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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
PROBATE DIVISION

ARTHUR P. DUECK, M.D., <i>et al.</i> ,)	CASE NO. 2018ADV234080
)	
Plaintiffs,	)	JUDGE ANTHONY J. RUSSO
)	
v.)	
	)	<u>PLAINTIFFS' MOTION FOR</u>
JOSEPH KERRIGAN, TRUSTEE, CLIFTON	)	<u>TEMPORARY RESTRAINING ORDER</u>
PARK TRUST, <i>et al.</i>,	)	<u>AND PRELIMINARY INJUNCTION</u>
)	
Defendants.)	

Pursuant to Rule 65 of the Ohio Rules of Civil Procedure, Plaintiffs Arthur P. Dueck, Paul A. Bjorn, Nancy Binder, and William Keller ("Plaintiffs") move this Court for a Temporary Restraining Order and Preliminary Injunction against Defendants Joseph Kerrigan, Mary Ellen Fraser, Robert Frost, Warren Coleman, and Ryan Meany ("Trustees"), which enjoins the Trustees from:

- (1) granting to the Clifton Club Members a right to use the Clifton Park Trust Property, including, but not limited to, Clifton Beach, without lot owner consent as required by the Trust;
- (2) granting the Clifton Club Members a permissive right to use the Clifton Park Trust Property, including the Beach and Beach Property, that is equal to the rights of any other individual Clifton Park Trust beneficiary without lot owner consent as required by the Trust;
- (3) enforcing Rules that grant the Clifton Club any more rights to Beach house reservations, parking guest passes, parking spaces, and/or picnic table reservations that is greater than any individual Clifton Park Trust beneficiary without lot

owner consent as required by the Trust; and

- (4) restricting the resident lot owner beneficiaries' use of the Beach in any manner beyond that required to remain consistent with the directive in the Clifton Park Trust that the Trust Property is for the sole and exclusive use in common by all of the lot owners.

The Trustees actions in regard to the 2018 Beach Season are breaches of their fiduciary duties as Trustees of the Clifton Park Trust. The grounds for this Motion are set forth more fully in the attached Memorandum in Support. A proposed entry is also submitted with this Motion for the Court's consideration.

Respectfully submitted,



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I. INTRODUCTION

Plaintiffs Arthur P. Dueck's, Paul A. Bjorn's, Nancy Binder's, and William Keller's Second Amended Complaint relies on the most basic of trust law propositions: the Defendant Clifton Park Trustees ("Trustees")¹ can act only within the power vested in them by the terms of the Clifton Park Trust ("Trust"). This case is based on the Trust's terms, the sole conveyor of rights to the beneficiaries of the Trust.

The Eighth District Court of Appeals has now decided that the members of The Clifton Club Company ("Club") who are not residents of Clifton Park ("Club Members") are not beneficiaries of the Trust, have no legal rights under the Trust, do not have equal or commensurate rights as the beneficiary lot owners, and that the Trust document is the sole conveyor of rights to beneficiaries. *Dueck v. Clifton Club Co.*, 8th Dist. Nos. 103868 and 103888, 2017-Ohio-7161, ¶¶ 1, 41, 67, 125-126, 130-131. Simply, the Eighth District stated that the pending question was "whether the nonresident Club Members are **direct Beneficiaries** under the Trust Deed ... arguably entitling them to **equal access and commensurate status** as the owner Beneficiaries." *Id.* ¶¶ 41 (emphasis added). The court unequivocally answered **NO**.

¹ The Defendants are Joseph Kerrigan, Mary Ellen Fraser, Robert Frost, Warren Coleman, and Ryan Meany.

Id. ¶¶ 125-126; *Id.* 130-131 (J. Gallagher concurring).

Despite these clear rulings, the Trustees have enacted rules for use of the Clifton Park Beach and related Beach Property (all Trust property to which only Clifton Park lot owners have a right of use) that give 224 Club Members equal rights of use, thereby granting the Club — a single beneficiary — 224 times the right of access that an individual resident lot owner beneficiary has. There is absolutely no authority in the Trust for the Trustees' actions — and they have not been able to point to any language giving them that authority despite repeated requests to do so. Instead, they have attempted to twist and contort the Court of Appeals' decision and the parties' briefing below to claim that they have the authority to grant any Club Member a permissive right of access — for the 2018 Beach Season — that is equal to the rights of access of lot owner beneficiaries without lot-owner consent. The Trust does not grant them such authority, and *Dicta* from a court of appeals decision cannot grant the Trustees authority. Their authority must be found in the Trust.

In effect, the rules and permissive rights given by the Trustees without authority make each of the Club Members functionally equivalent to a lot owner. The granting of such access and the enforcement of rules limiting the Clifton Park residential lot owners' ("Resident Beneficiaries") Beach use to accommodate the Club Members' use further impairs the Resident Beneficiaries' legally protected rights to use of the Beach. Such a position and action by the Trustees is a clear breach of the fiduciary duties to administer the Trust according to its terms, the duty of loyalty, and the duty of impartiality.

It is also beyond dispute that the Beach and Beach Property create a private 700-foot long Beach area that is a finite and unique resource on the shores of Lake Erie that only lot owners have a right to access and use. The Resident Beneficiaries of Clifton Park purchased their homes in part, at a significant premium, to obtain that exclusive right of access and enjoyment. The

Trustees' actions impair the Plaintiffs' and other residents' use for the 2018 Beach Season, and they cannot get that time back.

Accordingly, the Plaintiffs request an order enjoining the Trustees breaches of fiduciary duty as set forth in the conclusion and attached proposed order.

II. FACTUAL BACKGROUND

On March 25, 1912 the Clifton Park Land & Improvement Company ("CPLIC") conveyed parcels of land including a beach located in the Clifton Park Allotment ("Clifton Park") in Lakewood to five trustees to hold "for the common use of all the lot owners in [Clifton Park], and their successors in title, and members of their households" (the "Trust"). [Ex. A.] There are 204 lot owners in the Park, 203 of whom are Resident Beneficiaries and one is the Club, a social club with over 250 members, most of whom do not own lots in Clifton Park. The Trust does not mention the Club Members.

A. The Trust Property

The terms of the Trust are memorialized in a certain Deed of Trust dated March 25, 1912. [Ex. A.] The Trustees hold legal title to real property as set forth in the Trust together with certain fixtures, buildings, and other personal property (the "Trust Property"). The Trust Property includes a beach property in the northwest corner of Clifton Park at the entrance to the Rocky River from Lake Erie (hereinafter referred to as the "Beach"). The Trust Property at the Beach includes 50 picnic tables, a beach house building, a parking lot with approximately 75 parking spaces, and a sandy beach area about 700 feet long ("Beach Property"). [Ex. B, Ex. C.]² Only 15 picnic tables are actually placed along the sandy beach area. The road leading to the Beach is reduced to a single lane for use by both entering and exiting traffic when the Beach

² A true and accurate copy of an aerial photo of the Beach and Beach Property prepared by the Trustees and posted on the Trustees' website is attached as Exhibit "B." A true and accurate copy of Brochure describing the size of the Beach is attached as Exhibit "C."

Property is fully occupied. The Beach and Beach Property are a limited resource and unique property that was intended to be an exclusive benefit for the 204 lot owners in Clifton Park.

B. The Trustees' Powers and Duties Set Forth in the Trust Deed.

The Trust mandates that the Trustees hold Trust Property in trust for the sole use and benefit of the lot owners: “in trust, nevertheless, for the *sole use and benefit of all the owners* of sub lots or parts of lots, in the Clifton Park Allotment” [Ex. A (emphasis added).]

The Trust gives the Trustees the power and duty to maintain the Trust Property, including the Beach and Beach Property, only for the common use of the Trust beneficiaries: “shall 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.” [*Id.* (emphasis added).]

The Trustees' duties and power also include making regulations for the use of the Trust Property: “shall establish regulations for the use of ... private roads, lanes, *parks and bathing pavilion*; and generally *maintain* all of *said property* in good order and condition *for the use of lot owners* in said allotment.” [*Id.* (emphasis added).]

Significantly, the Trustees cannot convey any interest in the Trust Property or dedicate any portion of the Trust Property to public use, *i.e.*, any person who is not a beneficiary, without the unanimous consent of all the lot owners in Clifton Park: “[n]o part of said land shall be sold, conveyed or dedicated to public use without the unanimous consent of all the lot owners in said allotment.” [*Id.*] Stated differently, the Trustees' power to transfer any interest in or dedicate to public use any Trust Property is limited by the lot owners' rights to object to that action.

C. The Beneficiaries of the Trust

The Trust Deed is the sole source of authority for the Trustees, and it is the sole conveyor of legal rights to the beneficiaries. The Plaintiffs and other subplot owners in Clifton Park are the

sole legal beneficiaries in common under the Trust. *Dueck*, 2017-Ohio-7161, ¶ 125. The Club is a lot owner in Clifton Park pursuant to a deed dated July, 1, 1912 (the “Club Deed”). The Club Deed transferred title to the Club’s sublots, but it did not, and could not, convey any greater rights to the Trust Property than those that are set forth in the Trust Deed, because title to, and control of, the Trust Property was vested solely in the Trustees via the Trust Deed. [*Id.*]

D. The Eighth District Definitively States that Club Members Are Not Beneficiaries and Have No Legal Rights.

Club Members are not beneficiaries of the Trust. *Id.* ¶¶ 41, 126. The Club Members are not named in the Trust and have no legal rights. [Ex. A]; *Dueck*, 2017-Ohio-7161, ¶ 1. They have no rights under the Trust Deed. *Id.* ¶¶ 41, 125-126. The Trust Deed does not give them any right to use Trust Property. *Id.* And the Trust Deed does not contain any terms allowing Club Members to use the Beach. *Id.* ¶¶ 41, 125-126; *id.* ¶¶ 130-131 (J. Gallagher Concurring); [Ex. A]. Nor does the Trust Deed give the Trustees authority to allow, give, or grant Club Members rights to use Trust Property, including the Beach and Beach Property, unless the Clifton Park lot owners provide unanimous consent. [Ex. A.]

On August 10, 2017, the Eighth District Court of Appeals confirmed all of these conclusions:

- “After a thorough review of the record, we find that the nonresident members of the Clifton Club are not beneficiaries of the Trust and, as a result, have no legal rights.” *Dueck*, 2017-Ohio-7161, ¶ 1.
- “[I]n response to the declaration explicitly requested by appellants, we find that the Club Members have no legal right of access as Beneficiaries. Access by the Club Members is by permission and regulation of the Trustees.” *Id.* at ¶ 67.
- “Club Members are not equal or direct Beneficiaries of the Trust.” *Id.* at ¶ 126.
- “[T]he Club Members are not beneficiaries under the Trust Deed and, therefore, have no legal right to access the subject beach.” *Id.* at ¶ 130 (J. Gallagher Concurring).

- “The trust simply does not contain any language from which this court can reasonably conclude that the members of the Clifton Club share the same legal rights as the Clifton Club itself.” *Id.* ¶ 131 (J. Gallagher Concurring).
- “We determine that the *lot owners* are the *sole legal beneficiaries* of the Trust. The Clifton Club is a lot owner and thus a beneficiary. The *Trust Deed is the sole conveyor of legal rights to the beneficiaries*. The Club Deed transferred title to the Club Lots. The Club Deed did not, and could not, convey any greater rights to the Trust property than those that are set forth in the Trust Deed, because title to, and control of, the Trust property was vested solely in the Trustees via the Trust Deed.” *Id.* ¶ 125.

E. The Trustees Treat the Club Members Like Beneficiaries and Make the Club a Super Beneficiary.

The Beach is a limited resource that can be used for only half the calendar year. It offers only 50 picnic tables and 75 parking spots for the 204 Trust beneficiaries to use. [Ex. B.] The Beach Season is defined by the Trustees, and the Beach Season defines when beneficiaries can use the Beach and Beach Property. According to the Trustees’ rules and regulations (the “Rules”), the Beach Season is defined as May 1 to October 31 of the calendar year—184 days. [Ex. D.]³

As set forth in the Rules, the Trustees have given 224 Club Members, their families, and their guests permission to use the Beach and Beach Property for the 2018 Beach season. [Ex. D.] The Rules inequitably favor the Club to the detriment of the other Beneficiaries. The Trustees also treat each individual Club Member as an equal or direct beneficiary of the Trust because they gave an individual Club Member the same rights to use the Beach and Beach Property as any Resident Beneficiary. These actions violate the Trust’s terms.

In fact, the Rules do not distinguish between a Club Member and Resident Beneficiary as they are all collectively referred to as “Beach Members” in the Rules. The Trustees assert that in 2018, 224 Club Members have an equal right to use the Beach as the Rules state that “All

³ A true and accurate copy of the Trustees’ 2018 Clifton Beach Rules (“Rules”) is attached as Exhibit “D.”

[Beach] members in good standing, along with their immediate family members living in the residence of the member, may use the Beach facilities [*i.e.*, Beach and Beach Property].” [Ex. D, p. 4, bullet no. 2.]

Under the Rules, a **Resident Beneficiary** has the following rights:

- One family living in the residence of the beneficiary may use the Beach. [*Id.*]
- A Resident Beneficiary receives only two windshield stickers for using the parking spaces that are part of the Beach Property. Thus, a Resident Beneficiary can use only two parking spaces at a time. [*Id.*, bullet nos. 3-4.]
- A Resident Beneficiary without a Beach picnic table reservation or Beach house reservation is limited to four guests per household and no more. [*Id.*, bullet no. 8.]
- A Resident Beneficiary can have only two open Beach picnic table reservations. [*Id.*, p.5, **“Picnic Tables,”** bullet no. 6.]
- A Resident Beneficiary can have only two open Beach house reservations. [*Id.*, p.6, bullet no. 2.]

Likewise, under the Rules, a **Club Member** has been given the same rights as a Resident Beneficiary by the Trustees:

- One family living in the residence of the Club Member may use the Beach. [Ex. D, p. 4, bullet no. 2.]
- Each Club Member also receives from the Trustees two windshield stickers for using the parking spaces that are part of the Beach Property. Thus, each Club Member can use two parking spaces at a time. [*Id.*, bullet nos. 3-4.]
- Each Club Member who does not have a Beach picnic table reservation or Beach house reservation is given a right to have four (4) guests per household. [*Id.*, bullet no. 8.]
- Each individual Club Member is given the right to have two open picnic table reservations at one time. [*Id.*, p.5, **“Picnic Tables,”** bullet no. 6.]
- Each individual Club Member is given a right to have two open Beach house reservations at one time. [*Id.*, p.6, bullet no. 2.]

It is clear that the Rules apply equally to a Resident Beneficiary's use and a Club Member's use without distinction. Thus, there is no difference between a Club Member and a Resident Beneficiary in terms of rights to access and use the Beach and Beach Property.

As a result, under the Rules, the **Club** has been given the following super rights by the Trustees:

- The Trustees allow the Club to have 224 families living in the residence of each Club Member, none of whom have any legal rights under the Trust, to use the Beach Property.
- The Club receives from the Trustees 448 (224 x 2 cars per Club Member) windshield stickers for using the parking spaces that are part of the Beach Property and, thus, can use all of the approximately 75 available parking spaces at a given time.
- The Club has the right to have 448 open picnic table reservations at any given time (224 x 2 open picnic table reservations per Club Member).
- The Club is also guaranteed up to 40% of the available picnic table reservations daily, while a Resident Beneficiary has access to only one of the available picnic table reservations daily. [Ex. D, p.5, "**Picnic Tables**" bullet no. 3.]
- The Trustees have given the Club the right to have 448 open Beach house reservations at any given time (224 x 2 open Beach house reservations per Club Member).⁴
- The Club receives a right from the Trustees to have 896 guest passes (224 x 4 guest passes per Club Member household) for use on the Beach on a daily basis during the 2018 Beach season.

These Rules regulating the use of Trust Property—Beach and Beach Property— (a) grant each individual Club Member a right to use the Trust Property that is equal to the rights of an individual Resident Beneficiary to the use the Trust Property, and (b) grant the Club rights to use the Trust Property that are far greater than any individual Resident Beneficiary in Clifton Park—in fact 224 times greater. [*Id.*] The Trustees assert that the basis for their authority to grant such rights to the Club Members and the Club is in the Trust—although they have never set forth what

⁴ Given that there are only 175 available days for a Beach House reservation under the Rules, the Club has been granted the right to reserve the Beach House for the entire Beach season.

language gives such authority—and paragraphs 59 and 40 of the Eighth District Court of Appeals opinion. [Ex. E.]⁵

F. The Trustees Enforce Rules Which Restrict the Resident Beneficiaries' Use and Enjoyment of the Beach

The Trustees limit the Resident Beneficiaries to two open picnic table reservations. In the past, the Resident Beneficiaries were allowed to have three open picnic table reservations. But when overcrowding occurred, which was caused by excessive Club Member users, the Resident Beneficiaries had their number of available open reservations reduced to accommodate that increased Club Member use.

The Trustees limit the Resident Beneficiaries to two parking stickers. In the past, the Resident Beneficiaries were allowed to have stickers for all cars registered at their home. But when overcrowding occurred, which was caused by excessive Club Member users, the Resident Beneficiaries had their number of parking stickers reduced to two to accommodate that increased Club Member use.

The Trustees limit the Resident Beneficiaries to ten persons per picnic table. In the past, the Resident Beneficiaries were allowed 15. But when overcrowding occurred, which was caused by excessive Club Member users, the Resident Beneficiaries had their number of persons per picnic table reduced to ten to accommodate that increased Club Member use.

The Trustees allow 224 Club Members access to use up to 40% of the picnic tables. [Ex. D, p. 5 “**Picnic Tables**,” bullet no. 3.] That allowance deprives lot owners of their ability to use 40% of the limited Beach Property, to which the Trust grants them exclusive use. Further, as the Trustees’ Rules allow Club Members to reserve up to 40% of each of two picnic table areas [*id.*,

⁵ A true and accurate copy of the Trustees’ counsel’s letter to the Plaintiffs’ counsel, dated April 24, 2018, but not sent until April 29, 2018 is attached as Exhibit E. The preceding correspondence between these parties is attached as Exhibits F, G, H, I, and J.

bullet nos. 2-3], the rules effectively permit the Club Members to occupy 13⁶ of the 15 Beach front tables, depriving the lot owners of the almost all of the prime table locations.

III. LAW AND ARGUMENT

To obtain a temporary restraining order or preliminary injunction, Plaintiffs must demonstrate: (1) a likelihood of success on its claims in their Complaint; (2) a threat of irreparable harm from the Trustees' breaches of fiduciary duties; (3) that third parties will not be unjustifiably harmed by injunctive relief; and (4) that the public interest will be served by an order of injunctive relief. *Franks v. Rankin*, 10th Dist. Franklin No. 11AP-962, 2012-Ohio-1920, ¶¶ 28, 36; *Mike McGarry & Sons, Inc. v. Gross*, 8th Dist. No. 86603, 2006-Ohio-1759, ¶¶ 10-11. While no one factor is dispositive, courts should focus on weighing the equities between the parties. *Id.* Here, Plaintiffs are likely to succeed on the merits, and the equitable considerations favor an injunction against the Trustees.

A. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.

