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

ARTHUR P. DUECK, M.D., et al.,	)	CASE NO. 2018ADV234080
	)	
Plaintiffs,	)	JUDGE ANTHONY J. RUSSO
	)	
v.	)	
	)	
JOSEPH KERRIGAN, TRUSTEE, CLIFTON PARK TRUST, et al.,	)	**DEFENDANTS' MOTION TO FILE ATTACHED REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS *INSTANTER***
	)	
Defendants.	)	

Pursuant to Local R. 40.1(D), Defendants Joseph Kerrigan, Mary Ellen Fraser, Robert Frost, Warren Coleman, and Ryan Meany, the current trustees of the Clifton Park Trust ("Defendants" or "Current Trustees"), respectfully move this Court for an Order granting them leave to file *instanter* the attached Reply Brief in Support of Their Motion to Dismiss ("Reply"). Defendants request leave to file this Reply because the Court would benefit from a full analysis of the Eighth District's opinion in *Dueck v. Clifton Club Co*., 2017-Ohio-7161 in light of the positions taken and assertions made by Plaintiffs in their Brief in Opposition to Defendants' Motion to Dismiss. This Motion is being filed within seven (7) days of Plaintiffs' Brief in Opposition to the Trustee's Motion to Dismiss. Accordingly, good cause exists for this Reply, and Defendants respectfully request that the Court grant it leave to file the attached Reply *instanter*.

Respectfully submitted,

/s/ Karen Soehnlen McQueen
Karen S. McQueen (0016883)
Terry J. Evans (0088399)
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W./P.O. Box 36963
Canton, Ohio 44735-6963
Phone: (330) 497-0700/Fax: (330) 497-4020
kmcqueen@kwgd.com;
tevans@kwgd.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify pursuant to Civ.R. 5(B)(2)(f), that a true and accurate copy of the foregoing *Defendants' Motion To File Attached Reply Brief In Support Of Their Motion To Dismiss Instanter* was served this 29th day of May, 2018 via email upon counsel for Plaintiffs:

Dennis R. Rose
Casey J. McElfresh
Hahn Loeser + Parks LLP
200 Public Square, Suite 2800
Cleveland, OH 44114-2316
drrose@hahnlaw.com
cmcelfresh@hahnlaw.com
Attorneys for Plaintiffs

/s/ Karen Soehnlen McQueen
Karen S. McQueen (0016883)
Terry J. Evans (0088399)
Counsel for Defendants

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

ARTHUR P. DUECK, M.D., et al.,	)	CASE NO. 2018ADV234080
	)	
Plaintiffs,	)	JUDGE ANTHONY J. RUSSO
	)	
v.	)	
	)	
JOSEPH KERRIGAN, TRUSTEE, CLIFTON PARK TRUST, et al.,	)	**DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS**
	)	
Defendants.	)	

Defendants Joseph Kerrigan, Mary Ellen Fraser, Robert Frost, Warren Coleman, and Ryan Meany, the current trustees of the Clifton Park Trust ("Defendants" or "Current Trustees") hereby provide the following Reply Brief in Support of Their Motion to Dismiss.

I. The fundamental issue in the 2012 litigation was Beach access by non-lot owning Club Members and this Court must consider the scope of the 2012 Plaintiffs' requests and the extent of the Eighth District's ruling.

A reading of Defendants' Motion to Dismiss and Plaintiffs' Brief in Opposition to the Trustee's Motion to Dismiss ("Plaintiffs' BIO") to same makes it clear that this Court must fully consider the scope of the 2012 Plaintiffs' requests for rulings, as well as the extent of the Eighth District's ruling in *Dueck v. Clifton Club Co*., 2017-Ohio-7161, to resolve many of the questions raised by Plaintiffs' Second Amended Complaint ("Amended Complaint") and Defendants' Motion to Dismiss. As a starting point, to accept Plaintiffs' argument would be to ignore what the 2012 litigation was all about—Beach access by non-lot-owning Club Members. Without regard to the characterization, that is precisely what the 2012 litigation was about. And without doubt, the rulings by this Court and the Eighth District put the fundamental issue in the 2012 litigation and this action—whether non-lot owning Club Members can access the Beach or not—to rest. This Court and the Eighth District have made clear that non-lot owning Club Members

may access the Beach in accordance with rules promulgated by the Trustees. Despite that clarity, Count I of the Second Amended Complaint tries to relitigate that issue.

