStreet shall retain ownership of all documents and work product provided by MainStreet and its consultants and City shall return all that work product in the event the transaction does not proceed.

19. **Authority.** Each Party respectively represents and warrants that it has the power and authority, and is duly authorized, to enter into this MOU on the terms and conditions herein stated, and to deliver and perform its obligations under this MOU.

20. **Entire Agreement.** This MOU represents the entire agreement of the Parties with respect to its subject matter. There are no other agreements, oral or written, except as expressly set forth in this MOU, which supersedes all previous agreements, oral or written.

21. **Counterparts.** This MOU may be signed in any number of identical counterparts, each of which shall be considered an original even if they are transmitted by electronic means and taken together shall be considered to constitute one and the same instrument.

22. **Effective Date.** The Effective Date of this MOU shall be the date when the last representative of the City or MainStreet executes and transmits a copy of the signed MOU to the other Party.

CITY OF MERCER ISLAND

MAINSTREET PROPERTY GROUP, LLC





By: Jessi L. Bon, Interim City Manager

By: Kelly Price, President

Date: June 20, 2019

Date: June 20, 2019

Authorized by Mercer Island City Council motion on June 18, 2019.

EXHIBIT A

**LEGAL DESCRIPTION
(PARCEL A-1)**

A-1:

THAT PORTION OF WSDOT TURNBACK PARCEL 12, PER QUIT CLAIM DEED RECORDED UNDER RECORDING NO. 20000425001234, RECORDS OF KING COUNTY, WASHINGTON, LYING EAST OF A LINE 113.50 FEET EAST, AS MEASURED AT RIGHT ANGLE FROM AND PARALLEL TO THE EAST MARGIN OF 78TH AVE. SE.

AREA CONTAINS 15,776± SQ. FT.

EXHIBIT B

**LEGAL DESCRIPTION
(BP/ARCO (f/k/a TULLY'S) PROPERTY)**

BP/ARCO (TULLY'S) PROPERTY: (531510-1235)

LOT 1 AND THAT PORTION OF LOT 2, BLOCK 15, MCGILVRA'S ISLAND ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS, PAGE 58, IN KING COUNTY, WASHINGTON; LYING NORTHERLY OF THE NORTH MARGIN OF NORTH MERCER WAY, AS ESTABLISHED BY DEED RECORDED UNDER RECORDING NO. 2561652; EXCEPT THOSE PORTIONS OF SAID LOT 1 AND 2 CONDEMNED FOR PRIMARY STATE HIGHWAY NO. 2 IN KING COUNTY SUPERIOR COURT CAUSE NO. 312351; AND EXCEPT THE WEST 113.5 FEET IN WIDTH THEREOF.

(PER 7800 PLAZA, A CONDOMINIUM, AMENDMENT NO. 1 TO SURVEY MAP AND PLANS REC. NO. 20120418001879)

EXHIBIT C

**LEGAL DESCRIPTION
(PARCEL A-2)**

A-2:

THAT PORTION OF MCGILVRA'S ISLAND ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS, PAGE 58, IN KING COUNTY WASHINGTON;

COMMENCING AT THE INTERSECTION OF 78TH AVE SE. AND SE. 27TH ST;

THENCE N 00°11'03" W, ALONG THE CENTERLINE OF SAID 78TH AVE SE, A DISTANCE OF 271.69 FEET TO A POINT ON THE NORTH LINE OF PARCEL 11, PER QUIT CLAIM DEED RECORDED UNDER RECORDING NO. 2000425001234, RECORDS OF KING COUNTY, WASHINGTON;

THENCE S 69°09'37" E, ALONG SAID NORTH LINE TO A POINT ON THE NORTHERLY PRODUCED EAST RIGHT OF WAY MARGIN OF 78TH AVE SE., A DISTANCE OF 32.14 FEET;

THENCE N 00°11'03" W, ALONG SAID NORTHERLY PRODUCED E. MARGIN 38.21 FEET;

THENCE S 62°42'30" E, A DISTANCE OF 127.92 FEET AND THE POINT OF BEGINNING OF PARCEL A-2; THENCE CONTINUING S 62°42'30" E 150.02 FEET;

THENCE S 26°41'21" W 24.70 FEET TO A POINT ON THE NORTH LINE OF SAID PARCEL

11; THENCE N 63°18'39" W 136.69 FEET ALONG SAID NORTH LINE;

THENCE N 00°11'03" W 29.46 FEET TO THE POINT OF BEGINNING. AREA CONTAINS 3,649± SQ. FT.

