

MADISON AVENUE ACCESS AGREEMENT

(Ohrt, Madison Landings Company, CCHD, Central Highlands, and Wallace Cottages)

THIS MADISON AVENUE ACCESS AGREEMENT (“**Agreement**”) is made and entered into by and between Gary and Susan Ohrt, a married couple (“**Ohrt**”), Madison Landings Inc., a Washington corporation (“**Madison Landings Company**”), Central Highlands Inc., a Washington corporation (“**Central Highlands**”), Wallace Cottages, LLC, a Washington limited liability company (“**Wallace**”), and CCHD LLC, a Washington limited liability company (“**CCHD**”) (each a “**Party**” and together the “**Parties**”). The effective date (“**Effective Date**”) of this Agreement shall be the date of complete execution hereof.

RECITALS

- A. CCHD is the consulting company working with Ohrt, the applicant for the proposed 8-lot Madison Grove subdivision (Project No. PLN50667 SUB) (“**Madison Grove Project**”) and forthcoming townhouse project (PLN50879SPR) (“**Madison Landing**”). Both the Madison Grove Project and Madison Landing will occur on property located between Madison Avenue N. and Nakata Avenue NW in the City of Bainbridge Island. The Madison Grove subdivision is planned to include tax parcels 27250211262001, 27250211402003, 27250211412002, and 27250212142004 (“**Madison Grove Property**”). Madison Landing is planned to include tax parcels 27250210662003, 27250210212007, and 27250210222006 (“**Madison Landing Property**”).
- B. Ohrt is a party to a purchase and sale agreement for the purchase of Kitsap County parcel no. 27250210222006 (the “**Vet Clinic Property**”), which is the southernmost lot of the Madison Landing Property. Ohrt anticipates closing on the Vet Clinic Property on March 21, 2018. Ohrt anticipates conveying the Madison Landing Property to the Madison Landings Company.
- C. Central Highlands and Wallace are proposing a 19-lot preliminary plat subdivision (Project No. PLN50589 SUB) located on tax parcels 27250210232005, 27250211552005, 27250211542006, and 27250211532007 (“**Wallace Cottages**”). Wallace Cottages is proposed to take access from the existing right-of-way located at the intersection of Nakata Ave NW, Wallace Way NW and Taurnic PL NW (“**Wallace Cottages Wallace Way Access**”). The homeowners in the community adjacent to the Wallace Cottages Wallace Way Access vociferously objected to authorizing access through their neighborhood and requested that Central Highlands find a way to take primary access from Madison Avenue (“**Wallace Cottages Madison Avenue Access**”). The Wallace Cottages property includes a lot that connects to Madison Avenue but the portion of that property that connects to Madison Avenue is only 15 feet wide and therefore is not wide enough to provide the desired Wallace Cottages Madison Avenue Access.
- D. The City of Bainbridge Island (“**City**”), Ohrt, CCHD, and Mattis Consulting Group, a Washington limited liability company (“**Mattis**”) are parties to that certain Agreement for Improvement to Public Trail and Processing of Vacation of Disputed Street, dated December 1, 2017 (the “**Trail Connection Agreement**”). The Trail Connection

Agreement was intended to resolve a dispute between the parties thereto regarding whether a right-of-way (the “**Disputed Street**”) exists or does not exist on the Madison Grove Property. Among other things, the Trail Connection Agreement provided that the City would process a street vacation for the Disputed Street and, in exchange, Ohrt, CCHD and Mattis would waive their potential claims against the City and Ohrt would construct certain public trail improvements which would result in a continuous public trail system between Sportsman Club Road and Weaver Road (“**Public Trail Connection**”), which trail would include a bridge over Hirawaka Creek.

