

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

<b>ARTHUR P. DUECK, et al.,</b>	)	<b>CASE NO.: 2012ADV179424</b>
	)	
<b>Plaintiffs,</b>	)	<b>JUDGE ANTHONY RUSSO</b>
	)	
<b>v.</b>	)	
	)	<b>THE CLIFTON CLUB COMPANY'S</b>
<b>THE CLIFTON CLUB COMPANY, et al.,</b>	)	<b>FIRST SET OF REQUEST FOR</b>
	)	<b>ADMISSIONS PROPOUNDED UPON</b>
<b>Defendants.</b>	)	<b>JEFF MANSELL</b>
	)	
	)	<b>**PLEASE NOTE THAT THIS</b>
	)	<b>DOCUMENTS CONTAINS REQUESTS</b>
	)	<b>FOR ADMISSIONS WHICH MUST BE</b>
	)	<b>ANSWERED WITHIN 28 DAYS OF</b>
	)	<b>SERVICE OTHERWISE THE REQUESTS</b>
	)	<b>WILL BE DEEMED ADMITTED</b>

Pursuant to Rules 26 and 36 of the Ohio Rules of Civil Procedure, Defendant The Clifton Club Company, by and through counsel, requests that Jeff Mansell respond to the following First Set of Requests for Admissions ("Requests") within twenty-eight days (28) days from the date of service to the law offices of Reminger Co., LPA, 101 W. Prospect Ave, Ste. 1400, Cleveland, OH 44115. In accordance with Civ. R. 26(B)(1), the information sought through these Requests is not privileged and is relevant to the subject matter of the instant matter.

**These Requests are subject to the following instructions and definitions:**

**DEFINITIONS**

Except where the context indicates otherwise, the following words and/or phrases are defined as follows:

(a.) **"Plaintiffs"** means Arthur P. Dueck, Todd Gilmore, Nancy Binder, and William R. Keller, and/or any of their agents, representatives, investigators, attorneys and all other persons, including government investigators, acting for or on their behalf.

(b.) **“Defendant”** or **“Clifton Club”** means The Clifton Club Company and owner of four sub lots incorporated in 1902 in the Clifton Park Allotment per deed dated July 1, 1912 and/or any of its officers, directors, representatives, employees, agents, attorneys, principals or any other persons acting on its behalf.

(c.) **“You”** or **“your”** means person to whom requests are propounded, and/or your agents, representatives, investigators, attorneys and all other persons, including government investigators, acting for or on your behalf.

(d.) **“Trustees”** means those persons who currently serve in the role of trustee of the Clifton Park Trust, who currently are: Charles Drumm, John Pyke, Peter Kuhn, Philip Hall, and Warren Coleman and/or any of their representatives, employees, agents, attorneys, principals or any other persons acting on their behalf.

(e.) **“Complaint”** means the First Amended Complaint filed by Plaintiffs captioned *Arthur P. Dueck et al., v. The Clifton Club Company, et al.*, Case No. 2012 ADV 179424, filed on April 25, 2013 and pending in the Cuyahoga County Probate Court, before Judge Anthony Russo.

(f.) **“Lease”** means the lease between “The Clifton Park Land and Improvement Company” and “The Clifton Club Company”, dated July 1, 1902 and filed for record January 13, 1903.

(g.) **“Answer”** refers to the Answer filed by Defendant Clifton Club on June 27, 2013 and amended on July 1, 2013.

(h.) **“Club Deed”** means the Deed of Trust dated July 1, 1912 and recorded in the Cuyahoga County Records, Cleveland, Ohio on July 9, 1912.

(i.) **“Trust Deed”** means the Deed of Trust dated March 25, 1912 and recorded in the Cuyahoga County Records, Cleveland, Ohio on March 27, 1912.

(j.) **“Beach”** means common areas owned and/or managed under the terms of the Trust Deed.

(k.) **“Sub lot”** means a sub lot in the Clifton Park Allotment.

(l.) **“Residential sub lot owners”** mean all owners of sub lots having one family residence and their household members in the Clifton Park Allotment.