EXHIBIT E

ENTITLEMENT SCHEDULE³

Memorandum of Understanding (MOU)		
Milestone	Process	Timing
	Vetting of MOU with City Council	
	Submittal of Draft MOU	
X	City Council Approves MOU	End of June/Beginning of July (7 days after MOU submittal)
Development Agreement (DA), Purchase and Sale Agreement (PSA), and Commuter Parking Easement with Joint Use and Maintenance Provisions ("CPE")		
Milestone	Process	Timing
	Submittal of SEPA checklist for the "maximum impact" of a future project along with a Draft DA and Draft PSA (together with supporting reports and documentation - e.g. traffic studies, etc.)	Prior to Work Session 1
	SEPA review comments from City (if any) to applicant	30 days after submittal of SEPA checklist and supporting reports / documentation
	Submittal of SEPA response based on staff review of SEPA Material	7 days after SEPA review comments sent to applicant
	First City Council Work Session: Review and preliminary direction re: edits for the PSA, DA and CPE terms	21 days after submittal of draft DA and PSA terms
	Submittal of revised PSA/DA/CPE terms based on the First City Council Work Session	7 days after Work Session 1
	Second City Council Work Session: Review of revised PSA/DA/CPE terms materials and final direction re: edits	30 days after Work Session 1
	Submittal of revised PSA/DA/CPE terms based on Second City Council Work Session	7 days after Work Session 2
	SEPA Threshold Determination issued	7 days after submittal of staff review
X	City Council Authorizes PSA	At least 7 days following issuance of the SEPA threshold determination

³ This schedule does not define when the two additional public meetings defined in Section 4 will occur.

	Notice of Public Hearing on the DA w/draft substantive CPE terms.	30 days before the public hearing on the DA
	Public Hearing on the DA w/draft substantive CPE terms.	45 days after Work Session 2
X	City Council Approves DA w/draft substantive CPE terms.	14 days after DA public hearing
	Submittal of draft CPE terms	Concurrent with submittal of Design Documentation
	City reviews CPE and approves (Council approval required if substantive terms vary from those in the DA).	21 days after submittal of draft CPE submittal
X	MainStreet and City execute Commuter Parking Easement with Joint Use and Maintenance Provisions.	7 days after City Council approves CPE
Land Use Permit⁴ (may run concurrently or overlap with PSA/DA/CPE process above)		
Milestone	Process	Timing
	Submittal of Draft Design Documentation: Design Commission Study Session	No timing
	First Design Commission meeting – Study Session	30 days after submittal of design documentation
	Follow-Up submittal of draft design documents to respond to Study Session (if needed)	14 days after first study session
	Follow-Up Design Commission meeting – Study Session (If needed)	30 days after follow-up submittal
	MainStreet submits a complete application for Land Use and Design Review Approval	30 days after last Design Commission Study Session
	City review to confirm complete application for Land Use and Design Review approval	14 days after application ⁵
	Issue Notice of Application (NOA)	21 days from application submittal
	Public Comment period	30 days after NOA
	1st Round of Design Review with City	51 days from complete application
	2nd Round of Design Review with City	21 days after Applicant responds to 1st round ⁶ comments
	Notice of Public Hearing	30 days prior to the Public Hearing

⁴ Land Use Permit Schedule assumes no appeal of SEPA determination

⁵ Mercer Island code provides 28 days, but this could likely be done in 14 days.

⁶ Sometimes there are multiple iterations of review comments – Mercer Island will prioritize meeting with the applicant to avoid this.

	Second Design Commission Public Hearing — Design Review Approval	51 days after Applicant responds to 1 st round comments
X	Design Commission Issues Decision	5 days after Second Design Commission Meeting
	Appeal period of Design Review Approval	14 days after Design Commission Recommendation
Building Permit		
Milestone	Process	Timing
	MainStreet and City meet to review Permit Application requirements	After Submittal of Land Use Application
	Grading / Utility Permit complete submittal of construction drawings	After Submittal of Land Use Application
	Foundation Permit complete submittal of construction drawings	After Submittal of Land Use Application
	Building Permit complete submittal of construction drawings	After Submittal of Land Use Application
X	Grading / Utility Permit issued	After two rounds of review and comments
X	Foundation/Shoring Permit issued	After two rounds of review and comments
X	Building Permit issued	After two rounds of review and comments
	Appeal Period of Building Permit	14 days after Permits are Issued
Construction Process⁷		
	Remediation work	Following DOE Agreement
	Grading/Utility Work Start	Following completion of remediation/excavation work
	Concrete Work	Following completion of grading work
	Vertical Construction	Following completion of vertical construction
X	Certificate of Occupancy	Prior to opening of Mercer Island Light Rail Station

⁷ All construction milestones are contingent upon the Department of Ecology’s approval of a hazardous waste cleanup plan as provided in Section 5.1.3 of the MOU, and the Parties completing any required remediation work. Any delay to Ecology approval will delay project completion. The City acknowledges that it is solely responsible for securing approval from the Department of Ecology.