Plaintiffs argue the Eighth District ruled that non-lot-owning Club Members[1] are not Trust beneficiaries and have no rights as direct beneficiaries under the Trust, but went no further. *See* Plaintiffs' BIO at 5-6. Defendants agree that the Eighth District made the former two conclusions, but not the latter. Indeed, the Eighth District considered the full scope of the rights and responsibilities of all parties under the Trust to resolve the Beach access issues. This Court should reject Plaintiffs' invitation to interpret the Eight District's opinion in a stunted, narrow fashion. In short, the Eighth District's 136-paragraph opinion must be read in its entirety and sets forth conclusions of fact and law which are dispositive of the issues raised in Count I (and other portions) of the Amended Complaint.

A. The 2012 Plaintiffs requested, and the Eighth District provided, a broad analysis of all parties' rights and responsibilities under the Trust.

The 2012 Plaintiffs requested a declaration "that [non-lot-owning] Club Members have no *legal right* to use the Beach." *Dueck, supra*, ¶ 37 (emphasis in original). This sweeping request required this Court and the Eighth District to engage in a comprehensive analysis of all parties' rights and responsibilities under the Trust. Although the Eighth District disagreed with this Court's analysis, it did not ignore these issues as Plaintiffs now suggest. Instead, the Eighth District analyzed all of the evidence and information provided by the 2012 Plaintiffs to determine the Trust settlor's intent regarding the rights conveyed to the Club and non-lot-owning Club Members. *Id.,* ¶ 54 ("…shifting our attention to the question posed by [the 2012 Plaintiffs] regarding the scope of the rights conveyed to [non-lot-owning Club] Members via the Club Deed….").

[1] All capitalized/defined terms have the same meaning as those set forth in Defendants' Motion to Dismiss.

The Eighth District's review included analyzing the Club's status as a corporation in the context of understanding "the [non-lot-owning] Club Members' legal status in 1912 as it related to the settlor's intent." *Id.,* ¶ 56. Relying on Ohio law that "[a] member of an incorporated club * * * does not have any title to any of the [club] property," the Eighth District concluded that non-lot-owning Club Members did not have rights as direct beneficiaries due to their status as members of a corporation. *Id.,* ¶ 57. But, in fully determining the Club's rights (again, at the direct request of the 2012 Plaintiffs) the Eighth District went on to state: "[i]n discerning the settlor's intent, we find that the Club Members are not defined Beneficiaries under the Trust Deed and were vested with no legal rights thereunder. However, it is clear by the terms of the Trust Deed that the Clifton Club's rights as a Beneficiary are also to be protected, to the extent they comport with the settlor's intent that the conveyance was 'for the sole use and benefit of all of the owners of sublots, or parts of lots, in the Clifton Park Allotment.' **Therefore, we determine that extrinsic evidence is required to determine the settlor's intent regarding the scope of the Clifton Club's use of the Beach, including the Trustee' historical interpretation and administration of the rights accordingly.**" *Id.,* ¶ 58 (emphasis added).

In reviewing the available extrinsic evidence, the Eighth District noted that the "Club Lease capped [Club] membership at 250 Club Members," and determined that the "Club Lease, Trust Deed, and Club Deed indicate an intent that the [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." *Id.,* ¶ 59. The Eighth District, in furtherance of its effort to determine the Trust settlor's intent regarding non-lot-owning Club Members' Beach usage, reviewed available documentation beginning in 1942 and continuing through the 1970s. *Id.,* ¶¶ 60-65. The Eighth District reasonably determined that "[o]ver the years, the meeting minutes of

the Trustees as well as the [Club's] board of directors document the understanding that use of the Beach by [non-lot-owning] Club Members was regulated by the Trustees." *Id.,* ¶ 61.

