



**BUSINESS OF THE CITY COUNCIL  
CITY OF MERCER ISLAND, WA**

**AB 4365  
November 3, 2008  
Regular Business**

**SECOND AMENDMENT TO THE  
DEVELOPMENT AGREEMENT WITH THE  
MERCER ISLAND SCHOOL DISTRICT AND THE  
BOYS AND GIRLS CLUB OF KING COUNTY  
FOR IMPLEMENTATION OF SECTION 17 OF  
THE PEAK SETTLEMENT AGREEMENT**

**Proposed Council Action:**

Adopt Ordinance No. 08-10 regarding the second amendment to the Development Agreement by and between the City of Mercer Island, the Mercer Island School District and the Boys and Girls Clubs of King County.

**DEPARTMENT OF**

Development Services Group (Steve Lancaster)

**COUNCIL LIAISON**

n/a

**EXHIBITS**

- 1. Proposed Ordinance No. 08-10
  - Exhibit 1 to the Ordinance: Second Amendment to the Development Agreement
  - Exhibit D to the Second Amendment: Settlement Agreement among B&G Clubs of King County, ICS, MISD and City of Mercer Island

**APPROVED BY CITY MANAGER**

<b>AMOUNT OF EXPENDITURE</b>	\$	n/a
<b>AMOUNT BUDGETED</b>	\$	n/a
<b>APPROPRIATION REQUIRED</b>	\$	n/a

**SUMMARY**

On April 8, 2008 the City of Mercer Island's Planning Commission approved a Conditional Use Permit (CUP) for a new Boys & Girls Club facility (known as The PEAK) on the Mercer Island High School campus. A group known as Islanders for Common Sense (ICS) filed an appeal to the Planning Commission's decision on April 18, 2008. The Boys and Girls Clubs of King County, appellant Islanders for Common Sense, property owner Mercer Island School District and the City of Mercer Island subsequently negotiated a Settlement Agreement resolving all issues under appeal (Exhibit 1, page 20). The settlement agreement was approved by the Mercer Island City Council under Agenda Bill 4324 on June 21, 2008.

Paragraph 17 of the approved Settlement Agreement provides as follows:

*17. Reduced Parking and Additional Landscaping. Subject to City Council and School Board approval of an amendment to the Development Agreement for the Project, the Club and District agree that the 8 parking spaces closest to 86<sup>th</sup> Avenue SE in the adjacent parking lot immediately south of the building will be eliminated and enough of the vacated space as is necessary will be used to extend the landscape buffer referred to in Section 4 above so as to screen the parking lot.*

The PEAK project is subject to a Development Agreement executed between the City, School District and the Boys and Girls Clubs of King County. The First Amendment to Development Agreement (approved by

the City Council on March 5, 2007) established a requirement that the PEAK project provide 99 dedicated plus 156 shared parking spaces. These numbers must be reduced by eight (8) to allow implementation of the reduction in parking and increase in landscaping buffer contemplated by the Settlement Agreement. The attached Second Amendment to Development Agreement (Exhibit 1, page 6) would authorize implementation of the settlement agreement regarding such reduction in parking.

Paragraph 1 of the Settlement Agreement includes a commitment by the Boys and Girls Club to reduce the size of the proposed facility by at least 3,700 square feet (so that the facility will not exceed 41,300 square feet). This reduction in building size would result in 18 fewer parking spaces being required by the Mercer Island City Code. The Settlement Agreement-authorized reduction of eight (8) spaces would therefore still comply with the minimum parking requirements established by the City Code. The resulting 91 dedicated and 156 shared parking spaces still falls within the parking demand estimate provided by the March 2007 Traffic Impact Analysis prepared for the PEAK proposal. Adequacy of parking was an issue raised by Islanders for Common Sense throughout the City's review of the PEAK proposal. Based upon their acceptance of the settlement agreement, ICS appears to agree that the loss of 8 parking spaces is offset by the reduced square footage and the benefits of additional landscaping and screening.

The Council reviewed and approved the Settlement Agreement in an open public meeting on June 21, 2008. Staff is recommending suspension of rule 5.2 of the City Council Rules of Procedure in order to adopt this ordinance in one reading as it is housekeeping matter required in order to implement Paragraph 17 of the Settlement Agreement.

## **RECOMMENDATION**

*Development Services Director*

- MOVE TO:
1. Suspend City Council Rule 5.2.
  2. Adopt Ordinance No. 08-10 authorizing the City Manager to sign the Second Amendment to Development Agreement by and between the City of Mercer Island, the Mercer Island School District and the Boys and Girls Clubs of King County regarding parking reductions and additional landscaping for The PEAK project.

