DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
AND EASEMENT AGREEMENTS

This Declaration of Covenants, Conditions, and Restrictions and Easement Agreements (this "Agreement") is made as of the 9th day of September, 2016, between BAY HARBOR COMPANY, L.L.C., a Michigan limited liability company, the address of which is 4000 Main Street, Bay Harbor, Michigan 49770 ("BHC"), BAY HARBOR VILLAGE COMPANY, L.L.C., a Michigan limited liability company, the address of which is 4000 Main Street, Bay Harbor, Michigan 49770 ("BHVC"), and GREAT LAKES CENTER FOR THE ARTS, a Michigan nonprofit corporation, the address of which is 800 Bay Harbor Drive, Bay Harbor, Michigan 49770 ("GLCFA").

A. BHC is the developer of certain real property that is located in Resort Township, Emmet County Michigan consisting of any approximately 1,100 acre community commonly known as "Bay Harbor".

B. While BHC no longer owns all of Bay Harbor, BHC continues to own portions of Bay Harbor, manages the administration of certain community areas and roads within Bay Harbor and levies and collects assessments from properties within Bay Harbor for that purpose pursuant to various easement agreements.

C. GLCFA owns certain real property located in Bay Harbor, as further described in Exhibit A attached hereto and made a part hereof (the "GLCFA Parcel").

D. BHVC owns certain real property adjacent to the GLCFA Parcel, which includes that certain property described on Exhibit B attached hereto and made a part hereof ("Parcel 1"), that certain property known as West Beach Street as described on Exhibit C ("Parcel 2"), and certain property described on Exhibit D attached hereto and made a part hereof (the "Parcel 3").

E. GLCFA intends to improve the GLCFA Parcel with a performing art center (the "Center") subject to the terms as contemplated herein, which shall include a 149-space parking lot with 136 parking spaces on the GLCFA Parcel and 13 parking spaces on Parcel I (collectively, the "Parking Lot"), as depicted on Exhibit E attached hereto and made a part hereof.

F. Each party hereto desires to enter into this Agreement to grant certain easements, as further contemplated herein (individually, an "Easement" and collectively, the "Easements").
and to establish certain requirements and restrictions regarding the developments of the GLCFA Parcel. Attached as Exhibit F is a comprehensive depiction of the various parcels and easements which are the subject matter of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements contained in this Agreement, BHC, BHVC and GLCFA (individually, a "Party" and collectively, the "Parties") hereby agree as follows:

1. Ingress/Egress Easements.

1.1 On or prior to the date of this Agreement, BHC shall execute and record an amendment to: (a) the Declaration of Easement and Agreement for Maintenance dated September 23, 1994, and recorded September 27, 1994, in Liber 533, Page 750, Emmet County Records, as amended; and (b) the Declaration of Easement and Agreement to Maintain (Village Harbor Drive) dated February 18, 1999, and recorded February 19, 1999, in Liber 676, Page 430, Emmet County Records, as amended; to include the GLCFA Parcel and GLCFA (and its successors, assigns, agents, employees, tenants, invitees, guests and mortgagees) as beneficiaries to the easements for pedestrian and vehicular ingress and egress over Bay Harbor Drive, part of East Main Street and Village Harbor Drive to access U.S. Highway 31, together with any necessary clarifications to those documents to be consistent with this Agreement and current practices in Bay Harbor, such as clarification that BHC and not The Peninsula Association shall administer maintenance and oversight over certain roads.

1.2 BHVC hereby grants to the GLCFA Parcel and GLCFA (and its successors, assigns, agents, employees, tenants, invitees, guests and mortgagees) a perpetual, non-exclusive easement for pedestrian and vehicular ingress and egress over Parcel 2 between the GLCFA Parcel and Village Harbor Drive, as more particularly described in Exhibit C and depicted on Exhibit F attached hereto, subject to the terms and conditions of this Agreement. BHVC agrees that the Parcel 2 easement for ingress and egress shall remain open and unobstructed for GLCFA's use. Administration of this easement will be managed by BHC in the same manner as the private roads described above in Section 1.1. No additional documents shall need to be executed in connection with this ingress and egress right over Parcel 2. The ingress and egress easements created in this Section 1 shall be collectively referred to as the "Ingress/Egress Easement."

2. Cross-Parking Easement; Construction of Parking.

2.1 Construction. Subject to the terms and conditions hereof, as part of the construction of the Center and the development of the GLCFA Parcel, GLCFA, at its sole cost and expense except as provided below, shall construct the Parking Lot in compliance with all requirements of any applicable governmental authorities together with 13 spaces on Parcel 1 as depicted on Exhibit E (the "Parcel 1 Parking Lot"). It is anticipated that the Center requires only 122
parking spaces to satisfy municipal parking ratios. As a result of the foregoing, BHVC agrees to pay GLCFA or its designee (e.g. the contractor) for the cost it incurs to pave the number of parking spaces on the GLCFA Parcel in excess of 122, which is calculated as 14 spaces, and for the 13 spaces on the Parcel 1 Parking Lot within thirty (30) days of invoice.