After its full review of all available extrinsic evidence, the Eighth District made the following ruling as to the Trust settlor's intent concerning non-lot-owning Club Members' Beach access and usage: "Recitation of the foregoing events serves to confirm a historical understanding by the Trustees and [the Club] that the [non-lot-owning] Club Members' right to access the Beach is permissive, **and that the Trustees have full authority to regulate Beach access**. The Club Lease, capping the membership number subject to the settlors' consent, confirms that the [Club's] use, even as a direct Beneficiary, is not unfettered, particularly since the purpose of the trust is to allow the lot owners to enjoy the Beach. We conclude that the trial court correctly determined that the [non-lot-owning] Club Members have a 'right' to use the Beach. However, in response to the declaration explicitly requested by appellants, we find that the [non-lot-owning] Club Members have no legal right of access as Beneficiaries. **Access by the [non-lot-owning] Club Members is by permission and regulation of the Trustees.**" *Id.*, ¶¶ 66-67 (emphasis added).

The Eighth District's ruling in *Dueck, supra*, could not be clearer on the following points: (1) the Club is a Trust beneficiary, and its rights as a Trust beneficiary, including its rights to access and use the Beach, must be protected; (2) the Trust settlor's intent was that the Club's right to use the Beach, through its non-lot-owning members, was not unfettered, as evidenced by Club membership being capped at 250; and, (3) the Trust settlor's intent was that the Trustees would have full authority to grant non-lot-owning Club Members access to the Beach and to regulate that access to allow for all of the lot owners' Beach enjoyment. Put another way, the Eighth District conclusively ruled on the issue of Beach access by non-lot owning Clifton Club

Members. The Eighth District did not, as Plaintiffs now claim, ignore the broader issues concerning non-lot-owning Club Member Beach use and the Trustees authority to grant and regulate Beach access. The access issue has been decided, and Plaintiffs may not litigate it again.

Plaintiffs attempt to blur the issue by claiming that the Eight District's acknowledgement that the parties in the 2012 litigation agreed that non-lot owning Club Members have a permissive right to Beach access does not constitute litigating the issue and is somehow not determinative. But parties cannot litigate a case in *seriatim*. In short, the 2012 Plaintiffs could not agree to an issue in the 2012 litigation and then attempt to litigate it in this case.

The doctrine of res judicata provides that "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.,* 73 Ohio St.3d 379, 1995 Ohio 331, 653 N.E.2d 226 (1995), syllabus. In *Grava*, the court stated that the doctrine of res judicata bars not only subsequent actions involving the same legal theory of recovery as the previous action, but also claims that could have been litigated in the previous action:

> It has long been the law of Ohio that 'an existing final judgment or decree between the parties to litigation is conclusive as to all claims which were or might have been litigated in a first lawsuit.' We also declared that '[t]he doctrine of res judicata requires a plaintiff to present every ground for relief in the first action, or be forever barred from asserting it.'

Grava at 382, quoting *Natl. Amusements, Inc. v. Springdale*, 53 Ohio St.3d 60, 62, 558 N.E.2d 1178 (1990). "[T]he law of preclusion bars a plaintiff from bringing, in a subsequent action, new allegations relating to the same underlying facts that could have been brought in the former action against the defendant." *Catz v. Chalker* (C.A.6, 1998), 142 F.3d 279, 287. A litigant therefore may not split her cause of action by asserting in a second lawsuit different reasons for

the same relief sought in an earlier lawsuit. *See Davis v. Mabee* (C.A.6), 32 F.2d 502, cert. denied (1929), 280 U.S. 580, 50 S. Ct. 33, 74 L. Ed. 630.

The doctrine of res judicata acts to bar a claim when the following four elements are met: (1) there is a final, valid decision on the merits by a court of competent jurisdiction; (2) there is a second action that involves the same parties, or their privies, as the first action; (3) the second action raises claims that were or could have been litigated in the first action; and (4) the second action arises out of a transaction or occurrence that was the subject matter of the first action. *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St. 3d 106, 123, 2006 Ohio 954, 846 N.E.2d 478. These four elements are met here, and portions of Plaintiffs' Amended Complaint are precluded by the Eighth District's ruling in *Dueck, supra*.

