

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

ARTHUR P. DUECK, M.D.  
1104 Forest Road Lakewood,  
Ohio 44107

PAUL A. BJORN, D.O.  
1084 Lake Point Drive  
Lakewood, Ohio 44107

NANCY BINDER  
18171 Clifton Road  
Lakewood, Ohio 44107

WILLIAM R. KELLER  
18173 Clifton Road  
Lakewood, Ohio 44107

Plaintiffs,

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

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.

CASE NO. 2018ADV234080

JUDGE: ANTHONY J. RUSSO

**PLAINTIFFS' SECOND AMENDED  
COMPLAINT**

Plaintiffs Arthur P. Dueck, Paul A. Bjorn, Nancy Binder, and William R. Keller (“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 subplot 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 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 15 of the picnic benches are actually on the Beach.

14. The Beach Property is a limited resource.

15. Upon information and belief, there are 204 lot owner beneficiaries of the Trust, the Club, as one beneficiary, and 203 resident lot owner beneficiaries (the "Resident Beneficiaries").

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 source of authority for the Trustees.

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

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

22. 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.

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

24. 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.

25. The members of the Clifton Club who do not own sublots in Clifton Park (“Club Members”) are not beneficiaries of the Trust.

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

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

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

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

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

31. 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.

32. 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.

33. 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.**

34. In late 2011, a dispute arose over the question of whether the Club Members are beneficiaries of the Trust who must be treated equally with the Clifton Park lot owners.

35. In April of 2012, certain Plaintiffs filed an action captioned as *Arthur P. Dueck, et al. v. The Clifton Club Company, et al.*, Case No. 2012ADV179424, which asked the Court to resolve two questions: (a) whether the Club Members are beneficiaries of the Trust, and (b) whether the Club Members have the legal right to use Trust Property.

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

37. 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.”

38. 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).]

39. 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.**

40. The Beach season is defined by the Trustees.
41. The defined Beach season defines when beneficiaries can use the Beach and Beach Property.
42. The Beach season is defined as May 1 to October 31 of the calendar year.
43. There are only 184 days in the Beach season set by the Trustees.
44. The Trustees have given the Club Members permission to use the Beach and Beach Property for the 2018 Beach season.
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]."

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 Resident Beneficiary only receives two windshield stickers for using the parking spaces that are part of the Beach Property.

52. In effect, a Resident Beneficiary can only use two parking spaces at a time, except to the extent that the Resident Beneficiary obtains one or more of the additional 10 guest parking passes available from the Trustees Monday through Friday.

53. Under the Rules, each Club Member also receives from the Trustees two 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.

55. The Rules related to parking and parking restrictions apply equally to each Resident Beneficiary's household and to each individual Club Member household.

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 Beneficiary who does not have a Beach picnic table reservation or Beach house reservation, is limited to four guests per household and no more.

58. Under the Rules, the Trustees have allowed each Club Member who does not have a Beach picnic table reservation or Beach house reservation, four guests per household.



59. In effect, 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.

60. The Rules on the number of guests allowed on the Beach apply equally to each Resident Beneficiary household and to each individual Club Member household.

61. Under the Rules, a Resident Beneficiary can only have two open picnic table reservations at one time.

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

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).

64. The Rules regarding picnic table reservations apply equally to each Resident Beneficiary household and to each individual Club Member household.

65. Under the Rules, the Club is also guaranteed up to 40% of the available picnic table reservations daily, while a Resident Beneficiary only has access to one of the available picnic table reservations daily.

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

67. Thus, by granting one beneficiary – the Club – its guarantee of up to 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 the Trust Property by guaranteeing the Resident Beneficiaries only 60% of the total.

68. Under the Rules, a Resident Beneficiary can only have two open Beach house reservations at any one time.

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

70. The Rules regarding Beach house reservations apply equally to Resident Beneficiary household and to each individual Club Member household.

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).

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 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 Resident Beneficiary to the use the Trust Property and (b) grants 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.

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, together with the other Resident Beneficiaries, 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 act pursuant to 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, Fraser, 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 only scanned files were given 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 300 pages (of the above 17,964 pages) were withheld by the current Trustees 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 have been provided by 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.