**CITY OF MERCER ISLAND  
ORDINANCE NO. 08-10**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON  
AUTHORIZING THE CITY MANAGER TO ENTER INTO A SECOND  
AMENDMENT TO THE DEVELOPMENT AGREEMENT DATED JUNE  
5, 2006, BETWEEN THE CITY OF MERCER ISLAND, THE MERCER  
ISLAND SCHOOL DISTRICT AND THE BOYS AND GIRLS CLUBS OF  
KING COUNTY COVERING CERTAIN REAL PROPERTY  
COMMONLY KNOWN AS THE MERCER ISLAND HIGH SCHOOL  
SITE, AND AMENDING THE PARKING REQUIREMENTS.**

WHEREAS, RCW 36.70B.170 - 210 authorizes the City to enter into a development agreement with property owners to provide for the development, use, and mitigation of a specific piece of property; and

WHEREAS, the City entered into the Development Agreement the PEAK Project on June 5, 2006 pursuant to Resolution No. 1374. The City entered into a First Amendment to Development Agreement pursuant to Resolution No. 1385. The City entered into the Correction to Development Agreement and Correction to First Amendment to Development Agreement pursuant to Ordinance No. 08-02; and

WHEREAS, RCW 36.70B.170 – 210 does not discuss or provide any standards or requirements for the amendment or correction of development agreements entered into pursuant to those statutes; rather, it is assumed that the process for amendment or correction of a development agreement will be left to the parties, as set forth in the agreement itself; and

WHEREAS, the June 5, 2006 Development Agreement, approved by all parties and recorded with the King County Auditor, provides a specific process for amending the Development Agreement; to-wit: *“This Agreement may be amended by the written agreement of the District and approval of the Mercer Island City Council by ordinance”*; and

WHEREAS, The City, the District and the Club entered into a First Amendment to Development Agreement, pursuant to Resolution No. 1385 approved by the City Council on March 5, 2007, covering the parking development standards for the PEAK Project consistent with RCW 36.70B.170 through 36.70B.210 and the designation of the PEAK Project as a public facility under MICC 19.020.010(C)(1) with its associated off-street parking regulations; and

WHEREAS, on April 8, 2008, the City’s Planning Commission approved a Conditional Use Permit for the Project. A group known as Islanders for Common Sense filed an appeal to the Planning Commission’s decision on April 18, 2008. A settlement agreement was negotiated resolving all issues under appeal, which agreement was approved at open public meeting by the City Council on June 21, 2008, and

WHEREAS, Paragraph 17 of the approved settlement agreement provides in relevant part:

17. Reduced Parking and Additional Landscaping. Subject to City Council and School Board approval of an amendment to the Development Agreement for the Project, the Club and District agree that the 8 parking spaces closest to 86<sup>th</sup> Avenue SE in the adjacent parking lot immediately south of the building will be eliminated and enough of the vacated space as is necessary will be used to extend the landscape buffer referred to in Section 4 above so as to screen the parking lot;

and

WHEREAS, the First Amendment to Development Agreement established a requirement that the Project provide 99 dedicated plus 156 shared parking spaces. These numbers must be reduced by eight to allow implementation of the reduction in parking and increase in landscaping buffer contemplated by the settlement agreement, and

WHEREAS, the parties desire to enter into a Second Amendment to Development Agreement in order to further refine the parking development standards consistent with RCW 36.70B.170 through 36.70B.210, the First Amendment to Development Agreement, and the June 21, 2008 Settlement Agreement; and

WHEREAS, the PEAK at Mercer Island Transportation Impact Analysis dated March, 2007, prepared by The Transpo Group (“TIA”), concludes that up to 90 parking spaces will be required for high activity periods from 7:00 am until 6:00 pm on school days and up to 247 spaces will be required during evening and weekend high activity periods; and

WHEREAS, there will be at least 91 new parking spaces constructed on the Property available for PEAK Project use from 7:00 am until 10:00 pm and 247 parking spaces (comprised of the 91 new parking spaces and 156 shared parking spaces) available from 3:30 pm until 10:00 pm.; and

WHEREAS, the City finds that the PEAK Project promotes the public health, safety and welfare of the City and the Code Official finds that the parking required by this Amendment sufficient for the PEAK Project use on the Property; and

WHEREAS, the parties desire to enter into the Second Amendment under the authority granted by the laws of the State of Washington, RCW 36.70B.170, as amended, regarding the development and use of the Property, in order to facilitate the timely and orderly completion of the PEAK Project; and

WHEREAS, the potential environmental effects of the PEAK Project, as modified by the Second Amendment, have been adequately evaluated and mitigated under the SEPA Mitigated Determination of Non-Significance No. SEP06-031 and the Conditional Use Permit No. CUP06-001; and

WHEREAS, Paragraph 1 of the settlement agreement commits the Club to reduce the size of the proposed facility by at least 3,700 square feet (not to exceed 41,300 square feet), resulting in an 18-space reduction in the number of parking spaces required by the City Code. The reduction of

eight spaces as agreed to in the settlement agreement complies with the minimum parking requirements established by the City Code,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

**Section 1.**     **Authorization for City Manager to Sign.** The City Council hereby authorizes the City Manager to enter into and immediately execute the Second Amendment to Development Agreement attached to this Ordinance as Exhibit 1 based upon the findings of fact set forth in the preamble (whereas) section of this Ordinance.

**Section 5.**     **Effective Date.** This Ordinance shall take effect and be in force immediately after its passage and publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AT ITS REGULAR MEETING ON THE 3RD DAY OF NOVEMBER, 2008 AND SIGNED IN AUTHENTICATION OF ITS PASSAGE.

