

PUBLIC BENEFIT, DEVELOPMENT AND PERMIT PROCESSING AGREEMENT

(Ohrt, CCHD, Mattis, and City)

THIS PUBLIC BENEFIT, DEVELOPMENT AND PERMIT PROCESSING AGREEMENT (“**Agreement**”) is made and entered into by and between the City of Bainbridge Island, a Washington municipal corporation (“**City**”), Gary and Susan Ohrt, a married couple (“**Ohrt**”), Madison Landings Inc., a Washington corporation (“**Madison Landings Company**”), CCHD LLC, a Washington limited liability company (“**CCHD**”), and Mattis Consulting Group LLC, a Washington limited liability company (“**Mattis**”) (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. Mattis is the consulting company working with DeNova Northwest LLC, a Washington limited liability company (“**DeNova**”) regarding its approved 12-lot preliminary plat subdivision (Project No. PLN50622 SUB) located at 7340 Finch Road NE (“**The Reserve at Winslow**”).
- B. 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**”).
- C. 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.
- D. Central Highlands Inc., a Washington corporation (“**Central Highlands**”) and Wallace Cottages, LLC, a Washington limited liability company (“**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 obtain 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 objected to authorizing access through their neighborhood and requested that Central Highlands find a way to obtain 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.

- E. The City, Ohrt, CCHD, and 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 entered into, in part, to resolve a dispute between the parties thereto regarding whether a right-of-way (the “**Disputed Street**”) exists on the Madison Grove Property. Among other things, the Trail Connection Agreement provides 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.
- F. The City approved the street vacation in City Ordinance No. 2018-04 (“**Vacation Ordinance**”) within the initial time required by the Trail Connection Agreement but, in doing so, imposed a condition on the vacation. The ordinance provides that the vacation is effective upon the satisfaction of the following condition: “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.” In imposing the condition, the City Council indicated that the public benefit related to the vacation of Duane Lane would best be served if Ohrt granted sufficient right-of-way to allow Central Highlands and Wallace to achieve the Wallace Cottages Madison Avenue Access described in Recital D above.
- G. 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 a significant additional cost, which Ohrt estimates to be 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.
- H. Ohrt, CCHD, and Mattis are entering into this 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 Reserve at Winslow and Madison Landing.
- I. Central Highlands, Wallace and Madison are entering into a separate agreement with Ohrt, CCHD, and Mattis titled “Madison Avenue Access Agreement” (“**Madison Avenue Access Agreement**”). The Madison Avenue Access Agreement is intended to achieve the construction and use of the Wallace Cottages Wallace Way Access.
- J. Central Highlands, Wallace and Madison are entering into another separate agreement with the City titled “Central Highlands Permit Processing Agreement” (“**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.

- K. The City is entering into this Agreement and the Central Highlands Permit Processing Agreement to achieve certain public benefits, including the completion of the Public Trail Connection, the release of potential claims by Ohrt, CCHD, Mattis, and to achieve the Wallace Cottages Madison Avenue Access desired by the City and the neighborhood.
- L. 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. Madison Avenue Access. Pursuant to the Madison Avenue Access Agreement, Central Highlands, Wallace, CCHD, Ohrt, and the Madison Landings Company have agreed to process 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 the Vet Clinic Property, and CCHD, Ohrt and the Madison Landings Company have agreed to grant a thirty (30) foot right-of-way (the "**ROW Property**") over the south boundary of the Vet Clinic Property (as enlarged by inclusion of the Panhandle via the boundary line adjustment). The City shall process a boundary line adjustment prior to the vacation of the Disputed Street, which shall incorporate into the Madison Landing Property those portions of Kitsap County parcel no. 272502-1-126-2001 and 272502-1-214-2004 that are zoned Madison Avenue District ("**Duane Lane BLA Property**"). The boundary line adjustments involving the ROW Property and the Duane Lane BLA Property may be included in the same application or applications submitted together. Prior to the vacation of the Disputed Street and prior to or after the dedication of a right-of-way on the ROW Property, the City shall allow Madison Landing to include the ROW Property and the Duane Lane BLA Property in its calculation of the floor area ratio for Madison Landing. The City agrees that the ROW Property, once dedicated, shall be sufficient to serve both Wallace Cottages and Madison Landing, and no additional right-of-way shall be required for the Madison Landing project. The City shall not require stormwater detention related to the ROW Property to occur within the ROW Property or within the Madison Landing Property; provided that a bioretention system may be located within the portion of the roadway located on the ROW Property. The City shall require setbacks no greater than 7.5 feet on the Madison Landing Property from the ROW Property and from any right-of-way along the north boundary of the Madison Landing Property. If the applicant applies for a variance to authorize a 5-foot setback from such adjacent rights-of-way, then the City shall support such variance application throughout the City's variance processing procedures.