(m.) **“Interested party defendants”** mean all residential sub lot owners.

(n.) **“Clifton Club Allotment”** means real property recorded in Cuyahoga County Map Recorders, Volume 29, Page 11, in Cleveland, Ohio.

(o.) **“Club Members”** means persons who are dues paying members of the Clifton Club and shareholders of same, none of whom are sub lot owners of land in the Clifton Park Allotment.

(p.) **“Family”** means parents, children, grandparents, grandchildren, great grandparents, great grandchildren, aunts, uncles, nieces, nephews, and cousins.

(q.) “**Access**” means approaching, entering, exiting, making use of, the ability or right to approach, enter, exit, and make use of, availability to.

(r.) “**Riverfront property**” means the property located along the Rocky River adjacent to the Lagoon Trust property line that is held in trust by the Clifton Park Trustees. This property was part of litigation from 2000 to 2003.

(s.) “**Improvement**” means something that enhances value or excellence, makes better.

(t.) “**Person**” means natural persons, firm, corporations, partnerships, proprietorships, joint venture organization, group of natural persons, unions, associations, federations, government agencies, or any other kind of entity separately identifiable, whether or not such association has a separate juristic existence in its own right.

(u.) “**Documents**” or “**documents**” is intended to be comprehensive and to include, without limitation, all materials within the full scope of Evidence Rule 1001 and Ohio R. Civ. P. 34, which are in the actual or constructive possession, custody or control of you or any attorney, agent or employee of you, including but not limited to: all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise and whether a copy, preliminary draft or original, (including but without limitation to, email and attachments, correspondence, memoranda, handbooks, manuals, notes, diaries, calendars, minutes, statistics, letters, telegrams, minutes, contracts, agreements, reports, studies, publications, press releases, checks, statements, tags, labels invoices, brochures, periodicals receipts, returns, summaries, pamphlets, books, interoffice and intraoffice communications, offers, notations of any sort of conversations, announcement, working papers, applications, permits, file wrappers, indices, telephone calls, meeting or printouts, voicemails, text messages, faxes, invoices, worksheets, affidavits, transcripts and all drafts alterations, modifications, changes and amendments of any of the foregoing), graphic or aural representations of any kind (including without limitation, maps, photographs, graphs, charts, microfiche, micro film, videotape or recordings, audio tapes or recordings, motion pictures, plans, drawings, surveys, analysis, forecasts, tabulations), and electronic, mechanical, magnetic, optical or electric records, or representations of any kind (including without limitation, computer files and programs, tapes, cassettes, discs, recordings), including metadata or other stored information from computer software or hardware or other information retrieval systems.

(v.) “**Communication**” or “**communicate,**” means the transmittal of information (in the form of facts, ideas, inquires, or otherwise).

(w.) “**Discussed**” or “**discussions**” include in person, by telephone, by email, or any other manner.

(x.) All “**electronically stored information**” shall be produced in native format unless it is later determined that electronically stored information must be converted to PDF or TIFF format because it is not possible or feasible to search such electronically stored information in native format.

(y.) The word “**identify**” when used in reference to a natural person, means to state his or her full name, present address, telephone number, employer and position or job title at the time of the transaction, occurrence or event covered in the Interrogatory. If any of the above information is not available to you, provide any other available information with or by which such natural person can be identified.

(z.) The word "**identify**" when used in reference to a person (as defined above) other than a natural person, means to state (1) its full name, (2) the nature of its organization, including the name of the state in which it was organized, (3) its address(es), (4) the address(es) of its principal place of business, and (5) its principal line(s) of business. If any of the above information is not available to you, provide any other available information with or by which such person can be identified.