CITY OF MERCER ISLAND

\_\_\_\_\_  
Jim Pearman, Mayor

ATTEST:

\_\_\_\_\_  
Allison Spietz, City Clerk, CMC

Approved as to Form:

\_\_\_\_\_  
Katie H. Knight, City Attorney

Date of Publication:\_\_\_\_\_

**WHEN RECORDED, RETURN TO:**

Katie H. Knight  
City Attorney  
City of Mercer Island  
9611 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040

**EXHIBIT 1 TO ORDINANCE NO. 08-10**

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**SECOND AMENDMENT TO  
DEVELOPMENT AGREEMENT**

**Grantor:** The Mercer Island School District a school district of the State of Washington  
The Boys and Girls Clubs of King County, a Washington non-profit corporation

**Grantee:** City of Mercer Island, Washington, a Washington municipal corporation

**Abbreviated Legal Description:**

A portion of the NE ¼ of NW ¼ of NW ¼, a portion of the NE ¼ of the NW ¼, a portion of the SE ¼ of NW ¼ of NW ¼, a portion of the NW ¼ of NE ¼ of NW ¼ of Section 18, Township 24 North, Range 5 East, W.M.

Complete legal description is at Exhibit A (page 10)

**Assessor's Property Tax Lot Numbers:**

1824059005, 1824059006, 1824059043 and 1824059045

**Reference to Related Document:**

No documents are assigned or released herein.  
SEE ALSO: Documents with King County recording numbers: 20061106002526, 20080409001088, 20080409001195, and 20080409001196

**SECOND AMENDMENT  
TO  
DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this “Second Amendment”) is entered into, as of the effective date described below, by and between MERCER ISLAND SCHOOL DISTRICT, a school district of the State of Washington (“District”), the BOYS & GIRLS CLUBS OF KING COUNTY (“Club”), a Washington nonprofit corporation and the CITY OF MERCER ISLAND, a Washington municipal corporation (the “City”), to establish development standards for certain real property owned by the District and subject to development as provided herein.

**RECITALS**

A. The District is the owner of certain real property legally described on Exhibit A attached hereto (“Property”) located generally at 4160 86<sup>th</sup> Ave. SE within the City of Mercer Island, King County, Washington; and

B. The District desires to enter into an agreement with the Club whereby the Club will construct and install upon and within a portion of the Property a multi-purpose facility, known as PEAK, to meet the youth development, sports and recreation needs of Mercer Island youth to be operated by the Boys and Girls Club (the “PEAK Project”) and both the District and the Club have agreed that the PEAK Project will be a local club and not a regional facility; and

C. The Club will lease a portion of the Property for the PEAK Project (“Leased Property”); and

D. The permitting, design and environmental review of the PEAK Project will require subsequent approval under all applicable City codes, rules and regulations; and

E. The City and the District entered into a Development Agreement, as approved by the City Council on June 5, 2006 pursuant to Resolution No. 1374 (Development Agreement), covering impervious surfaces development regulations consistent with RCW 36.70B.170 through 36.70B.210; and

F. The City, the District and the Club entered into a First Amendment to Development Agreement, pursuant to Resolution No. 1385 approved by the City Council on March 5, 2007, covering the parking development standards for the PEAK Project consistent with RCW 36.70B.170 through 36.70B.210 and the designation of the PEAK Project as a public facility under MICC 19.020.010(C)(1) with its associated off-street parking regulations.

G. The Club was added as a party to the Development Agreement in the Correction

to Development Agreement approved by Council on February 19, 2008 in light of the fact that the District and the Club entered or are entering into a lease agreement for a portion of the Property; and

H. The District, City, Club and Islanders for Common Sense entered into a Settlement Agreement on June 21, 2008 agreeing that the eight parking spaces closest to 86<sup>th</sup> Avenue SE in the adjacent parking lot immediately south of the building will be eliminated and enough of the vacated space as is necessary will be used to extend the landscape buffer so as to screen the parking lot (see Settlement Agreement attached as Exhibit D to this Amendment). As a result of that Settlement Agreement, the Development Agreement requires amending to acknowledge the accommodations regarding parking made in the Parties' Settlement Agreement of June 21, 2008; and

I. The parties desire to enter into this Second Amendment in order to further refine the parking development standards consistent with RCW 36.70B.170 through 36.70B.210, the First Amendment to Development Agreement, and the June 21, 2008 Settlement Agreement; and

J. The PEAK at Mercer Island Transportation Impact Analysis dated March, 2007, prepared by The Transpo Group ("TIA"), concludes that up to 90 parking spaces will be required for high activity periods from 7:00 am until 6:00 pm on school days and up to 247 spaces will be required during evening and weekend high activity periods; and

K. There will be at least 91 new parking spaces constructed on the Property available for PEAK Project use from 7:00 am until 10:00 pm and 247 parking spaces (comprised of the 91 new parking spaces and 156 shared parking spaces) available from 3:30 pm until 10:00 pm.; and

L. The City finds that the PEAK Project promotes the public health, safety and welfare of the City and the Code Official finds that the parking required by this Amendment sufficient for the PEAK Project use on the Property; and

M. The parties desire to make this Second Amendment under the authority granted by the Laws of the State of Washington, RCW 36.70B.170, as amended, regarding the development and use of the Property, in order to facilitate the timely and orderly completion of the PEAK Project; and

N. The potential environmental effects of the PEAK Project, as modified by this Second Amendment, have been adequately evaluated and mitigated under the SEPA Mitigated Determination of Non-Significance No. SEP06-031 and the Conditional Use Permit No. CUP06-001; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **AGREEMENT**

**1. Section 1 Amendment.** The following portions of Section 1.b. Required Parking, subsections (i) through (iv) of the Development Agreement, as amended by the First Amendment to the Development Agreement, shall be amended as follows. These amendments are shown by strike-through and double underline.

b. Required Parking.