2.2 Easement. GLCFA hereby grants and conveys to BHVC and BHC a perpetual non-exclusive right to use those portions of the Parking Lot located on the GLCFA Parcel for non-commercial vehicle public parking by patrons and staff of the adjacent retail and commercial properties of the Village at Bay Harbor. BHVC hereby grants and conveys to GLCFA a perpetual non-exclusive right to use those portions of the Parcel 1 Parking Lot for use by patrons and staff of the Center; provided, however, that BHVC retains the right at any time to relocate those parking spaces on the Parcel 1 Parking Lot to a different location on Parcel 1. If and when such relocation occurs, BHVC shall construct the newly located parking before terminating the current location, and the foregoing relocation shall be memorialized in an amendment to this Agreement. Neither GLCFA nor BHVC shall be entitled to reduce the number of parking spaces to be constructed without obtaining the written approval of BHC so that such reduction would result in the total number of spaces required being out of compliance with the then-current parking requirements in effect with the appropriate governmental authorities. The easements created by this Section 2.2 are hereby collectively referred to as the "Cross-Parking Easement." If fees are customarily charged for public parking in the Village at Bay Harbor, then GLCFA shall have the option, but not the obligation, to charge for parking in the Parking Lot, and in this event all amounts so collected by GLCFA shall be split proportionately between GLCFA and BHVC based on the number of parking spaces owned by the applicable party divided by the total number of parking spaces in the Parking Lot. Notwithstanding the foregoing, from and after the earlier to occur of: (a) the date that is 25 years after the date of this Agreement; or (b) such time as David V. Johnson and/or his heirs own less than ten percent (10%) of BHC and less than ten percent 10% of BHVC (the earlier of (a) and (b), the "Sunset Date"), GLCFA shall have the option to charge for parking in the Parking Lot regardless of whether fees are customarily charged for parking in the Village at Bay Harbor.

2.3 Limited Closure. The Cross-Parking Easement shall remain open and unobstructed so as to allow the applicable Parties who have been granted easement rights for parking pursuant to this Section 2 to enjoy the reciprocal easements; provided, however, (i) such rights are subject to the terms of the applicable Parties' rights in Section 12.6 and (ii) GLCFA shall have the exclusive use of the portion of the Parking Lot located on the GLCFA Parcel during events held at the Center for which more than 100 tickets have been sold (including the two-hour period immediately preceding such event). During these limited periods of closure when the Cross-Parking Easement rights are solely enjoyed by GLCFA, GLCFA may enforce the periods of closure by any reasonable means, expressly including, without limitation, having violating vehicles towed at the expense of
owner of the violating vehicle. BHC and BHVC each agree that GLCFA may post signs, both temporary and permanent, regarding parking violators to the extent either reasonable or required by applicable law (as defined below). Such signs must be approved by BHC whose approval shall not be unreasonably withheld, delayed or conditioned.

3. **Utility Easement.** BHVC hereby grants and conveys to GLCFA a perpetual non-exclusive easement on, over, across and through an agreed upon portion of Parcel 1 (the "Utility Easement") for the purpose of installing, connecting to, using and maintaining underground electric, telephone, cable, gas, water, storm and sanitary sewer lines to the GLCFA Parcel. GLCFA may be permitted pursuant to this Utility Easement to install and maintain above-ground mechanical equipment on Parcel 1 if BHVC agrees that such equipment is reasonably necessary, in which event BHVC shall pre-approve the location of such equipment and require GLCFA to install any necessary screening to reduce or eliminate the visibility of such equipment from adjacent properties or roads. GLCFA shall have the non-exclusive right in common to use the Utility Easement for the purpose stated in this Paragraph. BHVC retains the right to allow other utility lines to be installed under, across and within the Utility Easement.

4. **Intermediate Drive Cross Easement.** Subject to the terms and conditions hereof, as part of the construction of the Center and the development of the GLCFA Parcel, GLCFA shall, at its sole cost and expense, construct the road described as Intermediate Drive in the location depicted on the attached Exhibit F ("Intermediate Drive") in compliance with all requirements of any applicable governmental authorities. GLCFA hereby grants and conveys to BHVC and BHC (and their successors, assigns, agents, employees, tenants, invitees, guests and mortgagees) a perpetual, non-exclusive easement for pedestrian and vehicular passage over the portion of Intermediate Drive located on the GLCFA Parcel. BHVC hereby grants and conveys to GLCFA (and its successors, assigns, agents, employees, tenants, invitees, guests and mortgagees) a perpetual, non-exclusive easement for pedestrian and vehicular passage over the portion of Intermediate Drive located on Parcel 1. The easements created in this Section 4 shall be collectively referred to as the "Intermediate Drive Cross Easement." BHVC retains the right at any time to relocate the portion of Intermediate Drive located on Parcel 1 to a different location on Parcel 1, at BHVC's sole cost and expense, provided that the relocated road shall connect to the portion of Intermediate Drive located on the GLCFA Parcel at the existing point of connection. If and when such relocation occurs, BHVC shall construct the newly located road before terminating the current location, and the foregoing relocation shall be memorialized in an amendment to this Agreement. The Parties acknowledge that GLCFA has agreed to be responsible for the costs of constructing Intermediate Drive, including the portion thereof that is located on Parcel 1, because GLCFA needs the Intermediate Drive Cross Easement in order to access the Parking Lot from Bay Harbor Drive. Each Party benefitted by the Intermediate Drive Cross Easement shall be responsible for the costs of maintaining its respective portion of Intermediate Drive, such that GLCFA shall pay the cost to maintain the portion of Intermediate Drive on the GLCFA Parcel, and BHVC shall pay the cost to maintain the portion of Intermediate Drive on Parcel 1. Notwithstanding the foregoing, if either of the benefitted
Parties damages Intermediate Drive as result of other than normal wear and tear by vehicles of pedestrians, such Party shall pay for the repair or replacement of the portion of Intermediate Drive damaged.