First, as detailed below, the Eighth District fully considered the issue of whether the Trustees have authority to grant non-lot-owning Club Members access to and use of the Beach. In fact, prior to rendering its final, valid decision on that point, the Eighth District completed a comprehensive review of extrinsic evidence to determine the Trust settlor's intent with respect to this very issue. The Eighth District did not mince words: **"Access by the [non-lot-owning] Club Members is by permission and regulation of the Trustees.**" *Id.*, ¶¶ 66-67 (emphasis added).

Second, three of the four 2012 Plaintiffs are Plaintiffs in this action; the fourth current Plaintiff was a party to the 2012 litigation. Plaintiffs do not argue any distinction between them and the 2012 Plaintiffs. The 2012 Defendants were sued in their capacity as Trustees of the Clifton Park Trust; the same capacity in which Defendants here are being sued. Plaintiffs do not argue any distinction between the 2012 Defendants and these Defendants. As such, Plaintiffs have conceded that they are collaterally estopped from litigating the same issues that were raised and ruled upon in the 2012 litigation.

Third, Plaintiffs now claim that: (1) the Trustees have no authority to grant non-lot-owning Club Members access to or use of the Beach; and (2) any grant of access to or use of the Beach to non-lot-owning Club Members amounts to a conveyance or dedication to public use. Defendants assert that these issues were directly resolved by the Eighth District's ruling. However, even if these issues were not explicitly raised, litigated, and resolved, they are certainly issues that should have been raised in the 2012 litigation. Plaintiffs cannot now assert in this second lawsuit different reasons for the same relief sought in the 2012 litigation.

Fourth, this second case arises out of a transaction or occurrence that was the subject matter of the first action. Because the issue of non-lot owning Club Members Beach access was the issue in the 2012 litigation, Plaintiffs cannot take contradicting positions in the actions—i.e., Plaintiffs cannot agree in the 2012 litigation that the Trustees can permissively admit non-lot owning Club Members and then turn around and attempt to litigate that very issue here. *See Davis v. Mabee* (C.A.6), 32 F.2d 502, cert. denied (1929), 280 U.S. 580, 50 S.Ct. 33.

B. Plaintiffs are estopped from seeking declarations from this Court concerning issues raised in the 2012 litigation.

On May 2, 2018, Plaintiffs filed their Amended Complaint.[2] Plaintiffs now argue that their Amended Complaint does not seek declaratory relief. Instead, they claim only to pursue claims for alleged breaches of the Trustees' various fiduciary duties.[3] This Court should reject Plaintiffs' position. First, Plaintiffs have invoked this Court's jurisdiction under R.C. §2721.05, which specifically allows a person interested in a trust to seek a declaration of rights. *See* Amended Complaint, ¶ 10. Second, Plaintiffs make the following allegations in Count I:

[2] Plaintiffs filed their original Complaint on May 1, 2018.

[3] Plaintiffs attempt to distance themselves from their requests for declarations for two reasons: (1) they recognize that the declarations they seek are in direct contravention to the Eighth District's ruling in *Dueck*, *supra*; and (2) they believe they can escape the requirement to join all lot owners, which they concede would be indispensable parties in any declaratory judgment action. *See Plaintiffs' BIO* at 18.

> 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 unanimous consent of the lot owners**. (Emphasis added).
>
> 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**. (Emphasis added).
>
> 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.

Without question, Plaintiffs are seeking (albeit implicitly) to have this Court declare these allegations are true. Plaintiffs explicitly ask this Court to enjoin the Defendants from exercising the precise regulatory power granted to them by the Trust, as confirmed by the Eighth District's comprehensive analysis of the Trust settlor's intent. Of course, *Dueck*, *supra*, is controlling law and prohibits accepting as true these allegations or enjoining the Trustees from exercising the power to grant non-lot-owning Club Members permissive access to the Beach and the power to regulate Beach use, as fully set forth above.

For these reasons, Count I of Plaintiffs' Amended Complaint should be dismissed for failure to state a claim upon which relief can be granted. Further, any portion of Plaintiffs' Amended Complaint, including Counts II through IV, which this Court finds premised upon or rooted in the contentions set forth in paragraphs 97-100 of the Amended Complaint should be dismissed for failure to state a claim upon which relief can be granted. Defendants should be

awarded costs, under R.C. §5810.04, for having to re-litigate issues that have already been decided.

i. The Trust contains language granting the Trustees power to grant non-lot-owning Club Members permissive Beach access.