(i) Definitions. For purposes of this Amendment, the following terms shall have the following meanings:

“Typical Parking Use” means typical use of the PEAK Project, including up to 60 kids before school and up to 90 kids after school enrolled in the childcare program; early morning teen programming; drop in activity at the teen center (excluding dances); high school use of the facility such as for the wrestling program; and use of two out of the four gyms in the field house. The required parking for typical parking use shall be a maximum of ~~99~~ 91 parking spaces.

“High Activity Events” means those events at the PEAK Project requiring more than ~~99~~ 91 parking spaces including a dance or concert in the teen center and use of all four gyms in the field house.

“Boys and Girls Club Breakfast” means the required parking for the PEAK Project during the Club’s annual business breakfast with attendance of up to 250 persons. The required parking for Boys and Girls Club Breakfast will be a minimum of ~~250~~ 247 parking spaces.

“District Special Event” means a special event or events occurring at the District that will require use of all or part of the 156 shared parking stalls referred to below, including football or sporting events, dances, and those events more specifically described in Exhibit B to this Amendment.

(ii) Number of Parking Spaces. The Club shall provide the following parking spaces on either the Leased Property or within a reasonable distance to the PEAK Project for use by PEAK Project users:

- At least 91 ~~99~~ new parking stalls, as approximately shown in the map attached as Exhibit C. The Club shall sign these spaces for exclusive PEAK use and provide other parking restrictions (e.g. 2 hour maximum) consistent with the TIA;
- 156 shared parking stalls, as approximately shown in the map attached as Exhibit C. The shared parking agreement between the District and the Club shall be in form and content acceptable to the City (except that Exhibit C shall not be subject to City review so long as it includes the required number of parking stalls), including that the shared spaces shall be available, except in the case of a District Special Event, for (i) priority

PEAK use between 3:30 pm and 5:00 pm on school days, and (ii) exclusive PEAK use on the weekends, non-school days and after 5:00 pm on school days and signed for such exclusive PEAK use. The term “priority PEAK use” means that the District must ensure that the shared parking stalls are actually available for PEAK use if they are needed for PEAK use. The District and the Club may agree to modify this priority or exclusive PEAK use and/or the actual location of the shared parking stalls shown on Exhibit C for other District events or meetings at Administration Building that are not District Special Events if the District provides other parking on the Property for Club use to satisfy the requirement for 156 shared parking stalls for priority or exclusive PEAK use. If the location of the parking stalls is modified, the new parking spaces shall be within a reasonable proximity from the PEAK Project. All relocated spaces must have adequate lighting, way-finding signage and pedestrian trails to the PEAK Project. By execution of this Agreement, the District consents to the Club’s shared use of such parking spaces.

The City will post signs on the east side of 86<sup>th</sup> Ave. SE between SE 40<sup>th</sup> and 42nd street allowing only restricted parking. The intent of this provision is to provide approximately 20 new spaces to be used by PEAK users, neighbors or childcare facility staff and not by high schools students. Currently, students park in some of these available street spaces.

(iii) Contingencies. The City’s consent to this Amendment is subject to the satisfaction of the following conditions precedent:

- Maximum Square Footage. The PEAK Project shall not exceed the following maximum square footage: ~~45,000~~ 41,300 total gross square feet within the building and 27,000 square feet for the building footprint based upon the roof area of the building.
- Environmental and Conditional Use Permit. The PEAK Project shall complete all required permitting, design and environmental review and comply with all applicable City and State codes, rules and regulations, including the State Environmental Policy Act, RCW Chapter 43. The SEPA threshold determination and all conditions associated with any Determination of Significance or Mitigated Determination of Significance shall be incorporated by reference into this Amendment.

(iv) Restrictions on Operations.

- The Club agrees that the Boys and Girls Club Breakfast shall occur only once a calendar year. The Club agrees that High Activity Events and the Boys and Girls Club Breakfast shall not occur during school days between the hours of 7:00 am and 4:00 pm.
- The District agrees that District Special Events shall occur no more than 30 times a school year (September 1 through August 31 of each year).