Plaintiffs have asserted claims for breaches of the Trustees' fiduciary duties. They are likely to succeed on the merits of their claims for breach of fiduciary duty. To prove a breach of fiduciary duty, a plaintiff must show the "existence of a duty on the part of the alleged wrongdoer not to subject such person to the injury complained of, a failure to observe such duty, and an injury proximately resulting therefrom." *KeyBank Nat'l Ass'n v. Thalman*, 8th Dist. No. 102624, 2016-Ohio-2832, ¶ 20 (quoting *All Star Land Title Agency, Inc. v. Surewin Inv., Inc.*, 8th Dist. Cuyahoga No. 87569, 2006-Ohio-5729, ¶ 36). Plaintiffs have pled that the Trustees have breached their fiduciary duties (1) to administer the trust in good faith and according to its

⁶ The Rules apply the 40% guarantee to picnic table Nos. 1-34 (identified by the Trustees as the "west side tables"). The west side tables include the 15 available Beach front tables. With this 40% guarantee, the Club Members get a right to use at least 13 of 34 available west side tables (13/34 equals 38%). Thus, the Club Members have the right to take 13 of 15 Beach front table reservations.

terms and purposes and the interests of the beneficiaries (R.C. 5808.01); (2) of loyalty (R.C. 5808.02); and (3) of impartiality in managing the trust property (R.C. 5808.03).

1. **The Trustees Breached the Duty to Administer the Trust According to Its Terms and Duty of Loyalty**

“[T]he powers and duties of a trustee are controlled by the terms of the trust instrument.” *Daloia v. Franciscan Health Sys.*, 1997-Ohio-402, 79 Ohio St. 3d 98, 102; *In re Trust of Brooke* (1998), 82 Ohio St.3d 553, 557, 1998 Ohio 185, 697 N.E.2d 191 (same); *see also Estate of Southard v. United States*, No. 2:05-cv-416, 2007 U.S. Dist. LEXIS 60957, at *15 (S.D. Ohio Aug. 20, 2007) (“As the Ohio Supreme Court held in *Daloia* ... the powers of a trustee are confined by the terms of the trust itself.”) While trustees have some discretion, they cannot act to frustrate the manifest intent of the settlor, which is ascertained from the unambiguous terms of the Trust. *Id.* (citing *Biles v. Webb*, 118 Ohio St. 346, 356, 161 N.E. 49 (1928); *Daloia*, 79 Ohio St. 3d at 103; *Domo v. McCarthy*, 66 Ohio St.3d 312, 314, 612 N.E.2d 706 (1993)). That is why “a trustee’s authority over the trust property is defined and limited by the instrument creating the trust, and he should be strictly guided by its provisions, and should pursue his power strictly.” *Biles*, 118 Ohio St. at 356.

Likewise, the duty of loyalty requires the Trustees to administer the Trust solely in the interests of the beneficiaries. R.C. 5808.02; *Cassner v. Bank One Trust Co., N.A.*, 10th Dist. No. 03AP-1114, 2004 Ohio 3484, at ¶ 28 (citing, Restatement of the Law 2d, Trusts (1959), Sections 169-177). This is the “most fundamental [of the Trustees’] duty.” *Dejaiffe v. KeyBank USA Nat’l Ass’n*, 2006-Ohio-2919, ¶ 28 (quoting *Pegram v. Herdrich*, 530 U.S. 211, 224 (2000)). Accordingly, the Trustee must display “complete loyalty to the interests of the beneficiary” when administering the Trust and “must exclude ... all consideration of the interests of third persons.” *Id.* (explaining Bogert, Law of Trusts and Trustees § 543 (2 Ed.Rev. 1980)).

Here, the terms of the Trust clearly confine the Trustees' authority to holding and maintaining trust property for the sole benefit of the Clifton Park lot owners and their common use and prohibit the Trustees from selling, conveying, or dedicating the land to public use without the unanimous consent of all Clifton Park lot owners. [Ex. A.] Nowhere are Club Members mentioned or given a right to use any Trust Property—which has already been decided by the Court of Appeals—and the Trustees have no authority under the Trust to grant them access. *Dueck*, 2017-Ohio-7161, ¶¶ 1, 67, 125-126, 130-131. Thus, the terms of the Trust alone prohibit the Rules implemented by the Trustees and their grant of Beach access to 224 Club Members.

Consistent with those terms, the duty of loyalty also dictates that the Trustees administer and manage the use of the Trust Property, including the Beach and Beach Property, solely in the interest of the lot owners—203 individual Resident Beneficiaries and the Club. Contrary to that duty, the Trustees have made clear that they made the Rules to protect the enjoyment of both beneficiaries and non-beneficiary Club Members. [See generally Ex. D; e.g., *id.*, p.4 (“Clifton Beach is maintained by the Clifton Park Trustees for use by Clifton Park property owners, *certain members of the Clifton Club* and Clifton Lagoon property owners (collectively, the ‘Beach Members’)” (emphasis added).] Confirming the breach, on March 1, 2018, The Trustees published that they “preserve and maintain” the Trust Property for the “*benefit* of Clifton Park lot owners *and a segment of Clifton Club members*.” [Ex. K (emphasis added).]⁷ In fact, they describe preservation and maintenance of the Trust Property as part of “Trustees’ Responsibilities.” [*Id.*]

⁷ A true and accurate copy of the Trustees' March 1, 2018 correspondence to the Trust beneficiaries is attached as Exhibit K.

To the contrary, the Trust has already been interpreted to mean that the Trust Property is held solely for the benefit of the Clifton Park lot owners – not the Club Members. The Court of Appeals “construe[d] the pending question to be whether the nonresident Club Members are direct Beneficiaries under the Trust Deed ... arguably entitling them to equal access and commensurate status as the owner Beneficiaries” *Dueck*, 2017-Ohio-7161, ¶ 41. The Court of Appeals’ answer was no. *Id.* at ¶¶ 1, 1, 67, 125-126, 130-131. The Court of Appeals expressly ruled that the Club Members were not “direct or equal beneficiaries” and had “no legal rights.” *Id.* at ¶¶ 1, 125-126. That was the only question presented to this Court in the prior case and to the Court of Appeals. Yet, the Trustees have created Rules and given the Club Members access for the 2018 Beach Season that grants the Club Members equal access and, in effect, commensurate status as the Resident Beneficiaries. [Ex. D, Ex. K.] Under the Rules, there is absolutely no difference in being a Club Member and a Resident Beneficiary. This confirms that the Trustees are maintaining and managing the Trust Property and setting rules by considering the interests of the third-party, non-beneficiary Club Members. [See Ex. D; Ex. K.] That is a clear breach of their fiduciary duty of loyalty. Accordingly, Plaintiffs are likely to succeed on the merits of showing that the Trustees breached their fiduciary duties.

2. The Trustees Breached Their Duty of Impartiality

R.C. 5808.03 clearly states that “[i]f a trust has two or more beneficiaries, the trustees shall act impartially in ... managing ... the trust property, giving due regard to the beneficiaries’ respective interests.”

The duty to act impartially does not mean that the trustee must treat the beneficiaries equally. Rather, the trustee must treat the beneficiaries equitably in light of the purposes and terms of the trust. A settlor who prefers that the trustee, when making decisions, generally favor the interests of one beneficiary over those of others should provide appropriate guidance in the terms of

the trust. See Restatement of the Law 2d, Trusts, Section 183 (1959).

Id. (Official Cmt., Uniform Trust Code Section 803). “In managing real estate ... held in the trust estate, impartiality is important in matters ranging from decisions concerning leasing to third parties or allowing one or more beneficiaries the use of Trust property.” Restatement of the Law 3d, Trust, Section 79, cmt. c.

Here, the Trustees have breached their duty of impartiality. The purpose of the Trust is clear, to preserve and maintain the Trust Property so all beneficiaries can enjoy the Beach in common. *Dueck*, 2017-Ohio-7161, ¶ 66. Indeed, there is no language indicating that the Trustees should prefer one beneficiary over the other; rather, its express terms mandate “common” (or equal)⁸ use. [Ex. A.] But that is exactly what the Trustees have done here. They have preferred the Club’s access over the Resident Beneficiaries. First, the Trustees granted the Club super-beneficiary status by allowing the Club 224 times the access of a single Resident Beneficiary – that is: (i) 224 families for the Club v. one family for a Resident Beneficiary, (ii) 448 parking passes v. 2 parking passes, (iii) 448 open picnic table reservations v. 2 open picnic table reservations, (iv) 448 open Beach house reservations v. 2 open Beach house reservations, and (v) 896 guest passes v. four guest passes. And, the Trustees have continued to enforce rules on the Resident Beneficiaries that limit the Resident Beneficiaries’ picnic table group size, number of open reservations, number of parking stickers per household and that increased the Resident Beneficiaries’ cost per guest for Beach house reservations. These limitations were enacted to accommodate the increased Club Member use to the detriment of the Resident Beneficiaries.

⁸ A court presumes that the settlor used the words in the trust “according to their common, ordinary meaning.” *Poston v. Schuster*, 6th Dist. No. H-07-037, 2008-Ohio-2085, ¶ 8. “Common” means “belonging to, shared by, or apply equally.” Webster’s II New Riverside Univ. Dict. P.297 (1988); cf. *Herrle v. Herrle*, 9th Dist. No. 1337, 1984 Ohio App. LEXIS 11427, *3-4 (Sep. 27, 1984) (“As a tenant-in-common with Mr. Herrle of the marital residence, Mrs. Herrle had a right of equal use and possession of the premises as of June 1, 1981.”)

B. Plaintiffs Will Suffer Irreparable Harm Absent a Temporary Restraining Order and Have No Adequate Remedy at Law.

Unless the Trustees are enjoined from their breach of fiduciary duties identified herein, Plaintiffs will suffer irreparable harm. “[A] showing of irreparable harm requires proof of actual irreparable harm or the existence of an actual threat of such injury.” *DK Prods., Inc. v. Miller*, 12th Dist. Warren No. CA2008-05-060, 2009-Ohio-436, ¶ 13 (internal citations, quotation marks omitted). Courts have generally recognized that depriving one of their rights to use and access real property constitutes irreparable harm. *Telle v. Perkins*, No. 14 CV 4647, 2015 Ohio Misc. LEXIS 12963, at *7 (Franklin Cnty. Ct. Com. Pl. Feb. 12, 2015) (finding that lost use of limited and “unique” stable that plaintiff specifically chose meant he would “suffer more damages than just the cost to board his horses elsewhere,” *i.e.*, irreparable harm); *see, e.g., D.B. Indy, L.L.C. v. Talisman Brookdale L.L.C.*, No. 04-1023 (PAM/RLE), 2004 U.S. Dist. LEXIS 3300, *8 (D. Minn. Mar. 4, 2004) (“despite Harold Pener’s valid lease to occupy the property, it has been denied access. Harold Pener has a vested interest in the leased premises. The Court finds that Harold Pener will suffer irreparable harm absent the issuance of the injunction it seeks.”); *Johnson v. United States Dep’t of Agriculture*, 734 F.2d 774, 789 (11th Cir. 1984) (“irreparable injury is suffered when one is wrongfully ejected from his home. Real property and especially a home [are] unique.”)

There is no dispute that the Beach is a private, unique beach on Lake Erie that is to be maintained solely for the benefit of the Clifton Park lot owners. [Ex. A.] Likewise, there is no dispute that the Beach Property is a unique benefit afforded to lot owners in Clifton Park. Indeed, the Resident Beneficiaries pay substantially more for their homes and annual real estate taxes to obtain the benefit of having access to and using the Beach and Beach Property.

Because the Trustees have established the Rules which directly limit the Resident Beneficiaries' use of the Beach and made the Club Members functionally a Trust beneficiary with the same access that displaces the Resident Beneficiaries' ability to use the Beach thereby indirectly limiting Resident Beneficiaries use of the Beach, they have obstructed the Resident Beneficiaries' access. Further, by making the Club a super-beneficiary and giving 224 Club Members access of up to 40% of certain limited Beach resources, the Plaintiffs' access and other Resident Beneficiaries' access and use of Beach Property has been impeded. The 2018 Beach Season is limited to 184 days (half the year). There will be only one 2018—including, only one 2018 Memorial Day, July 4, and Labor Day. By further diluting the Plaintiffs and other Resident Beneficiaries rights to use the Beach and Beach Property by giving the Club more access and rights than it is entitled to under the Trust and adding 224 additional beneficiaries, while restricting the Resident Beneficiaries' use of the Beach, the time lost in 2018 from being barred from using the Beach Property cannot be regained, and the injury is a certain, serious and direct harm. Accordingly, Plaintiffs should not have to lose the 2018 Beach Season before being entitled to relief from irreparable harm.

C. A Balancing of the Equities of the Parties and Third Parties Favors Plaintiffs.

Neither the Trustees nor any third parties will be harmed by the granting of an injunction. The Plaintiffs seek regulation of the use and access of the Trust Property that is faithful to the Trust and the August 10, 2017 Eighth District Order. The Trustees and Club have entered an agreement making the Club Members *de facto* beneficiaries and giving the Club super user status after the binding Eighth District Order was entered. Injunctive relief will prevent the Trustees from interfering with the Plaintiffs' rights, as beneficiaries under the Trust, to common use of the

Beach until the parties' dispute is resolved by litigation. Thus, the Trustees and Club will suffer no harm from the granting of an injunction.

Additionally, any harm that Trustees (or Club) may claim to suffer—and there is none—would merely be the result of the Trustees' misconduct. The Trustees (and the Club) knew that the Court of Appeals ruled that the Club Members were not beneficiaries of the Trust, had no direct or equal rights, and had no legal rights under the Trust, yet they chose to enter an access agreement giving 224 Club Members and their families and guests—in fact 21 more families than the Resident Beneficiaries—equal access as if they were beneficiaries of the Trust. “The self-inflicted nature of any harm suffered by the wrongdoer weighs heavily in favor of granting injunctive relief.” *Merrill Lynch v. Napolitano*, 85 F. Supp. 2d 491, 498 (E.D. Pa. 2000).

Finally, injunctive relief will protect third parties, including the other 199 Resident Beneficiaries whose rights of access are damaged by the Trustees' breaches of fiduciary duty.

D. The Public Interest Favors a Temporary Restraining Order.

The enforcement of valid agreements and the prevention of improper breaches of those agreements are in the public interest. *Blakeman's Valley Office Equip., Inc. v. Bierdeman*, 152 Ohio App. 3d 86, 93 (2003) (preserving the sanctity of contractual relations has traditionally been in the public interest.) Likewise, stopping a trustee's breach of fiduciary duty is a matter of public policy. *See Alotech Ltd. L.L.C. v. Barnes*, 8th Dist. No. 1043892017-Ohio-5569, ¶ 24. Moreover, as discussed above, injunctive relief will guarantee that the Resident Beneficiaries' rights will not be disturbed by the Trustees' refusal to follow the terms of the Trust. By granting injunctive relief in this case, the public interest will be served.

E. No Bond or a Nominal Bond Should Be Required.

Pursuant to Rule 65 of the Ohio Rules of Civil Procedure, the Court has the authority to require a bond, but has discretion to limit the bond to a nominal amount or to require no bond at

all. Any potential burden to Trustees as a result of the Court's order is directly due to their own intentional acts and omissions for choosing to breach their fiduciary duties. Therefore, Plaintiffs respectfully request that this Court require it to submit no bond, or at most, a nominal bond.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an order (1) enjoining the Trustees from granting to the Club Members a right to use the Trust Property without lot owner consent as required by the Trust, (2) enjoining the Trustees from granting the Club Members a right to use the Trust Property, including the Beach and Beach Property, that is equal to the rights of any other individual Trust beneficiary without lot owner consent as required by the Trust, and (3) enjoining the Trustees from enforcing Rules that grant the Club any more rights to Beach house reservations, parking guest passes, parking spaces, and/or picnic table reservations that is greater than any individual Trust beneficiary without lot owner consent as required by the Trust, (4) enjoining the Trustees from enforcing rules restricting the Resident Beneficiaries' use of the Beach in a manner beyond that which is consistent with the directive in the Trust that the Trust Property is for the sole and exclusive use in common by all of the lot owners. A proposed order is attached.

Respectfully submitted,



Dennis R. Rose (0039416)

Casey J. McElfresh (0088083)

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Cleveland, Ohio 44114

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E-mail: drrose@hahnlaw.com

cmcfresh@hahnlaw.com

OF COUNSEL:

HAHN LOESER & PARKS LLP

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction was sent via overnight mail for Saturday delivery, on this 11th day of May, 2018, upon the following parties:

Joseph Kerrigan, Trustee
Clifton Park Trust
18181 Clifton Road
Lakewood, Ohio 44107
Defendant

Mary Ellen Fraser, Trustee
Clifton Park Trust
1124 Forest Road
Lakewood, Ohio 44107
Defendant

Robert Frost, Trustee
Clifton Park Trust
18126 West Clifton Road
Lakewood, Ohio 44107
Defendant


Warren Coleman, Trustee
Clifton Park Trust
18136 Clifton Road
Lakewood, Ohio 44107
Defendant

Ryan Meany, Trustee
Clifton Park Trust
1104 West Forest Road
Lakewood, Ohio 44107
Defendant

In addition, I certify that a copy of the foregoing Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction was sent via email and regular mail, sufficient postage prepaid, on this 11th day of May, 2018, upon the following:

William D. Kloss, Jr., Esq.
(wdklossjr@vorys.com)
Karen M. Moore, Esq.
(kmmoore@vorys.com)
John R. Conley, Esq.
(jrconley@vorys.com)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43216

Attorneys for Defendants Joseph Kerrigan, Mary Ellen Fraser, Robert Frost, Warren Coleman, and Ryan Meany



Dennis R. Rose, One of the Attorneys for Plaintiffs

PROPOSED

ORDER

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
PROBATE DIVISION

ARTHUR P. DUECK, M.D., ET AL.)	
)	
Plaintiffs,	)	CASE NO: 2018ADV234080
)	
v.	)	JUDGE: ANTHONY J. RUSSO
)	
JOSEPH KERRIGAN, TRUSTEE, CLIFTON	)	<u>(PROPOSED)</u>
PARK TRUST, ET AL.)	
	)	<u>ORDER GRANTING PRELIMINARY</u>
Defendants.	)	<u>INJUNCTION</u>
)	

This matter came to be heard by the Court pursuant to Plaintiffs Arthur P. Dueck's, Paul A. Bjorn's, Nancy Binder's, and William Keller's ("Plaintiffs") Motion for Temporary Restraining Order and Preliminary Injunction and its accompanying Memorandum in Support. The Court finds that Plaintiffs have complied with Rule 65 of the Ohio Rules of Civil Procedure and that this Temporary Restraining Order is issued with adequate notice under the circumstances. The Court, having considered Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum in Support and relevant responses, further finds that Plaintiffs' Motion is well taken.

The Court further finds that Plaintiffs have established a likelihood of success on the merits of their claims for breaches of the Defendants Joseph Kerrigan's, Mary Ellen Fraser's, Robert Frost's, Warren Coleman's, and Ryan Meany's ("Trustees") fiduciary duties.

The Court further finds that Plaintiffs have established irreparable harm of their rights as beneficiaries of the Clifton Park Trust and rights to use the Clifton Park Beach for the 2018 Beach season.

The Court further finds that the balance of equities favors Plaintiffs and that the public interest is served by the enforcement of the Clifton Park Trust.

