

LIBER 340 PAGE 024 | GLUECK WATERFRONT AGREEMENT 1992 SEP -8 PM 1:32

THIS AGREEMENT made as of the 27th day *Charles M. Peck* REGS 10/10/92

(notwithstanding that the same may have been executed by one or more of the parties subsequent to such date), by and between Charles and Barbara Glueck/(herein called "Gluecks"), and Waterfront Partners Limited Partnership/(herein called "Waterfront").  
3906 Middleton Court, Cincinnati, Ohio 45220  
1533 N. Woodward, Suite 240, Bloomfield Hills, Michigan 48304

WHEREAS, Waterfront is in the process of developing a condominium project to be known as the C&O Club Condominiums on property owned by Waterfront and on property owned by Oscar Stroud (herein called "the C&O Club"); and

WHEREAS, Gluecks own a parcel of property identified as Charlevoix Tax Parcel No. 123-088-00, which parcel is herein referred to as the "Gluecks' Parcel"; and

WHEREAS, the Gluecks also own an additional parcel of property abutting Lake Charlevoix identified as Charlevoix Tax Parcel No. 123-0850-00, which parcel is herein referred to as "Gluecks' Lakefront Parcel"; and

WHEREAS, Waterfront owns a parcel of property which includes all or a portion of the former railroad right-of-way lying between Gluecks' Parcel and Gluecks' Lakefront Parcel and extending northward to the proposed C&O Club. For purposes hereof, the portion of Waterfront's property lying between and adjacent to the Gluecks' Parcel and Gluecks' Lakefront Parcel shall be referred to as "Waterfront's Parcel"; and

WHEREAS, Waterfront is the beneficial owner of an easement running over property now owned by Robert Pew for the purpose of providing ingress and egress between Waterfront's Parcel and Cherry

Street (said easement being referred to herein as the "Pew Easement"); and

WHEREAS, Waterfront intends to construct a road to provide ingress and egress between Cherry Street and the C&O Club (herein referred to as the "Road"), which Road shall traverse across the Pew Easement and the Waterfront Parcel; and

WHEREAS, Waterfront wishes to construct the Road in such a way that its course shall encroach upon the southeast corner of the Gluecks' Parcel; and

WHEREAS, the Gluecks are willing to grant Waterfront an easement for such encroachment on the terms and conditions more specifically set forth hereafter.

NOW, THEREFORE, IT IS AGREED as follows:

1. Gluecks hereby grant an easement over the portion of the Gluecks' Parcel described in Exhibit "A" and identified as the "Gluecks' Easement Area" to Waterfront, its successors and assigns and future owners of units in the C&O Club, and their respective invitees and guests, for the purpose of building, maintaining and using a Road for vehicular and pedestrian use.

2. The Gluecks' Parcel is bounded to the northeast by property owned by Wyler, being Tax Roll Descriptions 123 089 00 and 123 090 00 (the "Wyler Property"). The Wylers similarly own lakefront property on the shore of Lake Charlevoix separated from their upland lots by former C&O railroad property. Waterfront hereby grants to Gluecks and to Wylers, their successors and assigns, and any future owners of any portion of the properties belonging to

Gluecks and/or Wylers, and their respective guests and invitees, the unrestricted right to use the portion of the Road lying within the Pew Easement, the Gluecks Easement Area and the Waterfront Parcel for vehicular and pedestrian purposes.

3. The Road to be constructed on the Gluecks' Easement Area shall be constructed in accordance with plans and specifications prepared by Ranger Engineering and approved by the City of Charlevoix. Preliminary plans for the Road have been provided to the parties hereto and are identified as Ranger Engineering Job No. X-243 dated 4/8/92, sheet 8 of 14 (herein referred to as the "Road Plan"). A portion of the Road Plan showing the Road over the Pew Easement and the Waterfront's Parcel has been initialed by Waterfront and provided to Gluecks. The final plans shall be in conformance with such preliminary plans, subject to such changes as may be required by the City of Charlevoix.