(aa.) The word "**identify**" when used in reference to a document means to state (1) its date, (2) its author(s); (3) its addressee(s) and recipient(s); (4) the type of document (e.g., letter, memorandum, receipt, invoice, schedule, report, telegraph, chart, photograph, sound reproduction or note); (5) its general subject matter; and (6) its present location and the name of its present custodian. If any such document was, but is no longer in the possession of you or subject to your control, or is no longer in existence, state whether it (1) is missing or lost, (2) has been destroyed, (3) has been transmitted or transferred voluntarily or involuntarily to others, identifying such others, or (4) has been otherwise disposed of. In each such instance, explain the circumstances surrounding the authorization for such disposition and state the date or approximate date thereof. If any of the above information is not available to you, provide any available information with or by which such documents can be identified.

(bb.) "**Date**," when used herein, shall include the day, month and year of the occurrence to which the Interrogatory refers. You are to provide the exact date or inclusive dates if known, or if not known, an approximation together with an indication that the date or dates supplied may not be exact.

(cc.) "**And**" and "**or**" means "and/or" and shall be construed conjunctively or disjunctively as necessary to make the Request inclusive rather than exclusive and require the broadest possible production or response to any given Interrogatory.

(dd.) "**Original Purchaser**" will be the person or persons, whether individually or in trust that first purchased the parcel of real estate now owned by you within The Clifton Park Allotment from The Clifton Park Land & Improvement Company.

(ee.) "**Interim Owner**" will be any persons within the chain of title of the parcel of real estate you now own within The Clifton Park Allotment.

### **REQUESTS FOR ADMISSIONS**

**(Note: Please read the above definitions section before answering)**

1. Admit that the Clifton Club Company entered into a lease with the Clifton Park Land & Improvement Company on July 1, 1902.

**ADMIT OR DENY:**

2. Admit that the document attached hereto as Exhibit A is a true and accurate copy of the Club Lease recorded for record at Volume 29, page 609, on January 13, 1903.

**ADMIT OR DENY:**

3. Admit that the Club Lease was recorded with the Cuyahoga County Recorder's Office (or its predecessor) on January 13, 1903.

**ADMIT OR DENY:**

4. Admit that the Club Lease is a public record.

**ADMIT OR DENY:**

5. Admit that the Clifton Park Land & Improvement Company had the right to enter into the Club Lease.

**ADMIT OR DENY:**

6. Admit that the Clifton Park Land & Improvement Company had the power to grant to the Clifton Club Company the right to use the land associated with the Lease as a social club.

**ADMIT OR DENY:**

7. Admit that the Clifton Club Company is a social club.

**ADMIT OR DENY:**

8. Admit that since the date of the formation of the Clifton Club Company that the Clifton Club Company has admitted members.

**ADMIT OR DENY:**

9. Admit that there has never been a requirement of the Clifton Club Company that the members own land within the Clifton Park Allotment.

**ADMIT OR DENY:**

10. Admit that the Club Lease did not include any restrictions that would serve to prevent the Clifton Club Company from admitting members who are not also residents of the Clifton Park Allotment.

**ADMIT OR DENY:**

11. Admit that the Club Lease extended to the Clifton Club Company the right to purchase land associated with the Club Lease.

**ADMIT OR DENY:**

12. Admit that the Clifton Park Land & Improvement Company, as the Lessor, had the right to issue to the Clifton Club Company the right to purchase the property described within the Club Lease.

**ADMIT OR DENY:**

13. Admit that the Clifton Club Land & Improvement Company had the right to convey to the Clifton Club Company, via the Club Lease, the right to use the Beach.

**ADMIT OR DENY:**

14. Admit that the Clifton Park Land & Improvement Company was, upon the execution and recording of the Club Lease, subject to the Clifton Club Company's right to purchase afforded under the Club Lease.

**ADMIT OR DENY:**

15. Admit that the Clifton Club Company had, from the period of July 1, 1902 through July 1, 1922, the right to purchase the property described in the Club Lease, which right included the right to use the Beach.

**ADMIT OR DENY:**

16. Admit that the Beach contained within the Clifton Park Allotment is a common area in the Clifton Park Allotment.

**ADMIT OR DENY:**

17. Admit that the Clifton Park Land & Improvement Company did not have power to convey to the Clifton Park Trustees any land in contravention to the obligation undertaken by the Clifton Park Land & Improvement Company in the Club Lease.