5. **Sidewalk Easement.** As part of the construction of the Center, GLCFA may, at its sole cost and expense, construct sidewalks over Parcel 1, along the boundary lines of Bay Harbor Drive, Village Harbor Drive, Main Street and Parcel 2 and on any other property owned by BHVC or BHC that forms the perimeter of the GLCFA Parcel, as depicted on Exhibit E, so long as constructed in compliance with applicable laws, rules, regulations, codes and ordinances ("applicable laws") and all restrictions of record. BHVC hereby grants and conveys to GLCFA for pedestrian ingress and egress a perpetual non-exclusive easement on, over, across and through the sidewalks that may be constructed by GLCFA together with any other sidewalks that exist now and in the future on Parcel 1, along the boundary lines of Bay Harbor Drive, Village Harbor Drive, Main Street and Parcel 2 and on any other property owned by BHVC or BHC that forms the perimeter of the GLCFA Parcel ("Sidewalk Easement"). At any time and from time to time, BHVC shall have the right to relocate the Sidewalk Easement and the sidewalks described hereunder at BHVC's expense, provided that the relocated sidewalk(s) shall continue to provide pedestrian ingress and egress to the GLCFA parcel in accordance with the Sidewalk Easement.

6. **Landscape Easement; Maintenance Covenant.** As part of the construction of the Center, GLCFA may, at its sole cost and expense, install landscaping over the portion of Parcel 1 identified on Exhibit F as Building 1 ("Building 1") so long as it remains undeveloped with improvements on it (other than sidewalks and utilities) and is constructed in compliance with applicable laws and all restrictions of record. BHVC hereby grants and conveys to GLCFA a perpetual non-exclusive easement on, over, across and through the Building 1 for the landscaping that may be installed by GLCFA, which shall be maintained by GLCFA at its sole expense, until Building 1 is developed ("Landscape Easement"). When development activities on Building 1 commence, which is defined as when a Notice of Commencement is recorded in the county register of deeds office, the Landscape Easement is automatically converted from a perpetual easement to a covenant from the owner of Building 1 to maintain the improvements in a clean condition consistent with the aesthetics of the Center and other adjacent properties and in compliance with all applicable laws and requirements of record. Upon the owner of Building 1's written request, GLCFA shall enter into an amendment to this Agreement memorializing the conversion of the Landscape Easement into a covenant. Similarly, when development activities begin for the balance of Parcel 1 and Parcel 3, the owners of such parcels covenant to maintain the improvements in a clean condition, consistent with the aesthetics of the Center and other adjacent properties, and in compliance with all applicable laws and requirements of record.

7. **Temporary Easement for the Benefit of Parcels 1 and 3.** Commencing at such time as BHVC elects to commence development activities on Parcel 1 or Parcel 3, GLCFA hereby grants and conveys to BHVC (and its successors and assigns of Parcels 1 and 3 and their respective agents, employees, contractors, designers, subcontractors and...
inspectors) a temporary non-exclusive easement ("Temporary Construction Activity Easement") over the 20 feet of the GLCFA Parcel that is adjacent to Parcel 1 or Parcel 3, as the case may be (the "Temporary Easement Area") for the purpose of providing construction staging activities and/or access to the applicable Parcel during the period of initial construction thereon upon the following conditions: (i) prior to commencing the use of the Temporary Easement Area, certificates of insurance together with an additional insured endorsement naming GLCFA and its directors, employees, agents and mortgagees (collectively, "Indemnitees") as additional insureds on all liability insurance policies evidencing that BHVC and its contractors and subcontractors have obtained workers' compensation insurance in the statutory-required amount, commercial general liability insurance and motor vehicle liability insurance each in the amount of $2,000,000 per occurrence; (ii) BHVC and those working by or through BHVC shall defend, indemnify, and hold GLCFA and its Indemnitees harmless against all liability, damages, death or injuries that arise from the use of the Temporary Easement Area; (iii) BHVC's use of the Temporary Easement Area shall not interfere with the operations of the Center; (iv) the Temporary Easement Area shall be kept in a safe, secure, clean condition; (v) the Temporary Construction Activity Easement shall be for a term of no more than eighteen (18) months from the date BHVC commences development on Parcel 1 or 3, as applicable; (vi) BHVC agrees that it shall accept the Temporary Easement Area in its "AS IS" condition, without any representations or promises regarding the condition, utility or other matters related to the Temporary Easement Area; (vii) BHVC shall promptly restore the Temporary Easement Area to a similar condition as existing prior to BHVC's entry; (viii) the sole use of the Temporary Easement Area as it applies to Parcel 1 will be to provide construction access to Parcel 1; (ix) the Temporary Easement Area will not be used to store construction materials for the development of Parcel 1; and (x) construction materials to be used for the development of Parcel 3 will not be stored within the Temporary Easement Area or anywhere else on the GLCFA Parcel, except that certain limited materials, including without limitation trusses and siding, may be stored within the Temporary Easement Area for up to 72 hours from time to time.