4. Waterfront shall place fill in the area shown on the plan prepared by Maureen Parker dated 4/23/92, Rev 4/39/92 (herein referred to as the "Landscape Plan") in the area identified as "Fill Area", and shall reshape the area identified as the "Cut Area", and shall landscape the Fill Area and the Cut Area, all in accordance with the Landscape Plan. The Landscape Plan shall be subject to such changes as may reasonably be required by the City of Charlevoix. A copy of the Landscape Plan initialed by Waterfront has been provided to Gluecks.

5. Waterfront shall, if permitted by the City of Charlevoix, install an access control gate at the Cherry Street

entrance to the Road. As it may be impracticable to continually maintain or operate the access control gate as a result of excessive vandalism or an unreasonable burden being placed on the residents of the C&O Club, Waterfront makes no undertaking to keep the access control gate operative." Such gate shall be similar to the type described in Exhibit B. As of date hereof, Waterfront has submitted to the City of Charlevoix and it has granted preliminary approval to a plan to light Waterfront's proposed Road to the C&O Club Condominiums. The illumination depicted on this plan is agreeable to Gluecks. Unless required otherwise by municipal authorities, Waterfront, or its successors in interest, shall not increase the level of illumination, change the direction of the light beams or raise the height of the lights on the Waterfront's Parcel or the portion of Waterfront's property lying adjacent to the Gluecks' Parcel or the Wyler Property from those depicted in Waterfront's present development plan without the approval of Gluecks and Wylers. If requested by Gluecks or Wylers, Waterfront will provide appropriate shielding on the roadway lights so that the same shall not shine on to the upland properties of Gluecks and Wylers.

6. Waterfront hereby grants to Gluecks and their successors and assigns in interest to the Gluecks' Parcel, or any portion thereof, the right to trim trees now or hereafter located on the Waterfront Parcel to the extent that such trimming may from time to time be necessary to prevent such trees from interfering with the view of Lake Charlevoix from any residential structures located on the Gluecks' Parcel. Such trimming shall be done in a professional



and reasonable manner, and in such a way as not to endanger the life of the trees being trimmed. Waterfront shall by separate agreement afford similar rights to the owners of the Wyler Property.

7. Waterfront hereby grants to Gluecks and their successors and assigns in interest to the Gluecks' Parcel, or any portion thereof, a four foot pedestrian crossing easement over the Waterfront's Parcel to allow access from the Gluecks' Parcel to the Gluecks' Lakefront Parcel. The location of this crossing easement shall be towards the southerly end of the Waterfront's Parcel. The exact location and description of this easement shall be determined by survey within one year from the date of this instrument, and Waterfront agrees to execute a suitable grant of such easement in recordable form. Waterfront further acknowledges that Gluecks currently have an additional recorded four foot wide Crossing Easement over the Waterfront's Parcel which is located approximately 190 feet north of the south end of the Waterfront's Parcel. Both such easements shall be known as the Crossing Easements.\*

8. Waterfront hereby grants to Gluecks the right to install and maintain underground utilities under the two Crossing Easements, referred to in paragraph 7 above, for the purpose of providing utility service to the Gluecks' Parcel and/or the Gluecks' Waterfront Parcel; also the right to tap in to or connect with (to the extent Waterfront can grant such right) any utility services hereafter installed by Waterfront or by the City of Charlevoix in the Waterfront's Parcel for purposes of serving either the Gluecks' Parcel and/or the Gluecks' Waterfront Parcel. Such underground

The proposed 4 foot crossing easement shown on the aforesaid Road Plan and Landscape Plan shall not be construed to represent the final location of this crossing easement. The final location of this crossing easement shall be determined in accordance with paragraph 7 above. The absence of the presently existing Glueck crossing easement on the Road Plan and Landscape Plan shall not be construed as affecting in any way the continued existence of the present crossing easement.

utility lines to include by way of illustration, but not by way of limitation, lines for sewer, water, gas, cable TV and electricity. Gluecks shall, as a condition of the easement granted herein, repair any damage to the surface caused by the installation or maintenance of said utility lines. Waterfront shall by separate agreement afford similar rights to the owners of the Wyler Property.

