

STATE OF MICHIGAN
COUNTY OF CHARLEVOIX
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Charles W. Unbehaun
REGISTER OF DEEDS

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF CHARLEVOIX

HOWARD A. OTIS, MARY A. OTIS,
MARY OTIS LANDICK and ELLEN SCHIRMER,

Plaintiffs,

v.

Case No. 96-492-18-CH

WATERFRONT PARTNERS, LTD.
a Michigan limited partnership,
C&O CLUB CONDOMINIUM ASSOCIATION,
a Michigan non-profit corporation,
CHARLES W. UNBEHAUN, Trustee under
the Charles W. Unbehaun Revocable
Living Trust Agreement, dated
August 13, 1993, GERALD L. DECKER and
DONNA J. DECKER, and THOMAS ERBER,

Defendants.

STEDMAN, FERSHEE & FERSHEE
By John D. Fershee (P13393)
Attorney for Plaintiffs
314 E. Lake Street
Petoskey, MI 49770
(616) 347-1410

POINTNER, JOSEPH & CORCORAN, P.C.
By Richard E. Joseph (P39924)
Attorney for Defendants
203 Mason Street
Charlevoix, MI 49720
(616) 547-9931

AFFIDAVIT OF RICHARD E. JOSEPH

POINTNER, JOSEPH & CORCORAN, P.C. ATTORNEYS AT LAW, 203 MASON STREET, CHARLEVOIX, MICHIGAN 49720

STATE OF MICHIGAN)
)SS
COUNTY OF CHARLEVOIX)

Richard E. Joseph, being duly sworn, states as follows:

1. I am an attorney, duly licensed to practice law in the State of Michigan. I represented the Defendants in the above-captioned matter, bearing Charlevoix County Circuit Court Case No. 96-492-18-CH. I have personal knowledge of the facts contained in this Affidavit and, if called as a witness, can competently testify thereto.

2. I am making this Affidavit for purposes of recording a certain Stipulation and Uncontested Order which was entered by the Charlevoix County Circuit Court on August 9, 1996, in the above-captioned matter.

3. A certified copy of the Stipulation and Uncontested Order is attached to this Affidavit as Exhibit A (the "Order").

4. Certain parties to the above-captioned litigation, entered into an Easement Agreement, dated February 14, 1992, and recorded at Liber 338, Page 0351 through 0364, Charlevoix County Records. That Easement Agreement was amended pursuant to an Amendment To Easement Agreement, dated June 11, 1992, and recorded at Liber 338, commencing at Page 0365, Charlevoix County Records.

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5. The Easement Agreement, in part, created a 60 foot wide lake easement, which benefitted property which, as of the date of the Order, was owned by the Plaintiffs in the above-captioned matter (the "Lake Easement"). The property which is benefitted by the Lake Easement is depicted on a survey and more particularly described in the legal descriptions, all of which are attached as Exhibit B (the "Otis Property").

6. As set forth in the Easement Agreement, as amended, and in the Stipulation and Contested Order, the Otis Property is the only property which is legally entitled to benefit from the Lake Easement. The owners of Unit 3 and Unit 4 may use the property burdened by the Lake Easement as more fully set forth in the Easement Agreement, as amended, and the Order.

Further Affiant sayeth not.

WITNESSES:

Denise D. Pointner
Denise D. Pointner

Richard E. Joseph
Richard E. Joseph (P39924)

Melinda A. Joy
Melinda A. Joy

Subscribed before me, a Notary Public, this 23 day of April, 1997, by Richard E. Joseph.