8. Signage Easement. BHC and BHVC acknowledge that GLCFA has a goal to obtain approval to install signage, both promoting the Center and providing wayfinding to the Center, in Bay Harbor to improve visibility of the Center along US-31 and within Bay Harbor. The size, content, and location of the signage have not yet been determined; however, the Parties agree that GLCFA will require signage easements to effectuate its signage goals. Upon GLCFA making its determination of the size, content and location, it shall submit its proposed plans to BHC for its review, comment and approval. BHC agrees to work in good faith to assist GLCFA in achieving its signage goal, including without limitation, promptly collaborating and agreeing upon the location, size and content, assisting GLCFA in obtaining governmental approvals, granting of the necessary signage easements ("Signage Easement") to execute upon the signage goal and otherwise providing assistance, including, without limitation, the reasonable costs (consistent with third party competitive costs) of the wayfinding signs and any pylons or monuments that GLCFA agrees to be included on along with the panels for the pylons or monuments; provided that GLCFA shall agree to pay all out of pocket expenses incurred by BHC in such endeavors. GLCFA may require that BHC provide a not-to-exceed
amount for these expenses. In the event that only one sign is permitted by the applicable governmental authority on the portion of US-31 abutting Bay Harbor GLCFA shall have the option to be featured on that sign with any other businesses or entities that may be designated by BHC, provided that GLCFA pays its proportionate share of the cost of the sign.

9. **Persons Entitled to Use the Easements.** Each Party to this Agreement who has the rights to use an applicable Easement in this Agreement automatically includes their respective successors, assigns, employees, mortgagees, tenants, lessees, customers, invitees and guests, and all persons having business with any of the foregoing, such that all persons claiming by, through or under any of the foregoing shall have the non-exclusive right in common with such Party to use the respective Easements granted in this Agreement, except as otherwise provided in the grant of the applicable Easements, such as the Cross-Parking Easement and Landscape Easement.

10. **Maintenance.** BHC shall manage, enforce, maintain, repair, replace, insure and otherwise operate (including paying all property taxes and assessments) (collectively "Maintenance Activities") all Easements granted by this Agreement except the Temporary Construction Activity Easement of the Landscape Easement; however, all Maintenance Activities must be conducted in a first class condition, in compliance with all applicable laws and all restrictions of record, and in a safe and secure manner to the extent consistent with resort areas similar to Bay Harbor. GLCFA shall be responsible for its proportionate share of the expenses, fees and costs of maintenance, upkeep, repair, replacement, insurance, landscaping (other than the Landscaping Easement) and snow removal, to the extent applicable, to each respective Easement granted to GLCFA. Such expenses shall be fairly allocated by BHC or BHVC, as applicable, and will utilize in its best and reasonable judgment in determining a fair allocation among the various users of each Easements. During the five (5) year period immediately following the date of this Agreement, GLCFA's proportionate share of such expenses shall not exceed fifteen percent (15%) of the total of all such expenses under each Easement granted to GLCFA. Upon request at convenient times, GLCFA shall have the right to examine the methods of allocation, budgets and actual expenses incurred by BHVC and BHC with respect to each Easement granted to GLCFA. BHVC shall be responsible for its proportionate share of the same costs for the Ingress/Egress Easement over the Parking Lot. BHVC shall also be responsible for all maintenance, upkeep, repair, replacement, insurance, and snow removal of the Temporary Easement Area. Each Party shall pay its respective share of the expenses, fees and costs as contemplated in this Paragraph within thirty (30) days after receipt by such Party of an itemized statement showing the expenses, fees and costs actually incurred. A Party shall not be billed for such costs more often than once per quarter.

11. **Reserved Rights.** With respect to the Easements, BHC reserves the right at any time and from time to time upon thirty (30) days' notice to establish reasonable rules and regulations regarding the use of those Easements, provided that any such rules and regulations are not inconsistent with the intent of the applicable Easement and this Agreement and are uniformly enforced in a non-discriminatory manner. Except as
otherwise permitted by this Agreement, GLCFA shall not impose any rules or regulations with respect to the Parking Lot without first obtaining BHC's written consent and approval.