9. Subject to approval of the City of Charlevoix, Waterfront shall construct a white picket fence along the common boundary line between the Waterfront's Parcel and the Gluecks' Parcel and shall place operative gates in said fence at each of the Crossing Easements referred to in paragraph 7 above, so as not to restrict Gluecks access to said Crossing Easements. Also, subject to such municipal approval, Waterfront shall construct a similar fence, from the southerly line of Waterfront's private Road southerly along the boundary line between the former railroad right-of-way easement and property abutting to the west owned by the City of Charlevoix, to hinder or prevent vehicular access from the City's beach parking area to the former railroad right-of-way and the Gluecks' Lakefront Parcel.

10. Waterfront shall cause the Master Deed for the C&O Club to provide that the Condominium Association shall be responsible for the maintenance of the Road, and for the maintenance of any landscaping installed by Waterfront on the Waterfront's Parcel, the Pew Easement, the Gluecks' Easement Area, or the Fill Area.

11. There are certain concrete blocks and other debris comprising the foundation for a now-removed boathouse on the Gluecks'

Lakefront Parcel. Waterfront shall cause its contractors to remove such materials from the Gluecks' Lakefront Parcel, provided, however, that any labor costs specifically related to removal of said materials shall be paid by the Gluecks.

12. Waterfront agrees that if, in the future, it intends to sell the Waterfront's Parcel, it will first give Gluecks notice of its intention to do so, which notice shall include a statement as to the price which Waterfront is willing to accept for said Parcel. Gluecks shall have 45 days within which to elect to purchase the Parcel by paying the purchase price indicated in said notice. In the event Gluecks elect to purchase the Parcel pursuant hereto, closing shall take place within 45 days of the expiration of the aforesaid 45 day period. Such closing shall be in accordance with the standard customs for selling similar property in Charlevoix County with respect to matters such as, but not limited to, title policies, proration of taxes and method of conveyance. In the event the Gluecks fail to elect to purchase the Parcel within said 45 day notice period, then Waterfront shall be free to sell the Waterfront's Parcel to any third party, provided, however, that Waterfront shall not accept an offer of a lower price on terms more favorable to the buyer than that offered to Gluecks without first notifying Gluecks of its willingness to accept such lower price or more favorable terms, which notice shall be accompanied by a copy of any such acceptable third party offer. The Gluecks shall then have 10 days within which to elect to match said third party offer. If the Gluecks elect to match said third party offer within said 10 day period, closing shall

take place in accordance with the terms of said third party offer. If the Gluecks fail to elect to match said third party offer, then Waterfront shall be free to accept said third party offer and consummate the transaction in accordance therewith. If Waterfront elects to sell the Waterfront's Parcel in conjunction with property owned by Waterfront situated between the Wylers' upland property and the Wylers' lakefront property, the rights and obligations contained in this paragraph shall apply to the entire parcel to be sold.

13. Gluecks and Waterfront each claim an ownership interest in the former railroad right-of-way easement lying between the Waterfront's Parcel and the Gluecks' Lakefront Parcel, or portions of such former right-of-way. As of date hereof, each party is uncertain as to the extent of such property claimed by the other. Accordingly, Gluecks and Waterfront mutually agree with one another that neither party shall undertake future commercial or residential development of such former right-of-way property situated between the Gluecks' Parcel and the Gluecks' Waterfront Parcel without the consent of the other being first obtained.

"Development" as used herein shall mean construction of buildings in the former right-of-way property. This agreement shall run with the land and be binding upon the respective successors in interest of the parties hereto.

Provided, however, this paragraph 13 shall only apply if Waterfront owns one-half and Gluecks own the other one-half of the former right-of-way easement lying between Waterfront's Parcel and Gluecks' Lakefront Parcel. If it should be subsequently determined



that either party owns more than one-half the width of such easement, this entire paragraph 13 shall be void.

Waterfront shall by separate agreement afford similar rights to the owners of the Wyler Property as regards future development of the former railroad right-of-way lying between the Wyler upland property and the Wyler lakefront property.

14. This agreement, and the rights and benefits granted herein, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns, and shall run with the lands of Gluecks (being the Gluecks' Parcel and the Gluecks' Lakefront Parcel), and of Waterfront (being the Waterfront's Parcel and the Pew Easement).

