

# **PUBLIC BENEFIT, DEVELOPMENT AND PERMIT PROCESSING AGREEMENT**

## **(Central Highlands, Wallace, Madison, 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**”), Central Highlands Inc., a Washington corporation (“**Central Highlands**”), Wallace Cottages, LLC, a Washington limited liability company (“**Wallace**”), and Madison Place, LLC, a Washington limited liability company (“**Madison**”) (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. 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 proposing 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.
- B. Central Highlands and Madison are proposing an 18-lot preliminary plat subdivision (Project No. PLN50892 SUB) located on tax parcel 27250210602009 (“**Madison Place**”).
- C. Mattis Consulting Group LLC, a Washington limited liability company (“**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**”).
- D. CCHD LLC, a Washington limited liability company (“**CCHD**”), is the consulting company working with Gary and Susan Ohrt, a married couple (“**Ohrt**”), the applicants for the proposed 8-lot Madison Grove subdivision (Project No. PLN50667 SUB) (“**Madison Grove Project**”) and the 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**”).

- E. 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 Madison Landings Inc., a Washington corporation (“**Madison Landings Company**”).
- F. 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.
- G. 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 A above.
- H. Central Highlands, Wallace, and Madison are entering into this Agreement 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.
- I. Central Highlands and Wallace are entering into a separate agreement with Ohrt, Madison Landings and CCHD titled “MADISON AVENUE ACCESS AGREEMENT” and dated March 16, 2018 (“**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. Ohrt, Madison Landings, CCHD, and Mattis are entering into another separate agreement with the City 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 Reserve at Winslow, and Madison Landing.

- K. The City is entering into this Agreement and the Ohrt 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, Central Highlands, Wallace, and Madison, 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 Wallace Cottages and Madison Place, 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 revisions 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 Wallace Cottages.

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 Planning Commission or the Hearing Examiner, 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. Wallace Cottages.

- i. Within seven (7) days after the execution of this Agreement, City staff will communicate to the Planning Commission that this Agreement has been executed and that terms in the Agreement could potentially affect the Planning Commission's consideration regarding the Wallace Cottages project, to the extent that the Commission's decision was based on concerns about access to Madison Avenue.
- ii. City staff will 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 May 4, 2018.
- iii. 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.
- iv. The City shall complete its reviews and provide its response to the applicant for all building permits submitted for lots within Wallace Cottages 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.

b. Madison Place.

- i. Following the execution of this Agreement, City staff will schedule the Madison Place project for Planning Commission consideration at the Planning Commission's April 26, 2018, meeting, subject to Planning Commission availability.
- ii. 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.
- iii. The City will 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 May 18, 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 Wallace Cottages 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.

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 Ohrt, Madison Landings, and/or CCHD under the Madison Avenue Access Agreement shall not excuse the performance of an obligation under this Agreement, including, without limitation, the City's obligation to make best efforts to schedule the Hearing Examiner hearings for Wallace Cottages and Madison Place on or before the specified dates, subject to the Hearing Examiner's availability.

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 Central Highlands, Wallace, or Madison:**

Hayes Gori  
Law Office of Hayes Gori, PLLC  
271 Wyatt Way NE, #112  
Bainbridge Island, WA 98110  
Phone: 206-842-6462  
Email: hayes@hayesthelawyer.com

With a copy via email to:

David Smith  
Email: smithhouse4@comcast.net

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

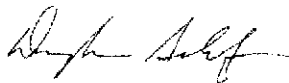
*[Signature Pages Follow]*

EXECUTED by the Parties on the dates set forth below.

**CITY:**

The City of Bainbridge Island, a  
Washington municipal corporation

By:



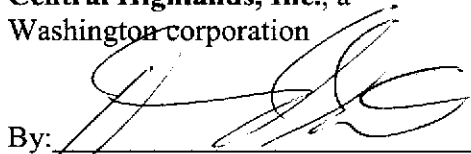
Print name: Douglas Schulze  
Its: City Manager

Date signed: March 16, 2018

**CENTRAL HIGHLANDS:**

Central Highlands, Inc., a  
Washington corporation

By:



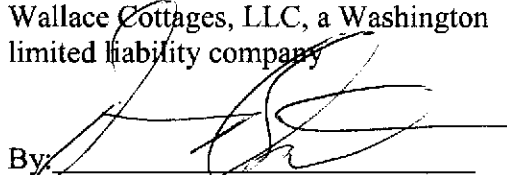
Print name: David Smith  
Its: President

Date signed: 3-16-18

**WALLACE:**

Wallace Cottages, LLC, a Washington  
limited liability company

By:



Print name: David Smith  
Its: Manager

Date signed: 3-16-2018

**MADISON:**

Madison Place, LLC, a Washington  
limited liability company

By:



Print name: David Smith  
Its: Manager

Date signed: 3-16-2018