- E. The City did not approve the street vacation within the initial time required by the Trail Connection Agreement. Instead, the City approved City Ordinance No. 2018-04 (“**Vacation Ordinance**”), which provides approval of the street vacation if the following condition is met: “The vacation of [the Disputed Street] is conditioned upon the grant of a right-of-way consisting of the south 15 feet of parcel number 272502-1-022-2006.” The right-of-way grant stated in the condition is intended to force Ohrt to grant sufficient right-of-way to allow Central Highlands and Wallace to achieve the Wallace Cottages Madison Avenue Access described in Recital C above.
- F. There is no legal requirement for Ohrt to grant a right-of-way or otherwise solve Central Highlands’ access issue. Ohrt’s Madison Landing already has been designed and building permits have been submitted. If Ohrt granted the right-of-way requested by the City in the Vacation Ordinance, then Ohrt would need to redesign Madison Landing at an additional cost of more than \$100,000. To incentivize Ohrt to enter into this Agreement, the City and Central Highlands have proposed certain terms under which Ohrt’s additional project costs would be mitigated.
- G. Ohrt, CCHD, the Madison Landings Company, Central Highlands and Wallace are entering into this Agreement to achieve the construction and use of the Wallace Cottages Madison Avenue Access as described herein.
- H. Ohrt, CCHD, Mattis and the City of Bainbridge Island (“**City**”) have entered into a separate agreement titled “Public Benefit, Development and Permit Processing Agreement” dated March 15, 2018 (“**Ohrt Permit Processing Agreement**”) in order to effectuate the vacation of the Disputed Street and resolve and fully consummate the Trail Connection Agreement, as well as to mitigate their losses and provide for certain assurances regarding the processing of permits and for clear permit processing timelines for Madison Grove, the approved 12-lot preliminary plat subdivision (Project No. PLN50622 SUB) located at 7340 Finch Road NE (“**The Reserve at Winslow**”), and Madison Landing.
- I. Central Highlands, Wallace and Madison have entered into another separate agreement with the City titled “Central Highlands Permit Processing Agreement” and dated March 16, 2018 (“**Central Highlands Permit Processing Agreement**”). The Central Highlands Permit Processing Agreement is intended to resolve the City’s concerns and the neighbors’ concerns regarding the Wallace Cottages Wallace Way Access, as well as mitigate their losses and provide for certain assurances regarding the processing of

permits and for clear permit processing timelines for Wallace Cottages and Madison Place.

- J. The Parties are entering into this Agreement to set forth the terms and conditions under which the issues described above shall be resolved to their mutual satisfaction.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and considerations set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Boundary Line Adjustment. As soon as practicable after execution of this Agreement, Ohrt and Central Highlands and Wallace shall prepare, sign, and take all such other actions as are necessary or convenient to submit to and obtain approval from the City a boundary line adjustment to incorporate the eastern panhandle portion of Kitsap County parcel no. 272502-1-023-2005 (approximately the eastern 240 feet thereof) (the “**Panhandle**”) into Kitsap County parcel no. 272502-1-022-2006 (“**Vet Clinic Property**”). In other words, the boundary line adjustment will effectively add the Panhandle to the Vet Clinic Property. Ohrt shall be responsible for the costs of processing the boundary line adjustment, provided that Ohrt may use and Central Highlands and Wallace shall provide any survey, topographical data or other applicable plans or work product related to the properties involved in such boundary line adjustment that are controlled or possessed by Central Highlands and Wallace and that may be useful in the application for or completion of the boundary line adjustment.

2. Ohrt to Grant 30-foot Right-of-Way to City Providing the Wallace Cottages Madison Avenue Access. In conjunction with the development of Madison Landing and Wallace Cottages, Ohrt shall grant to the City a thirty (30) foot right-of-way over the south boundary of the Vet Clinic Property (as enlarged by inclusion of the Panhandle via the boundary line adjustment described in Section 1 herein) (“**Vet Clinic ROW**”); provided that the property included in said right-of-way shall first be included in the floor area ratio calculation for Madison Landing. The Parties agree that Ohrt shall have no obligation to grant more than the 30-feet of right-of-way described in this Section 2.