WHEREFORE, IT IS HEREBY ORDERED AND DECREED THAT:

The Trustees are enjoined from doing the following with respect to the Clifton Park Beach and Clifton Park Trust Property:

- (1) granting to the Clifton Club Members a right to use the Clifton Park Trust Property, including but not limited to Clifton Beach, without lot owner consent as required by the Trust;
- (2) granting the Clifton Club Members a permissive right to use the Clifton Park Trust Property, including the Beach and Trust Property, that is equal to the rights of any other individual Clifton Park Trust beneficiary without lot owner consent as required by the Trust;
- (3) enforcing Rules that grant the Clifton Club any more rights to Beach house reservations, parking guest passes, parking spaces, and/or picnic table reservations that is greater than any individual Clifton Park Trust beneficiary without lot owner consent as required by the Trust; and
- (4) restricting the resident lot owner beneficiaries' use of the Beach in any manner beyond that required to remain consistent with the directive in the Clifton Park Trust that the Trust Property is for the sole and exclusive use in common by all of the lot owners.

This Order shall remain in full force and effect until the Court rules on a permanent injunction after a hearing on the matter. This Court shall retain jurisdiction to enforce this Order. No bond or security is required to be posted by Plaintiff.

IT IS SO ORDERED.

Dated: August ____, 2017

JUDGE ANTHONY J. RUSSO

EXHIBIT A

hands and seal the twenty fifth (25") day of March in the year of our Lord one thousand nine hundred and twelve (1912).

Signed, Sealed, Acknowledged and Delivered) John W. Tyler (Seal)
in presence of) Mary E. Tyler (Seal)
Marie S. Tyler Augustus Zehring)

The State of Ohio,) Before me, a Notary Public in and for said County, personally appear-
Cuyahoga County, ss.) ed the above named John W. Tyler and Mary E. Tyler, who acknowledged
that they did sign and seal the foregoing instrument and that the same is their free act and
deed. In testimony whereof, I have hereunto set my hand and official seal at Cleveland, O. this
twenty fifth (25") day of March A.D. 1912.

Transf'd Mar. 26, 1912.) Augustus Zehring { Notarial Seal
Rec'd Mar. 26, 1912, at 2:39 P.M.) Notary Public. { Cuyahoga County
Recorded Mar. 27, 1912.) Ohio
Fee for record \$1.00.) Paul Schreiner, Recorder.

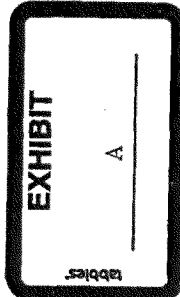
599375. The Clifton Park Land & Imp. Co. To F. C. Case et al, Trs.
Know all men by these presents, That The Clifton Park Land & Improvement Company, the grantor,
for divers good causes and considerations thereunto moving, and especially in consideration of
the covenants and agreements entered into by said company with the several owners of lots and
lands in its allotment herein described, and further for the sum of One Dollar (\$1.00) receiv-
ed to its full satisfaction of F. C. Case, Lucien B. Hall, F. A. Clidden, E.E. Adams, and F.B.
Anderson, Trustees, has given, granted, remised, released and forever quit claimed, and does
by these presents absolutely give, grant, remise, release and forever quit claim unto said
grantees, and their successors in trust or assigns, and the survivors or survivor of them,
and the heirs of such survivor, forever, all such right and title as the said grantor has or
ought to have in the following described pieces and parcels of land, situated in the City of
Lakewood, County of Cuyahoga and State of Ohio, and being the parts and parcels of land in
the grantor's said allotment, or lying adjacent thereto, which have been reserved for the use
and benefit of the owners of land in said allotment, and described as follows, viz: (1) The
three triangular parcels designated as "Reserved M", "Reserved N", and "Reserved O", on the
map of the allotment of Clifton Park as the same is recorded in the Map Records of Cuyahoga
County, volume 29, Page 11; reserving, however to the grantor the right at any time within
one year from this date to remove from said parcel marked "Reserved O" the earth and other
material piled thereon to a level not lower than the street curb line bounding said parcel.
Also the Shelter House standing in Clifton Road at the entrance to the Park. (2) All that part
of Blocks A and B in said Clifton Park Allotment above referred to, lying westerly from the 10
foot strip of land through said Block B, which was designated as a right of way connected with
the overhead crossing over the tracks of The New York, Chicago & St. Louis Railroad, and ded-
icated by said The Clifton Park Land & Improvement Company in a map and dedication of Sloan
Subway and other lands, as shown by the plat of said dedication upon the Map Records of Cuy-
ahoga County Volume 30, page 7; excepting from said Block A all that portion heretofore convey-
ed by The Clifton Park Land & Improvement Company to The American Construction Company by a
deed recorded in Cuyahoga County Records Volumes 1158, Page 598, subject to the right of way
for Sloan Subway, as designated on said subway map in volume 30, page 7, above referred to.
(3) The strip of land 8 feet in width extending from Clifton Road to Forest Road between sub
lots 116 and 117 and 94 and 95, and between Forest Road and Lake Road between sub lots 75 and
76 and 59 and 60, designated as "Shady Lane--private right of way," on the map of said Clifton
Park Allotment. (4) A right of way or footpath from Lake Road westerly to the land described
herein as Parcel 7, in common with the owners of sub lots 32 and 33, over and across said
sub lots as set forth in the grant of said right of way to The Clifton Park Land & Improvement
Company, et al., from Fannie W. Baker and Olive C. W. Wigmore which is recorded in Cuyahoga

See Case
Vol. 1302
15772/351

For Clifton
Map Records
Vol. 29 - 317
49 - 318
49 - 319

See Map Vol. 30 - 41
1296 - 41

See Vol. 7822 - 33
"Map" 15 - 4949



County Records, Volume 1198, Page 279. 5. All of sublots 13 and 14 in said Clifton Park allotment, having a frontage of 200 feet on Lake Road, and extending back northerly to Lake Erie, as shown by the recorded plat of said allotment in Volume 29 of Maps, Page 11, Cuyahoga County Records. 6. Part of Section Number 23 in the Township of Rockport, bounded as follows: Beginning at an iron pipe set in the northerly line of land conveyed to Franc C. Stowe by deed recorded in Volume 807 of Deeds, page 127 Cuyahoga County Records, at the intersection thereof, with the westerly curved line of Beach Road, a private road 25 feet in width; thence north 69° 36' 30" east along the extension easterly of said northerly line of lands so deeded to Franc C. Stowe, 25.22 feet to a point in the westerly line of sub lot number 37 in The Clifton Park Land & Improvement Company's allotment, recorded in Volume 29 of Maps, Page 11, Cuyahoga County Records; thence southerly 91.90 feet along a curved line deflecting to the left and having a radius of 432.45 feet and being the westerly line of sub lots numbers 37 and 38 in said allotment, to a stone monument; thence southeasterly along a curved line deflecting to the left and having a radius of 283.37 feet and being the southwesterly line of sub lots numbers 38 and 39 in said allotment, to the intersection of said curved line with the westerly line of "Reserved Parcel M" in said allotment; thence southwesterly along the westerly line of said "Reserved Parcel M" to the most northerly corner of sub lot number 42 in said allotment; thence northerly parallel with and 25 feet distant from the southwesterly line of sub lots numbers 39, 38 and 37, to the place of beginning. 7. Known as being part of Section number 23 in the township of Rockport, bounded as follows: Beginning at a point in the westerly line of sub lot number 37 in The Clifton Park Land & Improvement Company's allotment recorded in Volume 29 of maps, page 11, Cuyahoga County Records, where said line is intersected by the extension easterly of the northerly line of land conveyed to Franc C. Stowe, by deed recorded in Volume 807, Page 127, Cuyahoga County Records of Deeds; thence northerly along the westerly line of sub lots numbers 37 and 36 in said allotment, 177.16 feet, (being a curved line deflecting to the right and having a radius of 432.45 feet, and a chord which bears north 0° 50' west 175.95 feet) to an iron pipe at a point of reverse curvature; thence northerly along the westerly line of sub lots numbers 36, 34, 33 and 32 in said allotment 455.10 feet (being a curved line deflecting to the left and having a radius of 825.11 feet and a chord which bears north 5° 19' 55" west 458.88 feet) to an iron pipe at the northwesterly corner of said sub lot number 32; thence northerly along the westerly line of sub lot Number 31 in said allotment 60.17 feet (being a curved line deflecting to the left and having a radius of 155.72 feet, and a chord which bears north 32° 20' 30" west 59.79 feet) to a gas pipe at an angle in the line of said sub lot Number 31; thence north 16° 18' east along the westerly line of said subplot 77.85 feet to a stone monument; thence north 69° 32' east along the line of said sub lot 20 feet to the southwesterly corner of a parcel of land deeded by The Clifton Park Land & Improvement Company to Anna Y. Morgan by deed recorded in Volume.. of Deeds, page.. Cuyahoga County Records; thence north 4° 8' east along the westerly line of lands so deeded to Anna Y. Morgan to the water's edge on the shore of Lake Erie; thence westerly along the water's edge on the southerly shore of Lake Erie to the water's edge on the easterly shore of Rocky River; thence southerly along the water's edge on the easterly side of Rocky River to the northerly line of land deeded to Franc C. Stowe as aforesaid from which point a stone monument in the northerly line of said Franc C. Stowe's land bears north 69° 36' 30" east 23.09 feet; thence north 69° 36' 30" east along the northerly line of lands so deeded to Franc C. Stowe 173.09 feet to a stone monument; thence continuing said course along the northerly line of lands so deeded to Franc C. Stowe 100.84 feet to a stone monument; thence continuing said course along the northerly line of lands so deeded to Franc C. Stowe 109.18 feet to an iron pipe at the intersection of said northerly line of lands so deeded to Franc C. Stowe with the westerly curved line of Beach Road, a private road; thence continuing said course in an extension easterly of the northerly line of lands so deeded to Franc C. Stowe 25.22 feet to the beginning. But excepting from the above described land a parcel of land described as follows: Beginning at a stone monument which shall be called the prin-

See map
Vol 87
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See map
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693
695
697
699

cipal place of beginning and which principal place of beginning is found by running the following course: beginning at a stone monument set in the northerly line of land deeded to Franc C. Stowe as aforesaid at a point distant south 69° 36' 30" west 109.18 feet from a gas pipe in the northerly line of land so deeded to Franc C. Stowe at its intersection with the westerly curved line of Beach Road, a private road 25 feet in width; thence north 12° 57' 30" west 209.92 feet to said principal place of beginning; thence south 77° 02' 30" west 12.50 feet to a point; thence southerly and westerly 265.12 feet along a curved line deflecting to the right and having a radius of 155 feet and a chord which bears south 36° 02' 30" west 233.96 feet; thence northwesterly 86.14 feet along a curved line deflecting to the right, having a radius of 97.905 feet and a chord which bears north 69° 45' 7 1/2" west 83.39 feet; thence north 44° 32' 45" west 415 feet to a point; thence south 45° 27' 15" west 71.61 feet to the water's edge on the easterly side of Rocky River; thence north 47° 08' west along the water's edge on the easterly side of Rocky River 111.82 feet; thence north 56° 22' west along the water's edge on the easterly side of Rocky River 112.49 feet; thence north 45° 27' 15" east 252.75 feet to a point from which a stone monument set in the ground bears south 77° 02' 30" west 91.64 feet; thence north 77° 02' 30" east 462.14 feet to a stone monument; thence south 37° 24' 10" east 181.25 feet to a point; thence south 8° 52' 30" east 350.87 feet to a point; thence south 77° 02' 30" west 50 feet to the principal place of beginning. The above described land known as "Reserved M" and parcels 3 and 7 herein described, are made subject to such rights as have heretofore been granted to The East Ohio Gas Company to extend and maintain its gas supply pipes under a portion thereof; and also subject to the rights given by the grantor herein to The Lakewood Yacht Club Company by an Article of Agreement dated June 1, 1903. Also subject to the rights of owners of lots fronting on the lagoon in the land described as "excepted" from said parcel 7, for themselves and their guests, licensees and employees, to pass over and along the private roads, paths, stairways and common grounds to reach said lagoon from the dedicated roads and avenues in said Clifton Park Allotment. Also subject to right of way for owners of land fronting on the private road known as Beach Road. To have and to hold the premises aforesaid, with the appurtenances thereunto belonging, unto the said grantees and their successors in trust and assigns, and the survivors or survivor thereof, and the heirs of such survivor, so that neither said grantor, nor its successors, nor any other person claiming title through or under it, shall or will hereafter claim or demand any right or title to the premises, or any part thereof, but they and every one of them shall be by these presents excluded and forever barred; in trust, nevertheless, for the sole use and benefit of all the owners of sub lots, or parts of lots, in the Clifton Park Allotment, as the same is recorded in Cuyahoga County Map Records volume 29, page 11, and the heirs, representatives, successors or assigns, of such owners; subject to the terms, conditions and regulations herein contained, that is to say:-

APPOINTMENT AND TERM OF TRUSTEES.

The trustees shall be five in number, all of whom shall at all times be owners of land and residents in the Clifton Park Allotment. If at any time any trustee shall cease to be an owner of land or resident in the Clifton Park allotment, his position as trustee shall at once become vacant, and a successor shall be chosen as herein provided. When the position of any trustee is vacated by resignation, disability or death, the remaining trustees shall at once choose a successor. The fact of such vacancy and choice of successor shall be reduced to writing, signed and acknowledged by a majority of the remaining trustees, and recorded in the office of the County Recorder; whereupon the new trustee shall succeed to all the title and right of his predecessor.

DUTIES OF TRUSTEES.

(1) The Trustees shall 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. (2) No part of said land shall be sold, conveyed or dedicated to

public use without the unanimous consent of all the lot owners in said allotment. (3) The trustees shall collect money from the persons interested as hereinafter provided, and from the sums so collected, and from any other moneys coming to their hands, shall pay taxes and assessments on said lands as they become payable; shall keep the weeds and grass out, and trees, shrubbery and flower beds on said lands in good condition; shall provide for removal of snow and ice when necessary; shall keep the bathing pavilion, stairways, private roadways and sidewalks in repair; shall establish regulations for the use of, and provide for proper policing of private roads, lanes, parks and bathing pavilion; and generally maintain all of said property in good order and condition for the use of lot owners in said allotment, as the same is now maintained. (4) If at any time the owners of one-fourth of the lots in said allotment wish for more improvement or embellishment of said common land, or any part of it, than said trustees by the terms of these regulations are bound to make, such lot owners may call a meeting to be held at some convenient place within the boundaries of Clifton Park, of which meeting all lot owners shall have at least ten days notice by mail or public advertisement. Should a majority of the lot owners present at such meeting decide in favor of any extraordinary improvement of such land for the common benefit, the trustees, upon receiving or being guaranteed the money necessary for that purpose, may proceed to make such improvement, which shall then be a part of the common property, and shall be cared for as herein provided. (5) The trustees shall serve without compensation, but may charge to and collect from the lot owners all their necessary expenses as hereinafter provided.

MAKING AND COLLECTION OF ASSESSMENTS.

The cost of all ordinary care of the lands and buildings in the hands of the trustees, and their necessary expenses in carrying out their duties, shall be divided among the several lot owners and collected from them by an annual assessments as follows:—Each sub lot, or part of sub lot, in the allotment shall be charged with such proportion of the total annual expense as its value for taxation, exclusive of buildings, is of the total tax value of all the sub lots in said allotment, exclusive of buildings. The owner of such sub lot, or part of sub lot shall be bound to pay the sum so assessed to the trustees upon their written notice and demand; and the lien upon the several sub lots reserved to the Company in the deeds of conveyance for the same to secure the payment of such assessments, is transferred to the said trustees, and may be enforced by them. Any extraordinary expenses for improvement of the property shall be met by voluntary subscription. In witness whereof, the said grantor has caused its seal to be affixed hereto, and these presents to be signed by its Vice President and Secretary duly authorized by resolution of its Board of Directors, this 25th day of March A.D. 1912.

Signed and acknowledged) The Clifton Park Land & Improvement Co.

in presence of) L. A. Reed, Vice Prest.

J. M. Shallenberger T. H. Wilson J. J. Crooks, Secty.

(The Clifton Park Land & Improvement Company. Seal.)
(Cleveland, O. Incorporated July, 1899.)

State of Ohio,) Before me, a Notary Public in and for said County, personally appeared Cuyahoga County, ss.) ed the above named L. A. Reed as Vice President, and J. J. Crooks as Secretary of The Clifton Park Land & Improvement Company, who acknowledged that they executed the foregoing instrument on behalf of said The Clifton Park Land & Improvement Company as such officers, and that the same is their free act and deed as such officers. and the free act and deed of said corporation. In testimony whereof, I hereunto set my hand and official seal at Cleveland, Ohio, this 25th day of March A.D. 1912.

Transf'd Mar. 26, 1912.) J. M. Shallenberger

Rec'd Mar. 26, 1912, at 7:41 A.M.) Notary Public.

Recorded Mar. 27, 1912.)

Fee for record \$3.50.

) Paul Schreiner, Recorder.

(Notarial Seal)
(Cuyahoga County)
(Ohio)

EXHIBIT B



PICNIC TABLE LOCATIONS MAY 2015

EXHIBIT C

The
Clifton Park
Land and Improvement
Company

Officers

R. E. Burdick	<i>President</i>
Lucien B. Hall	<i>Vice President</i>
L. A. Reed	<i>Vice President</i>
J. F. Crooks	<i>Secretary and Treasurer</i>

Directors

Lucien B. Hall
Benton, Hall & Company

R. E. Burdick
The Bowler & Burdick Company

A. L. Stone
The Nicola, Stone & Myers Company

Paul North
Chamberlin Cartridge & Target Company

Jno. G. Jennings
The Lamson & Sessions Company

Howard H. Burgess
Old Hundred Mining Company

W. H. Canniff
The N. Y., C. & St. L. Ry. Company

S. L. Pierce
S. L. Pierce & Company

F. C. Case
The Lamson & Sessions Company

W. C. Baker
American Ball Bearing Company

Geo. L. Dake
Burton & Dake

L. A. Reed
The Diamond Portland Cement Company

C. B. Stowe
The Stowe, Fuller Company

J. A. Donaldson
The Pittsburgh Coal Company

W. D. Royce
The Royce Company

The
Clifton Park
Land and Improvement
Company

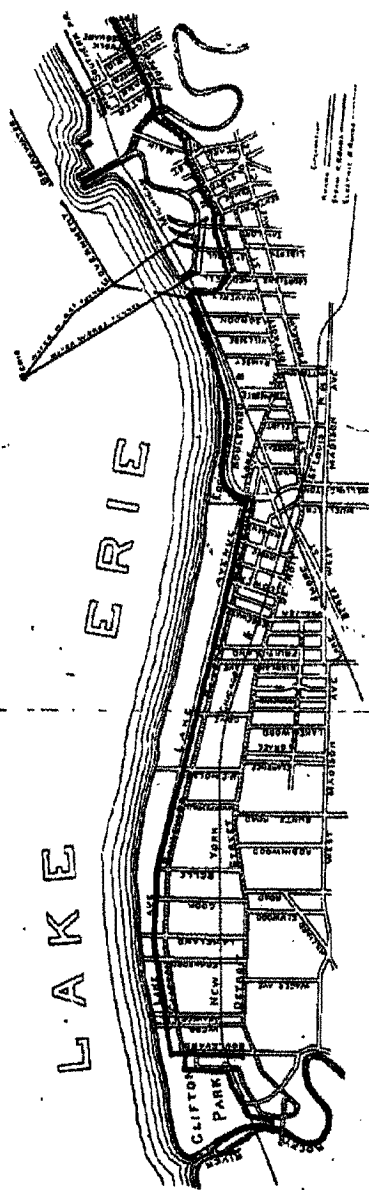
Capital \$300,000

OFFICE

801 Cuyahoga Bldg.
Cleveland

Clifton Park

On Lake Erie at Junction of
Rocky River 32 Minutes
Ride from Public Square
Via Clifton Boulevard



RELATIVE LOCATION OF CLIFTON PARK TO THE PUBLIC SQUARE



VIEW OF ROCKY RIVER AND CLIFTON PARK BLUFF



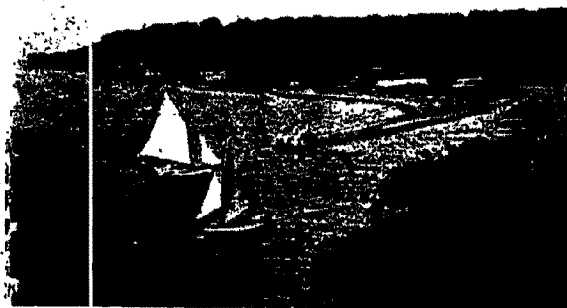
LOOKING WEST FROM CLIFTON PARK



CLIFTON PARK is famous as the most beautiful residence property in Northern Ohio. It is situated on a bluff 90 feet above and overlooking Lake Erie at the mouth of Rocky River, affording a magnificent view of both lake and river.