**ADMIT OR DENY:**

18. Admit that the deed issued to the Clifton Park Trustees by the Clifton Park Land & Improvement Company is attached hereto as Exhibit B.

**ADMIT OR DENY:**

19. Admit that the document attached hereto as Exhibit B was issued to the Clifton Park Trustees after the Club Lease was recorded.

**ADMIT OR DENY:**

20. Admit that the parcel of real estate you own within the Clifton Park Allotment was first purchased from the Clifton Park Land & Improvement Company by its original purchaser after the Club Lease was recorded.

**ADMIT OR DENY:**

21. Admit that the original purchaser of the parcel of real estate owned by you within the Clifton Park Allotment was on constructive notice that the Clifton Club Company was granted the right to operate within the Clifton Park Allotment as a social club.

**ADMIT OR DENY:**

22. Admit that the original purchaser of the parcel of real estate owned by you within the Clifton Park Allotment had actual notice that the Clifton Club Company was granted the right to operate within the Clifton Park Allotment as a social club.

**ADMIT OR DENY:**

23. Admit that the Clifton Club Company was granted through the Club Lease the right to use the Beach.

**ADMIT OR DENY:**

24. Admit that the original purchaser of the parcel of real estate owned by you within the Clifton Park Allotment was on constructive notice at the time he/she purchased said parcel that the Clifton Club Company operated as a social club.

**ADMIT OR DENY:**

25. Admit that the original purchaser of the parcel of real estate owned by you within the Clifton Park Allotment was on constructive notice at the time he/she purchased said parcel that the Club Members used the Beach.

**ADMIT OR DENY:**

26. Admit that the Clifton Club Company had the right contained within the Club Lease to purchase the property described in the Club Lease.

**ADMIT OR DENY:**

27. Admit that the Clifton Club Company's right to purchase the property associated with the Club Lease included the right to use the Beach.

**ADMIT OR DENY:**

28. Admit that the original purchaser of the parcel of real estate owned by you within the Clifton Park Allotment consented to the Clifton Club Company's use of the Beach.

**ADMIT OR DENY:**

29. Admit that the Clifton Club Company is a beneficiary of the Trust Deed.

**ADMIT OR DENY:**

30. Admit that the beneficiary status of the Clifton Club Company under the Trust Deed extends to its members.

**ADMIT OR DENY:**

31. Admit that the original purchaser of the parcel of real estate owned by you within the Clifton Park Allotment consented to the Club Members' use of the Beach.

**ADMIT OR DENY:**



32. Admit that during the time that the original purchaser of the parcel of real estate now owned by you within the Clifton Park Allotment occupied said parcel, that the Clifton Club Company was operated as a social club.

**ADMIT OR DENY:**

33. Admit that the original purchaser of the parcel of real estate owned by you within the Clifton Park Allotment had admitted members who did not also own land within the Clifton Park Allotment.

**ADMIT OR DENY:**

34. Admit that members of the Clifton Club Company used the Beach prior to the date of March 26, 1912.

**ADMIT OR DENY:**

35. Admit that the original purchaser of the parcel of real estate now owned by you within the Clifton Park Allotment did not object to the Clifton Club Company or its members' use of the beach.

**ADMIT OR DENY:**

36. Admit that the failure and/or refusal of the original purchaser of the parcel of real estate now owned by you within the Clifton Park Allotment to object to the Clifton Club Company and its members' use of the Beach constitutes legal consent.

**ADMIT OR DENY:**

37. Admit that any consent to the use of the Beach by the Clifton Club Company and/or its members by the original purchaser of the parcel of real estate you now own within the Clifton Park Allotment runs with said parcel and extends to you as the current owner.

**ADMIT OR DENY:**

38. Admit that all interim owners of the parcel of real estate owned by you within the Clifton Park Allotment were on constructive notice that the Clifton Club Company was granted the right to operate within the Clifton Park Allotment as a social club.

**ADMIT OR DENY:**

39. Admit that all persons who ever purchased a lot within the Clifton Park Allotment after January 13, 1903 were on constructive notice that the Clifton Club Company or its members used the Beach.