Denise D. Pointner
Denise D. Pointner, Notary Public
Charlevoix County, Michigan
My commission expires: 5/27/2001

DRAFTED BY:
(without opinion as to title)
Richard E. Joseph
Pointner, Joseph & Corcoran
203 Mason Street
Charlevoix, MI 49720

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF CHARLEVOIX

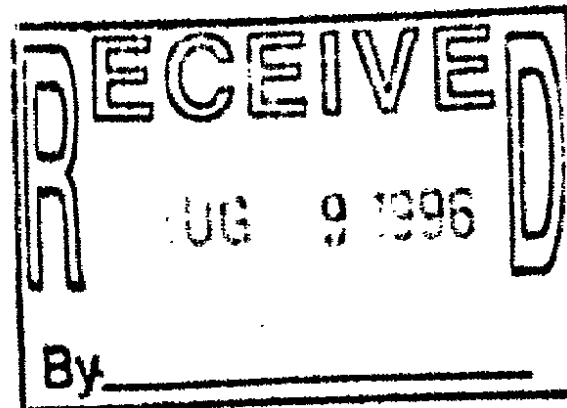
HOWARD A. OTIS, MARY A. OTIS,
MARY OTIS LANDICK and ELLEN SCHIRMER,

Plaintiffs,

v.

Case No. 96-492-18-CH

WATERFRONT PARTNERS, LTD.
a Michigan limited partnership,
C&O CLUB CONDOMINIUM ASSOCIATION,
a Michigan non-profit corporation,
CHARLES W. UNBEHAUN, Trustee under
the Charles W. Unbehaun Revocable
Living Trust Agreement, dated
August 13, 1993, GERALD L. DECKER and
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Charlevoix, MI 49720
(616) 547-9931

STIPULATION AND UNCONTESTED ORDER

At a session of the Court held on August 9,
1996.

PRESENT: HONORABLE RICHARD M. PAJTAS
Circuit Court Judge

The Court having read the Complaint filed by the
Plaintiffs in the above-captioned matter and, further, having

POINTNER, JOSEPH & CORCORAN, P.C., ATTORNEYS AT LAW, 203 MASON STREET, CHARLEVOIX, MICHIGAN 49720

read the Defendants' Motion For Summary Disposition and the Plaintiffs' Response to the Motion For Summary Disposition and supporting Briefs, and the Court having read the stipulation of the parties hereto and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED that the Defendants ~~shall~~^{shall} remove the four (4) white pines on Unit 3 of the C&O Club (the "Decker Unit") and the white pines and spruce trees on Unit 4 of the C&O Club (the "Unbehaun Unit"). The Unbehauns may place a white pine tree on the northerly one-half of the Lake Easement so that the tree is located twenty-one (21) feet from the center post on the Unbehauns' staircase and is in a line with Plaintiff Schirmer's gate and the trunk of the large white pine presently situated on the shore of Lake Charlevoix. The landscaping to be removed as provided in this paragraph shall be removed in the fall of 1996 if possible and no later than May 31, 1997.

IT IS FURTHER ORDERED that the Lake Easement shall be landscaped with grass and that the Unbehauns and/or Deckers shall be responsible for installing and maintaining the grass and irrigation systems, if any, on their respective half of the Lake Easement. The Deckers shall be required to install grass and the irrigation system, if any, on their half of the Lake Easement within twelve (12) months of the completion of construction of their house on the Decker Unit.

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IT IS FURTHER ORDERED that the Deckers may install landscaping on or within a portion of the southerly one-half of the Lake Easement as provided herein. Said landscaping may be installed by the Deckers to a maximum width of twelve (12) feet as measured from the southerly boundary of the Lake Easement provided that the average width shall be ten (10) feet or less. Provided, further, that the landscaping installed by the Deckers shall not block the view corridor between Plaintiff Schirmer's house and Lake Charlevoix over the southerly one-half of the Lake Easement. Provided, further, that the landscaping installed by the Deckers shall not consist entirely of conifer trees but may consist of a mix of conifer and deciduous plants consisting of low shrubs, small ornamental trees and/or flowers similar in size to the landscaping next to the Unbehaun home and shall be maintained so as not to exceed nine (9) feet in height.