- The District and Club agree that High Activity Events, the Boys and Girls Club Breakfast and District Special Events shall be scheduled so the events will not overlap.
- The parties agree that commencing on or before the date when the PEAK Project becomes operational and continuing thereafter, a unified scheduling system shall be used in order to coordinate events among the parties and District tenants to insure compliance with these operational restrictions. The unified scheduling system shall be required to be used by the District as to District Special Events, the Club and by District tenants as to events that will utilize more parking than normally available for the tenant's use. Nothing contained in this Agreement will entitle the City to schedule space in the facilities of the District, the Club or of District tenants. During the period starting with the execution of this Agreement and continuing until six months prior to the expected opening date for the PEAK Project, the City and District will work in good faith to agree upon mutually acceptable unified scheduling system software. If the City and District are unable to reach agreement during that period, the City shall resolve the impasse by designating the unified scheduling system to be used and so notify the District. If the District objects to the system designated by the City, the unified scheduling system to be used shall instead be the CLASS software now being used by the City or such later version of that software as may be used by the City from time to time. If the CLASS software or any other software designated by the City is no longer being updated or maintained by the licensor, then the City shall designate the replacement unified scheduling system software after first consulting with the District. With respect to the unified scheduling system software only, the City shall pay for the required software licenses; this obligation does not extend to any licenses for other software or for any other costs that a party may occur incident to using the unified scheduling system software.
- The Club agrees to assign a minimum of one employee to manage the unified scheduling system for PEAK and the employee will be instructed not to schedule activities if parking is not available due to already scheduled activities on the Property. The Club shall not schedule any event or program that requires more than ~~99~~ 91 parking spaces prior to 3:30 pm on school days. The Club shall not schedule any High Activity Event that requires more than ~~255~~ 247 parking spaces. The Club shall provide written parking demand estimates to the City for all High Activity Events at least one week prior to the scheduled event.
- The Club agrees to provide adequate staff to aggressively enforce all signed parking restrictions to insure parking stalls are available for PEAK users and not being used by high school students or other non PEAK users. The District shall provide the Club with all necessary authority to

enforce the restrictions on District property. The Club agrees to provide staff to manage parking lot supervision and direction (including lot-to-lot wayfinding assistance) as described in the Traffic and Parking Management Programs described in subsection (v). High Activity Events may not be scheduled if such staff assistance is not provided.

- The District agrees that it shall provide a minimum of 5 days written notice to all property owners residing on a street having a “no parking during school days” sign posted, to advise them (i) a District Special Event has been scheduled; (ii) parking signs prohibiting parking during school days will be covered during the District Special Event; and (iii) spillover parking may occur in the neighborhood. On the day of the District Special Event and prior to the commencement of such event, the District will be responsible for placing covers over each “no parking during school hours” sign.
- The Club agrees to operate the PEAK Project as a local club and not as a regional facility.
- The Club, City and District shall meet annually to review parking and traffic impacts and to make any program or operation adjustments necessary in order to avoid adverse impacts to the neighborhoods and/or spillover parking in the neighborhoods surrounding the Property.
- The District shall ensure that the designation of the shared parking stalls for PEAK use does not result in there being insufficient parking stalls for childcare operators and other tenants on the Property.
- The District shall implement and enforce a program among its tenants to avoid parking conflicts.

**2. Full Force and Effect.** All other terms and conditions of the Development Agreement, as amended by the First Amendment to Development Agreement, shall remain in full force and effect.

**3. Effective Date and Term.** The effective date of this Second Amendment is the date it is signed by the City. This Second Amendment shall be recorded against the Property and run with the Property; provided, however, that the City may terminate the Development Agreement for any material breach by the District or the Club of the terms and conditions of the Development Agreement, the First Amendment to Development Agreement or this Second Amendment following the District’s and/or Club’s failure to cure such breach within a reasonable time period following the City’s notice of the same.

EFFECTIVE as of the date set forth above.

**THE DISTRICT:**

THE MERCER ISLAND SCHOOL DISTRICT, a  
school district of the State of Washington

AB 4365  
Exhibit 1  
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By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THE CLUB:**

BOYS AND GIRLS CLUBS OF KING COUNTY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY:**

CITY OF MERCER ISLAND, a political subdivision  
of the State of Washington

\_\_\_\_\_  
Richard M. Conrad

City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Allison Spietz, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Katie H. Knight, City Attorney

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of THE MERCER ISLAND SCHOOL DISTRICT, a school district of the State of Washington, the school district that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_  
Print Name \_\_\_\_\_

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_ to me known to be the Chief Executive Officer of the BOYS AND GIRLS CLUB OF KING COUNTY, a Washington nonprofit corporation, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said Boys and Girls Club for the uses and purposes therein mentioned and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Richard M. Conrad to me known to be the City Manager of the CITY OF MERCER ISLAND, Washington, the city that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said city, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute the said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_  
Print Name \_\_\_\_\_

**EXHIBITS:**

- A - Description of the Property
- B - District Special Events
- C - Map of approximate location of 91 PEAK parking spaces and 156 shared parking spaces
- D - Settlement Agreement

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## **EXHIBIT A**

### **Description of the Property (Mercer Island School District Legal Descriptions)**

#### **Tax Parcel Number 182405-9043**

The North 345 feet of the East 135 feet of the West one-half of the Northwest quarter of the Northeast quarter of the Northwest quarter of Section 18, Township 24 North, Range 5 East, W.M., in King County, Washington; LESS county road.