IN WITNESS WHEREOF, the parties have caused these presents to be executed in a manner sufficient to bind them as of the day and year above first written.

As to Charles Glueck:

Trent M. Tracy  
Trent M. Tracy

Valfredia Thrasher  
Valfredia Thrasher

As to Stuart Kaufman:

Liz Hatch  
Liz Hatch

Joanne Nordman  
Joanne Nordman

As to Barbara Glueck:

Patricia A. Bain  
Patricia A. Bain

David W. Campbell  
David W. Campbell

STATE OF MICHIGAN  
County of Charlevoix

WATERFRONT LIMITED PARTNERSHIP,  
a Michigan limited partnership,  
by: WATERFRONT GROUP CORPORATION,  
a Michigan corporation  
Its: General Partner

By: Stuart M. Kaufman  
Stuart M. Kaufman  
President

Charles Glueck  
Charles Glueck

Barbara Glueck  
Barbara Glueck

The foregoing instrument was acknowledged before me this 11th day of MAY, 1992 on behalf of Waterfront Limited

Partnership, a Michigan limited partnership, by Stuart M. Kaufman, President of Waterfront Group Corporation, a Michigan corporation, the General Partner of such limited partnership.

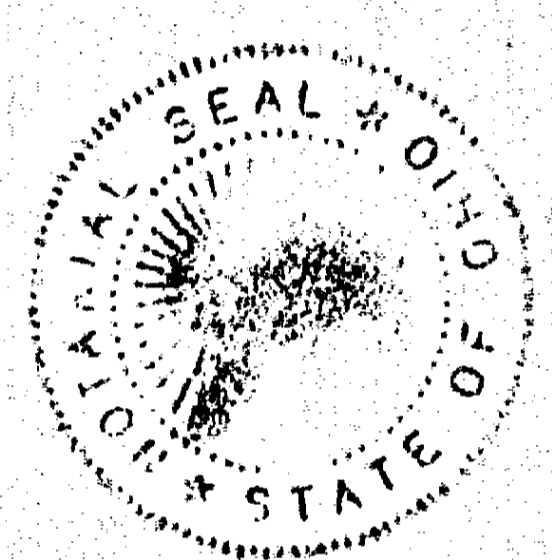
*Liz Hatch*  
Liz Hatch Notary Public  
Charlevoix County, Michigan  
My Commission Expires: LIZ HATCH  
Notary Public, Oakland County, MI  
My Commission Expires April 13, 1994

STATE OF OHIO  
County of Hamilton

The foregoing instrument was acknowledged before me this  
4 day of May, 1992 by ~~Charles Glueck~~ and Barbara Glueck.

AFFIX SEAL

*David W. Campbell*  
David W. Campbell Notary Public  
Hamilton County, Ohio  
My Commission Expires: DAVID W. CAMPBELL, Attorney at Law  
NOTARY PUBLIC - STATE OF OHIO  
My Commission has no expiration  
date. Section 147.03 R.C.

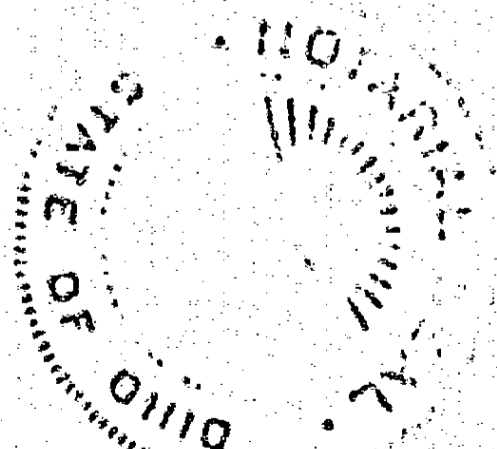


STATE OF OHIO  
County of Hamilton

The foregoing instrument was acknowledged before me this  
6 day of May, 1992 by Charles Glueck.