Its situation, therefore, is unique, no other tract of high class residence property in the County having such an extent of lake and river front. Its location is such as to render it for all time free from smoke and soot. It has every convenience of the city, city water, sewerage, electric light, natural and artificial gas, combined with the added attraction of a home in the country—one of its chief attractions being the large forest trees covering almost the entire property.

ROCKY RIVER, LAGOON AND BATH HOUSE





RESIDENCE OF A. E. NORR

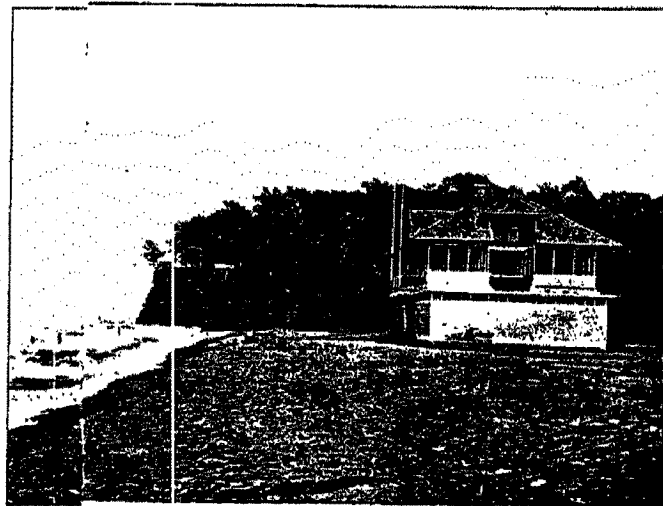


HE bathing beach, extending a distance of about 700 feet, on which a pavilion and bath house has been erected by the Company, is an added attraction to the lot owners, who have exclusive use of its privileges.

The sewerage system, which consists of a sanitary sewer and a separate drainage system, is connected with the large boulevard sewer extending to the disposal plant erected by the village some years ago.

A lagoon, so long considered an essential feature of the park, has been constructed during the past year, dredged to a depth of ten feet, with entrance from Rocky River, and of sufficient size to accommodate 75 or 80 boats, varying in size up to 100 feet in length. Lovers of boating appre-

BATH HOUSE AND PAVILION, CLIFTON PARK



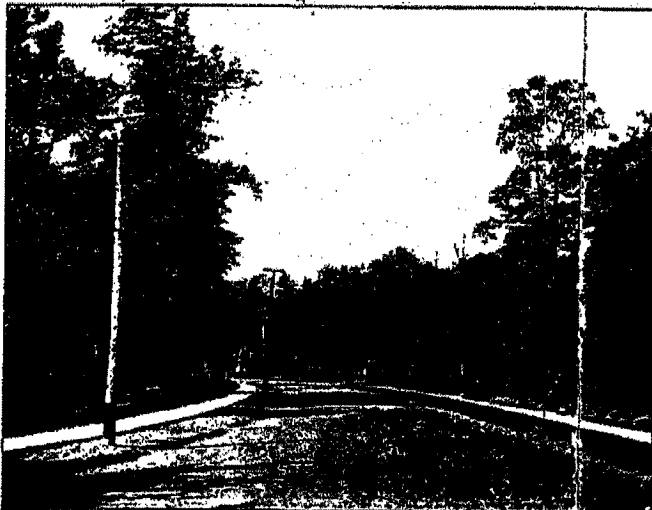
ciate this improvement as it affords a safe harbor from storms in the summer and storage for the boats in winter.

The approaches to Clifton Park are by way of Lake Avenue, the site of some of Cleveland's most stately homes, and Clifton Boulevard, 120 feet wide, paved with asphalt, over which the Lake Shore and Cleveland Electric Lines pass to the Park, the running time over this route being 32 minutes from the Public Square.



RESIDENCE OF LUCIEN B. HALL

FOREST ROAD



The fact that no grade crossings exist on either of these routes, or on the Detroit Street route, which runs within one-quarter of a mile of the property, is a matter of such vital importance that to overlook it in selecting a site

for a home, is to disregard peace of mind, and place in jeopardy life itself.

Social life at the Park centers about Clifton Club, which occupies a handsome Club House, situated at a point on the bluff, overlooking both lake and river. The Club House is designed with spacious verandas, cobblestone columns and shingled surfaces, which together with the dense foliage of the surround-



PUBLIC SCHOOL, WITHIN FIVE MINUTES WALK OF CLIFTON PARK

CLIFTON CLUB, CLIFTON PARK



ing trees, produce a very charming effect. It contains a reception hall, billiard room, main and two private dining rooms and a grill room on the first floor; a large ball room, veranda and guests' chambers on the second floor. Winter and summer



RESIDENCE OF C. E. NEWELL

the Club House is the scene of many brilliant social functions. The membership of the Club is limited and select.

For many years the tide of home seekers has been largely eastward, but with the constantly increasing number of

manufacturing plants along the East shore and other East End sections, with their volumes of black smoke and soot, the conditions have changed and many fine East End homes have been sacrificed by their owners who have sought locations where such conditions are impossible, not a few of them in Clifton Park.

Indeed there never was a time when the wisdom of that advice of the sage of Chappaqua to young men was so fully

VIEW ON LAKE AVENUE, CLIFTON PARK





RESIDENCE OF HON. F. W. TREADWAY

appreciated and so literally followed as within the past two or three years, as shown by the number of young men, and older ones, who have "gone West" to make their home in Clifton Park and "grow up with the country."

The drives are laid out in graceful curves, reaching all lands available for lots, and at the same time cutting the lots into a pleasing variety of shapes, and equally desirable irregularities in size. This feature of the plan renders impossible any monotony or uniformity in appearance of houses, owing to the fact that they cannot be set in straight lines, as is common in the ordinary allotment.

Improvements are of the highest standard, the three

A WINTER SCENE IN CLIFTON PARK



miles of roads being macadamized, Lake Avenue having been improved within the past year with a fine tar macadam pavement. Cement sidewalks five feet in width and of uniform appearance, extend on each side of the streets, and here and there small tracts

are reserved for Park purposes, one of which, 200 x 250 feet, extends to the bluff, overlooking the lake.



RESIDENCE OF W. D. BENE

The property is restricted in such a manner as to secure to all purchasers alike, immunity from the depreciation of value which would follow the location of business places of any kind, Apartment Houses, or Terraces within the limits of the Park.

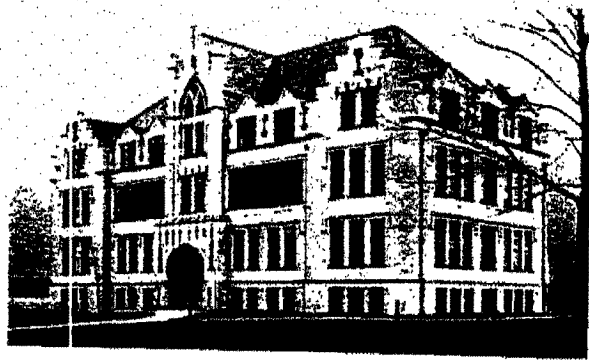
In selecting a site for a home many things are to be

RESIDENCE OF F. A. GLIDEN



considered, but of supreme importance is the matter of pure air. This is afforded by a location in Clifton Park, as, owing to the situation of this property it is impossible to locate manufacturing establishments anywhere in its vicinity.

The property within a radius of two or three miles on the South and East is used exclusively for residence purposes; the lake extending



LAKEWOOD HIGH SCHOOL, WARREN ROAD AND DETROIT STREET

RESIDENCE OF WALTER C. BAKER



along the entire North side of the Park excludes anything objectionable in that direction. We can say, therefore, with assurance, that contamination of the air with smoke and soot is an impossibility so far as Clifton Park is concerned.



BEACH ROAD, CLIFTON PARK

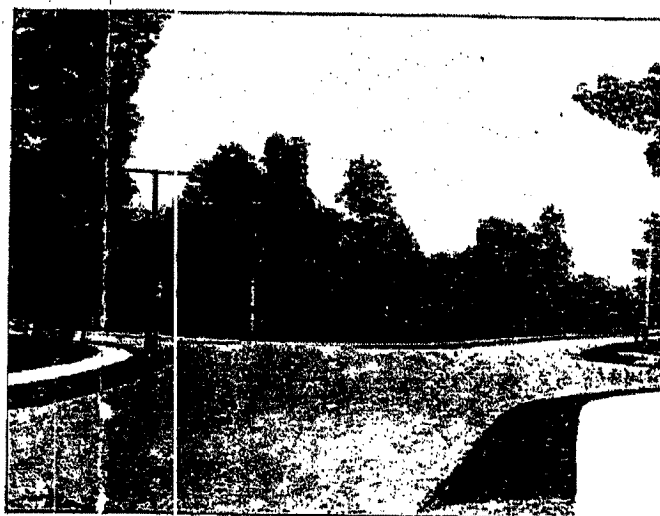
feet front by 150 feet deep, upwards, a large proportion of which are equally as desirable as any that have been disposed of. The prices at which the property is held is less than one-half the price of the best East End property, which affords no such attractions as can be found in the Park.

Over fifty homes have been built on the property, as shown by the accompanying map, many of which are owned and



THE homes in the Park are of a high class, many of them being particularly attractive from an architectural standpoint, each being designed with a view to its particular locality, and range in price from \$4,500 to 30,000. There are yet unsold 136 lots, from 60

CLIFTON ROAD, FOREST ROAD AND LAKE AVENUE, CLIFTON PARK



occupied by prominent business and professional men. Other lots sold will be built upon in the near future.

As it is a matter of but a short time before a new high level bridge will be built, connecting the East and West sides, and the boulevard will be extended from Edgewater Park to the end of the proposed bridge, together with the probability of suburban service on the Nickel Plate R. R. with running time of from 12 to 15 minutes from the Park to the Union Depot, it would seem that the present is the opportune time to purchase, as with these improvements property will undoubtedly double in value.

For prices, terms and full particulars, apply to The Clifton Park Land and Improvement Company, 801 Cuyahoga Building.



RESIDENCE OF C. W. ROOT

EXHIBIT D

Clifton Park & Lagoon Lot Owners,

We hope everyone is looking forward to a wonderful 2018 season. As your Clifton Park Trustees, we would like to take this opportunity to update all beneficiaries regarding several matters.

BEACH BEAUTIFICATION

Saturday, May 12th is Beach Beautification Day. Bring your neighbor and come down to help with beautification projects. Once again, we are blessed to have both Kathy Weiss and Tony leading the charge.

TOWN HALL MEETING

The Clifton Park Trustees are hosting an annual Town Hall Meeting on Tuesday, May 15th at 6:30pm at the Beach House. We encourage all to attend. This is an opportunity to learn about everything related to the Beach and its operations.

LEGAL UPDATE

Below is a summary of recent legal events pertaining to the 2012 lawsuit.

August 10, 2017 - 8th District Appeals Court issued its opinion, reversing Judge Russo's 2015 grant of Summary Judgment.

October 10, 2017 - Cuyahoga County Probate Court issued a Judgment Entry putting into effect the 8th District Appeals Court Opinion. This Judgment Entry was stayed pending the requests to the Ohio Supreme Court to exercise discretionary jurisdiction and review the 8th District Opinion.

February 28, 2018 - Ohio Supreme Court declined to exercise discretionary jurisdiction.

March 19, 2018 the Probate Court lifted the stay and the substantive portions of the October 10, 2017 Judgment Entry were put into effect.

Currently - The Probate Court will conduct an evidentiary hearing to determine the reasonable amount of attorney fees, costs and expense owed by the defendant Clifton Park Trustees to the Plaintiff-appellants.

Judge Russo of the Cuyahoga County Probate Court adopted the Appellate Court's language in his Judgment Entry (attached). Please take a moment to read as this is the final determination of the court with regard to Clifton Club Member access to the Beach. Additional information and related documents, can be reviewed on our website.

<http://www.cliftonparktrustees.org/trustee-communications/>

WHAT DOES ALL THIS MEAN?

The 2012 lawsuit has produced final language to the contested matters regarding the determination of non-lot owning Clifton Club Member access to the Beach. Clifton Club Members are not beneficiaries of the Clifton Park Trust ("Trust") and therefore have no legal right to use the Beach. However, Clifton Club Members are not simply the general public, but rather are members of an entity that is a beneficiary of the Trust. As such, and as specifically stated in the Court's ruling, "Club Members have a

permissive right to access the Beach, as regulated by the Trustees pursuant to the Trust Deed.” The Trust Deed affords the Clifton Park Trustees the authority to regulate use of the trust property.

RE-EXAMINING CLUB MEMBER ACCESS AFTER SUPREME COURT DECLINES JURISDICTION

In December, 2017, The Clifton Park Trustees reviewed the Appellate Court ruling, and the requests to the Ohio Supreme Court made by Defendant Trustees and the Clifton Club. While waiting to hear if the Ohio Supreme Court would accept jurisdiction, we increased the Clifton Club’s assessment to 45% of the annual budget and maintained the same number of Club Members to access the Beach as in the previous five years, for the calendar year 2018. We did not feel it was appropriate to take actions or make modifications that could conflict with a ruling from the Ohio Supreme Court.

On February 28, 2018, the Ohio Supreme Court declined jurisdiction, and on March 19, 2018, the Probate Court lifted the stay of the Judgment Entry. With this final outcome, we felt it was our duty to re-examine our December 2017 decisions. The outcome of our re-examination is as follows:

2018 Assessment & Club Member Access Review – 2018 assessments will remain the same. Assessment letters were sent to all Lot Owners including the Clifton Club on or before March 1st. Any significant changes to assessments after the calendar year has begun present administrative challenges and potential financial burden to Beneficiaries. For example, if \$127,000 (the Clifton Club’s assessment) was to be re-assigned to Lot Owner Beneficiaries other than the Clifton Club for only a portion of 2018, administrative and substantive challenges occur for the following reasons:

- 1) Trust Beneficiaries are preparing and transmitting payments.
- 2) Clifton Park Trustees have received and processed payments.
- 3) Assessment amounts to Lot Owner Beneficiaries would increase significantly and may represent an unanticipated financial burden to Lot Owner Beneficiaries.

For the last several years, 224 Clifton Club families have been granted access to the Beach. This will continue in 2018, as previously decided. Clifton Park Trustees conduct an annual review to determine Clifton Club Member access. For the year 2019, we have already begun our review, with specific attention toward the Court’s decisions made in March of this year.

Regulation Review – The Clifton Park Trustees recognize the distinctions between the rights of Clifton Club Members and Lot Owners. For the year 2018, we will be issuing car stickers that are different for Park Lot Owners, Lagoon Lot Owners and Clifton Club Members. This will assist us in usage monitoring and it will begin laying the foundation for new regulations in the future.

The Clifton Beach Rules have been modified with regard to table reservations and occupancy. These changes better reflect the intention of the rules and the assignment of rights in light of the Court’s decision. A copy of the Clifton Beach Rules for 2018 is attached.

The Clifton Park Trustees are organizing a Rules Review Committee in 2018, consisting of six Trust Beneficiaries and two Clifton Park Trustees. The task of the 2018 Rules Review Committee is to make recommendations to the Clifton Park Trustees regarding any changes to regulations that may be necessary as a result of the Court’s decision for the years 2019 and onward. More information on the Rules Review Committee will be forthcoming.

2018 Operating Expense Review – We expect legal expenses to triple from the original budget of \$20,000. This is a direct result of (i) the Clifton Park Trustees seeking legal counsel to interpret and administer the Trust following the Court's decision, and (ii) inquiries from Beneficiaries and Plaintiff Appellants that carry legal ramifications to the Trust and all Beneficiaries (primarily regarding the interpretation of the Court's decisions). As a result of the past litigation, the current Trustees felt it prudent to use legal counsel on matters in order to appropriately carry out our duties, as well as hopefully avoid future litigation involving the Trust. It is our duty to protect the interests of all Trust Beneficiaries impartially and with due regard to interest of each Beneficiary.

It is our responsibility to continuously report the financial condition of the Trust. We are delaying certain projects originally planned for the 2018 to accommodate the increased legal expenses. These projects include the replacement of the boardwalk and associated lighting. We are still planning to repair the Beach House chimney.

FINAL REMINDERS

Please attend Beach Beautification Day and the Town Hall meeting.

Please visit our website for information about the administration of the Trust. Meeting minutes, financial information, contact information, legal documents, and other pertinent updates are shared for all Beneficiaries.

Thank you and have a wonderful Spring.

Warren Coleman

Mary Ellen Fraser

Robert Frost

Joseph Kerrigan

Ryan Meany

Clifton Park Trustees

2018 CLIFTON BEACH RULES

Clifton Beach is maintained by the Clifton Park Trustees for use by Clifton Park property owners, certain members of the Clifton Club and Clifton Lagoon property owners (collectively, the "Beach Members"). Unauthorized visitors will be treated as trespassers and will be asked to leave the Beach by the Guards or be the subject of a police report. The Clifton Park Trustees have established these Rules to provide a safe and enjoyable Beach experience for all members, their families and guests. Members are responsible for their family members and guests and must be certain that their family members and guests understand and obey the Beach Rules. Guards employed by the Trustees are empowered to enforce the Rules. These Rules may be changed at any time by the Trustees, who will communicate changes to members. The Trustees, at their sole discretion, reserve the right to suspend or deny Beach privileges for violations of the Rules.