#### **Tax Parcel Number 182405-9045**

The West one-half of the Northwest quarter of the Northeast quarter of the Northwest quarter of Section 18, Township 24 North, Range 5 East, W.M., records in King County, Washington;

except the North 345 feet of the East 135 feet;

together with the south 415 feet of the West 80 feet of the East one-half of the Northwest quarter of the Northeast quarter of the Northwest quarter of said Section 18; LESS county road.

#### **Tax Parcel Number 182405-9006**

The Northeast quarter of the Northwest quarter of the Northwest quarter of Section 18, Township 24 North, Range 5 East, W.M., records in King County, Washington; LESS county roads.

#### **Tax Parcel Number 182405-9005**

The South one-half of the Northeast quarter of the Northwest quarter; together with the Southeast quarter of the Northwest quarter of the Northwest quarter of Section 18, Township 24 North, Range 5 East, W.M. records in King County, Washington; LESS county roads.

**Exhibit B**  
**District Special Events**

The following events shall constitute District Special Events

PTSA Welcome Coffee  
Fall Assembly  
Homecoming Assembly  
General Elections  
Winter Sports Assembly  
Martin Luther King Assembly  
Spring Assembly  
Mercer Island School Foundation Breakfast  
ASB elections  
Day of Respect  
Senior Assembly  
Senior Breakfast and Rehearsal  
Football games and other sporting events  
Dances

**Exhibit C**

**Map of Approximate Location of  
91 PEAK Parking Spaces and 156 Shared Parking Spaces**

**[To be subsequently provided by the District]**

**Exhibit D**

**Settlement Agreement by and between the City of Mercer Island, the Mercer Island School District, Boys and Girls Clubs of King County and Islanders for Common Sense (dated June 30, 2008)**

## AGREEMENT

This Agreement, dated this <sup>7th</sup> ~~30~~ day of June, 2008, is by and between Islanders for Common Sense, a Washington nonprofit corporation ("ICS"), Boys & Girls Clubs of King County ("Club"), a Washington nonprofit corporation, the City of Mercer Island ("City"), a Washington municipal corporation, the Mercer Island School District ("District"), a Washington municipal corporation, and Amanda Clark, a resident of Mercer Island, Washington ("Clark").

The Club has proposed a Boys & Girls Club facility, including a teen center and field house, on property located on the District's Mercer Island High School campus ("Project").

The City's Planning Commission has approved a conditional use permit for the Project ("CUP"). ICS and Clark have appealed the CUP to the City's Hearing Examiner.

The parties have agreed to resolve their disagreements on the terms and conditions set forth in this Agreement.

The parties agree:

1. Reduction of square footage. The Club agrees to reduce the square footage of the building portion of the Project approved by the CUP by at least 3700 gross square feet. The total square footage of the building portion of the Project will not exceed 41,300 gross square feet.

2. Local Programming. Consistent with Recital B of Amendment Number One to the Development Agreement for the Project, the Club agrees that substantially all of its programming will be oriented toward serving residents or students of Mercer Island and that it will not schedule regionally oriented programming that involves multiple off-Island clubs, groups, or organizations. However, this restriction is not intended to prevent programming in which an off-Island club or group uses the Project to compete with, participate in an activity with, or otherwise interact with Mercer Island residents or students. The Club may also allow programming that already exists on the High School campus, such as the Island Thunder Volleyball annual tournament that is currently scheduled at the High School.

3. School Bus Relocation. All parties will in good faith explore the feasibility of relocating within five years the school bus parking from the existing Mercer Island High School campus to a new location. In the event that relocation occurs, the District will engage in a public process to determine the appropriate use or uses for the area now occupied by school bus parking. ICS will be invited to participate in that public process.

4. Landscape Buffer. (A) Prior to obtaining a Certificate of Occupancy for the Project, the Club will plant a mature, full vegetative screen between 86<sup>th</sup> Avenue SE and the Project building and parking lot (excluding the entry of the parking lot), as set forth on Exhibit A. The type of vegetation planted shall be:

(i) sufficient to entirely screen throughout the year, within three years after issuance of the Certificate of Occupancy, the Project and adjacent parking lot to the south from

someone standing on 86<sup>th</sup> Ave. Southeast directly across from the buffer (other than what might be visible from the entry to the parking lot) (the parties acknowledge, however, that for a period of time after that date, several chevron-shaped spaces of the top 2-3 feet of the Project may remain visible as the vegetation gradually fills in) ; and

(ii) consistent with the above requirement, include species of shrubs and trees that are visibly attractive and that are approved by the City's Design Commission. ICS shall be provided with the opportunity to review and comment upon the proposed landscape plan. The Club will in good faith consider ICS's comments.

The screen may utilize existing trees to the extent they will satisfy the requirements of subsection (i) above. Prior to planting the landscape buffer, the Club will obtain a written certification from a reputable and licensed landscape architect that the plantings will, in his/her professional opinion, satisfy the requirements of subsection (i) above. If the Club fails to satisfy its obligations under the foregoing provisions of this Section, the District and the City shall be responsible for taking appropriate enforcement action against the Club to ensure its compliance. The parties acknowledge that the City has enforcement authority under MICC 19.15.030 and to impose civil penalties should the Club fail to comply.