3. Design and Construction of 30-Foot Right of Way. Central Highlands and/or Wallace shall be responsible for the design, including all costs related thereto, of the Wallace Cottages Madison Avenue Access, including that portion occurring within the Vet Clinic ROW (“**Vet Clinic Street**”). Central Highlands and/or Wallace shall coordinate with Ohrt regarding such design and Ohrt must first approve the design prior to final approval by the City. If the Vet Clinic Street has not been designed and constructed prior to the time when Ohrt is ready to proceed with construction on Madison Landing, then Ohrt may pursue a permit for the construction of the Vet Clinic Street and authorize the remaining portion of the Wallace Cottages Madison Avenue Access to be permitted separately and at a later time. Ohrt and Central Highlands and/or Wallace shall share equally the construction costs for the Vet Clinic Street, including costs for curb/gutter/pavement/water/sewer/sidewalks/grading/landscaping/required bonding, and any other related construction costs. Within five (5) business days of the permit for the Vet Clinic Street improvements being issued for whichever Party is first to construct, the

other Party shall deposit into escrow fifty percent (50%) of the estimated construction cost. No increase over the estimated construction cost resulting from a change order or other action shall be approved unless the increase is first approved by all Parties. Upon completion of the construction of the Vet Clinic Street, the escrow funds shall be released to the constructing Party and any overpayment or underpayment resulting from the difference between the estimated and actual construction costs shall be paid to the appropriate Party within fourteen (14) days of notice by the Party that was underpaid or the Party that overpaid. If Ohrt disapproves of the design of the Wallace Cottages Madison Avenue Access, Ohrt will notify Central Highlands immediately and the Parties will mutually agree upon required design changes. Upon such agreement, Central Highlands and/or Wallace will have the plans amended to include the agreed upon changes at its expense within thirty (30) days.

4. Central Highlands Payment to Ohrt. Within seven (7) calendar days of recording of the deed conveying the Vet Clinic Property to Ohrt or Madison Landings Company, Central Highlands and/or Wallace shall pay to Ohrt the sum of Seventy-One Thousand Two Hundred Forty Dollars (\$71,240.00) (the “**Payment Amount**”).

5. Interest. Any required payment under this Agreement that remains unpaid after such payment is due shall accrue interest at a rate of twelve percent (12%) per annum.

6. Severability. If any clause, sentence, paragraph, section or part of this Agreement shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part of this Agreement and to this end the provisions of each clause, sentence, paragraph, section or part of this Agreement are hereby declared to be severable.

7. Cooperation. The Parties agree to cooperate and work together in good faith and without delay to take the actions and issue the approvals described in this Agreement.

8. Specific Performance. The Parties acknowledge that this Agreement contemplates the conveyance of certain real property which is critical to each Party’s interest, including access, development rights and the public interest. As such, the Parties agree that monetary damages may not sufficiently compensate for a breach or default by a Party and that specific performance would be an appropriate remedy for the failure to convey or dedicate any portion of the Vet Clinic ROW in accordance with the terms and conditions of this Agreement.

9. Attorneys’ Fees. In any court proceeding brought to enforce or interpret this Agreement, the substantially prevailing party (as determined by the court) shall recover from the other party its costs and reasonable attorneys’ fees, including costs and fees on appeal.

10. Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. In any action brought to enforce or interpret the provisions of this Agreement, venue shall be exclusively in Kitsap County Superior Court.

11. Time. Time is of the essence for all provisions of this Agreement.

12. Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

13. Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns. It is anticipated that Ohrt will transfer the Madison Landing Property to the Madison Landings Company and any obligations of Ohrt's with respect to such property shall be binding upon Madison Landings Company.

14. Entire Agreement; Amendment. This Agreement represents the entire agreement of the Parties and supersedes any prior communications, written or oral. This Agreement is the product of negotiation and shall not be construed against either Party as the drafter hereof. No amendment, modification, or waiver of any rights hereunder shall be binding unless in writing and signed by the Party or Parties potentially adversely affected hereby.

15. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one instrument.

16. Authority. Each Party signing this Agreement, whether signing individually or on behalf of an entity, represents that he/she has full authority to sign this Agreement on behalf of himself/herself or such entity.

17. Calculation of Time. Unless clearly stated otherwise in this Agreement, all references to days shall be to calendar days, not business days.