General

- The Beach season is defined as the period May 1 through October 31st. During the season the Beach will open at 9 a.m. and will be vacated by midnight without exception.
- All members in good standing, along with their immediate family members living in the residence of the member, may use the Beach facilities. Immediate family members shall mean children, parents and grandparents provided they permanently reside in the home of the member.
- Clifton Beach windshield stickers will be attached by the Guards to the windshield to vehicles belonging to members or immediate family members residing in the home of a member upon receipt of their assessment, their household registration form and presentation of State-issued vehicle registration information. Only Guards may apply and remove vehicle stickers during the Beach season.
- Only vehicles with stickers or with guard issued guest vehicle passes will be allowed to park on Beach property. The Guards have the authority to order a vehicle towed if the owner does not comply with these Rules. All risks and expenses of the tow are the responsibility of the owner of the vehicle. Motorized street legal scooters, carts, and motorcycles, must park in the designated space near the basketball court as directed by the guards.
- Ten (10) guest vehicle day passes will be available Monday through Friday for guests of a host member who is present at the beach. The vehicles with guest passes must depart the Beach when the host departs, no later than 4:00 p.m. Five (5) vehicle guest passes will be available, Monday through Thursday after 5:00 p.m., for senior citizens and handicapped guests of a host member. The guards will make the day and evening passes available, at their discretion, on a first-come, first-served basis. As in the case of all guests, the host member is responsible for the guests, who must comply with all the Beach rules.
- Non-stickered vehicles dropping off and picking up guests and/or supplies will be provided with a 15-minute time-stamped parking permit for that purpose.
- The host member must register all guests, including children, at the Guard House. This rule applies to guests arriving in member vehicles. Guards are authorized to refuse entry to any visitor not registered as a guest by a member. Pre-registration of guests, via a list to the Guards (preferably the day before), is highly encouraged and will ease entry.
- Except for those with table or Beach House reservations, there is a limit of four (4) guests per member household Beach visit.
- Children of members under 22 years of age, not accompanied by their parents, will be limited to two (2) guests at any time.
- Children under 5 years of age must be accompanied by an adult at all times.
- Radios, TVs, CD players, boom boxes, etc., are not permitted at Clifton Beach. Amplified sound is allowed only at the Beach House in conjunction with a Beach House reservation.
- There will be no game equipment (e.g., cornhole, string golf, volleyball nets, etc.) in the picnic areas. Such activities are limited to the ball field area and on the beach, EAST of the beach house.

- Wood fires are strictly prohibited everywhere on Beach property except in the permanent fire pits.
- Propane cooking fuel will not be allowed at the Beach except by a catering service at the Beach House in conjunction with its reserved use.

Picnic Tables

- Reservations for picnic tables must be made with the Guard House (216/228-5131). An adult member must make reservations in his/her name only, must be present at all times and is responsible for the actions of all guests.
- No more than ten (10) people, including children, are permitted at tables located on the west side of the Beach House (#1-#34). Up to fifteen (15) people are permitted at tables in the grove east of the Beach House (#40-#50).
- No more than forty percent (40%) of the available table reservations can be reserved by Clifton Club Members. This limitation applies to west side tables (#1-34) and grove tables (#40-50) separately, and to afternoon and evening periods separately.
- Non-reserved tables are available to all Beach Members by obtaining an approved yellow reservation card from the Clifton Park Security Guard, to be placed on the table.
- Any Beach Member may use an unoccupied, reserved table one hour after the noted reservation time by obtaining an approved yellow reservation card from the Clifton Park Security Guard, to be placed on the table.
- A member may have no more than two open picnic table reservations at one time. Two tables may be reserved Monday-Thursday and will count as two open reservations. An afternoon reservation (ending at 4:30 p.m.) and an evening reservation (after 5:00 p.m.) will count as two reservations.
- Reservations will be accepted beginning at 2 p.m. on Beach Spring Cleanup/Beautification Day. Tables will be reserved and held for a specific day and time.
- If picnic tables are moved, they must be returned to their original positions. Tables on the Beach House patio may not be removed from the patio.
- The Trustees reserve the right to cancel any open reservations if the member's use of the facilities is deemed to be unsatisfactory.
- No fires are to be built anywhere except within the grills or the permanent fire pits. Charcoal is the only fuel permitted within the grills.
- Catering is not permitted at the picnic tables and only at the Beach House with a confirmed reservation.

Swimming, Tennis and Boating

- Swimming is the responsibility of each individual and the Trustees assume no responsibility for swimming safety regardless of whether or not Guards or other staff are on duty.
- Swimmers should stay within the designated and marked swimming area; boaters are prohibited from entering the designated swimming area at any time. After the end of the school year a lifeguard is generally on duty from 12 noon until 5 p.m. through Labor Day.
- Parental supervision is mandatory for children swimming at the Beach. The duty of the lifeguard is water safety, not babysitting.
- Small boats carried to the Beach inside or on top of a car may be launched from the west end of the Beach, and must be removed from the Beach after use. Boat trailers, motorized boats, jet skis and other watercraft are prohibited.
- Rules for the tennis court are posted at the courts.

Beach House Reservations

- Reservations for the Beach House may be made by Clifton Park, Clifton Club and Lagoon residents through the Secretary (216/521-6078) by an adult member in his/her name only beginning **March 3rd** up to and including April 30th. **After April 30th**, all reservations should be made through the Guard House (216/228-5131). The reserving adult member must be in attendance for the entire Beach House event.

- Wedding reception or rehearsal dinner requests for a member or an immediate family member of a member will generally be given priority and requests may be submitted at any time up to one year in advance of the event through the Secretary, subject to the same confirmation procedures.
- A member family may have no more than two (2) Beach House reservations open at any given time.
- Reservations for the Beach House must include member's name, address, telephone number, type of function, the date and the time requested. **A reservation is NOT confirmed until the Secretary or the Beach guards receive a \$150 deposit.** The Secretary will confirm all reservations in writing. The **minimum charge** for rental of the Beach House shall be \$150.00.
- If the member cancels the Beach House reservation at any time, the \$150.00 reservation deposit will be returned only if the Guards are able to rebook that date. If not, the \$150.00 deposit will be forfeited.
- The charge for use of the Beach House is **\$5.00** for each of the first **fifteen (15)** non-member guests, including children and **\$10.00** for each additional non-member guest up to the 100 person limit (minimum charge of \$150.00).
- The Beach House will not be reserved for private parties on Sundays during the months of July and August or, Sunday or Monday of holiday weekends during the season. Reservations for private parties may be made on Sundays during May, June, September and October. On those days when private parties are not permitted, the Beach House and patio are available for picnic table reservations under the stated picnic table reservation policy.
- The Trustees reserve the right to cancel any open reservation if the member's status is deemed by the Trustees to be unsatisfactory.

Beach House Rules

- There is a limit of 100 individuals per Beach House event, including members and their guests. The Trustees reserve the right to deny access if more than 100 people are in attendance for a specific Beach House reservation.
- Beach House entertainment will end no later than 11:00 p.m. and the Beach House will be closed at 11:30 p.m.
- Beach House reservations include **exclusive** use of the patio and its tables and grill; it does not include any recreational facilities.
- A written alphabetical list of guests must be provided to the Guard House 24 hours prior to the day of the event.
- The member must check in at the Guard House upon arrival to confirm his/her reservation and must be present for the entire event.
- Guest vehicle passes will be given to Beach House guests and only 15 passes will be available for distribution, including any caterers and entertainment vehicles. After all 15 Beach House guest passes have been given out, subsequent guests will be denied parking privileges unless, in the opinion of the Guards, additional space is available without prejudice to other members.
- The use of the Beach House is subject to the other standing rules relative to Beach property.
- Catering is permitted only at the Beach House with a confirmed reservation.
- In the sole determination of the Trustees, an extra charge may be assessed for extraordinary clean up or damage to property.
- Charcoal is the only fuel permitted in grill on the patio.

General Restrictions

- The following items are prohibited at all times, throughout the entire year, by all persons while on Beach property:
 - Sky lanterns (fire balloons)
 - Glass beverage containers. Beverages should be poured into plastic glasses, mugs or cups and not be consumed directly from glass bottles.
 - Skateboards, roller blades, scooters and other similar items.

- Dogs, cats and other pets, even in cars.
- Tents or portable shelters.
- Vehicles must not be parked at the Beach overnight; non-compliance may result in the vehicle being towed.
- The pier at the entrance to Rocky River is posted as property of the U.S. Government and individuals are prohibited from accessing the pier.

The Trustees will not be responsible for any loss or damage to property of members, their family members and guests.

Members and their guests are reminded that the Beach is private property and not a public park and therefore not intended for use by a large number of non-members. The Beach is for the enjoyment of its members and therefore care will be taken to insure that those members enjoy their privileges to the fullest.

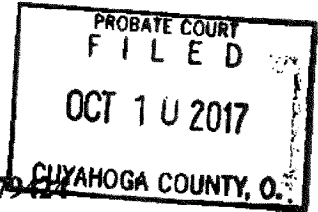
Questions or comments or requests for individual exemptions from a specific Rule may be directed to the Trustees listed below:

Warren Coleman, Trustee
216-409-1126
Joe Kerrigan, **Trustee President**
216-870-4430

Mary Ellen Fraser, Trustee
216-374-6863
Robert Frost, Trustee
216-534-6346

Ryan Meany, Trustee
440-781-5817
Nancy Graves, Secretary-Treasurer
521-6078

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
CUYAHOGA COUNTY, OHIO



ARTHUR P. DUECK, et al.,

Plaintiffs,

vs.

THE CLIFTON CLUB COMPANY, et al.,

Defendants.

) CASE NO. 2012 ADV 179424

) JUDGE ANTHONY J. RUSSO

) JUDGMENT ENTRY

This matter came on for consideration before the Honorable Judge Anthony J. Russo, Presiding Judge of the Probate Division of the Court of Common Pleas, on August 10, 2017, upon the reversal and remand by the Court of Appeals, Eighth District (Case Nos. 103868 and 103888), Cuyahoga County, Ohio, pursuant to the Judgment Entry and Opinion dated August 10, 2017.

The Court of Appeals, Eighth District, Cuyahoga County, Ohio, held that the lot owners are the sole legal beneficiaries of the Trust. Further, the Court determined that members of the Clifton Club, who are not resident lot owners, are not direct beneficiaries of the Trust and therefore have no legal right to access the Beach under said Trust, but that the nonresident members of the Clifton Club have a permissive right to access. The Court further ordered that the Trustees compensate Plaintiff-appellants for the reasonable costs of Plaintiff-appellants' attorney fees, costs and expenses, as the Trustees breached fiduciary duties owed to the Trust and its beneficiaries. As a result of these findings, the Court of Appeals reversed and remanded this case to the Probate Court to enter judgment for Plaintiff-appellants consistent with the appellate decision and to conduct an evidentiary hearing to determine a reasonable amount of attorney fees, costs, and expenses to be awarded to Plaintiff-appellants.



Based upon the decision of the Court of Appeals, Eighth District, Cuyahoga County, Ohio, this Court hereby modifies the Judgment Entry released and journalized on November 10, 2015, as hereinafter set forth.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the lot owners are the sole legal beneficiaries of the Trust. The Clifton Club is a lot owner and thus a beneficiary.

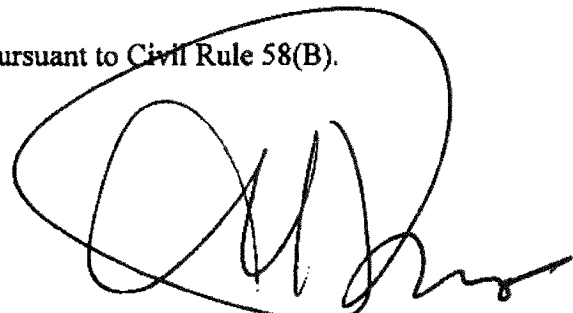
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that members of the Clifton Club, who are not resident lot owners, are not equal or direct beneficiaries of the Trust and thus have no legal right to access the Beach under the Trust, although they do have a permissive right to access the Beach, as regulated by the Trustees pursuant to the Trust Deed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Trustees shall compensate the Plaintiff-appellants for reasonable attorney fees, costs, and expenses. An evidentiary hearing shall be set before Senior Magistrate Richard L. Gedeon to determine the reasonable amount of attorney fees, costs and expenses owed by Clifton Park Trustees to Plaintiff-appellants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff-appellants' shall file their respective Motions for Attorney Fees by December 08, 2017.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of Court serve upon all parties notice of this Judgment Entry pursuant to Civil Rule 58(B).

IT IS SO ORDERED.

A large, stylized handwritten signature in black ink, likely belonging to Judge Anthony J. Russo, is written over the signature line.

JUDGE ANTHONY J. RUSSO

EXHIBIT E



Vorys, Sater, Seymour and Pease LLP
Legal Counsel

52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

614.464.6400 | www.vorys.com

Founded 1909

William D. Kloss, Jr.
Direct Dial (614) 464-6360
Direct Fax (614) 719-4807
Email wdklossjr@vorys.com

April 24, 2018

VIA ELECTRONIC MAIL

Dennis R. Rose, Esq.
Hahn Loeser & Parks LLP
200 Public Square, Suite 2800
Cleveland, Ohio 44114

Re: Clifton Park Trust

Dear Dennis:

Thank you for your April 24, 2018 letter. I appreciate your effort to maintain communications and to attempt to resolve the dispute by your clients of the Clifton Park Trustees' authority in advance of your threatened litigation.

You claim that my April 18, 2018 letter confirms that the Trustees agree that they do not have authority under the Clifton Park Trust to grant non-lot owning members of the Clifton Club access to the Clifton Park Beach. My letter states no such thing. In fact it said the direct opposite.

Additionally, all of your recent correspondence repeatedly refers to Judge Eileen T. Gallagher's dissenting opinion to the 8th Appellate District Court's majority opinion as a "concurring opinion." This is incorrect as Judge Gallagher's opinion is a dissent. A dissenting opinion is not the court's decision or the controlling law of the opinion.

The binding authority on the Clifton Park Trustees is the opinion of Judge Laster Mays, in which Judge Boyle concurred. And that opinion establishes the Trustees' authority pretty clearly:

- (1) "The Club Lease, Trust Deed, and Club Deed indicate an intent that the Clifton Club, as lessees and successor lot owners, have access to the Beach, but that such access was subject to the rules and regulations implemented by the Trustees." *See* ¶59.

Dennis R. Rose, Esq.
April 24, 2018
Page 2

- (2) “Appellants [i.e., your clients] have consistently argued that the Club Members do not have a ‘legal right’ to use the Beach, but that the right is by permission and subject to regulations by the Trustees. Appellees maintain the same position. Thus, it appears that the parties actually agree that Club Members may use the Beach by permission, for an annual fee, with regulatory oversight by the Trustees.” (Emphasis added). See ¶40.

Your draft complaint seems to answer the questions that were posed to you nearly a month ago by Karen Moore. But the positions in the complaint are difficult for the Trustees to understand. The complaint states that your clients' position is that there can be no permissive access to the Beach by non-lot owners who are Clifton Club members without the unanimous consent of all lot-owners. In looking through the pleadings in the underlying litigation I have never seen Plaintiffs take that position. More importantly any position that the Trustees cannot allow permissive access is inconsistent with your clients' arguments (and frankly everyone's arguments) to the Probate Court, 8th District and the Supreme Court. If that was your clients' position I think the Court will conclude that they were obligated to raise it long ago.

Further, you have identified five areas in the 2018 Clifton Beach Rules which your clients claim impair the access of lot owners in order to accommodate non-lot owner club Members' use of the Beach. This is helpful but it is also inconsistent with your clients' primary position that the Trustees cannot allow permissive access to the beach by Clifton Club Members at all. Specifically, if your clients do not believe there can be permissive access at all, why do they want to quibble about the inequities of the rules governing non-lot owning Clifton Club Members' use of the beach?

Regardless, as to your clients' rule complaints the Clifton Park Trustees are already working to address the stated concerns with some immediate changes to the 2018 Clifton Beach Rules and a commitment to a further rules review process in 2018. The new Trustees started that effort at the end of 2017. While these immediate changes might not be fully satisfactory to your clients, the Trustees intend to put together a Rules Review Committee that involves Trust beneficiaries. That group can work through the usage data being collected this summer and work towards revising the rules with the input of a broad and diverse group of beneficiaries. The Trustees have to be fair to all beneficiaries. Therefore, they cannot cede to your clients demands without the input of all.

The Clifton Park Trustees remain committed to working with you and your clients to resolve their concerns and complaints regarding the administration of the Trust and their regulation of the use of Trust property. However, until your clients take a position regarding permissive access that is consistent with their position in the underlying litigation and the

VORYS
Legal Counsel

Dennis R. Rose, Esq.
April 24, 2018
Page 3

controlling language of the 8th District that is difficult to do. Perhaps it makes sense to set a time to talk on the phone to see if we can find some workable solution.

I will await hearing back from you as to whether or not your clients would like to work to resolve the remaining issues of dispute.

Very truly yours,

A handwritten signature in black ink that reads "Bill Kloss, Jr." in a cursive script.

William D. Kloss, Jr.

WDK/amb

cc: Karen M. Moore

EXHIBIT F

March 15, 2018

VIA E-MAIL

Karen M. Moore, Esq.
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43216-1008

Re: *Clifton Park Trust*

Dear Karen:

Now that the Supreme Court has denied the motions for jurisdiction, the 8th District's decision is now the law of the case governing the rights under the trust deed (the "Trust Deed"). There is now no doubt that the Plaintiffs and the many lot owners that support them were right on the only questions raised in the litigation.

1. The Clifton Park lot owners are the sole legal beneficiaries of the Trust.
2. The members of the Clifton Club who are not lot owners have no legal rights under the Trust Deed.
3. The Trust Deed is the sole conveyor of legal rights to the beneficiaries.

While the 8th District in dicta discussed a permissive right to access the Beach as regulated by the Trustees pursuant to the Trust Deed, Judge Gallagher's separate opinion explains this position when she noted that the Club members have no legal right to access the Beach and that she hoped that the parties could "negotiate a fair and equitable agreement that would grant members of the Clifton Club access to the beach on a permissive basis." Her opinion is supported by the fact that the Trust Deed's provision giving the Trustees the authority to establish regulations for the use of trust property limits that authority to "use of lot owners in [Clifton Park]."

Importantly, nowhere in the 8th District's decision is there any discussion of where the Trustees are given authority to permit access to the Beach by non-beneficiaries. This is not surprising as there is no language in the Trust Deed that either expressly or impliedly grants such authority.

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HAHN LOESER & PARKS LLP attorneys at law

cleveland columbus naples fort myers san diego chicago

200 Public Square, Suite 2800 Cleveland, Ohio 44114 phone 216.621.0150 fax 216.241.2824 hahnlaw.com

Plaintiffs are surprised and disappointed that the current Trustees have not learned anything from this litigation and plan to permit 224 non-lot-owner Club members to use the Beach for a modest increase in the Club assessment and have not changed the Beach rules in any way to make them consistent with the fact that the Beach is held for the sole use of the lot owners, not the Club Members.

The beneficiaries of the Trust have a right to answers to the following questions:

1. What language in the Trust Deed are the Trustees relying on to maintain the status quo?
2. Where do the Trustees get the authority to permit anyone but a lot owner to use the Beach?
3. Why have the Trustees again placed rules on Beach use that impair the access of the lot owners in order to accommodate non-lot-owner Club members' use of the Beach?