AFFIX SEAL

*Valfredia Thrasher*  
Valfredia Thrasher Notary Public  
Hamilton County, Ohio  
My Commission Expires: March, 1, 1996



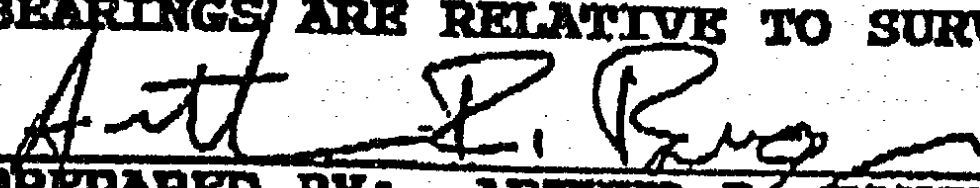
Prepared by:  
Nathaniel W. Stroup  
Stroup, Johnson & Tresidder, PC  
P.O. Box 809  
Petoskey, MI 49770

GLUECKS' EASEMENT AREA

THAT PART OF FRACTIONAL SECTION 23, TOWNSHIP 34 NORTH, RANGE 8 WEST, CITY OF CHARLEVOIX, CHARLEVOIX COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT A 1" IRON ROD AT THE EAST QUARTER CORNER OF SAID SECTION 23; THENCE SOUTH 0°39'18" WEST ON THE EAST LINE OF SAID SECTION 23 (AS MONUMENTED) (WEST LINE OF GOVERNMENT LOT 4), A DISTANCE OF 1506.14 FEET TO A CONCRETE MONUMENT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FORMER CHESAPEAKE AND OHIO RAILROAD; THENCE SOUTH 32°25'59" WEST ON SAID RIGHT-OF-WAY LINE 669.61 FEET TO THE TRUE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED; THENCE CONTINUING ON SAID RIGHT-OF-WAY LINE SOUTH 32°25'59" WEST 8.54 FEET TO A T-IRON STAKE; THENCE CONTINUING ON SAID RIGHT-OF-WAY LINE SOUTH 32°29'40" WEST 78.72 FEET TO A 1/2" IRON ROD ON THE SOUTHEASTERLY EXTENSION OF THE NORTH LINE OF CHERRY STREET; THENCE NORTH 70°44'05" WEST ON SAID EXTENSION AND THE NORTH LINE OF CHERRY STREET 87.15 FEET; THENCE LEAVING CHERRY STREET SOUTHEASTERLY 147.52 FEET AROUND A 110.00 FOOT RADIUS CURVE TO THE LEFT WHOSE CHORD BEARS NORTH 70°50'57" EAST 136.71 FEET TO THE POINT OF BEGINNING. CONTAINING 1479.66 SQUARE FEET OF LAND MORE OR LESS.

SUBJECT TO ANY AND ALL EASEMENTS AND RESTRICTIONS OF RECORD OR OTHERWISE.

BEARINGS ARE RELATIVE TO SURVEYS IN THE AREA.

  
PREPARED BY: ARTHUR R. RANGER, L.L.S. 31601

SHEET 1 OF 1.