IT IS FURTHER ORDERED that, except for the white pine and spruce trees which are required to be removed from the Unbehaun Unit as set forth above, the Unbehauns may maintain and/or replace the landscaping which presently exists on their half of the Lake Easement near their house and may plant and maintain the white pine tree as set forth above.

IT IS FURTHER ORDERED that the cedar hedge which has been installed along the road easement shall be maintained at a height not exceeding seven (7) feet as the hedge runs in front of the Plaintiffs' property. The remaining portion of the cedar

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hedge which is not located in front of the Plaintiffs' property may be maintained by the C&O Club at whatever height it desires in its sole discretion. No additional hedging shall be planted in front of the Plaintiffs' property.

IT IS FURTHER ORDERED that the Plaintiffs shall have the right to install driveways for ingress and egress to their property from C&O Club Drive as set forth in the Easement Agreement dated February 14, 1992, and recorded at Liber 338, Pages 0351-0357, Charlevoix County Records.

IT IS FURTHER ORDERED that the Plaintiffs may install one picnic table in the Lake Easement. Additionally, the Plaintiffs may place lawn chairs and other chairs in the Lake Easement. Additionally, the Plaintiffs may place one glider-type swing in the Lake Easement. The Plaintiff may also maintain a dock and boat hoist as set forth in the Easement Agreement, dated February 14, 1992, and recorded at Liber 338, Pages 0351-0357, Charlevoix County Records and the Amendment To Easement Agreement dated June 11, 1992, and recorded at Liber 338, Pages 0365 through 0368 and in compliance with the C&O Club rules and regulations and condominium documents as they may be amended from time to time. The placement of the picnic table and/or lawn chairs and/or glider swing shall be within the fifty (50) foot setback area contained within the Lake Easement and as long as such placement is allowed by the Special Use Permit and the Plaintiffs agree to comply with all terms and conditions of

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the C&O Club Condominium Association rules and regulations as they may be amended from time to time and the condominium documents and Special Use Permit governing the C&O Club Condominium development as they may be amended from time to time.

IT IS FURTHER ORDERED that the Plaintiffs ^{may} shall at all times use the Lake Easement for any purpose which is consistent with the rules and regulations of the C&O Club Condominium Association as they may be amended from time to time and the condominium documents and the Special Use Permit which govern the C&O Club Condominium development as they may be amended from time to time. Such rules and regulations shall be applied and enforced uniformly as to all parties hereto.

IT IS FURTHER ORDERED that the Plaintiffs' use of the Lake Easement shall at all times comply with any and all federal, state and local laws, rules and ordinances.

IT IS FURTHER ORDERED that the above-captioned matter shall be dismissed with prejudice and without costs to either party.

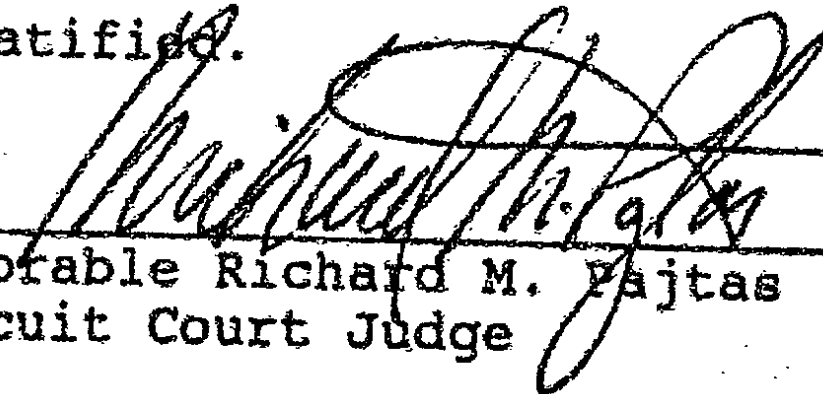
IT IS FURTHER ORDERED that this Order shall be recorded with the Charlevoix County Register of Deeds and that the cost of recording this Order shall be paid by the Defendants.