In addition, the 8th District's decision makes it clear that the Trustees owe the lot-owner beneficiaries full disclosure. Please send me copies of all correspondence that the Trustees or their counsel have had with the Clifton Club or its counsel since the 8th District's decision in August of 2017.

Plaintiffs and the many lot owners that support them had hoped that the Trustees and the Club would have accepted the 8th District's decision and that the Trustees would govern the Trust consistent with the terms of the Trust Deed. By maintaining the status quo, including rules put in place under the prior Trustees' mistaken belief that non-lot-owner Club members were beneficiaries with rights under the Trust Deed, the Trustees ignore the rights of the resident lot owners. The Trustees owe their confirmed sole beneficiaries an explanation.

We look forward to your fulsome response.

Very truly yours,



Dennis R. Rose

slh

EXHIBIT G



Vorys, Sater, Seymour and Pease LLP
Legal Counsel

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Founded 1909

Karen M. Moore
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Email kmmoore@vorys.com

March 29, 2018

Dennis R. Rose, Esq.
Hahn Loeser & Parks LLP
200 Public Square, Suite 2800
Cleveland, Ohio 44114

Re: Clifton Park Trust

Dear Dennis:

I am writing in response to your letter of Thursday, March 15, 2018 on behalf of Warren Coleman, Mary Ellen Fraser, Rob Frost, Joe Kerrigan, and Ryan Meany, the Trustees of the Clifton Park Trust ("Trustees"). My purpose in writing is to provide documents that you requested, respond to your questions and address two questions to your clients.

As an initial matter, to the extent that statements in your letter suggest that the Trustees have taken actions **after** February 28, 2018, the date on which the Ohio Supreme Court announced its decision not to accept jurisdiction, such statements are inaccurate. On December 28, 2017, while waiting to learn whether the Ohio Supreme Court would accept jurisdiction of any issues raised on appeal, the Trustees communicated to the Clifton Club the Club's 2018 contribution for Beach operations. Since learning that the Ohio Supreme Court did not accept jurisdiction of any of the issues raised, the Trustees have undertaken a review of their determination of the Club's 2018 contribution. The Trustees will send a communication to all lot owners after that review is complete. Bill Kloss indicated that he discussed this concept with you during your telephone conversation on Friday, March 23, 2018.

Pursuant to your request, please find attached copies of all correspondence of the Trustees and their counsel with the Clifton Club and its counsel since August 10, 2017, pertaining to the litigation and the operation of and/or access to the Beach.

March 29, 2018

Page 2

With respect to questions 1 and 2 in your letter, the Trustees' responses are inter-related and, therefore, are being combined: The Trust Deed provides that "[t]he trustees shall 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 . . ." The Clifton Club is the owner of four lots in the Clifton Park allotment. The 8th Appellate District stated that, "The Club Members' [sic] have a permissive right to access the Beach as regulated by the Trustees pursuant to the Trust Deed." (*Dueck v. Clifton Club Co.*, 8th Dist. Cuyahoga Nos. 103868 and 103888, 2017-Ohio-7161, ¶126.) Plaintiffs' brief filed with the Appellate Court acknowledges this right to permissive access. Statement of Facts, ¶9 – 14, Argument, ¶29-30. See also, Plaintiffs' Stipulation of Facts #14 and #15 filed with the Probate Court. This permissive access reflects the course of conduct of the parties for the past 70 years. (*Dueck*, 2017-Ohio-7161, ¶65.) The Judgment Entry entered by the Probate Court clearly states the Probate Court's position on this issue ("members of the Clifton Club . . . have a permissive right to access the Beach, as regulated by the Trustees pursuant to the Trust Deed"), which the 8th Appellate District said was correctly determined. (*Dueck*, 2017-Ohio-7161, ¶67.)

With respect to question 3, the Trustees are not aware that any rules promulgated impair the access of lot owners in order to accommodate non-lot-owner Club members' use of the Beach. That said, as noted above, the Trustees are in the process of reviewing their previous determination of the Club's 2018 contribution for Beach operations, reviewing Beach rules promulgated, and considering other actions in order to carry out their fiduciary duties to all of the lot owners, including the Clifton Club. After this review is complete, the Trustees will communicate with all of the beneficiaries of the Clifton Park Trust.

On numerous occasions your clients have communicated that they do not agree with the Trustees' permissive regulations pertaining to use of the Beach by non-lot-owner Clifton Club members. During his call with you Bill asked whether it is your clients' position that there can be no permissive access to the Beach by non-lot-owners who are Clifton Club Members. Bill did not get a clear answer from you one way or the other. The Trustees request an answer to that question.

In addition your letter states that the current Trustees have "placed rules on Beach use that impair the access of lot owners in order to accommodate non-lot-owner Club members' use of the Beach". Please identify the rules to which you are referring and the precise manner in which those rules impair the lot owners' use of the Beach in favor of non-lot owners.

March 29, 2018

Page 3

The Trustees' good faith interpretation of the 8th Appellate District opinion, the documents and briefs filed by your clients, the documents and briefs filed by the Clifton Club and the Probate Court's Judgment Entry lead the Trustees to conclude that they may reasonably grant permissive access to non-lot-owner Clifton Club members. As Bill discussed with you, if your clients absolutely disagree, then the Trustees may need to find an avenue to seek the Court's guidance as permitted by the Ohio Revised Code. But before the Trustees decide their course of action, they would like a clear response from you concerning your clients' precise position on the issues identified above.

I look forward to hearing from you.

Sincerely,



Karen M. Moore

KMM/ckd
Attachments

cc: William D. Kloss, Jr.

EXHIBIT H

April 2, 2018

VIA E-MAIL

Karen M. Moore, Esq.
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43216-1008

Re: Clifton Park Trust

Dear Karen:

This is in response to your March 29, 2018 letter concerning the issue of the Trustees' authority to permit non-lot-owner members of the Clifton Club to use trust property. In my March 15, 2018 letter, I asked three specific questions. Your letter has failed to address questions one and two and does not respond directly to question three. Your failure to provide the language in the Trust Deed the Trustees rely on to permit non-lot-owner members of the Club to use trust property indicates that you agree with the lot-owner beneficiaries that there is no such language in the Trust Deed. Similarly, your failure to state where the Trustees get the authority to permit anyone but a lot owner to use the beach indicates that the Trustees agree with the lot-owner beneficiaries that they have no such authority. Please confirm.

Finally, as to your question of whether Plaintiffs' position is that there can be no permissive access to the beach by non-lot-owner members of the Clifton Club avoids the fundamental questions of whether the Trustees have the authority to do so and, if so, where does that authority come from. If the Trustees agree that the Trust Deed gives no such authority, they must seek that authority from the lot owners. If the Trustees believe otherwise, please explain the basis of that belief.

With the beach season fast approaching, the Plaintiffs would like the issue of Trustee authority finally resolved in a prompt manner. If the Trustees do not agree that the Trust Deed gives them no authority to permit access and cannot point to any other legitimate grant of such authority, I would expect the Trustees to seek a determination by the court to resolve the issue as you

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partner, Bill Kloss, indicated in our telephone conversation. Please let me know when the Trustees will seek a court determination.

Very truly yours,



Dennis R. Rose

slh

cc: Plaintiffs

EXHIBIT I



Vorys, Sater, Seymour and Pease LLP
Legal Counsel

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William D. Kloss, Jr.
Direct Dial (614) 464-6360
Direct Fax (614) 719-4807
Email wdklossjr@vorys.com

April 18, 2018

VIA ELECTRONIC MAIL

Dennis R. Rose, Esq.
Hahn Loeser & Parks LLP
200 Public Square, Suite 2800
Cleveland, Ohio 44114

Re: Clifton Park Trust

Dear Dennis:

Thank you for your April 10, 2018 email. As to the documents that were recently produced to Mr. Butler, we did not produce the documents that the prior Trustees and their counsel deemed to be privileged. We understand that issue was subject to motion practice before the Court. Thus, to the extent you seek those documents, please direct those inquiries to the Defendant Trustees' counsel.

In addition, I write to respond to your April 2, 2018 letter to Karen Moore. We disagree that we did not answer the issues raised in your March 15, 2018 letter. In good faith the new Trustees believe the decision of the Court of Appeals, the Judgment Entry of the Probate Court, and the parties' underlying briefing make clear that the Trustees have the right to grant non-lot owning Clifton Club Members permissive access to the beach.

The Trustees take seriously their duty to administer the Trust in the interest of all beneficiaries and their duty of impartiality. Karen's March 29, 2018 letter asked several questions, which remain unanswered. Those questions are: First, is it your clients' position that there can be no permissive access to the Beach by non-lot owners who are Clifton Club members? Second, please identify the rules "on Beach use that impair the access of lot owners in order to accommodate non-lot owner club Members' use of the Beach". Also, please identify the precise manner in which those rules impair the lot owners' use of the Beach in favor of non-lot owners.

In good faith the new Trustees are trying to manage this situation. But it is difficult to do so unless your clients will specifically articulate the basis for their complaints or what they want

VORYS
Legal Counsel

Dennis R. Rose, Esq.
April 18, 2018
Page 2

to happen. If you could help us understand those issues, perhaps that would chart a course towards resolution.

I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink that reads "Bill Kloss, Jr." in a cursive script.

William D. Kloss, Jr.

WDK/amb

cc: Karen M. Moore

EXHIBIT J

April 24, 2018

VIA E-MAIL (wdklossjr@vorys.com)

William D. Kloss, Jr., Esq.
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street
Columbus, Ohio 43216

Re: Clifton Park Trust

Dear Bill:

I write in response to your letter dated April 18, 2018 ("4/18/2018 Letter") which responds to my April 2, 2018 letter to Karen Moore requesting the Trustees' position on their authority to grant permission to Club members.

First, your letter confirms that the Trustees agree that they do not have authority under the Clifton Park Trust to grant non-lot owning members of the Clifton Club ("Club Members") access to the Clifton Park Beach ("Beach") and the facilities on the Beach, which is the Trust Property. It should not have taken weeks to confirm this fact. Judge Gallagher confirmed that the Trustees have no authority under the Trust to allow Club Members to use the Beach or other Trust property thereon: "The trust simply does not contain any language from which this court can reasonably conclude that the members of the Clifton Club share the same legal rights as the Clifton Club itself." [Opinion ¶ 131.] I would have thought that this would have been conceded weeks ago.

The Trustees' assertion that the "Trustees have the right to grant non-lot owning Clifton Club Members permissive access to the beach" [*see* 4/18/2018 Letter] is not supported by the Court of Appeals' decision. That is why the concurrence suggested the parties "negotiate a fair and equitable agreement that would grant members of the Clifton Club access to the beach on a permissive basis." [Opinion ¶ 131.] Contrary to your statement, the Court of Appeals concluded that Club Members are not beneficiaries of the Trust, have no rights under the Trust, and that the Trustees have given the Club Members a permissive right to access the Beach, which the Trustees have regulated pursuant to the Trust Deed. [*Id.* ¶ 126.] This statement merely recites what has been happening over the past years; it did not give the Trustees authority or a "right" to grant non-lot owning Clifton Club Members permissive access to the beach.

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Finally, your claim that “the new Trustees are trying to manage this situation” and then claiming we are making it “difficult to do so” because our clients will not “articulate . . . what they want to happen” misstates the record. [See 4/18/2018 Letter.] Repeatedly, Plaintiffs have tried in good faith to make suggestions or proposals to get to the fair and equitable agreement that Judge Gallagher suggested the parties find, and again and again, they have been met with the same responses: (1) Plaintiffs will not win, and/or (2) Let us maintain the status quo—a status quo that was soundly rejected by the Court of Appeals.

- Prior to the lawsuit, lot owner beneficiaries that included the Plaintiffs tried to engage in discussions with the then-group of Clifton Park Trustees and asked them to join in a declaratory judgment action seeking guidance from the Probate Court. Those Trustees refused to discuss the matter and declared that Club Members have a right under the Trust to use the Beach. The lawsuit ensued.
- The former Trustees and Club chose to engage in delay tactics instead of confronting the simple questions posed to the Court and claimed this is the way it has always been and the lawsuit would not change that.
- The parties then finally engaged in the first mediation. Plaintiffs made proposals, and they were refused. The Trustees filed a summary judgment motion that epitomized their settlement position—maintain the status quo because this is how it has always been and a building cannot use the Beach.
- The parties then engaged in mediation just prior to the Probate Court’s summary judgment ruling and, again, despite Plaintiffs offering some suggested solutions, the response was maintain the status quo and a building cannot use the Beach.
- Plaintiffs then, in good faith, tried mediation when the case was pending before the Court of Appeals. Again, we offered some suggestions, and the only response was maintain the status quo and a building cannot use the Beach.
- Plaintiffs prevailed on appeal and offered to work with the current trustees to establish a mechanism to obtain lot owner consent for Club Member Beach use, but were rebuffed. Plaintiffs left that offer open.
- Plaintiffs proposed to join the Club and seek a qualified independent opinion on the meaning of the Appellate decision. That offer was refused.
- Arthur Dueck and I met with Trustee Frost, made suggestions, and again, no offers came from the Trustees except a demand to agree to the status quo until the Ohio Supreme Court ruled.

These are just a few examples. So, again and again, Plaintiffs have tried in good faith to make attempts to get to the fair and equitable agreement that Judge Gallagher suggested the parties reach, and, again and again, they have been met with the same rebuke. In fact, the Trustees' current suggestion is maintain the status quo of treating Club Members equally to lot owner beneficiaries for the 2018 Beach season. Accordingly, it is baffling for you to suggest that the lot owner beneficiaries have been the impediment to any meaningful discussion when the Club, the past Trustees, and the new Trustees are the ones who in fact have never offered a single solution besides maintain the status quo.

Accordingly, we have attached a Complaint outlining the numerous breaches of fiduciary duty that the new Trustees have engaged in to the detriment of the lot owner beneficiaries despite the Court of Appeals' August 10, 2017 ruling. Considering the urgency of the need to protect lot owners' rights as the Beach season rapidly approaches and the delays which have already occurred as a result of the current Trustees' delay in responding to our straightforward questions, we will be forced to file this Complaint if the Trustees do not admit that they need to obtain lot owner consent before allowing Club Members Beach use and move to protect the interests of the beneficiaries for the 2018 Beach season.

We look forward to your prompt response.

Very truly yours,



Dennis R. Rose

hnh

Attachment

cc: Karen M. Moore, Esq. (w/att.)

DRAFT

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
PROBATE DIVISION

	)	CASE NO.
)	
Plaintiffs,	)	JUDGE
)	
vs.)	
)	
JOSEPH KERRIGAN, TRUSTEE,)	
CLIFTON PARK TRUST)	
18181 Clifton Road)	
Lakewood, Ohio 44107)	
)	
MARY ELLEN FRASER, TRUSTEE,)	
CLIFTON PARK TRUST)	
1124 Forest Road)	
Lakewood, Ohio 44107)	
)	
ROBERT FROST, TRUSTEE,)	
CLIFTON PARK TRUST)	
18126 West Clifton Road)	
Lakewood, Ohio 44107	)	<u>PLAINTIFFS' COMPLAINT</u>
)	
WARREN COLEMAN, TRUSTEE,)	
CLIFTON PARK TRUST)	
18136 Clifton Road)	
Lakewood, Ohio 44107)	
)	
RYAN MEANY, TRUSTEE,)	
CLIFTON PARK TRUST)	
1104 West Forest Road)	
Lakewood, Ohio 44107)	
)	
Defendants.)	

Plaintiffs =, for their Complaint, state as follows:

1. This case involves the administration of the Clifton Park Trust (the "Trust"). The terms of the Trust are memorialized in a certain Deed of Trust dated March 25, 1912, as recorded on March 27, 1912 in the Cuyahoga County Records, Cleveland, Ohio, at Volume 1382, Pages

277-280 ("Trust Deed"). A copy of the Trust Deed is attached hereto and marked as Exhibit "A."

PARTIES

2. Plaintiffs are sublot owners of real property located within the allotment of Clifton Park in the City of Lakewood, County of Cuyahoga, and State of Ohio ("Clifton Park").

3. Plaintiffs are all beneficiaries of the Trust.

4. Warren Coleman is a resident of Lakewood, Ohio, and is a trustee of the Clifton Park Trust.

5. Mary Ellen Fraser is a resident of Lakewood, Ohio, and is a trustee of the Clifton Park Trust.

6. Robert Frost is a resident of Lakewood, Ohio, and is a trustee of the Clifton Park Trust.

7. Joseph Kerrigan is a resident of Lakewood, Ohio, and is a trustee of the Clifton Park Trust.

8. Ryan Meany is a resident of Lakewood, Ohio, and is a trustee of the Clifton Park Trust.

9. Warren Coleman, Mary Ellen Fraser, Robert Frost, Joseph Kerrigan, and Ryan Meany are referred to collectively as the "Trustees."

JURISDICTION AND VENUE

10. This Court has jurisdiction to hear disputes arising from the administration of a trust pursuant to R.C. 2101.24 and R.C. 2721.05.

11. Venue is proper in Cuyahoga County because the corpus of the Trust is real property located in Cuyahoga County, and all interested parties reside in Cuyahoga County, Ohio.

BACKGROUND

12. The Trustees hold legal title to certain real property as set forth in the Trust together with certain fixtures, buildings, and other personal property in the Trust (the “Trust Property”).

13. The Trust Property includes a beach property in the northwest corner of the Clifton Park Allotment at the entrance to the Rocky River from Lake Erie (hereinafter referred to as the “Beach”). The Trust Property at the Beach includes 50 picnic benches, a beach house building, a parking lot with a finite number of parking spaces, and a sandy beach area about 700 feet long (“Beach Property”). Only 16 of the picnic benches are actually on the Beach. A true and accurate copy of an aerial photo of the Beach and Beach Property prepared by the Trustees and posted on the Trustees’ website is attached as Exhibit “B.” A true and accurate copy of Brochure describing the size of the Beach is attached as Exhibit “C.”

14. The Beach Property is a limited resource.

15. Upon information and belief, there are 203 lot owner beneficiaries of the Trust.

16. On information and belief, there are only 75 parking spaces as part of the Beach Property.

17. The Trust Deed mandates that the Trustees maintain the Trust Property, including the Beach and Beach Property, for the “sole use and benefit” of the Trust beneficiaries and that the Trustees hold title for the common use of the Trust beneficiaries: that is, they “shall 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.”

18. The Trust Deed also mandates that the Trustees cannot convey any interest in the Trust Property or dedicate any portion of the Trust Property to any person who is not a beneficiary without the unanimous consent of all the lot owners in Clifton Park: “[n]o part of

said land shall be sold, conveyed or dedicated to public use without the unanimous consent of all the lot owners in said allotment.”

19. The Trust Deed is the sole conveyor of legal rights to the beneficiaries.

20. The Plaintiffs and other subplot owners in Clifton Park are the sole legal beneficiaries in common under the Trust.

21. The Clifton Club Company (the “Club”), which was incorporated in 1902 to operate as a for-profit social club, is a lot owner in Clifton Park pursuant to a deed dated July, 1, 1912, as recorded on July 9, 2012 in the Cuyahoga County Records, Cleveland, Ohio at Volume 1399, Pages 374-376 (the “Club Deed”), and a beneficiary of the Trust.

