

**SETTLEMENT AGREEMENT REGARDING  
CONSERVATION EASEMENT AND BUILDING AND USE RESTRICTIONS**

This Settlement Agreement Regarding Conservation Easement and Building and Use Restrictions (“Agreement”) is made on \_\_\_\_\_, 2019 by and between Glacier Hills, Inc., a Michigan non-profit corporation, located at 1200 Earhart Road, Ann Arbor, Michigan, 48105 (“Glacier Hills”) and Earhart Village Homes Association, a Michigan non-profit corporation, located at 835 Greenhills Drive, Ann Arbor, Michigan 48105 (“Earhart Village”) and the City of Ann Arbor, with its principal offices located at 301 East Huron Street, Ann Arbor, Michigan, 48104 (the “City”).

**RECITALS**

WHEREAS, Glacier Hills operates a senior living community on approximately 31 acres of land (“Glacier Hills Property”).

WHEREAS, Earhart Village is a condominium community located just south of and adjacent to the Glacier Hills Property.

WHEREAS, the City is responsible for issuance of building permits and oversight of construction activities with respect to development of the Glacier Hills Property, in keeping with local code, zoning and other land use restrictions.

WHEREAS, Glacier Hills’ predecessor in title executed a Grant of Conservation Easement (“Conservation Easement”) with respect to approximately 3.37 acres of land located along the southern boundary of the Glacier Hills Property. The Grant of Conservation Easement is recorded at Liber 1959, Pages 679-681, Washtenaw County Records.

WHEREAS, Glacier Hills executed a Declaration of Building and Use Restrictions (“Use Restrictions”) with respect to the land which is subject to the Conservation Easement. The Declaration of Building and Use Restrictions is recorded at Liber 1959, Pages 673-678, Washtenaw County Records.

WHEREAS, the parties are in disagreement as to whether the Conservation Easement and/or Use Restrictions require Glacier Hills to seek approval from Earhart Village for any future development of the Glacier Hills Property.

WHEREAS, the parties seek to adopt terms and conditions that would apply to any exterior development of the Glacier Hills Property by entering into this Settlement Agreement.

**IT IS THEREFORE AGREED:**

1. Regarding the issue of whether the Conservation Easement and Use Restrictions require Glacier Hills to seek approval from Earhart Village for any future development of the Glacier Hills Property, each party reserves its rights regarding this issue and nothing in this Agreement constitutes a waiver or relinquishment of such rights or an amendment or revision of the Conservation Easement or Use Restrictions, both of which remain in full force and effect.

2. Glacier Hills will not build any structures or make any improvements upon the 3.37 acres of land which is subject to the Conservation Easement described above.

3. Glacier Hills has constructed four residential villas near the northern boundary of the Conservation Easement, depicted as Villas A, B, C and D on the site drawing attached as Exhibit 1. Glacier Hills agrees that any expansion or addition to Villas A, B, C and D will maintain a distance from the northern boundary of the Conservation Easement of at least 9 feet. This restriction does not apply to existing decks, and patios. This setback is to be treated consistently with setback requirements in Ann Arbor City Code (“City Ordinance”) as it presently exists. Currently City Ordinance provides that patios and paths that are flush with the ground level may invade the setback, but that any improvement that is above the ground, such as a deck shall not invade the setback. The parties agree that these setback requirements will apply to this Agreement, unless the requirements are changed by amendment of City Ordinance, in which case the amended City Ordinance will control.

4. For any future exterior development on the Glacier Hills Property which requires a building permit from the City, Glacier Hills agrees to submit development plans to Earhart Village simultaneously with its submission of the plans to the City. Upon its receipt of development plans from Glacier Hills, Earhart Village will have a period of 30 days to provide Glacier Hills with any comments on the plans. If requested within those 30 days, Glacier Hills and its consultants will meet with Earhart Village residents to answer questions and address any concerns or comments regarding a proposed new development prior to commencement of any work. Glacier Hills agrees that it will not break ground or otherwise commence work until such meeting, if timely requested is had. Earhart Village and Glacier Hills mutually agree to work together to promptly schedule such timely requested meeting with the hope and expectation that it take place prior to any public hearing, and if there is no public hearing contemplated, within less than 21 days of the request for the meeting. The obligations of Glacier Hills set forth in this paragraph will also apply to any petition filed by Glacier Hills for an administrative amendment to the planned project site plan pursuant to Chapter 55, Section 5.30.4 of City Ordinance.

5. Nothing in this Agreement is intended to affect in any way the rights of Earhart Village to citizen participation in the application and approval process for any new development on Glacier Hills Property as provided to the general public in Chapter 55, Section 5.28.4 of the City Ordinance and such rights are expressly reserved.

6. If any of the provisions of this Agreement are deemed invalid by any court of competent jurisdiction, such provisions shall be deemed not to be a part of this Agreement and shall not affect the validity or enforceability of the remaining provisions.

7. This Agreement shall be deemed to have been made in the State of Michigan and shall be interpreted and construed under the laws of the State of Michigan.

8. The parties recognize that they may be mistaken as to the facts and/or law upon which they may be relying in executing this Agreement. The parties nonetheless represent that they have

carefully read this Agreement and understand its contents, that they have determined it to be fair and reasonable, that they signed this Agreement as their free act and deed, after reasonable period of consideration and reflection, without reliance upon any statement or representation of any party hereto, and after consulting their attorneys, and that they agree for themselves and their successors in interest to be forever bound by the terms of this Agreement.

9. This Agreement has been negotiated at arm's length and legal counsel has represented each party. This Agreement shall be deemed to have been jointly drafted by each party and shall not be construed against any party as the drafting party.

10. Each of the parties represent to the other that each signatory is authorized and empowered to enter into this Agreement on behalf of the party or parties for which they sign, and that this Agreement is valid and legally binding upon each party in accordance with its terms and all applicable laws.

11. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their successors, assigns and transferees.

12. Notwithstanding the provisions of Paragraph 8, this Agreement can only be amended, changed, waived, or modified, by a similar written agreement executed by the parties and similarly recorded with the Washtenaw County Register of Deeds. No waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the waiver is charged. There are no other representations or agreements between the parties other than contained in this Agreement.

IN WITNESS WHEREOF, the parties or their duly authorized representatives, intending to be legally bound, hereby execute this Settlement Agreement and Mutual Release on the date set forth above.

GLACIER HILLS, INC.

By: \_\_\_\_\_  
Dale J. Berry

Its: President

EARHART VILLAGE HOMES  
ASSOCIATION

By: \_\_\_\_\_  
Christopher Cook

Its: President

CITY OF ANN ARBOR

By: \_\_\_\_\_  
Christopher Taylor

Its: Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry

Its: City Clerk\_\_\_\_\_

Drafted by and after recording  
return to:

William J. Stapleton  
Hooper Hathaway, P.C.  
126 South Main Street  
Ann Arbor, MI 48104