IT IS FURTHER ORDERED that the terms and conditions set forth in this Order shall be binding upon the parties hereto, their successors, heirs and assigns.

POWNER, JOSEPH & CORCORAN, P.C., ATTORNEYS AT LAW, 203 MASON STREET, CHARLEVOIX, MICHIGAN 49720

IT IS FURTHER ORDERED that the terms and conditions and rights, obligations and duties set forth in the Easement Agreement dated February 14, 1992, and recorded at Liber 338, Pages 0351 through 0357 and the Amendment to Easement Agreement dated June 11, 1992, and recorded at Liber 338, Pages 0365 through 0368 which are not inconsistent with the terms of this Order are hereby reaffirmed and ratified.


Date: 8-9-96


Honorable Richard M. Pajtas
Circuit Court Judge

We hereby stipulate to the entry of the above Order, pursuant to MCR 2.119(D)(2)(a).

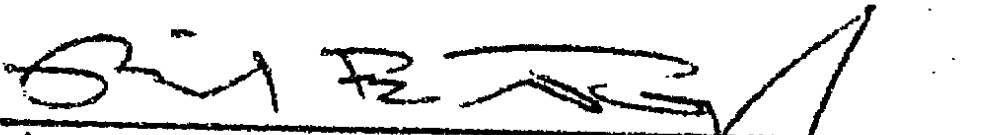
STEDMAN, FERSHEE & FERSHEE

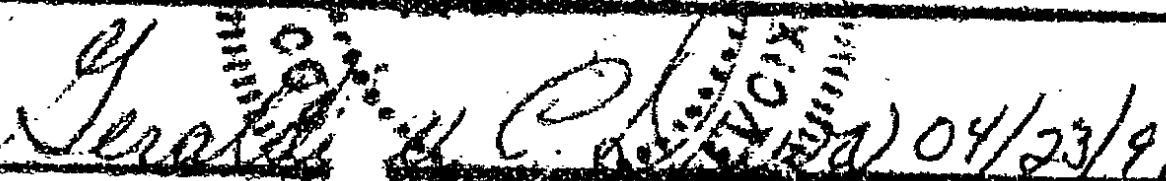
Date: Aug 9, 1996

By: 
John D. Fershee (P13393)
Attorney for Plaintiffs

POINTNER, JOSEPH & CORCORAN, P.C.