22. The Club Deed transferred title to the Club’s sublots.

23. The Club Deed did not, and could not, convey any greater rights to the Trust Property than those that are set forth in the Trust Deed, because title to, and control of, the Trust Property was vested solely in the Trustees via the Trust Deed.

24. The Club Members are not beneficiaries of the Trust.

25. The Club Members are not named in the Trust.

26. The Club Members have no rights under the Trust Deed.

27. The Trust Deed does not give the Club Members any right to use the Trust Property.

28. The Trust Deed does not contain any terms allowing the Club Members to use the Beach.

29. There are no terms in the Trust Deed expressly reserving authority to expand rights under the Trust after its creation.

30. The Trust Deed does not give the Trustees authority to allow, give, or grant Club Members rights to use Trust Property, including the Beach and Beach Property, unless the Clifton Park lot owners provide unanimous consent.

31. On information and belief, the Clifton Park lot owners have not given the Trustees unanimous consent to allow, give, or grant 224 Club Members rights to use Trust Property, including the Beach and Beach Property in any manner.

32. The Clifton Park lot owners have not given the Trustees unanimous consent to allow, give, or grant Club Members rights to use Trust Property, including the Beach and Beach Property, in a manner that is equal to the rights of the beneficiaries of the Trust.

**THE COURT OF APPEALS FINALLY RESOLVES THE ISSUE OF CLUB MEMBER
RIGHTS UNDER THE TRUST DEED**

33. In late 2011, a dispute arose over the question of whether the members of The Clifton Club Company (“Club”) who are not residents (“Club Members”) of the Clifton Park Allotment in Lakewood, Ohio (“Clifton Park”) are beneficiaries of the Clifton Park Trust (“Trust”) who must be treated equally with the Clifton Park lot owners.

34. In April of 2012, certain Plaintiffs filed an action captioned as *Arthur P. Dueck, et al. v. The Clifton Club Company*, 2012ADV179424, which asked the Court to resolve two questions: (a) whether the members of The Clifton Club Company (“Club”) who are not residents (“Club Members”) of the Clifton Park Allotment in Lakewood, Ohio (“Clifton Park”) are beneficiaries of the Clifton Park Trust (“Trust”), and (b) whether the Club Members have the legal right to use Trust property.

35. The questions were finally resolved by the Eighth District Court of Appeals in a written opinion entered on August 10, 2017 (the “Opinion”).

36. In the Opinion, the Court of Appeals construed the pending question to be “whether the nonresident Club Members are direct Beneficiaries under the Trust Deed, as stated in Count I of the first amended complaint, arguably entitling them to equal access and commensurate status as the owner Beneficiaries.”

37. The Court of Appeals’ answer to that question was **NO**:

- “After a thorough review of the record, we find that the nonresident members of the Clifton Club are not beneficiaries of the Trust and, as a result, have no legal rights.” [Opinion at ¶ 1.]
- “We do not, however, find that the cases establish that the Club Members are direct legal Trust Beneficiaries, the query pending here.” [*Id.* at ¶ 52.]
- “[I]n response to the declaration explicitly requested by appellants, we find that the Club Members have no legal right of access as Beneficiaries.” [*Id.* ¶ 67.]
- “The Club Members are not equal or direct Beneficiaries of the Trust.” [*Id.* ¶ 126.]
- “[T]he Club Members are not beneficiaries under the Trust Deed and, therefore, have no legal right to access the subject beach.” [*Id.* at ¶ 130 (J. Gallagher Concurring).]
- The trust simply does not contain any language from which this court can reasonably conclude that the members of the Clifton Club share the same legal rights as the Clifton Club itself. [*Id.* ¶ 131 (J. Gallagher Concurring).]

38. The Court of Appeals also found that the Club did not have any greater rights to use the Trust Property than any other Trust beneficiary:

- “We determine that the lot owners are the sole legal beneficiaries of the Trust. The Clifton Club is a lot owner and thus a beneficiary. The Trust Deed is the sole conveyor of legal rights to the beneficiaries. The Club Deed transferred title to the Club Lots. The Club Deed did not, and could not, convey any greater rights to the Trust property than those that are set forth in the Trust Deed, because title to, and control of, the Trust property was vested solely in the Trustees via the Trust Deed. [*Id.* ¶ 125.]

THE TRUSTEES GIVE CLUB MEMBERS EQUAL BEACH ACCESS RIGHTS TO BENEFICIARIES

39. The Beach season is defined by the Trustees.

40. The defined Beach season defines when beneficiaries can use the Beach and Beach Property.

41. The Beach season is defined as May 1 to October 31 of the calendar year.

42. There are only 184 days in the Beach season set by the Trustees.

43. The Trustees have given the Club Members permission to use the Beach and Beach Property for the 2018 Beach season.

44. A true and accurate copy of the Trustees' 2018 Clifton Beach Rules ("Rules") is attached as Exhibit "D."

45. The Trustees have issued the Rules, which unequally favor the Club and unequally grant the Club rights to use the Trust Property, including the Beach and Beach Property.

46. The Rules also treat each individual Club Member as an equal or direct beneficiary of the Trust because an individual Club Member has been given the same rights to use the Beach and Beach Property as any Clifton Park lot owner, who is actually a Trust beneficiary.

47. 224 Club Members have been given permission by the Trustees to access the Beach.

48. Like any Trust beneficiary, the Trustees assert that in 2018, each Club Member has a right to use the Beach as the Rules state that "All members in good standing, along with their immediate family members living in the residence of the member, may use the Beach facilities, [*i.e.* Beach and Beach Property]." [Ex. C, p. 1, bullet no. 2.]

49. Under the Rules, the Trustees allow the Club to have 224 families living in the residence of each Club Member, none of whom have any legal rights under the Trust, to use the Beach Property. [*Id.*]

50. Under the Rules, a resident beneficiary only has the right to have one family living in the residence of the beneficiary use the Beach. [*Id.*]

51. Under the Rules, each beneficiary that is a resident only receives two (2) windshield stickers for using the parking spaces that are part of the Beach Property.

52. In effect, a resident lot owner Trust beneficiary can only use two (2) parking spaces at a time, except to the extent that the resident lot owner Trust beneficiary obtains one or more of the additional 10 guest parking passes available from the Trustees Monday through Friday. [Ex. C, p. 1, bullet no. 5.]

53. Under the rules, each Club Member also receives from the Trustees two (2) windshield stickers for using the parking spaces that are part of the Beach Property.

54. Under the Rules, each Club Member also has been given equal access to the 10 guest parking passes available from the Trustees Monday through Friday. [Ex. C, p. 1, bullet no. 5.]

55. The Rules related to parking and parking restrictions apply equally to each resident lot owner beneficiary household and to each individual Club Member household. [Ex. C, p. 1, bullet nos. 2 and 5.]

56. In effect, the Club receives from the Trustees 448 (224 x 2 cars per Club Member) windshield stickers for using the parking spaces that are part of the Beach Property and, thus, can use all of the approximately 75 available parking spaces at a given time.

57. Under the Rules, a resident lot owner beneficiary who does not have a Beach picnic table reservation or Beach house reservation is limited to four (4) guests per household and no more. [Ex. C, p. 1, bullet no. 8.]

58. Under the Rules, the Trustees have allowed each Club Member to bring four (4) guests per household. [*Id.*]

59. In effect, the Club receives a right from the Trustees to 896 guest passes (224 x 4 guest passes per Club Member household) for use on the Beach on a daily basis during the 2018 Beach season. [*Id.*]

60. The Rules on the number of guests allowed on the Beach apply equally to each resident lot owner beneficiary household and to each individual Club Member household. [Ex. C, p. 1, bullet nos. 2 and 8.]

61. Under the Rules, a resident lot owner beneficiary can only have two open picnic table reservations at one time. [Ex. C, p. 1, bullet no. 2 and p. 2, bullet no. 8.]

62. Under the Rules, the Trustees have given each individual Club Member a right to have two open picnic table reservations at one time. [*Id.*]

63. In effect, the Club has the right to have 448 open picnic table reservations at any given time (224 x 2 open picnic table reservations per Club Member). [*Id.*]

64. The Rules regarding picnic table reservations apply equally to each resident lot owner beneficiary household and to each individual Club Member household. [*Id.*]

65. Under the Rules, the Club, a single beneficiary, is also guaranteed 40% of the available picnic table reservations, while the 203 residential lot owner beneficiaries only have access to 60% of the available picnic table reservations and no guarantee whatsoever. [Ex. C. p. 2, bullet no. 5.]

66. In effect, each resident lot owner beneficiary is not only limited to two (2) open picnic table reservations at any time, but the resident lot owner beneficiary only has access to 60% of the available reservation slots.

67. Thus, by granting one beneficiary – the Club – its guaranteed 40% of the picnic table reservations as a “Super User,” the Trustees have sacrificed the rest of the beneficiaries’ use and enjoyment of the Beach via that Trust property to 60% of the total.

68. Under the Rules, a resident lot owner beneficiary can only have two open Beach house reservations at any one time. [Ex. C, p. 1 bullet no. 2, p.3 bullet no. 2.]

69. Under the Rules, the Trustees have given each individual Club Member a right to have two open Beach house reservations at one time. [*Id.*]

70. The Rules regarding Beach house reservations apply equally to each resident lot owner beneficiary household and to each individual Club Member household. [*Id.*]

71. In effect, the Trustees have given the Club the right to have 448 open Beach house reservations at any given time. (224 x 2 open Beach house reservations per Club Member). [*Id.*]

72. Thus, the Trustees have granted the Club a “super user” status allowing it Beach house access that is 224 times greater than any other beneficiary.

73. Under the Rules, there are only 175 available days for a Beach house reservation during the Beach season.

74. In effect, the Trustees have given the Club the ability to reserve the Beach house for the entire Beach season.

75. The Rules apply equally to each resident lot owner beneficiary household and to each individual Club Member household.

76. Despite the clear rulings of the Court of Appeals in the Opinion, the Trustees have issued rules related to the use of Trust Property—held in the form of the Clifton Park Beach and related Beach Property—that (a) grants each individual Club Member a right to use the Trust property that is equal to the rights of an individual lot owner of Clifton Park (who are the sole

beneficiaries of the Trust) to the use the Trust property and (b) grants the Club rights to use the Trust property that are far greater than any individual lot owner in Clifton Park—in fact 224 times greater.

77. This conduct by the Trustees violates the Appellate Court ruling and is a breach of fiduciary duty and must be enjoined to protect the rights of the Plaintiffs, who are the sole Trust beneficiaries in common with the Club.

**TRUSTEES WITHHOLD INFORMATION IN VIOLATION OF THEIR FIDUCIARY
DUTIES AS SET FORTH BY THE OPINION**

78. The Trustees are required to promptly respond to a beneficiary's information request as it relates to the administration of a trust. [Opinion at ¶ 110.]

79. According to the Court of Appeals, the Trustees' refusal to provide Trust documents prior to the litigation, and during, constitutes a breach of R.C. 5808.13, to inform and report. [*Id.* at ¶ 120.]

80. The Court of Appeals also held that “[t]he preservation of full disclosure in a trustee beneficiary relationship is of utmost importance.” [*Id.*]

81. Since September 25, 2017, lot owner beneficiaries asked Trustees Kerrigan, Fraser and Meany by email on September 25, 2017, whether they were going to abide by the Court of Appeals ruling and the language of the Trust in administering the Trust and regulating use of the Trust Property.

82. Trustees Kerrigan, Fraser, and Meany failed to respond to this question.

83. As a result of Trustees Kerrigan's, Fraser's, and Meany's refusal to respond to Plaintiff Dueck regarding how the Trust would be administered, counsel for Plaintiffs was forced to send a March 15, 2018 letter asking the Trustees the following questions: (a) “What language in the Trust Deed are the Trustees relying on to maintain the status quo?”; (b) “Where do the

Trustees get the authority to permit anyone but a lot owner to use the Beach?"; (c) Why have the Trustees again placed rules on Beach use that impair the access of the lot owners in order to accommodate non-lot-owner Club members' use of the Beach?"

84. Despite owing a fiduciary duty to respond, the Trustees have failed to fully respond to each of those questions, and instead responded with questions to the Plaintiffs, none of which seeks clarification of the foregoing questions from Plaintiffs.

85. Prior Trustees wrote in their January 2016 minutes that there were boxes of yet un-scanned files remaining in storage that were to be sent out for scanning.

86. On September 16, 2017, a lot owner beneficiary asked for copies of those belatedly scanned files from the Trustees which were not previously produced, as scanned files were given only to the Plaintiffs.

87. Despite repeated requests for those files, they were withheld until March 29, 2018, a period of time in excess of six months.

88. Those withheld files contained 17,964 pages, of which over 1,200 were relevant to the prior lawsuit.

89. Despite the fact that the Court of Appeals stated that all files, including those containing legal advice from counsel to Trustees (except in specific defense of ongoing litigation) were to be shared with Trust beneficiaries – including the Plaintiffs – over 230 pages were withheld due to claims of attorney-client privilege, and no privilege log was provided.

90. The request for information made by the lot owner beneficiary on September 16, 2017 requested four specific other categories of information, none of which has received a response from the Trustees despite repeated requests.

91. A lot owner beneficiary asked Trustee Kerrigan for a summary of legal charges paid for either by the Trust or its insurance company in the previous lawsuit from 2012 to 2017. The Trustees have not provided any of that information to date.

92. In March 2018, a lot owner beneficiary asked Trustee Kerrigan if the Trustees agreed with a statement promulgated by the Club that all of its members had rights to use the Beach through their membership in the Club for 2018. A true and accurate copy of the Club's March 2018 statement is attached as Exhibit "E."

93. Trustee Kerrigan refused to answer the question and deflected it to the Trustees' counsel, who has not answered the question to date.

COUNT I

94. The allegations contained in paragraphs 1 through 92 above are incorporated herein as if fully rewritten.

95. The Trustees owe a duty to administer the Trust Deed according to its terms.

96. The Trustees owe a duty to administer the Trust Deed solely in the interests of the beneficiaries, the lot owners in Clifton Park.

97. The Trustees owe a duty of loyalty to the Trust beneficiaries.

98. The Trustees owe a duty to the Trust beneficiaries to take reasonable steps to take control of and protect the Trust Property.

99. The Trustees have no authority under the terms of the Trust to grant a right to use the Trust Property, including the Beach and Beach Property, to any person who is not a beneficiary of the Trust without the unanimous consent of the lot owners.

100. The Clifton Park lot owners have not given unanimous consent to the Trustees to grant a right to use the Trust Property, including the Beach and Beach Property, to any person who is not a beneficiary of the Trust.

101. The Trustees have no authority under the terms of the Trust to grant a right or permission to use the Trust Property, including the Beach and Beach Property, to any person who is not a beneficiary of the Trust that is equal to the rights of the Trust beneficiaries without the unanimous consent of the lot owners.

102. The Clifton Park lot owners have not given unanimous consent to the Trustees to grant a right to use the Trust Property, including the Beach and Beach Property, to any person who is not a beneficiary of the Trust that is equal to the rights of the Trust beneficiaries.

103. The Club Members are not beneficiaries of the Trust.

104. The Club Members have no legal rights under the Trust.

105. The Club Members have no legal rights or permission under the Trust to use Trust Property.

106. The Trustees have granted 224 Club Members a permissive right to use the Trust Property, including the Beach and Beach Property, that is equal to the rights of the Trust beneficiaries.

107. The Trustees' grant to 224 Club Members of a permissive right to use the Trust Property, including the Beach and Beach Property, without the unanimous consent of the Clifton Park lot owners is a breach of fiduciary duty.

108. Under R.C. 5810.01(B), the Court should enjoin the Trustees from granting to the Club Members a permissive right to use the Trust Property, including the Beach and Beach Property, without the unanimous consent of the Clifton Park lot owners because such conduct is a breach of the trust and a breach of their fiduciary duty.

109. Under R.C. 5810.01(B), the Court should enjoin the Trustees from granting to the Club Members a permissive right to use the Trust Property, including the Beach and Beach

Property, that is equal to the rights of any other individual Trust beneficiary without the unanimous consent of the Clifton Park lot owners because such conduct is a breach of trust and/or fiduciary duty.

110. Under R.C. 5810.04, the Court should also award Plaintiffs their costs, expenses, and attorneys' fees to be paid by the Trustees.

COUNT II

111. The allegations contained in paragraphs 1 through 109 above are incorporated herein as if fully rewritten.

112. The Trustees owe a duty to the Trust beneficiaries to act impartially in managing the Trust Property, including the Beach and Beach Property, giving due regard to the beneficiaries' respective interests.

113. The Trust Deed does not contain any terms indicating that any one Trust beneficiary has a greater right to use the Trust Property, including the Beach or the Beach Property, than any other Trust beneficiary.

114. The Trust Deed is the sole conveyer of legal rights to the Trust beneficiaries.

115. The Trust Deed mandates that the Trustees "shall 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."

116. The Club does not have any greater rights to use the Trust Property, including the Beach or Beach Property, than any other individual lot owner.

117. By creating Rules that give the Club a right to use the Beach and Beach Property in a way that allows the Club a right to use of the Beach that is 224 times greater than any one resident lot owner beneficiary's right to use the Beach, the Trustees have breached their fiduciary duty.

118. Under R.C. 5810.01(B), the Court should enjoin the Trustees from enforcing Rules that grant the Club any more rights to Beach house reservations, parking guest passes, parking spaces, and/or picnic table reservations that is greater than any other individual resident lot owner beneficiary.

119. Under R.C. 5810.04, the Court should also award Plaintiffs their costs, expenses, and attorneys' fees to be paid by the Trustees.

COUNT III

120. The allegations contained in paragraphs 1 through 118 above are incorporated herein as if fully rewritten.

121. The Trustees have a fiduciary duty to hold the Trust property for the use in common by all of the lot owners.

122. By creating Rules which reduce the common use of all of the resident lot owner beneficiaries to only 60% of certain Trust Property, the Trustees have breached their fiduciary duty.

123. Under R.C. 5810.01(B), the Court should enjoin the Trustees from enforcing Rules that restrict the rights of the resident lot owner beneficiaries to use Trust Property that are in excess of the Rules required for the Trustees to fulfill their duties to hold the Trust Property for the common use of all of the lot owners.

124. Under R.C. 5810.04, the Court should also award Plaintiffs their costs, expenses, and attorneys' fees to be paid by the Trustees.

COUNT IV

125. The allegations contained in paragraphs 1 through 123 above are incorporated herein as if fully rewritten.

126. The Trustees owe a fiduciary duty to keep the current beneficiaries of the Trust reasonably informed about the administration of the Trust and of the material facts necessary for them to protect their interests.

127. The Trustees also owe a fiduciary duty to promptly respond to a beneficiary's request for information related to the administration of the Trust.

128. The Trustees have a fiduciary duty to provide information and documents concerning the administration of the Trust to the beneficiaries.

129. The Trustees have refused to respond to the Plaintiffs' request for information related to the Trustees' administration of the Trust, including regulation of the Beach use by resident lot owner beneficiaries, the Club, and the Club Members.

130. The information the Plaintiffs requested from the Trustees requested material facts necessary for them to protect their interests.

131. On information and belief, the Trustees refused and/or continue to delay responding to prevent challenges to the Beach Rules and their grant of permission to the Club Members to use the Beach for the 2018 Beach season.

132. The Trustees have breached their duty to provide information by delaying the production of information and documents relating to the administration of the Trust and failing to provide information and documents relating to the administration of the Trust.