(B) The Club agrees to maintain the landscape buffer after it has been planted to ensure that the requirements of subsection (A)(i) continue to be satisfied. The Club agrees to pay for replacement trees and shrubs in accordance with subsection (A)(i) should the need arise (e.g., replacing trees and/or large screening shrubs). The parties acknowledge that situations may occur that temporarily result in the buffer being impaired (e.g., trees having to be replaced due to disease).

5. Additional Landscape Enhancement. Subject to the approval of the District and compliance with City regulations, the Club will provide additional landscape enhancement of the District property located to the south of the Project and adjacent to 86<sup>th</sup> Avenue SE. This area will be professionally landscaped with the goal of lowering the impact from and visibility of parking lot/building activities in this portion of the campus, as shown conceptually on Exhibit A. The additional landscape enhancement will include species of shrubs and trees that are visibly attractive and approved by the District. ICS shall be provided with the opportunity to review and comment upon the proposed landscape plan. The Club will in good faith consider ICS's comments.

6. Ombudsperson. The City will assign a member of its staff to serve as an ombudsperson to respond to and to address neighborhood concerns associated with the Project and to ensure that the City will enforce the terms of this Agreement, the Development Agreements associated with the Project, and the conditions of the CUP. The Ombudsperson will be reachable during all hours when the Project is open for operations.

7. Notice of Special Events. The Club will provide notice of special events in a manner consistent with the terms of the Project-related Development Agreements and Transportation Management Program.

8. Oversight Committee. The parties will create an oversight committee that will meet monthly (unless ICS decides that fewer meetings are needed) and will include a representative of ICS so there is a forum in which operating issues that impact the neighborhood can be discussed and resolved. The ombudsperson identified in paragraph 5 above will attend meetings of the Oversight Committee when requested by ICS.

9. Hours of Operation. The Project shall be closed, other than for cleaning and maintenance, after 10:00 pm on all days and before noon on Sundays. The Project may be open later on Friday and Saturday nights (e.g., monthly dances on Friday or Saturday) for teen-related events but in no event after 11:00 pm on Fridays or midnight on Saturday. These events shall not occur more often than four times per month. In addition, there may be occasional events in which hours of operation will be extended, such as supervised sleep-overs. Such events will be discussed and agreed to in the Oversight Committee process.

10. Noise and Lights. Activities held in the Project field house shall be conducted in compliance with the City's noise regulations. The field house will include sound-absorbing insulation in an exposed acoustical roof deck (with a minimum acoustical performance of NRC 0.65 tested according to ASTM C423), or equivalent sound-absorbing materials. The interior finishes will include continuous wall pads below 5'-6" and a rubber backed polyurethane sport flooring product, or equivalent sound-absorbing materials. Project lighting shall be designed to be shielded and directed away from neighboring residences.

11. Supervision of Project Site. The Club will supervise the Project site to guard against loitering and unlawful conduct and to assure compliance with Club rules and regulations.

12. Off-Site Parking. The Club will reasonably cooperate with the City in the City's efforts to prevent persons who participate in programs at the Project from parking unlawfully in the adjoining neighborhoods. The City will assign an enforcement officer who will spend a sufficient portion of his or her time in the enforcement of parking limitations in the adjoining neighborhoods.

13. Residential Parking Zone. The City will implement a residential parking zone in the neighborhood in the vicinity of the Project, if the City determines that an appropriate number of residents of the neighborhood desire such a restriction.

14. 86<sup>th</sup> Avenue SE Transportation Issues. A calming device shall be installed on 86<sup>th</sup> Avenue SE, south of the Project, to slow traffic down and create gaps between cars. The City will also consider the propriety of installation of a "No Left Turn" sign at the Project driveway that exits onto 86<sup>th</sup> Avenue SE.

15. Campus Master Plan. The District agrees that prior to commencing any currently unplanned significant development of or changes to the land owned by the District, which is bound by 86<sup>th</sup> Avenue SE to the west, 40<sup>th</sup> Street to the north, Mary Wayte Pool and Mercer Island High School to the east, and 42<sup>nd</sup> Street to the south (the "Campus"), the District will develop a master plan for the Campus. In any event, the master planning process must commence within two years, and be completed within five years, after execution of this

Agreement. The master plan must cover the entire Campus and provide a clear plan for the development and redevelopment of the Campus in accordance with the Superintendent of Public Instructions' Washington Sustainable Schools Protocol, as applicable. The District will engage in a public process to determine the appropriate use or uses for the Campus.

16. Elevation of Field House. The Club will reduce the height of the proposed Field House along 86<sup>th</sup> Avenue SE by one foot so that the top of parapet elevation above existing grade at the mid-point of the west elevation of the filed house does not exceed 20'-10", such reduction to be accomplished by such means as the Club deems appropriate consistent with legal requirements, which may include sinking the Field House further into the ground. The Club will in good faith consider the feasibility of sinking the Field House up to two feet, and will do so if it determines that the cost and programming consequences are reasonable.