Plaintiffs agree that, pursuant to the Trust, the Trustees hold title to the Beach for the sole use and benefit of lot owner beneficiaries, including the Club. *See* Plaintiffs' BIO at 3. Plaintiffs also agree that the Trust grants the Trustees the power to regulate Beach use. *Id.* at 4. Nonetheless, Plaintiffs continue to assert that the Trust does not contain any language which grants the Trustees the power to grant permissive Beach access to non-lot-owning Club Members. *Id.* at 8. This position completely ignores the Eighth District's entire opinion.

At the risk of being redundant, the Eighth District embarked on a comprehensive evaluation of extrinsic evidence to determine the settlors' intent with respect to the "Club's use of the Beach, including the Trustees' historical interpretation and administration of the rights accordingly." *Dueck, supra*, ¶ 58. The Eight District went on to note that the "Club Lease capped Clifton Club membership at 250. The Club Lease, Trust Deed, and Club Deed indicated 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." *Id.*, ¶ 59. The Eighth District concluded that the Trust settlor's intent was that "Club Members' right to access the Beach is permissive, **and that the Trustees have full authority to regulate Beach access**." *Id.*, ¶ 66 (emphasis added). The Trust, as understood in light of the Eighth District's analysis of extrinsic evidence to determine the settlor's intent, clearly grants the Trustees the power to grant non-lot-owning Club Members permissive Beach access, and to regulate that access.

ii. The Trustees' exercise of their power to grant non-lot-owning Club Members Beach access is not conveying or dedicating the Beach to public use.

The Trust states that the Beach cannot be "sold, conveyed or dedicated to public use without the unanimous consent of all the lot owners in" Clifton Park. *See* Amended Complaint, Exhibit A. Throughout Plaintiffs' Amended Complaint and BIO, Plaintiffs argue that the Trustees' grant of Beach access to non-lot-owning Club Members amounts to conveying or dedicating the Beach to public use. They rely on three points in support of this position: (1) Club membership does not give members a special status under the Trust; therefore, Club Members are no different than the public; (2) under Ohio law, the bundle of property rights includes the right to use; and (3) Trustees have conveyed the right to use the Beach to Club Members, and therefore have "conveyed or dedicated [the Beach] to public use without the unanimous consent of all the lot owners." This argument misses the entire point of the Eighth District's analysis in *Dueck*.

It is the Club's status as a lot-owning Trust beneficiary that allows the Club to have access to and use of the Beach. Indeed, after analyzing the extrinsic evidence concerning non-lot-owning Club Members' rights based the Eighth District found "it is clear by the terms of the Trust Deed that the [Club's] rights as a Beneficiary are also to be protected, to the extent they comport with the settlors' intent that the conveyance was 'for the sole use and benefit of all the owners of sublots, or parts of lots, in'" Clifton Park. *Id.*, ¶ 58. From there the Eighth District concluded that "**the trial court correctly determined that the [non-lot-owning] Club Members have a 'right' to use the Beach..." and that "[a]cess by the [non-lot-owning] Club Members is by permission and regulation of the Trustees**." *Id.*, ¶ 67 (emphasis added).

The 2012 Plaintiffs and the Eighth District were both well aware of the Trust's prohibition concerning conveying or dedicating Trust property to public use at the time these

issues were litigated. *See Id.*, ¶ 48. If the 2012 Plaintiffs believed, for an instant, that the Trustees' grant of permissive Beach use to non-lot-owning Club Members was an improper conveyance to public use, they certainly would have raised that issue then. Instead, the 2012 Plaintiffs "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**." *Id.*, ¶ 40 (emphasis added). The Eighth District itself noted that "the parties actually agree that Club Members may use the Beach **by permission, for an annual fee, with regulatory oversight by the Trustees.**" *Id.* (emphasis added). The Eighth District stated that the Trustees and the Club had a "historical understanding…that the [non-lot-owning] Club Members' right to access the Beach is permissive, and that **Trustees have full authority to regulate Beach access**." *Id.*, ¶ 66 (emphasis added). Moreover, the Eighth District concluded "that the trial court correctly determined that the [non-lot-owning] Club Members have a 'right' to use the Beach," but "that the [non-lot-owning] Club Members have no legal right of access as Beneficiaries. **Access by the [non-lot-owning] Club Members is by permission and regulation of the Trustees**." *Id.*, ¶ 67 (emphasis added).