133. Upon information and belief, the Trustees' conduct places the interests of the Club Members who are "not beneficiaries of the Trust and as a result have no legal rights" [Opinion at ¶ 1] above the interests of the Trust beneficiaries and compromises those interests.

134. Under R.C. 5810.04, the Court should also award Plaintiffs their costs, expenses, and attorneys' fees to be paid by the Trustees.

WHEREFORE, the Plaintiffs pray for judgment in their favor:

- (1) Enjoining the Trustees from granting to the Club Members a right to use the Trust Property, including the Beach and Beach Property;
- (2) Enjoining the Trustees from granting to the Club Members a permissive right to use the Trust Property, including the Beach and Beach Property, that is equal to the rights of any other individual Trust beneficiary;
- (3) Enjoining the Trustees from enforcing Rules that grant the Club any more rights to Beach house reservations, parking guest passes, parking spaces, and/or picnic table reservations that is greater than any other individual Trust beneficiary;
- (4) Enjoining the Trustees from restricting the resident lot owners use of the Beach in any manner not consistent with the directive in the Trust that the Trust Property is for the sole and exclusive use in common by all of the lot owners.
- (5) Awarding Plaintiffs their costs, expenses, and attorneys' fees to be paid by the Trustees; and
- (6) Awarding such additional relief as the Court deems appropriate, just, and equitable.

OF COUNSEL:

HAHN LOESER + PARKS LLP

Respectfully submitted,

DRAFT

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Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand trial by jury on all counts so triable.

OF COUNSEL:

HAHN LOESER + PARKS LLP

Respectfully submitted,

DRAFT

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Attorneys for Plaintiffs

EXHIBIT K

CLIFTON PARK

TRUSTEES OF LAND RESERVED FOR PARK PURPOSES

Trustees

Warren P. Coleman
Mary Ellen Fraser
Robert Frost
Joseph W. Kerrigan
Ryan J. Meany

Secretary-Treasurer

Nancy Graves
17889 Lake Road
Lakewood, OH 44107
216/521-6078

March 1, 2018

Dear Clifton Park Lot Owners, Clifton Club Directors and Lagoon Trustees:

We are looking forward to the 2018 Beach Season! Important information related to the upcoming season, Beach Rules, registration of vehicles, and Trustee-sponsored events at the Beach, is set forth below.

Financial Statements

Enclosed are the Trust's 2017 financial statements and budget for 2018. The 2018 overall assessment will increase by \$16k. The increase will help fund substantial maintenance and improvement projects, including a new boardwalk and lighting targeted to begin this fall, as well as legal expenses related to addressing information requests from beneficiaries and managing the Trust in the context of ongoing litigation. Park residents will provide 45% of the total, the Clifton Club will provide 45% (vs. 42% in 2017) and the Lagoon residents will provide 10%. Individual assessments for Park residents will not increase for 2018.

Beach Rules

The 2018 Beach Rules are included in this mailing. Please familiarize yourself with these Rules, which will be enforced by the Trustees and the Beach guard staff. Please note that the guest vehicle passes rule has not changed from last year. Ten (10) guest vehicle passes will be available Monday through Friday for guests of a host member who is present at the beach. The vehicles with guest passes must depart the Beach when the host departs, no later than 4:00 p.m. Five (5) vehicle guest passes will be available Monday through Thursday, after 5:00 p.m., for senior citizens and handicapped guests of a host member. The guards will make the day and evening passes available, at their discretion, on a first-come, first served basis.

Vehicle Registration

Enclosed is the Registration Form for the windshield stickers required for vehicles during Beach season, which begins May 1st. Please follow the instructions on the Form.

Geese Patrol

Also enclosed is a registration form for dogs that will participate in the geese patrol. Please return this registration form with your assessment payment if you wish to take on this responsibility. The number of registrations is limited. The guards will hand out scarves to those dogs registered and will track participation.

Reserve these Dates

- **Beach Spring Clean-up/ Beautification** will be held **Saturday, May 12th**, with a rain date of **May 19th**. This is an important community event that helps prepare the Beach for the season. It involves only a few hours of service and offers an opportunity to get acquainted or re-acquainted with neighbors and friends after a long winter. It begins at 8:30 am and winds up after pizza in the early afternoon.
- The **Town Meeting** will be held on **Tuesday evening, May 15th, at 7:00 pm**. The Trustees invite you to join them, your neighbors, and Club members for a social hour followed by a brief Trustees' presentation of priorities for 2018. The Trustees will answer questions about Trust operations and will respond to comments and concerns. We especially urge new residents and Club members to attend for an introduction to your neighbors and the Trustees.
- The Trustees have reserved the date of **August 25th** for the annual **Clifton Beach Family Camp Out**. We are looking for volunteers to staff this popular event.

Trustees' Responsibilities

The Clifton Park Trustees preserve and maintain the "common properties" held in the Trust for the benefit of Clifton Park lot owners and a segment of Clifton Club members. The principal property is Clifton Beach; other properties include Beach Road, a parcel along the Rocky River south of the entrance to the Lagoons, Banks Park, landscaped triangles in Clifton Park, land north of the railroad tracks and two walkways in Clifton Park. The governing Trust grants the Trustees the authority to assess properties in Clifton Park for the costs of maintaining the common properties and to establish regulations for the use of the properties.

We remind you that the Trustees maintain an informative and useful website at www.cliftonparktrustees.org. Please contact any Trustee with any questions or concerns or email us via the website. The Trustees strive to be transparent and responsive.

We look forward to a wonderful summer at Clifton Beach.

Cordially,
The Clifton Park Trustees

**Clifton Park Trustees
Year 2018 Budget
Comparison to Prior Years**

	2018 Budget	2017 Actual	2016 Actual	2015 Actual	2014 Actual	2013 Actual	2012 Actual
Revenue							
Assessment Revenue							
Clifton Park Residents	\$ 127,928	\$ 127,472	\$ 129,418	\$ 127,928	\$ 128,731	\$ 129,591	\$ 128,362
Clifton Club	127,000	112,131	112,131	112,130	112,130	112,130	112,130
Clifton Lagoons	27,800	26,698	26,698	26,698	26,698	26,698	26,698
Total Assessment Revenue	\$ 282,728	\$ 266,301	\$ 268,247	\$ 266,756	\$ 267,559	\$ 268,419	\$ 267,190
Other Revenue							
Beach House Rental	25,000	32,145	28,440	25,975	24,225	22,085	31,965
Interest & Dividends	250	647	563	459	642	537	437
Other Income							
Total Other Revenue	25,250	32,792	29,003	26,434	24,867	22,622	32,402
Total Revenue	\$ 307,978	\$ 299,093	\$ 297,250	\$ 293,190	\$ 292,426	\$ 291,041	\$ 299,592
Disbursements							
Guard Payroll	\$66,000	\$71,126	\$68,379	\$71,434	\$76,761	\$73,336	\$74,725
Beach Payroll	6,000	10,949	11,554	15,787	16,807	21,894	22,525
Supervision & Administration	42,387	40,700	36,560	35,600	34,560	33,075	33,100
Payroll Taxes	10,467	10,564	10,891	11,389	11,662	11,515	11,588
Accounting Fees	4,500	4,485	4,468	3,975	3,718	4,110	4,033
Special Maintenance Projects	30,000	47,223	30,660	34,689	88,271	54,588	41,073
Property Maintenance	57,750	71,179	62,098	64,463	45,317	48,160	44,139
Insurance	26,000	25,376	27,189	26,953	9,988	8,284	8,284
Tax							
Interest Expense			-		-	421	43
Legal Expenses	20,000	8,328		-	-	12,379	37,005
Miscellaneous	1,000	846	811	609	1,466	1,684	860
Printing & Postage	2,500	2,149	2,303	3,026	1,473	2,300	3,403
Real Estate Taxes	525	519	524	268	533	509	730
Utilities	14,550	17,134	16,771	12,818	10,684	10,183	12,280
Workers' Compensation	1,000	663	1,679	1,695	1,335	1,062	2,035
Additions to Capital Reserve (Net)	0				-	7,541	3,769
Total Operating Disbursements	\$282,679	\$311,242	\$273,887	\$282,706	\$302,575	\$291,041	\$299,592
Net Operating Revenue/(deficit)	\$ 25,299	\$ (12,149)	\$ 23,363	\$ 10,484	\$ (10,149)	\$ 7,541	\$ 3,769

**Clifton Park Trustees
Balance Sheet 2009 to 2016**

Assets	12/31/2017	12/31/2016	12/31/2015	12/31/2014	12/31/2013	12/31/2012	12/31/2011
Operating Cash	\$108,964	\$121,077	\$97,714	\$87,230	\$97,334	\$90,787	\$87,018
Other Assets							
Friends of the Beach	3,211	4,721	4,919	3,223	1,250		
Sub-Total Cash	\$112,175	\$125,798	\$102,633	\$90,453	\$98,584	\$90,787	\$87,018
Property	1	1	1	1	1	1	1
Total Assets	\$112,176	\$125,799	\$102,634	\$90,454	\$98,585	\$90,788	\$87,019
Total Liabilities & Fund Balances							
First Federal Operating Loan						\$994	\$994
Friends of the Beach	3,211	4,721	4,919	3,223	1,250		
Total Liabilities	3,211	4,721	4,919	3,223	1,250	\$994	\$994
Fund Balance	\$108,965	\$121,078	\$97,715	\$87,231	\$97,335	\$89,794	\$86,025
Total Liabilities & Fund Balance	\$112,176	\$125,799	\$102,634	\$90,454	\$98,585	\$90,788	\$87,019

2018 CLIFTON BEACH RULES

Clifton Beach is maintained by the Clifton Park Trustees for use by Clifton Park property owners, certain members of the Clifton Club and Clifton Lagoon property owners (collectively, the "members"). Unauthorized visitors will be treated as trespassers and will be asked to leave the Beach by the Guards or be the subject of a police report. The Clifton Park Trustees have established these Rules to provide a safe and enjoyable Beach experience for all members, their families and guests. Members are responsible for their family members and guests and must be certain that their family members and guests understand and obey the Beach Rules. Guards employed by the Trustees are empowered to enforce the Rules. These Rules may be changed at any time by the Trustees, who will communicate changes to members. The Trustees, at their sole discretion, reserve the right to suspend or deny Beach privileges for violations of the Rules.

General

- The Beach season is defined as the period May 1 through October 31st. During the season the Beach will open at 9 a.m. and will be vacated by midnight without exception.
- All members in good standing, along with their immediate family members living in the residence of the member, may use the Beach facilities. Immediate family members shall mean children, parents and grandparents provided they permanently reside in the home of the member.
- Clifton Beach windshield stickers will be attached by the Guards to the windshield to vehicles belonging to members or immediate family members residing in the home of a member upon receipt of their assessment, their household registration form and presentation of State-issued vehicle registration information. Only Guards may apply and remove vehicle stickers during the Beach season.
- Only vehicles with stickers or with guard issued guest vehicle passes will be allowed to park on Beach property. The Guards have the authority to order a vehicle towed if the owner does not comply with these Rules. All risks and expenses of the tow are the responsibility of the owner of the vehicle. Motorized street legal scooters, carts, and motorcycles, must park in the designated space near the basketball court as directed by the guards.
- Ten (10) guest vehicle day passes will be available Monday through Friday for guests of a host member who is present at the beach. The vehicles with guest passes must depart the Beach when the host departs, no later than 4:00 p.m. Five (5) vehicle guest passes will be available Monday through Thursday after 5:00 p.m., for senior citizens and handicapped guests of a host member. The guards will make the day and evening passes available, at their discretion, on a first-come, first-served basis. As in the case of all guests, the host member is responsible for the guests, who must comply with all the Beach rules.
- Non-stickered vehicles dropping off and picking up guests and/or supplies will be provided with a 15-minute time-stamped parking permit for that purpose.
- The host member must register all guests, including children, at the Guard House. This rule applies to guests arriving in member vehicles. Guards are authorized to refuse entry to any visitor not registered as a guest by a member. Pre-registration of guests, via a list to the Guards (preferably the day before), is highly encouraged and will ease entry.
- Except for those with table or Beach House reservations, there is a limit of four (4) guests per member household Beach visit.
- Children of members under 22 years of age, not accompanied by their parents, will be limited to two (2) guests at any time.
- Children under 5 years of age must be accompanied by an adult at all times.
- Radios, TVs, CD players, boom boxes, etc., are not permitted at Clifton Beach. Amplified sound is allowed only at the Beach House in conjunction with a Beach House reservation.
- There will be no game equipment (e.g., cornhole, string golf, volleyball nets, etc.) in the picnic areas. Such activities are limited to the ball field area and on the beach, EAST of the beach house.

- Wood fires are strictly prohibited everywhere on Beach property except in the permanent fire pits.
- Propane cooking fuel will not be allowed at the Beach except by a catering service at the Beach House in conjunction with its reserved use.

Picnic Tables

- Reservations for picnic tables must be made with the Guard House (216/228-5131). An adult member must make reservations in his/her name only, must be present at all times and is responsible for the actions of all guests.
- No more than ten (10) people, including children, are permitted at tables located on the west side of the Beach House (#1-#34). Up to fifteen (15) people are permitted at tables in the grove east of the Beach House (#40-#50).
- Sixty percent (60%) of available table reservations will be available for Clifton Park/Clifton Lagoon residents. Forty percent (40%) will be available for Clifton Club members. This ratio will apply separately to west side tables (#1-#34) and grove tables (#40-#50), and to afternoon and evening shifts.
- Non-reserved tables will be available to all Beach members after 5 p.m. on a first-come first-served basis.
- Any member may use unoccupied, reserved tables one hour after the noted reservation time.
- A member may have no more than two open picnic table reservations at one time. Two tables may be reserved Monday-Thursday and will count as two open reservations. An afternoon reservation (ending at 4:30 p.m.) and an evening reservation (after 5:00 p.m.) will count as two reservations.
- Reservations will be accepted beginning at 2 p.m. on Beach Spring Cleanup/Beautification Day. Tables will be reserved and held for a specific day and time.
- If picnic tables are moved, they must be returned to their original positions. Tables on the Beach House patio may not be removed from the patio.
- The Trustees reserve the right to cancel any open reservations if the member's use of the facilities is deemed to be unsatisfactory.
- No fires are to be built anywhere except within the grills or the permanent fire pits. Charcoal is the only fuel permitted within the grills.
- Catering is not permitted at the picnic tables and only at the Beach House with a confirmed reservation.

Swimming, Tennis and Boating

- Swimming is the responsibility of each individual and the Trustees assume no responsibility for swimming safety regardless of whether or not Guards or other staff are on duty.
- Swimmers should stay within the designated and marked swimming area; boaters are prohibited from entering the designated swimming area at any time. After the end of the school year a lifeguard is generally on duty from 12 noon until 5 p.m. through Labor Day.
- Parental supervision is mandatory for children swimming at the Beach. The duty of the lifeguard is water safety, not babysitting.
- Small boats carried to the Beach inside or on top of a car may be launched from the west end of the Beach, and must be removed from the Beach after use. Boat trailers, motorized boats, jet skis and other watercraft are prohibited.
- Rules for the tennis court are posted at the courts.

Beach House Reservations

- Reservations for the Beach House may be made by Clifton Park, Clifton Club and Lagoon residents through the Secretary (216/521-6078) by an adult member in his/her name only beginning **March 3rd** up to and including April 30th. **After April 30th**, all reservations should be made through the Guard House (216/228-5131). The reserving adult member must be in attendance for the entire Beach House event.

- Wedding reception or rehearsal dinner requests for a member or an immediate family member of a member will generally be given priority and requests may be submitted at any time up to one year in advance of the event through the Secretary, subject to the same confirmation procedures.
- A member family may have no more than two (2) Beach House reservations open at any given time.
- Reservations for the Beach House must include member's name, address, telephone number, type of function, the date and the time requested. **A reservation is NOT confirmed until the Secretary or the Beach guards receive a \$150 deposit.** The Secretary will confirm all reservations in writing. The **minimum charge** for rental of the Beach House shall be \$150.00.
- If the member cancels the Beach House reservation at any time, the \$150.00 reservation deposit will be returned only if the Guards are able to rebook that date. If not, the \$150.00 deposit will be forfeited.
- The charge for use of the Beach House is **\$5.00** for each of the first **fifteen (15)** non-member guests, including children and **\$10.00** for each additional non-member guest up to the 100 person limit (minimum charge of \$150.00).
- The Beach House will not be reserved for private parties on Sundays during the months of July and August or, Sunday or Monday of holiday weekends during the season. Reservations for private parties may be made on Sundays during May, June, September and October. On those days when private parties are not permitted, the Beach House and patio are available for picnic table reservations under the stated picnic table reservation policy.
- The Trustees reserve the right to cancel any open reservation if the member's status is deemed by the Trustees to be unsatisfactory.

Beach House Rules

- There is a limit of 100 individuals per Beach House event, including members and their guests. The Trustees reserve the right to deny access if more than 100 people are in attendance for a specific Beach House reservation.
- Beach House entertainment will end no later than 11:00 p.m. and the Beach House will be closed at 11:30 p.m.
- Beach House reservations include **exclusive** use of the patio and its tables and grill; it does not include any recreational facilities.
- A written alphabetical list of guests must be provided to the Guard House 24 hours prior to the day of the event.
- The member must check in at the Guard House upon arrival to confirm his/her reservation and must be present for the entire event.
- Guest vehicle passes will be given to Beach House guests and only 15 passes will be available for distribution, including any caterers and entertainment vehicles. After all 15 Beach House guest passes have been given out, subsequent guests will be denied parking privileges unless, in the opinion of the Guards, additional space is available without prejudice to other members.
- The use of the Beach House is subject to the other standing rules relative to Beach property.
- Catering is permitted only at the Beach House with a confirmed reservation.
- In the sole determination of the Trustees, an extra charge may be assessed for extraordinary clean up or damage to property.
- Charcoal is the only fuel permitted in grill on the patio.

General Restrictions

- The following items are prohibited at all times, throughout the entire year, by all persons while on Beach property:
 - Sky lanterns (fire balloons)
 - Glass beverage containers. Beverages should be poured into plastic glasses, mugs or cups and not be consumed directly from glass bottles.
 - Skateboards, roller blades, scooters and other similar items.
 - Dogs, cats and other pets, even in cars.

- Tents or portable shelters.
- Vehicles must not be parked at the Beach overnight; non-compliance may result in the vehicle being towed.
- The pier at the entrance to Rocky River is posted as property of the U.S. Government and individuals are prohibited from accessing the pier.

The Trustees will not be responsible for any loss or damage to property of members, their family members and guests.

Members and their guests are reminded that the Beach is private property and not a public park and therefore not intended for use by a large number of non-members. The Beach is for the enjoyment of its members and therefore care will be taken to insure that those members enjoy their privileges to the fullest.

Questions or comments or requests for individual exemptions from a specific Rule may be directed to the Trustees listed below:

Warren Coleman, Trustee
216-409-1126
Joe Kerrigan, **Trustee President**
216-870-4430

Mary Ellen Fraser, Trustee
216-374-6863
Robert Frost, Trustee
216-534-6346

Ryan Meany, Trustee
440-781-5817
Nancy Graves, Secretary-Treasurer
521-6078