

MEMORANDUM

TO: Clifton Park Trustees
FROM: Mary Lovett, Ron Isroff, and Gregory Stein
DATE: May 9, 2012
RE: The Legal Rights of Clifton Club Co. to Use the Clifton Park Beach

Executive Summary

Clifton Club Co. ("Clifton Club") and its members have rights to access the beach under that certain **Trust Deed** dated March 25, 1912 and the **Deed** dated July 1, 1912. Clifton Club was granted the right to access the beaches under those deeds and they contain no express prohibitions or restrictions that would limit such access for Clifton Club members. Clifton Club members' long and consistent use of the beach supports this interpretation.

Background

Clifton Park Beach is a private beach. Historically, people could obtain access to the beach only if they were lot owners in the Clifton Park allotment or were members of Clifton Club, a social club that owns four lots in the Clifton Park allotment. In recent years, complaints have been advanced that the Clifton Park Beach has become overcrowded. In fact, within the past three months residents of the Clifton Park allotment have argued that non-resident members of Clifton Club have no legal right to access the beach. The Clifton Park Trustees (the "Trustees") hold title to the beach for the benefit of all Clifton Park "lot owners." Certain residents have requested that the Trustees bring a legal action to have a court declare that the non-resident Clifton Club members do not have a legal right to the beach under that certain **Trust Deed** dated March 25, 1912. These residents claimed that they will initiate litigation should the Trustees fail to take appropriate action. The purpose of this memo is to outline what rights the Clifton Club and its members have to access the beach under that certain **Trust Deed**.

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Summary of Governing Documents

Three documents govern the rights granted by The Clifton Park Land & Improvement Co. (the "Developer"), as grantor, to the beneficiaries of the Clifton Park Trust: (i) **Lease** dated June 9, 1902 between the Developer and Clifton Club (the "**Lease**"); (ii) **Trust Deed** dated March 25, 1912 by the Developer (the "**Trust Deed**"); and (iii) **Deed** dated July 1, 1912 from the Developer to Clifton Club (the "**Clifton Club Deed**"). Below is a summary of the pertinent points of each of these documents.

1. Lease

a. Summary of the Lease

- i. The **Lease** is for a 20 year term.
- ii. The leased premises were Sub Lots Nos. 38, 39, 40, and 41.
- iii. Clifton Club agreed that the premises were "to be used solely for the purpose of a social club."
- iv. The Developer covenanted that "[t]he said Lessor [the Developer] further covenants with the said Lessee [Clifton Club] that it will before the period of existence expires, convey the fee in the land reserved and dedicated for park purposes in the allotment of the Clifton Park Land and Improvement Company to a Board of Trustees of not less than three members who shall be property owners in said allotment with power to perpetuate said Board of Trustees and with power to hold said property for the *use and benefit of persons owning land in said allotment.*" (emphasis added).
- v. During the term of the **Lease**, the Clifton Club could purchase the leased property for \$14,000.
- vi. The **Lease** prohibited Clifton Club from having more than 250 members without the consent of the Developer or its successors.

b. Implications of the Lease on Clifton Club's Use of the Beach

The Developer acknowledged the idea that Clifton Club would have members, as the **Lease** expressly permits Clifton Club to have up to 250 members and did not restrict the use of the beach by resident or non-resident members. Further, in 1902 when the Lease was signed,

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the Developer contemplated creating the trust for the benefit of land owners in the Clifton Park allotment. The **Lease** included a covenant that the Developer would convey the “the land reserved for park purposes” to a Board of Trustees “for the use and benefit of *persons owning land in said allotment.*” (emphasis added). Such a conveyance would directly affect Clifton Club because it had an option to purchase the land it was leasing. Thus, the Developer’s covenant to convey the land reassured Clifton Club that it would have access rights to the beach after the establishment of the trust, if Clifton Club owned land in the Clifton Park allotment.