2. City Confirmation Regarding Vested Rights. The City hereby confirms that the City's Moratorium Ordinance (Ord. No. 2018-05, as amended by Ord. No. 2018-09) and the

City's newly adopted Critical Areas Ordinance (Ord. No. 2018-01) do not and will not apply to The Reserve at Winslow, Madison Grove Project, and Madison Landing, and future building permits related thereto, because pursuant to state law said projects became vested to the applicable regulations in effect at the time of submitting a complete preliminary plat application and/or complete building permit applications, as applicable. The City further confirms that the projects described in this Section 2 shall remain vested despite any revision to the Madison Landing Project or its associated building permits resulting from actions necessary or convenient to provide the Wallace Cottages Madison Avenue Access.

3. City Waiver of Transportation Impact Fees. The City shall waive and not require any payment of transportation impact fees associated with Madison Grove and Madison Landing.

4. City Permit Processing. The City shall process the permits and approvals for the following projects as stated in this Section 4. All review times stated below shall commence on the later of the execution date of this agreement, submittal date, or resubmittal date.

Important Note: Regarding the timelines to follow in this Section 4:

The City's commitments (including timelines) are predicated on timely submittal of complete new or revised documentation from the applicant. City staff do not control the recommendations or action that will be taken by the DRB or the Planning Commission, including the availability of those bodies for meetings and the number of meetings those bodies regard as necessary as part of their consideration of subject projects.

a. The Reserve at Winslow.

- i. Section 2(a) of that certain Agreement Regarding Permit Processing by and between Ohrt, CCHD, Mattis and the City dated March 8, 2018, is adopted by this reference as if fully set forth herein, and is hereby ratified and affirmed.
- ii. The City shall complete its reviews and provide its response to the applicant for all building permits submitted for lots within The Reserve at Winslow within thirty (30) days of submission of a fully completed building permit application. The City shall complete its reviews and provide its response to the applicant within fourteen (14) days of receiving from the applicant a response to a correction notice.
- iii. Building Permit BLD22874 (lot 7 of The Reserve at Winslow) shall be allowed to submit a new plan and site plan and use the current fees for the revised plan. The City has not yet begun to review the current plan. The City's review of the new plan shall be subject to the 30-day and 14-day review timeline described in Section 5(a)(ii) above.

b. Madison Grove.

- i. Section 2(b) of that certain Agreement Regarding Permit Processing by and between Ohrt, CCHD, Mattis and the City dated March 8,

2018, is adopted by this reference as if fully set forth herein, and is hereby ratified and affirmed.

- ii. The boundary line adjustment filed under Project Number PLN51005 shall be processed on an expedited basis and approved for recording within fourteen (14) days of submittal of the required documents, if the requested BLA is found to be in compliance with the required criteria.
- iii. The City shall schedule a preliminary plat hearing date with the Hearing Examiner as soon as practicable and shall make best efforts to schedule such hearing no later than April 20, 2018.
- iv. Public Works review and comments including bond quantity amounts, permit fees, and related matters shall be ready within fourteen (14) days of the Hearing Examiner's preliminary plat decision and shall allow construction to start as soon as possible upon the City obtaining the required bonds, fees, and agreements. However, if the Hearing Examiner's decision includes conditions that require changes to the civil improvement drawings, the 14-day period will commence at the time of resubmittal of the revised civil improvement drawings to the City. The City shall allow construction to start as soon as possible upon the City obtaining the required bonds, fees, and agreements.
- v. The City shall complete its reviews and provide its response to the applicant for all building permits submitted for lots within Madison Grove within thirty (30) days of submission of a fully completed building permit application. The City shall complete its reviews and provide its response to the applicant within fourteen (14) days of receiving from the applicant a response to a correction notice.
- vi. The applicant for those certain current Building Permits (BLD22875 Lot 1), (BLD22876 Lot 7) and (BLD22877 Lot 8) shall be allowed to submit a new plan and site plan and use the current fees for the revised plan. The City has not yet begun to review the current plans. The City's review of the new plans shall be subject to the 30-day and 14-day review timeline described in Section 5(b)(v) above.

c. Madison Landing.