Date: 8/9/96

By: 
Richard E. Joseph (P39924)
Attorney for Defendants

CERTIFIED
Jane E. Branton, County Clerk

DEPUTY OF CLERK DATE 04/23/97

POINTNER, JOSEPH & CORCORAN, P.C., ATTORNEYS AT LAW, 203 MASON STREET, CHARLEVOIX, MICHIGAN 49720

CERTIFICATE OF SURVEY

SHEET 1 OF 1

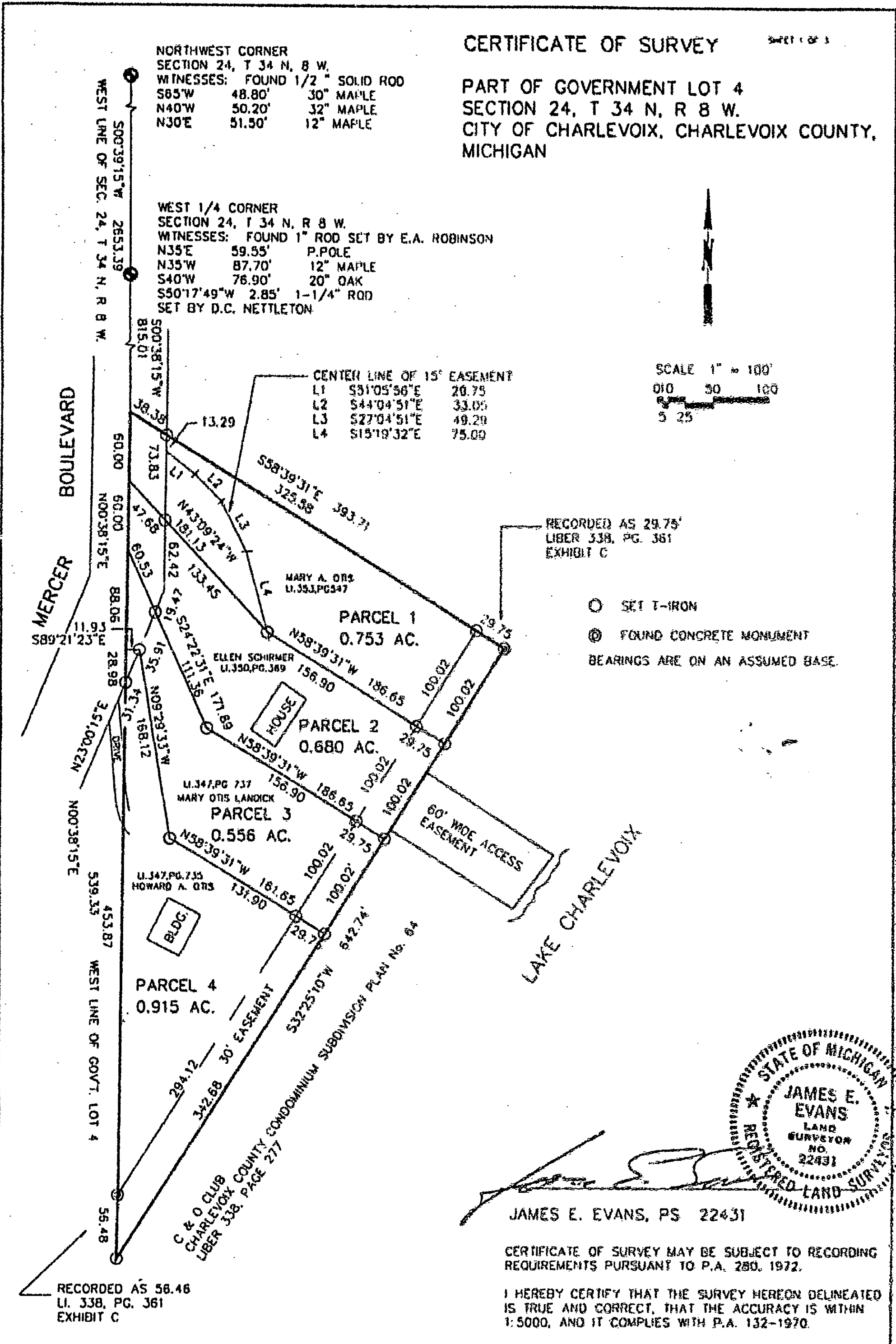
PART OF GOVERNMENT LOT 4
SECTION 24, T 34 N, R 8 W.
CITY OF CHARLEVOIX, CHARLEVOIX COUNTY,
MICHIGAN

NORTHWEST CORNER
SECTION 24, T 34 N, R 8 W.
WITNESSES: FOUND 1/2" SOLID ROD
S85°W 48.80' 30" MAPLE
N40°W 50.20' 32" MAPLE
N30°E 51.50' 12" MAPLE

WEST 1/4 CORNER
SECTION 24, T 34 N, R 8 W.
WITNESSES: FOUND 1" ROD SET BY E.A. ROBINSON
N35°E 59.55' P. POLE
N35°W 87.70' 12" MAPLE
S40°W 76.90' 20" OAK
S50°17'49"W 2.85' 1-1/4" ROD
SET BY D.C. NETTLETON