2. Trust Deed

a. *Summary of Trust Deed*

- i. The park and recreational property subject to the **Trust Deed** was conveyed to the Trustees “for the sole use and benefit of *all the owners of sub lots*, or parts of lots, in the Clifton Park allotment ... and the *heirs, representatives*, successors or assigns of such owners;” (emphasis added)
- ii. There must be five trustees and each must “at all times be owners of land *and residents* in the Clifton Park allotment.” (emphasis added). Any trustee who ceases to own land *or* to be a resident in the Clifton Park allotment would automatically vacate his or her position.
- iii. The trustees are obligated to (among other things), “hold title to and preserve all the land deeded to them *for the common use of all the lot owners* in the Clifton Park allotment and their successors in title, and members of their households.” (emphasis added).
- iv. The **Trust Deed** does not specifically mention any prohibitions or restrictions applicable to Clifton Club or its no more than 250 members.

b. *Implications of Trust Deed on Clifton Club’s Use of Beach*

The Developer conveyed property to the trustees for the “sole use and benefit of *all the owners of sub lots*, or parts of lots, in the Clifton Park allotment ... and the heirs, *representatives*, successors or assigns of such owners[.]” (emphasis added). This covers all sub lot owners, not just residents. On the other hand, describing the requirements for a Trustee, the **Trust Deed** sets forth two requirements: they must be “[1] owners of land *and* [2] residents in the Clifton Park allotment.” (emphasis added). There is no such requirement of being a *resident* to be a beneficiary under the **Trust Deed**.

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This is consistent with the covenant in the **Lease** that the Developer obligated itself to convey the park land “for the use and benefit of persons owning land” in the Clifton Park allotment. Both documents evidence the Developer’s intent to make *all owners* of such properties the beneficiaries of the **Trust Deed**.

It is irrelevant that the **Trust Deed** did not mention Clifton Club members. The trust property was conveyed for the benefit of “owners of sub lots” and Clifton Club is an owner of multiple sub lots. But unlike other “owners of sub lots,” Clifton Club cannot itself directly use the beach: only its members have the ability to utilize that privilege. Since the Developer understood that Clifton Club operated a social club, the **Trust Deed** contemplates the Clifton Club members’ usage as though it is the usage by the lot owner.

3. Clifton Club Deed

a. *Summary of Clifton Club Deed*

- i. Clifton Club received “*the right to use in common with other owners of land* in said [Clifton Park] allotment, all portions of said allotment which shall by the grantor be devoted to the purposes of *parks or park spaces for the exclusive use and benefit of such lot owners.*” (emphasis added).
- ii. The land conveyed to Clifton Club pursuant to the **Clifton Club Deed** could not be used “for any other purpose than that of a private residence or social club.”
- iii. It included a similar covenant to the **Lease**: “The said grantor further covenants with the said grantee that it will, before the period of its corporate existence or any renewal or renewals thereof expires, convey the fee in the land reserved for park purposes in the allotment of The Clifton Park Land and Improvement Company, as shown by plat thereof made and on file in the office of the Secretary of the Company, to a Board of Trustees of not less than three members who shall be property owners in said allotment, with power to perpetuate said Board of Trustees, and with power to hold said property for the use and benefit of persons owning lots in said allotment, subject to such rules and regulations in regard to the use there of [sic] as hereinabove provided, and for that purpose the said Trustees shall succeed to all the rights, powers and duties of the Company as to use, maintenance, repairs, improvements, and for all purposes whatsoever.”

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b. *Implications of Clifton Club Deed on Clifton Club's Use of Beach*

The **Clifton Club Deed** is consistent with both the **Lease** and the **Trust Deed** because it provides no indication that the Developer intended to limit Clifton Club's rights or to relegate its members to a separate status from other owners of sub lots. First, there is a provision expressly granting Clifton Club the right to the portions of allotment dedicated to "parks or park spaces." Second, that right was in common with other owners of land. Thus it was clear that Clifton Club received the same rights as other sub lot owners.