- i. The City shall process to approval as soon as possible the boundary line adjustment involving the Panhandle, as described in Section 1 of this Agreement. The City shall approve the boundary line adjustment for recording within fourteen (14) days of receiving the documents required for such approval, if the requested BLA is found to be in compliance with the required criteria.
- ii. Site Plan Review
 - A. If Ohrt submits complete revised site plan drawings to the City to adjust the building location, open space, and site access regarding the Madison Landing project by March 23, 2018, review by the Design Review Board ("DRB") will be scheduled for April 2, 2018, subject to the DRB's availability.

- iii. If the DRB makes their recommendation on April 2, 2018, City staff will schedule the project for Planning Commission consideration at the Planning Commission's May 10, 2018, meeting, subject to Planning Commission availability.
 - A. Within ten (10) days of the Planning Commission recommendation, the Director of Planning and Community Development will consider the revised Site Development Permit and will approve the permit if it meets all of the requirements applicable to such permits.
 - B. The City (Public Works) shall complete review of civil drawings and provide comments to the applicant within fourteen (14) days of submittal. The City shall complete its reviews and provide its response to the applicant within fourteen (14) days of receiving from the applicant a response to a correction notice.
 - C. Current Building and Site Development Permits currently submitted will need to be re-submitted. Such resubmittal shall not result in the waiver or loss of any vested rights previously obtained.
 - D. Once revised building permit drawings have been submitted, the City shall complete its reviews and provide its response to the applicant for all building permits submitted within thirty (30) days of submission of a fully completed building permit application. The City shall complete its reviews and provide its response to the applicant within fourteen (14) days of receiving from the applicant a response to a correction notice.
- iv. Applicant shall be authorized to re-grade the twenty-foot (20') open space buffer along the western boundary of the Madison Landing Property to accommodate the revised site plan. There are no trees to be retained within the buffer except for two (2) fir trees on the southwest corner which will be removed during construction of the new right-of-way on the ROW Property. The twenty-foot (20') buffer will be replanted to achieve the appropriate screening.
- v. The City shall not require more than the minimum code-required number of parking stalls per unit.

5. 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.

6. Relationship to Other Agreements. The default by Central Highlands or Wallace under the Madison Avenue Access Agreement shall not excuse the performance of an obligation under this Agreement.

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. 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.

9. 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.

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

11. 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.

12. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

13. 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.

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

15. 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.

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

17. 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, Madison Landings Company** or **Mattis**:

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 **City**:

Joe Levan
City Attorney, City of Bainbridge Island
280 Madison Ave. N
Bainbridge Island, WA 98110
(206) 780-8622
Email: jlevan@bainbridge.wa.gov

With a copy via email to:


Doug Schulze
City Manager, City of Bainbridge Island
Email: dschulze@bainbridgewa.gov

[Signature Pages Follow]

EXECUTED by the Parties on the dates set forth below.


CITY:

The City of Bainbridge Island, a
Washington municipal corporation

By: 
Print name: **DOUGLAS SCHULZE**
Its: **CITY MANAGER**
Date signed: **3/15/18**

OHRT:

Gary and Susan Ohrt, a married couple


Date signed: **03/15/2018**

MADISON LANDINGS COMPANY:


Madison Landings Inc., a
Washington corporation

By: 
Print name:
Its:


Date signed: **03/15/2018**


CCHD:

CCHD, a Washington limited liability
company

By: 
Print name: **Lanya McKittrick**
Its: Manager
Date signed: **03/15/2018**

MATTIS:

Mattis, a Washington limited liability
company

By: 
Print name: **Todd McKittrick**
Its: Manager
Date signed: **03/15/2018**