18. Notices. All notices, requests, and other communications that may be or are required to be given hereunder or with respect hereto shall be in writing and shall be given by overnight delivery service and by electronic mail, and shall be deemed to have been given on the next day following the date such notice was sent by overnight delivery service. Such notices, requests, and other communications shall be addressed as follows:

If to Ohrt, CCHD, or Madison Landings Company:

Randall P. Olsen
Cairncross & Hempelmann, P.S.
524 Second Ave., Suite 500
Seattle, WA 98104-2323
Phone: 206-254-4418
Email: rolsen@cairncross.com

With a copy via email to:

Todd McKittrick
Email: todd@millennialbuilders.com

If to Central Highlands, Wallace, or Madison:

Hayes Gori
Law Office of Hayes Gori, PLLC
271 Wyatt Way NE, Suite 112
Bainbridge Island, WA 98110
(206) 842-6462
hayes@hayesthelawyer.com

With a copy via email to:

David Smith
Email: smithhouse4@comcast.net

Nick Smith
Email: nick.centralhighlands@gmail.com

[Signatures on Following Page]

EXECUTED by the Parties on the dates set forth below.

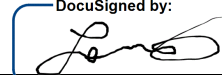
MADISON LANDINGS COMPANY:

Madison Landings Inc., a
Washington corporation

By: 
Print name: 5EDFE466D979411...
Its: President

CCHD:

CCHD, a Washington limited liability
company

By: 
Print name: 1DC2201E40FE4D1...
Its: Manager
Date signed: 3/16/2018

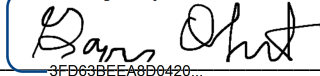
CENTRAL HIGHLANDS:

Central Highlands Inc., a
Washington corporation

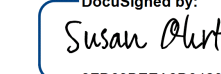
Print Name: _____
Its: _____

OHRT:

Gary and Susan Ohrt, a married couple

DocuSigned by:

3FD63BEEA8D0420...
Gary Ohrt

Date signed: 3/16/2018

DocuSigned by:

3FD63BEEA8D0420...
Susan Ohrt

Date signed: 3/16/2018

WALLACE:

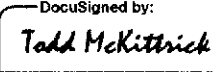
Wallace Cottages, LLC, a
Washington limited liability corporation

Print Name: _____
Its: _____

EXECUTED by the Parties on the dates set forth below.

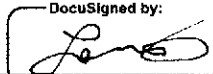
MADISON LANDINGS COMPANY:

Madison Landings Inc., a
Washington corporation

By: 
Print name: Todd McKittrick
Its: President

CCHD:

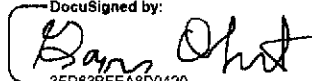
CCHD, a Washington limited liability
company

By: 
Print name: Lanya McKittrick
Its: Manager

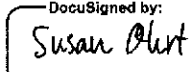
Date signed: 3/16/2018

OHRT:

Gary and Susan Ohrt, a married couple

By: 
Print name: Gary Ohrt

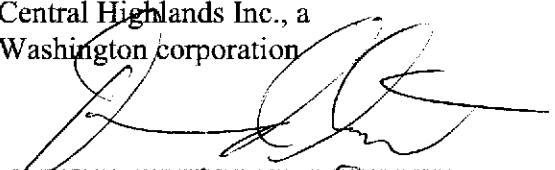
Date signed: 3/16/2018

By: 
Print name: Susan Ohrt

Date signed: 3/16/2018

CENTRAL HIGHLANDS:

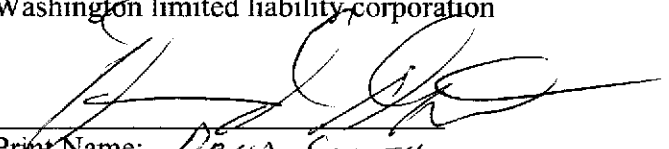
Central Highlands Inc., a
Washington corporation

By: 
Print Name: DAVID SMITH
Its: PRESIDENT

DATE: 3-16-2018

WALLACE:

Wallace Cottages, LLC, a
Washington limited liability corporation

By: 
Print Name: DAVID SMITH
Its: PRESIDENT

DATE: 3-16-2018