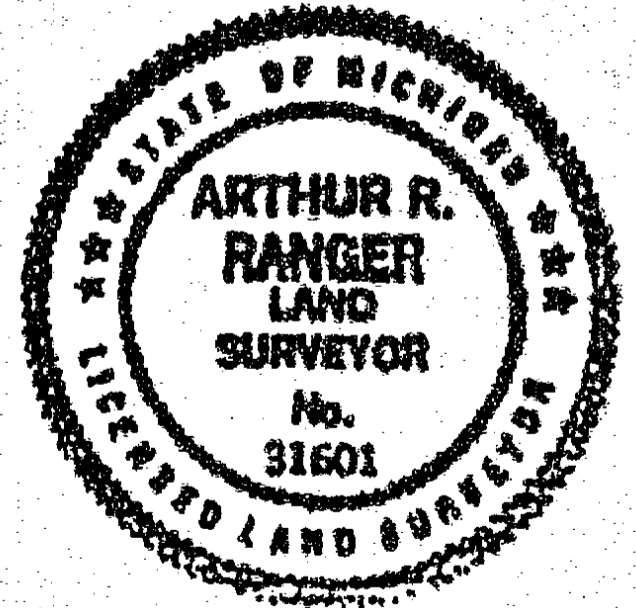


EXHIBIT A

**EQUIPMENT SPECIFICATION**

**MODEL ATG-820**

**BARRIER GATE**

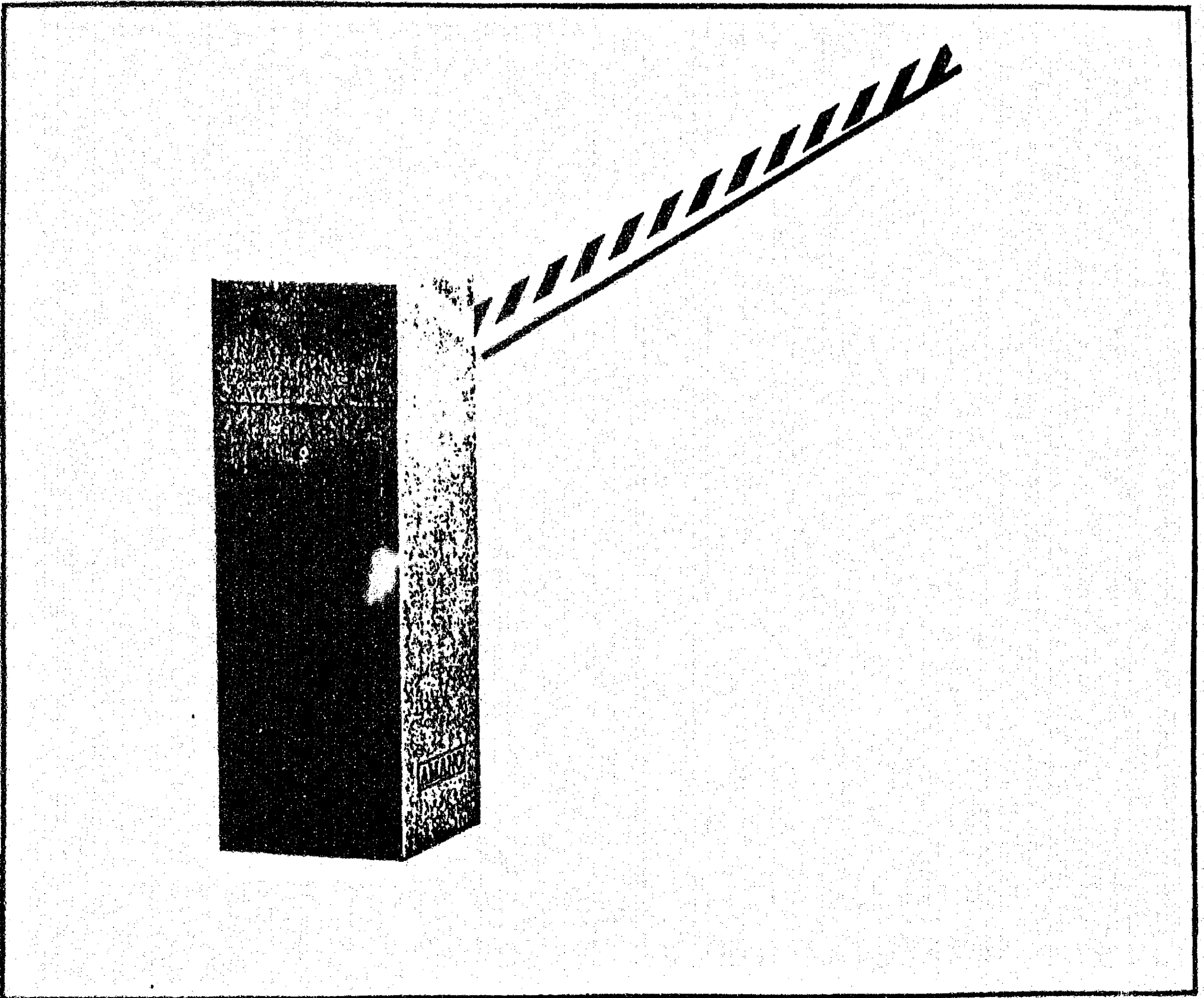


EXHIBIT B