## COUNT I

92. The allegations contained in Paragraphs 1 through 91 above are incorporated herein as if fully rewritten.

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

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

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

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

97. 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.

98. 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.

99. 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.

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 that is equal to the rights of the Trust beneficiaries.

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

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

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

104. 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.

105. 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.

106. Under R.C. 5810.01(B), the Court should enjoin the Trustees from granting to the 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 because such conduct is a breach of the trust and a breach of their fiduciary duty.

107. Under R.C. 5810.01(B), the Court should enjoin the Trustees from granting to the Club Members of 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.

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

## **COUNT II**

109. The allegations contained in Paragraphs 1 through 108 above are incorporated herein as if fully rewritten.

110. 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.

111. 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.

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

113. 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."

114. 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.

115. 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.

116. 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.

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

### COUNT III

118. The allegations contained in Paragraphs 1 through 117 above are incorporated herein as if fully rewritten.

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

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

121. Under R.C. 5810.01(B), the Court should enjoin the Trustees from enforcing Rules that directly or indirectly restrict the rights of the Resident 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.

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

### COUNT IV

123. The allegations contained in Paragraphs 1 through 122 above are incorporated herein as if fully rewritten.

124. 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.

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

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



127. The Trustees have refused to respond to the Plaintiffs' request for information related to the Trustees' administration of the Trust.

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

129. 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.

130. 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.

131. 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.

132. Under R.C. 5810.04, the Court should also award Plaintiffs their costs, expenses, and attorney 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 of a right to use the Trust Property, including the Beach and Beach Property;
- (2) Enjoining the Trustees from granting to the Club Members of 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 Beneficiaries' 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 attorney 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,

/s/ Dennis R. Rose  
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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,

/s/ Dennis R. Rose

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Fax: 216.241.2824

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Plaintiffs' Second Amended Complaint* was sent by overnight mail, sufficient postage prepaid, on this 2<sup>nd</sup> day of May, 2018, upon the following:

Joseph Kerrigan, Trustee  
Clifton Park Trust  
18181 Clifton Road  
Lakewood, OH 44107

*Defendant*

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

*Defendant*

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

*Defendant*

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

*Defendant*

Warren Coleman, Trustee  
Clifton Park Trust  
18136 Clifton Road  
Lakewood, OH 44107

*Defendant*

In addition, I certify that a copy of the foregoing *Plaintiffs' Second Amended Complaint* was sent via email on this 2<sup>nd</sup> day of May, 2018, upon the following:

William D. Kloss, Jr.  
Karen M. Moore  
John Conley  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
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*Attorneys for Defendants Warren Coleman,  
Mary Ellen Fraser, Robert Frost, Joseph  
Kerrigan, and Ryan Meany*

/s/ Dennis R. Rose

Dennis R. Rose, One of the Attorneys for  
Plaintiffs

# EXHIBIT A

hands and seal the twenty fifth (25<sup>th</sup>) 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<sup>th</sup>) 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 Glenn  
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 Volume 1158, Page 598, subject to the right of way  
for Glenn 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

*See Deed  
Vol 115  
15275/251  
for Clifton Park Land & Improvement Co. v. F. C. Case et al, Trs.  
44-318  
44-319  
See Deed Vol 306-41  
"miserable" 44-319-4465*



County Records, Volume 1198, Page 279. 6. 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 36 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' east 175.95 feet) to an iron pipe at a point of reverse curvature; thence northerly along the westerly line of sub lots numbers 35, 34, 33 and 32 in said allotment 465.10 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° 0' 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 108.84 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 par-

principal 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 12.80 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 71.51 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 55° 22' west along the water's edge on the easterly side of Rocky River 112.49 feet; thence north 45° 27' 15" east 262.75 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 14" 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 thereto 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



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 assessment 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 Pres.  
J. M. Shallenberger T. E. 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 appear Cuyahoga County, ss. ) of 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 26th 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 \$5.50. ) Paul Schreiner, Recorder.

(Notarial Seal  
Cuyahoga County  
Ohio)