12. Covenants, Conditions and Restrictions.

12.1 Approvals and Architectural Control.

12.1.1 GLCFA has previously provided BHC drawings for the Center and BHC has granted conceptual architectural approval for the Center, a copy of which is attached hereto as Exhibit G and made a part hereof (the "Approved Plans"). Prior to GLCFA commencing any construction activities that will affect any area of the GLCFA Parcel other than the interior of the building and other improvements of the Center that has not been previously approved by BHC pursuant to the Approved Plans, GLCFA shall submit to BHC a full set of all drawings, renderings, plans and specifications of the changes to the exterior of the Center for BHC's approval to re-confirm that the Center shall be: (a) architecturally and aesthetically consistent and harmonious with the buildings comprising the Village at Bay Harbor, and (b) contains sufficient lobby and exhibition space.

12.1.2 GLCFA may not commence the construction on the exterior of the improvements for the Center, other than the initial work previously approved by BHC pursuant to the Approved Plans, without first obtaining written approval from BHC and all permits and approvals as required by any governmental authority having jurisdictions over the construction of the Center or any portion thereof. BHC's approval of the Approved Plans includes that the conditions of Section 12.1.1 are satisfied and that BHC approves the design and specification for the installation of curbs, gutters, drains, traffic and other appropriate signs, street and other lighting and landscaping and the location for the installation of the utilities.

12.1.3 Any modification to the Approved Plans for the exterior of the Center's building, either during construction or thereafter, shall require the written approval of BHC (a "Modification"). If GLCFA desires a Modification, GLCFA shall submit to BHC a full set of all drawings, renderings, plans and specifications for such Modification (including for any material exterior modification paint or stain color samples).

12.1.4 Neither BHC nor its owners, members, representatives, employees or agents shall have any liability whatsoever for the approval or disapproval of any proposed improvements to be performed or installed on the GLCFA Parcel.
12.1.5 GLCFA may not install any signs on the GLCFA Parcel without obtaining the prior written approval of BHC regarding the location, size, style, content and quality of the proposed sign(s), which shall also be in compliance with the sign ordinance or requirements of any applicable governmental authority. Notwithstanding anything to the contrary, BHC acknowledges and agrees that signage on the GLCFA Parcel shall be critical to the success of the Center, both for wayfinding and advertisement and promotion of the Center and its events. Therefore, BHC shall not unreasonably withhold, delay or condition its consent and hereby agrees that it will permit such signage so long as the signage is aesthetically consistent and harmonious with other signage in the Village at Bay Harbor and under no circumstances can signage be declined as a concealed or de facto means of censoring the programming activities of GLCFA.

12.1.6 Plans submitted to BHC hereunder will be approved if they are architecturally and aesthetically consistent and harmonious with the buildings and other improvements comprising the Village at Bay Harbor, as reasonably determined by BHC. If BHC fails to approve or reject any plans submitted to it hereunder within 15 days after receiving the same, then BHC will be deemed to have approved such plans.

12.2 Construction. No building, structure, landscaping or other exterior improvement located on the GLCFA Parcel shall be constructed, installed, maintained or altered unless the style, location, plans and specifications for such improvement have been approved by BHC in accordance with Section 12.1. Construction of the Center, including the Parking Lot and required landscaping, shall be at GLCFA’s sole cost and expense and shall be diligently and continuously performed in a good and workmanlike manner and in compliance with all requirements of law, applicable rules, regulations ordinances, statutes and guidelines. The construction by GLCFA shall be performed in an orderly and safe manner and GLCFA will not permit, or allow any of its contractors or subcontractors to permit, any rubbish or debris or other materials to accumulate on the GLCFA Parcel and will not store any materials on any property of BHC or BHVC. Unless required to prevent the loss of life or any personal injury or any substantial property damage, construction shall only be performed on the GLCFA Parcel during the following times (expressed in Eastern Standard Time): Monday – Thursday 8:00 a.m. – 6:00 p.m.; Friday 8:00 a.m. – 5:00 p.m., and Saturday 9:00 a.m. – 5:00 p.m. Construction is prohibited on Sunday and legal holidays. These same standards shall be applied to the construction activities that occur on Parcel 1 and Parcel 3.

12.3 Completion. The plans and specifications approved by BHC for the exterior of the Center’s building pursuant to Section 12.1 above may not be changed, amended, or modified without the express written consent of BHC. Upon completion of the construction of the Center and obtaining a certificate of
occupancy from the appropriate governmental authority, GLCFA shall deliver to BHC "as-built" drawings of the Center's building exterior perimeter that shall also include confirmation of the location of all installed utilities.

12.4 **Insurance.** Prior to commencing its construction, GLCFA shall deliver to BHC a certificate of insurance evidencing that GLCFA has obtained public liability insurance with a single limit liability coverage of not less than $2,000,000, that this insurance is in full force and effect, that BHC has been named as an additional insured party and that the insurance may not be cancelled unless written notice is delivered to BHC at least thirty (30) days prior to cancellation.

12.5 **Permitted Use.**

12.5.1 The GLCFA Parcel and the Center shall be used for the primary purpose of showcasing cultural programming and educational opportunities in the arts, music, theater, film and entertainment and intellectual dialogue/speakers. The GLCFA Parcel and the Center may also be used as a venue for banquets, weddings and/or business meetings, provided that such use shall be ancillary to the Center's primary purpose hereunder. The Center and the GLCFA Parcel shall not be used for any purpose other than those explicitly described under this paragraph and are specifically prohibited from exhibiting or promoting Pornography. "Pornography" means any sexually-explicit materials, films, art or any similar noxious activity whose purposes is solely to elicit sexual arousal and is of a content that other performance and art centers of equal caliber and quality, such as the Lincoln Center and John F. Kennedy Center for the Performing Arts, will not display or exhibit.