**ADMIT OR DENY:**

40. Admit that all persons who ever purchased a lot within the Clifton Park Allotment after January 13, 1903 had actual notice that the Clifton Club Company or its members used the Beach.

**ADMIT OR DENY:**

41. Admit that all interim owners of the parcel of real estate now owned by you within the Clifton Park Allotment were on constructive notice that the Clifton Club Company operated as a social club.

**ADMIT OR DENY:**

42. Admit that all interim owners of the parcel of real estate now owned by you within the Clifton Park Allotment were on constructive notice at the time he/she purchased said parcel that the Club members used the Beach.

**ADMIT OR DENY:**

43. Admit that all interim owners of the parcel of real estate now owned by you within the Clifton Park Allotment consented to the Clifton Club Company's use of the Beach.

**ADMIT OR DENY:**

44. Admit that all interim owners of the parcel of real estate now owned by you within the Clifton Park Allotment knew that the Clifton Club Company had admitted members who did not also own land within the Clifton Park Allotment.

**ADMIT OR DENY:**

45. Admit that all persons who purchased a lot within the Clifton Park Allotment after January 13, 1903 were on constructive notice that the Clifton Club Company admitted members who did not own land within the Clifton Park Allotment.

**ADMIT OR DENY:**

46. Admit that no interim owners of the parcel of real estate now owned by you within the Clifton Park Allotment ever objected to the Clifton Club Company or its members' use of the Beach.

**ADMIT OR DENY:**

47. Admit that the failure and/or refusal of a lot owner within the Clifton Park Allotment to object to the Clifton Club Company or its members' use of the Beach, constitutes legal consent.

**ADMIT OR DENY:**

48. Admit that any consent to use the Beach by the Clifton Club Company and/or its members by the original purchaser of the parcel of real estate or any owner within your chain of title runs with said parcel and extends to you as the current owner.

**ADMIT OR DENY:**

49. Admit that the document attached hereto as Exhibit C is a true and accurate copy of the deed issued to the Clifton Club Company by the Clifton Park Land & Improvement Company and recorded in the Cuyahoga County Recorder's Office on July 9, 1912.

**ADMIT OR DENY:**

50. Admit that the Clifton Club Company negotiated for the purchase of the land associated with the Club Deed.

**ADMIT OR DENY:**

51. Admit that the Clifton Club Company negotiated for the right to operate as a social club on the property associated with the Club Deed.

**ADMIT OR DENY:**

52. Admit that the Clifton Club Company negotiated for the right to use common areas within the Clifton Park Allotment including the right to use the Beach.

**ADMIT OR DENY:**

53. Admit that the Clifton Club Company paid fair value to purchase the land associated with the Club Deed.

**ADMIT OR DENY:**

54. Admit that the deed granted to the Clifton Club Company authorized the Clifton Club Company to operate on said property as a social club.

**ADMIT OR DENY:**

55. Admit that the Clifton Club Company first operated as a social club prior to the date of March 27, 1912.

**ADMIT OR DENY:**

56. Admit that the Clifton Club Company Members openly used the Beach prior to and after March 27, 1912.

**ADMIT OR DENY:**

57. Admit that the parcel of real estate now owned by you within the Clifton Park Allotment is obligated to pay assessments as assessed by the Clifton Park Trustees to be calculated as follows:

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 subplot, or part of subplot, 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 sublots in said allotment, exclusive of buildings.

**ADMIT OR DENY:**

58. Admit that the Clifton Club Company has, since the date you became an owner of the parcel of land owned by you within the Clifton Park Allotment, paid a greater assessment for 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 than that authorized to be charged to the Clifton Club Company under the formula described in the Trust deed.

**ADMIT OR DENY:**

59. Admit that you knew, prior to the date the instant lawsuit was filed, that the Clifton Club Company paid a greater share of the assessments associated with the common areas within the Clifton Park Allotment.

**ADMIT OR DENY:**

60. Admit that the assessment leveraged against the Clifton Club Company by the Trustees caused the amount assessed against the parcel of real estate you own within the Clifton Park allotment to be reduced.