Third, the Clifton Club Deed mirrored all of the deeds by the Developer to the other sub lot owners (other than the rights to operate a social club). The provision in the Clifton Club Deed granting rights to use the "parks or park spaces" is found in the deeds that conveyed property to all of the sub lot owners. *See Wallace v. Clifton Land Co.*, 92 Ohio St. 349 (1915) (explaining that such provision was in all of the deeds in the allotment). The Developer used substantially similar deeds to convey property to Clifton Club as it did to the other sub lot owners of the Clifton Park allotment. *See Id.* (the **Clifton Club Deed** "contained substantially the same restrictions as in all other deeds, save and excepting that the lots should not be used for any other purpose than that of private residence or social club.") The Clifton Club Deed also included an agreement that the Developer would convey park land to Trustees sometime in the future, even though that event occurred three months earlier. This is consistent with all of the Developer's deeds to sub lot owners before and after it signed the Trust Deed. Although the provision was unnecessary after March 1912, when the Trust Deed was signed, the Developer included the provision in all of the deeds until at least 1914. *See Id.* The Developer's consistent use of the same deed provisions for sub lot owners and Clifton Club is evidence that the Developer intended to afford them all the same rights in the purchased land and the beach. The consistency of those documents supports the interpretation of the Trust Deed as affording all sub lot owners, including Clifton Club, rights to access the beach.

The **Clifton Club Deed** expressly provides Clifton Club with the right to use the property for a social club. The rights granted to Clifton Club were equivalent to those of other sub lot owners, but Clifton Club would utilize those rights in the context of operating a social club with hundreds of members. By granting Clifton Club rights to utilize the trust property, the **Clifton Club Deed** was granting those rights to Clifton Club's members. "A member of such an organization acquires not a severable right to any of [the nonprofit's] property or funds, but merely a right to the *joint use and enjoyment* thereof so long as he continues to be a member." *Raulston v. Everett*, 561 S.W.2d 635 (Tex. Ct. App. 1978) (emphasis added).

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Analysis of Issues

Clifton Club is a beneficiary under the **Trust Deed** because it owns sub lots and the Developer conveyed the beach property expressly for the benefit of "owners of sub lots." Based on the **Lease**, the **Trust Deed**, and the **Clifton Club Deed**, the Developer granted rights to Clifton Club to use the beach in the context of its purpose as a social club. And as early as 1914, Ohio courts recognized and confirmed that "a large number" of Clifton Club members were not residents. *Wallace v. Clifton Land Co.*, 92 Ohio St. 349 (1915) (quoting the Ohio Court of Appeals decision). Thus, any rights afforded as a member of Clifton Club were based on club membership and not on one's status as a resident or lot owner.

The **Clifton Club Deed** evidences the intent that access to the beach was contemplated as a benefit to Clifton Club as a result of its purchase of its property. This is consistent with a century-old, unchallenged practice of Clifton Club using the beach as a benefit of membership, which is entirely consistent with the **Lease**, the **Trust Deed**, and the **Clifton Club Deed**. These documents do not suggest that Clifton Club members were ever *prohibited or restricted* from accessing the beach or that the Developer ever intended to limit Clifton Club or its members' use of the beach.

The beach was to be held for all sub lot owners, including Clifton Club when it became an owner. As a social club, there is no obvious way for Clifton Club to benefit from the beach other than to include it as an amenity to its members. Any restrictions to the contrary would have been made expressly clear. Based on the historical usage of the beach and the wording of the **Lease**, the **Trust Deed**, and the **Clifton Club Deed**, we believe that Clifton Club members are legally entitled to access the beach.

Conclusion

Clifton Club and its members are entitled to access the beach pursuant to the **Trust Deed** and the **Clifton Club Deed**. The position asserted by certain Clifton Park residents that non-resident Clifton Club members have no right to access the beach is contrary to Clifton Club's usage over the past century and does not have a basis in the **Trust Deed** or the **Clifton Club Deed**. For the Trustees to take these residents' position, the governing documents should be clear that Clifton Club members do not have such rights. But, to the contrary, those documents are entirely consistent with Clifton Club and its members having the legal right to access the beach as they have done over the past century.

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