12.5.2 BHVC agrees that any future development of Building 1 shall be architecturally consistent and harmonious with the buildings comprising the Village at Bay Harbor, and shall not include any use that involves Pornography.

12.6 **Parking Lot Exclusivity.** Notwithstanding the Cross-Parking Easement granted in Section 2 above, not more than three (3) times per calendar year: (a) GLCFA shall have the exclusive right to use the portion of the Parking Lot located on the GLCFA Parcel for special, limited events; and (b) BHC and BHVC shall have the exclusive right to use all of the Parking Lot, except the parking spaces necessary for the operation of the Center, for special, limited events. The Parties shall cooperate to periodically establish a schedule designating the dates on which the Parking Lot will be used for this purpose. GLCFA shall use its best efforts and take necessary steps to require and ensure that patrons, guests, invitees, employees and visitors to the Center or of GLCFA park their vehicles in the Parking Lot and neither park on Main Street nor obstruct or hinder the normal business operations of the stores, shops and restaurants located in the Village at
Bay Harbor. For the purposes of this Section 12.6, GLCFA shall be deemed to have used its "best efforts" hereunder if it publishes information on approved parking locations on its website and in printed materials and provides verbal instructions to patrons. If, in spite of GLCFA's best efforts, the Center's patrons repeatedly park on Main Street and substantially obstruct or hinder the normal business operations of the Village at Bay Harbor, then BHC shall have the right to also require GLCFA to monitor and coordinate parking during events to ensure that patrons park only in approved locations. If GLCFA has a need for additional parking in the future, the Parties will work together in good faith to explore the possibility of building a second parking lot at GLCFA's sole cost and expense; provided, however, that neither BHVC nor BHC shall be required to donate, sell or otherwise convey land to GLCFA for this purpose.

13 Display of Marketing Materials. For so long as BHC's affiliate, Bay Harbor Properties, L.L.C. ("Bay Harbor Properties"), is a licensed real estate broker engaged in the sale of real estate in Bay Harbor and/or the surrounding area, no other real estate broker or salesperson shall be allowed to display marketing materials anywhere on the GLCFA Parcel in any form or capacity, except the restrictions set forth under this paragraph shall not prohibit GLCFA from recognizing a real estate broker other than Bay Harbor Properties as a sponsor of the Center in GLCFA's brochures and marketing materials; provided, however, that sponsorship opportunities shall be offered first to BHC and Bay Harbor Properties for a cost to be determined by GLCFA prior to being offered to any other real estate broker, and provided further that the amount paid by any other real estate broker for a sponsorship shall be no less than the rate for which the same sponsorship was first offered to BHC and Bay Harbor Properties.

14 Right of First Refusal. Prior to the Sunset Date, BHC shall have the right to purchase the GLCFA Parcel on the same terms and conditions pursuant to which GLCFA has agreed pursuant to a purchase or sale agreement to sell the GLCFA Parcel to any other prospective purchaser in an arm's length transaction pursuant to a bona fide real estate sales process. Immediately upon signing an agreement to sell the GLCFA Parcel, GLCFA shall deliver to BHC a copy of that signed agreement (the "Proposed Agreement"). Not later than twenty (20) days after receiving the Proposed Agreement (the "Election Period"), BHC will deliver written notice to GLCFA electing to either (i) acquire the GLCFA Parcel according to the terms and conditions set forth in the Proposed Agreement, or (ii) waive its right to purchase the GLCFA Parcel. If any of the terms and conditions of the Proposed Agreement are modified, written notice thereof must be delivered to BHC, and BHC will then have twenty (20) additional days from its receipt of such modification to either acquire the GLCFA Parcel according to the terms and conditions set forth in the modified proposed agreement, or waive its right to purchase the GLCFA Parcel. BHC's failure to timely deliver a notice of its election during the Election Period or subsequent twenty (20) day period, as applicable, shall be deemed an election by BHC to waive its right to purchase the GLCFA Parcel with respect to the subject transaction. If BHC waives its right with respect to any given transaction and said transaction does not close, then BHC shall continue to have the rights set forth herein with respect to each subsequent transaction that occurs in respect of the GLCFA Parcel prior to the Sunset Date.
Notwithstanding anything in this Agreement to the contrary, BHC’s right of first refusal hereunder shall not apply to GLCFA’s agreement to sell the GLCFA Parcel to a performing arts or cultural organization in connection with a merger or strategic operating arrangement or other similar arrangement to carry on the Permitted Use on a non-profit basis.

15 **Notices.** All notices under this Agreement must be in writing and must either be personally delivered or deposited with the United States Postal Service, postage prepaid, for delivery by first class mail, or deposited with a nationally recognized overnight delivery service for next day delivery and will be deemed to have been delivered on the date of receipt or refusal, as indicated on the receipt for delivery of that notice. Notices must be sent to BHC or GLCFA, as the case may be, at the respective address set forth below or at any other address if notice of that address has been delivered according to the requirements of this paragraph.