**ADMIT OR DENY:**

61. Admit that you accepted the benefit of a reduced assessment related to the use of the common areas by virtue of the greater assessment paid by the Clifton Club Company.

**ADMIT OR DENY:**

62. Admit that until the filing of the instant lawsuit, no person to ever have owned a parcel or parcels of real estate within the Clifton Park Allotment ever filed a lawsuit against the Clifton Club Company to challenge the right of the Clifton Club Company and/or its members to use the common areas associated with the land purchased by the Clifton Club Company.

**ADMIT OR DENY:**

63. Admit that the Clifton Club Company improved the land associated with the purchase of real estate from the Clifton Park Land & Improvement Company, in part, because its purchase included the right to use the Beach.

**ADMIT OR DENY:**

64. Admit that the Clifton Club Company purchased the real estate within the Clifton Park Allotment for the purpose of enabling its members to use the land and Beach.

**ADMIT OR DENY:**

66. Admit that the Clifton Club Company engaged in no conduct that would cause the statute of limitations to be tolled or extended.

**ADMIT OR DENY:**

67. Admit that the Clifton Park Land & Improvement Company is no longer in existence.

**ADMIT OR DENY:**

68. Admit that the Clifton Park Land & Improvement Company is a necessary party to any action that seeks to challenge the power of the Clifton Park Land & Improvement Company to issue a deed to the Clifton Club Company.

**ADMIT OR DENY:**

69. Admit that the Clifton Club Company will suffer damages if its members are not permitted to use the Beach.

**ADMIT OR DENY:**

70. Admit that the Ohio Supreme Court in *Wallace v. Clifton Land Co.*, 92 Ohio St. 349 (1915) held that the Clifton Park Land & Improvement Company's restrictive covenants upon the sub lots was for a period of 50 years.

**ADMIT OR DENY:**

Respectfully submitted,

/s/ Adam M. Fried

Adam M. Fried (0065187)

REMINGER CO., LPA

101 W. Prospect Ave., Ste. #1400

Cleveland, OH 44115

P: (216)687-1311 / F: (216)687-1841

E: [afried@reminger.com](mailto:afried@reminger.com)

*Counsel for Defendant The Clifton Club Co.*

**CERTIFICATE OF SERVICE**

I certify that I served a copy of the foregoing by electronic mail on October 22, 2013

upon:

<p>DENNIS R. ROSE 200 PUBLIC SQUARE SUITE 2800 Cleveland, Ohio 44114 <a href="mailto:drd@hahnlaw.com">drd@hahnlaw.com</a> <i>Attorney for Plaintiffs Nancy Binder, Arthur Dueck Todd Gilmore, William Keller</i></p>
<p>JEFFREY MANSELL 18127 WEST CLIFTON ROAD LAKEWOOD, OH 44107 <a href="mailto:JMANSELL@COX.NET">JMANSELL@COX.NET</a> <i>PRO SE DEFENDANT</i></p>
<p>KIP READER ULMER BERNE LLP SKYLIGHT OFFICE TOWER 1660 West 2<sup>nd</sup> STREET, SUITE 1100 CLEVELAND, OH 44113 <a href="mailto:kreader@ulmer.com">kreader@ulmer.com</a> <i>Attorney for Defendant Clifton Park Trustees</i></p>
<p>Dana Rose Weston Hurd 1301 East 9<sup>th</sup> Street, Suite 1900 Cleveland, OH 44114 <a href="mailto:DRose@westonhurd.com">DRose@westonhurd.com</a> <i>Attorney for Defendants Cathryn Kuhn, Marcia Hall, Leslie Coleman, Edward Hill</i></p>
<p>Michael C. Cohan 20<sup>th</sup> Floor, 1300 E. 9<sup>th</sup> St. Cleveland, OH 44114 <a href="mailto:mcohan@cavitch.com">mcohan@cavitch.com</a> <i>Attorney for Interested Co-Defendants</i></p>

/s/ Adam M. Fried  
Adam M. Fried (0065187)