17. Reduced Parking and Additional Landscaping. Subject to City Council and School Board approval of an amendment to the Development Agreement for the Project, the Club and District agree that the 8 parking spaces closest to 86<sup>th</sup> Avenue SE in the adjacent parking lot immediately south of the building will be eliminated and enough of the vacated space as is necessary will be used to extend the landscape buffer referred to in Section 4 above so as to screen the parking lot.

18. Effective Date. This Agreement shall be effective immediately following its execution by Club and ICS and its ratification by the Mercer Island City Council and the Mercer Island School Board ("Effective Date").

19. Dismissal of Appeal. Promptly following the Effective Date, ICS and Amanda Clark will dismiss their pending appeal of the CUP.

20. Support for 86<sup>th</sup> Avenue SE Landscape Buffer. Following the Effective Date, ICS will not advocate to the City Design Commission that the Project buildings require building modulation and façade ornamentation along 86<sup>th</sup> Avenue SE. ICS and Amanda Clark will provide written or oral testimony in support of the Weinstein A/U landscaping screening proposal as described in Section 4 above.

21. Non-Opposition to Project. Promptly following the Effective Date, ICS and the individual Board members of ICS who have signed below agree that they will no longer oppose any aspect of the Project in any forum and that they will not support or encourage any opposition to the Project by any other persons or entities. ICS Board Members agree to not publicly oppose the Project. However, it is understood that ICS cannot legally restrain its members in the exercise of their right to make statements as individuals and individual members in their individual capacity may still elect to do so. Amanda Clark, Chair of ICS, agrees to strongly attempt to persuade all members to follow this requirement but will bear no personal responsibility for the actions of any individual. Also, promptly following the Effective Date, ICS and the Club will issue a press release in the form attached as Exhibit B. Nothing contained in this Section shall prevent ICS or its individual Board members from taking actions to enforce this Agreement or from raising concerns with or making operational complaints to the Club, the District or the City regarding the Club after the Club has commenced operations.

22. Heirs, Successors and Assigns. The terms and conditions of this Agreement shall bind, and inure to the benefit of, the parties' heirs, successors, and assigns.

23. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and shall not be modified or amended in any way, except in writing, signed by the parties hereto, or their successors in interest.

24. Authority, Representations and Warranties. Each signatory to this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the entity for whom he or she is signing. In particular, Amanda Clark as Chair of ICS expressly represents and warrants that she has full power and authority to execute and deliver this agreement on behalf of Islanders for Common Sense, and to bind that entity to the terms of this Agreement. Upon proper execution and delivery, this Agreement will have been duly entered into by the parties, will constitute as against each party a valid, legal and binding obligation, and will be enforceable against each party in accordance with the terms herein. Notwithstanding the foregoing, neither the City nor the District shall be bound by this Agreement until such time as the Mercer Island City Council, and the Mercer Island School Board, respectively, ratify this Agreement.

25. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

26. Severability. If any of the provisions of this Agreement shall prove to be invalid, void or illegal, it shall in no way affect, impair, or invalidate any of the other provisions hereof.

27. Attorneys' Fees. In any litigation or other proceeding arising out of this Agreement, the substantially prevailing party shall be entitled to an award of its reasonable attorneys' fees and other costs incurred therein.

28. Further Acts. The parties shall execute and deliver such further documents and instruments and take such other further actions as may be reasonably necessary to carry out the intent and provisions of this Agreement.

29. Injunctive Relief. The parties acknowledge and admit that there may be no adequate remedy at law for a failure or breach of this Agreement, and that in the event of such failure or breach, the other party or parties shall be entitled to obtain equitable relief in the form of temporary or permanent injunctions, as well as any other relief as a court of competent jurisdiction may deem just and proper.

Islanders for Common Sense

By: Amanda M Clark  
Its: Chair

Amanda M Clark  
Amanda Clark

ICS Board Members:

Amanda M Clark  
Amanda Clark

\_\_\_\_\_  
David Ross

\_\_\_\_\_  
Dorian Collins

Boys & Girls Clubs of King County

By: \_\_\_\_\_  
Its: \_\_\_\_\_

City of Mercer Island

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Mercer island School District

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Islanders for Common Sense

By: \_\_\_\_\_

Its: \_\_\_\_\_

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Amanda Clark

ICS Board Members:

\_\_\_\_\_  
Amanda Clark

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David Ross

\_\_\_\_\_  
Dorian Collins

Boys & Girls Clubs of King County

By: \_\_\_\_\_

Its: \_\_\_\_\_

City of Mercer Island

By: \_\_\_\_\_

Its: \_\_\_\_\_

Mercer island School District

By: \_\_\_\_\_

Its: \_\_\_\_\_

*[Handwritten signature]*  
*Superintendent*

Islanders for Common Sense

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Amanda Clark

ICS Board Members:

\_\_\_\_\_  
Amanda Clark

\_\_\_\_\_  
David Ross

\_\_\_\_\_  
Dorian Collins

Boys & Girls Clubs of King County

By: *Daniel Johnson*  
Its: *President / CEO*

City of Mercer Island

By: *Richard M. Conrad*  
Its: *City Manager*

Mercer island School District

By: \_\_\_\_\_

Its: \_\_\_\_\_