If to BHC:  
Bay Harbor Company, L.L.C.  
7640 Dixie Highway, Suite 100  
Clarkston, MI 48346  
Attn: Jennifer Merriman

With a copy to:  
Carson Fischer, P.L.C.  
4111 Andover Road, West-2nd Floor  
Bloomfield Hills, MI 48302  
Attn: Robert M. Carson  
Jeffrey B. Schlussel

If to GLCFA:  
800 Bay Harbor Drive  
Bay Harbor, MI 49770  
Attn: Jill O’Neill

16 **Term.** This Agreement shall run with the land constituting those properties as described herein, and shall be binding upon and inure to the benefit of all future owners of any portion of those properties and all their respective heirs, successor, assigns and transferees.

17 **Miscellaneous.**

15.1 In order to effectuate Section 16, a true and complete copy of this Agreement shall be recorded with the Emmet County Register of Deeds immediately following the execution of this Agreement.

15.2 If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance is at any time or to any extent determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of this Agreement and the application of that term or provision to persons or circumstances other than those to which it is held invalid, illegal or unenforceable will not be affected thereby and each term, covenant, condition and
provision of this Agreement will be enforceable to the fullest extent permitted by law.

15.3 This Agreement shall only be modified or amended only by a writing executed by the Parties, or their respective successors and assigns that is also recorded in the Register of Deeds for Emmet County.

15.4 Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

[Signature page to follow]
IN WITNESS WHEREOF, the Parties have executed this Declaration of Covenants, Conditions, and Restrictions and Easement Agreements as of the day and year first written above.

BHC:

Bay Harbor Company, L.L.C., a Michigan limited liability company

By: 

David V. Johnson

Its: Chairman

GLCFA:

Great Lakes Center for the Arts, a Michigan nonprofit corporation

By: 

Its: Executive Director

BHVC:

Bay Harbor Village Company, L.L.C., a Michigan limited liability company

By: 

David V. Johnson

Its: Chairman

[Notarizations on the Following Page]
STATE OF MICHIGAN )
COUNTY OF EMMET )

The foregoing instrument was acknowledged before me on this 9th day of September 2016, by David V. Johnson, the Chairman of Bay Harbor Company, L.L.C., a Michigan limited liability company, on behalf of the limited liability company.

LORI JO MOREY
NOTARY PUBLIC, CHARLEVOIX COUNTY, MI
MY COMMISSION EXPIRES: 1-4-2020,
ACTING IN THE COUNTY OF EMMET.

Notary Public County,
My Commission Expires: 1-4-2020

STATE OF MICHIGAN )
COUNTY OF EMMET )

The foregoing instrument was acknowledged before me on this 9th day of September 2016, by David V. Johnson, the Chairman of Bay Harbor Village Company, L.L.C., a Michigan limited liability company, on behalf of the limited liability company.

LORI JO MOREY
NOTARY PUBLIC, CHARLEVOIX COUNTY, MI
MY COMMISSION EXPIRES: 1-4-2020,
ACTING IN THE COUNTY OF EMMET.

Notary Public County,
My Commission Expires: 1-4-2020

STATE OF MICHIGAN )
COUNTY OF EMMET )

The foregoing instrument was acknowledged before me on this 9th day of September 2016, by Jill O'Neill, the Executive Director of Great Lakes Center for the Arts, a Michigan nonprofit corporation, on behalf of the nonprofit corporation.

LORI JO MOREY
NOTARY PUBLIC, CHARLEVOIX COUNTY, MI
MY COMMISSION EXPIRES: 1-4-2020,
ACTING IN THE COUNTY OF EMMET.

Notary Public County, Michigan
My Commission Expires: 1-4-2020

This instrument was drafted by, and
When recorded return to:

Jeffrey B. Schlussel
Carson Fischer, P.L.C.
4111 Andover Road, West-2nd Floor
Bloomfield Hills, Michigan 48302
14488297-12
EXHIBIT A
GLCFA Parcel

Legal Description of GLCFA Parcel —

Part of the Southeast ¼ of Section 3, T34N, R6W, Emmet County, Michigan, more particularly described as:

Commencing at the Southeast corner of Section 3, T34N, R6W, Emmet County, Michigan; thence along the East line of Said Section 3, N2°01′56″E 661.62 feet to the northwesterly right of way of US 31 highway; thence along said northwesterly right of way of US 31 highway 192.37 feet along the arc of a circular curve to the right, radius 3583.58 feet, delta 3°04′33″, chord N55°20′36″E 192.34 feet to the southwest corner of The Cliffs At Bay Harbor Condominium, recorded as Emmet County Subdivision Plan number 143; thence N32°41′36″W 496.94 feet; thence S58°48′27″W 35.08 feet; thence S64°20′29″W 137.46 feet; thence N31°02′23″W 260.68 feet to the Place of Beginning; thence continuing N31°02′23″W 339.96 feet; thence S 58°57′40″W 237.23 feet; thence S31°02′20″E 38.33 feet; thence 78.17 feet along the arc of a curve to the right, radius 94.00 feet, delta 47°38′45″, chord S7°13′06″E 75.93 feet; thence S67°05′13″E 115.70 feet; thence S15°30′47″W 93.24 feet; thence S4°16′28″W 225.63 feet; thence 399.00 feet along the arc of a non tangential curve to the left, radius 775.00 feet, delta 29°29′49″, chord N80°56′05″E 394.61 feet; thence N31°02′23″W 257.30 feet; thence N58°57′36″E 32.00 feet to the Place of Beginning, being subject to easements, restrictions, and encumbrances of record, and containing 3.55 acres of land, more or less.
EXHIBIT B