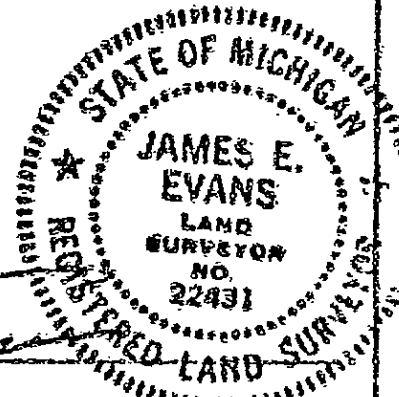
CENTER LINE OF 15' EASEMENT
L1 S31°05'56"E 20.75
L2 S44°04'51"E 33.05
L3 S27°04'51"E 49.20
L4 S13°19'32"E 75.00

SCALE 1" = 100'
0 50 100
5 25



RECORDED AS 29.75'
LIBER 338, PG. 361
EXHIBIT C

- SET T-IRON
 - ⊙ FOUND CONCRETE MONUMENT
- BEARINGS ARE ON AN ASSUMED BASE.



JAMES E. EVANS, PS 22431

CERTIFICATE OF SURVEY MAY BE SUBJECT TO RECORDING REQUIREMENTS PURSUANT TO P.A. 280, 1972.

I HEREBY CERTIFY THAT THE SURVEY HEREON DELINEATED IS TRUE AND CORRECT, THAT THE ACCURACY IS WITHIN 1:5000, AND IT COMPLIES WITH P.A. 132-1970.

Charlevoix Abstract & Engineering Co.

ABSTRACTS of TITLE
TITLE INSURANCE
SURVEYING
ENGINEERING



Women's Business
Enterprise
(WBE)

Phone 818 547-9901
FAX 818 547-0041

213 Bridge St. / P.O. Box 18
Charlevoix, Michigan.
49720

FIELD OFFICE
6738 Greenview
Detroit, MI 48226
(313) 271-0466
FAX (313) 271-7002

FOR: MARY OTIS	
FIELD: JEE/TRA/GTR/JZL	COMPUTED BY: JEE/FAF
COMPUTER # 12562.DWG	CHECKED BY: JEE
DRAWN BY: FAF	REV. APRIL 2, 1996
DATE: 8-18-1993	JOB # 93-12562C.SB

EXHIBIT B

CERTIFICATE OF SURVEY

Sheet 2 of 3

PARCEL 1

In the City of Charlevoix, Charlevoix County, Michigan; commencing at a 1 inch rod (set by E. A. Robinson, surveyor) at the West quarter corner of Section 24, Township 34 North, Range 8 West; thence along the West line of said section South 00°38'10" West 815.01 feet for the Point of Beginning of this description; thence South 58°39'31" East 393.71 feet to a concrete monument on the Northwesterly line of C & O Club, as recorded in Liber 338, page 343, Charlevoix County records; thence along said line South 32°25'10" West 100.02 feet to a T-iron stake; thence North 58°39'31" West 186.65 feet to a T-iron stake; thence North 43°09'24" West 181.13 feet to said West section line; thence along said West section line North 00°38'15" East 60.00 feet to the Point of Beginning; being a part of Government Lot 4, Section 24, Township 34 North, Range 8 West and containing 0.753 acres.

PARCEL 2

In the City of Charlevoix, Charlevoix County, Michigan; commencing at a 1 inch rod (set by E. A. Robinson, surveyor) at the West quarter corner of Section 24, Township 34 North, Range 8 West; thence along the West line of said section South 00°38'10" West 875.01 feet for the Point of Beginning of this description; thence South 43°09'24" East 181.13 feet to a T-iron stake; thence South 58°39'31" East 186.65 feet to a T-iron stake on the Northwesterly line of C & O Club, as recorded in Liber 338, Page 343, Charlevoix County records; thence along said line South 32°25'10" West 100.02 feet to a T-iron stake; thence North 58°39'31" West 186.65 feet to a T-iron stake; thence North 24°22'31" West 171.89 feet to said West section line; thence along said West section line North 00°38'15" East 60.00 feet to the Point of Beginning; being a part of Government Lot 4, Section 24, Township 34 North, Range 8 West and containing 0.880 acres.