Indeed, in its final conclusion the Eighth District stated: "[t]he [non-lot-owning] Club Members' [sic] have a permissive right to access the Beach as regulated by the Trustees pursuant to the Trust Deed." *Id.*, ¶ 126. This Court's final judgment entered upon remand agreed: "**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."[4]

[4] The Court initially entered this ruling on October 10, 2017, but stayed same pending the Ohio Supreme Court's jurisdictional decision. The Court lifted the stay on March 19, 2018, and this ruling was reinstated.

For these reasons, Count I of Plaintiffs' Amended Complaint should be dismissed for failure to state a claim upon which relief can be granted. Further, any portion of Plaintiffs' Amended Complaint, including Counts II through IV, which this Court finds premised upon or rooted in the contention that the Trustees' grant of Beach access to non-lot-owning Club Members amounts to conveying or dedicating the Beach to public use should be dismissed for failure to state a claim upon relief can be granted. Defendants should be awarded costs, under R.C. §5810.04, for having to re-litigate issues that have already been decided.

II. <u>Plaintiffs must join all necessary parties.</u>

Plaintiffs Amended Complaint, both implicitly and explicitly, seeks declarations concerning the rights and responsibilities of the Trust beneficiaries under the trust. Plaintiffs' attempt to back away from this fact in its recent characterization of the pleading does not change the nature of the pleading. Because Plaintiffs seek these declarations, all lot owner beneficiaries, especially the Club, are indispensable parties to this case. As Plaintiffs are seeking an interpretation of deed language common to all lot owners, every lot owner has an interest in this matter, and the outcome of this matter will impact those interests and create a risk of double, multiple, or inconsistent obligations, in the event those parties are not included in the litigation. As such, the Amended Complaint should be dismissed or Plaintiffs should be ordered to add all such parties.

Otherwise, Defendants will stand on the arguments and assertions set forth in their Motion to Dismiss as to the joinder of indispensable parties.

III. Conclusion

The Current Trustees, like all past and future trustees, have the power to grant non-lot-owning Club members permissive access to the Beach in exchange for a negotiated fee and subject to applicable regulations. This issue has been conceded, litigated, and decided and Count I of Plaintiffs' Amended Complaint must be dismissed.

In addition, given the nature of Plaintiffs' assertions and requested relief, all Clifton Park lot owners are necessary parties to this action. Therefore, either the case must be dismissed, or Plaintiffs must be given leave to join all necessary parties.

Once this Court has ruled on these outstanding issues, Defendants will seek the Court's assistance under the Trust code for guidance on the rules criticized in Counts II and III of Plaintiffs' Amended Complaint.

Respectfully submitted,

/s/ Karen Soehnlen McQueen
Karen S. McQueen (0016883)
Terry J. Evans (0088399)
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W./P.O. Box 36963
Canton, Ohio 44735-6963
Phone: (330) 497-0700/Fax: (330) 497-4020
kmcqueen@kwgd.com;
tevans@kwgd.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify pursuant to Civ.R. 5(B)(2)(f), that a true and accurate copy of the foregoing *Defendants' Reply Brief In Support Of Its Motion To Dismiss* was served this 29th day of May, 2018 via email upon counsel for Plaintiffs:

Dennis R. Rose
Casey J. McElfresh
Hahn Loeser + Parks LLP
200 Public Square, Suite 2800
Cleveland, OH 44114-2316
drrose@hahnlaw.com
cmcelfresh@hahnlaw.com
Attorneys for Plaintiffs

/s/ Karen Soehnlen McQueen
Karen S. McQueen (0016883)
Terry J. Evans (0088399)
Counsel for Defendants