Parcel 1

Legal Description of Parcel 1 West of GLCFA Parcel

Part of the Southeast ¼ of Section 3, T34N, R6W, Emmet County, Michigan, more particularly described as:

Commencing at the Southeast corner of Section 3, T34N, R6W, Emmet County, Michigan; thence along the East line of Said Section 3, N2°01′56″E 661.62 feet to the northwesterly right of way of US 31 highway; thence along said northwesterly right of way of US 31 highway 192.37 feet along the arc of a circular curve to the right, radius 3583.58 feet, delta 3°04′33″, chord N55°20′36″E 192.34 feet to the southwest corner of The Cliffs At Bay Harbor Condominium, recorded as Emmet County Subdivision Plan number 143; thence N32°41′36″W 496.94 feet; thence S58°48′27″W 35.08 feet; thence S64°20′29″W 137.46 feet; thence N31°02′23″W 260.68 feet; thence continuing N31°02′23″W 339.96 feet: thence S 58°57′40″W 237.24 feet; thence S31°02′20″E 38.33 feet; thence 78.17 feet along the arc of a curve to the right, radius 47°38′45″, chord S7°13′06″E 115.70 feet; thence S15°30′47″W 93.24 feet; thence S4°16′28″W 225.63 feet; thence 208.29 feet along the arc of a non tangential curve to the right, radius 775.00 feet, delta 15°23′56″, chord N76°36′53″W 207.67 feet; thence N23°44′39″E 316.96 feet; thence 23.78 feet along the arc of a circular curve to the left, radius 94.00 feet delta 14°29′33″ chord N23°51′12″E 23.71 feet to the Place of Beginning, being subject to easements, restrictions, and encumbrances of record, and containing 1.18 acres of land, more or less.
EXHIBIT C
Parcel 2

Legal Description of Parcel 2 (Part of W. Beach St)

Part of the Southeast ¼ of Section 3, T34N, R6W, Emmet County, Michigan, more particularly described as:

Commencing at the Southeast corner of Section 3, T34N, R6W, Emmet County, Michigan; thence along the East line of Said Section 3, N2°01'56"E 661.62 feet to the northwesterly right of way of US 31 highway; thence along said northwesterly right of way of US 31 highway 192.37 feet along the arc of a circular curve to the right, radius 3583.58 feet, delta 3°04'33", chord N55°20'36"E 192.34 feet to the southwest corner of The Cliffs At Bay Harbor Condominium, recorded as Emmet County Subdivision Plan number 143; thence N32°41'36"W 496.94 feet; thence S58°48'27"W 35.08 feet; thence S64°20'29"W 87.23 feet to the Place of Beginning; thence N31°02'23"W 605.36 feet; thence S 58°57'40"W 50.00 feet; thence S31°02'23"E 600.64 feet; thence N64°20'29"E 50.23 feet to the Place of Beginning, being subject to easements, restrictions, and encumbrances of record, and containing 0.69 acres of land, more or less.
EXHIBIT D

Parcel 3

Legal Description of Parcel 3 (Strip West of West Beach St)

Part of the Southeast ¼ of Section 3, T34N, R6W, Emmet County, Michigan, more particularly described as:

Commencing at the Southeast corner of Section 3, T34N, R6W, Emmet County, Michigan; thence along the East line of Said Section 3, N2°01’56”E 661.62 feet to the northwesterly right of way of US 31 highway; thence along said northwesterly right of way of US 31 highway 192.37 feet along the arc of a circular curve to the right, radius 3583.58 feet, delta 3°04'33’”, chord N55°20’36”E 192.34 feet to the southwest corner of The Cliffs At Bay Harbor Condominium, recorded as Emmet County Subdivision Plan number 143; thence N32°41’36”W 496.94 feet; thence S58°48’27”W 35.08 feet; thence S64°20’29”W 137.46 feet to the Place of Beginning; thence N31°02’23”W 260.68 feet; thence S 58°57’36”W 32.00 feet; thence S31°02’23”E 257.30 feet; thence 25.05 feet along the arc of a circular curve to the left, radius 775.00 feet, delta 1°51’07”, chord N65°10’46”E 25.05 feet to the Place of Beginning, being subject to easements, restrictions, and encumbrances of record, and containing 0.19 acres of land, more or less.
EXHIBIT E

Site Plan Depicting Parking Lot and Sidewalks
EXHIBIT F

Overall Site Plan Depicting Parcels and Easements
EXHIBIT G

Approved Plans