PARCEL 3

In the City of Charlevoix, Charlevoix County, Michigan; commencing at a 1 inch rod (set by E. A. Robinson, surveyor) at the West quarter corner of Section 24, Township 34 North, Range 8 West; thence along the West line of said section South 00°38'10" West 935.01 feet for the Point of Beginning of this description; thence South 24°22'31" East 171.89 feet to a T-iron stake; thence South 58°39'31" East 186.65 feet to a T-iron stake on the Northwesterly line of C & O Club, as recorded in Liber 338, Page 343, Charlevoix County records; thence along said line South 32°25'10" West 100.02 feet to a T-iron stake; thence North 58°39'31" West 161.65 feet to a T-iron stake; thence North 09°29'33" West 168.12 feet to a T-iron stake on the Southeasterly line of Mercer Boulevard; thence North 89°21'23" West 11.93 feet to said West section line; thence along said West section line North 00°38'15" East 60.00 feet to the Point of Beginning; being a part of Government Lot 4, Section 24, Township 34 North, Range 8 West and containing 0.556 acres.

LIBER 376 PAGE 0394

Certificate of survey may be subject to recording requirements pursuant to P.A. 280, 1972.

I HEREBY CERTIFY that the survey hereon delineated is true and correct, that the accuracy is within 1:5000, and it complies with P.A. 132-1970



James E. Evans, PS 22431

Charlevoix Abstract & Engineering Co.

ABSTRACTS of TITLE
TITLE INSURANCE



SURVEYING
ENGINEERING

616 547-9901

Charlevoix, Michigan

49720

FOR: Mary Otis

DATE: 8-23-1993

JOB #: 12562c.SB

CERTIFICATE OF SURVEY

Sheet 3 of 3

PARCEL 4

In the City of Charlevoix, Charlevoix County, Michigan: commencing at a 1 inch rod (set by E. A. Robinson, surveyor) at the West quarter corner of Section 24, Township 34 North, Range 8 West: thence along the West line of said section South 00°38'10" West 995.01 feet for the Point of Beginning of this description; thence South 89°21'23" East 11.93 feet to a T-iron stake on the Southeasterly line of Mercer boulevard; thence South 09°29'23" East 168.12 feet to a T-iron stake; thence South 58°39'31" East 161.65 feet to a T-iron stake on the Northwesterly line of C & O Club, as recorded in Liber 338, Page 343, Charlevoix County records; thence along said line South 32°25'10" West 342.68 feet to a T-iron stake on said West section line; thence along said West section line North 00°38'15" East 539.33 feet to the Point of Beginning; being a part of Government Lot 4, Section 24, Township 34 North, Range 8 West and containing 0.915 acres.

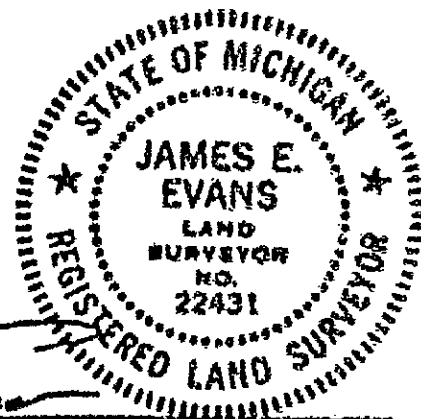
Center line of 15 feet wide Driveway Easement

In the City of Charlevoix, Charlevoix County, Michigan: commencing at a 1 inch rod (set by E. A. Robinson, surveyor) at the West quarter corner of Section 24, Township 34 North, Range 8 West: thence along the West line of said section South 00°38'10" West 815.01 feet; thence South 58°39'31" East 38.38 feet to a T-iron stake on the Easterly line of Mercer Boulevard; thence along said line South 00°38'15" East 13.29 feet for the Point of Beginning of the center line of this easement; thence the following four courses along said center line: South 51°05'56" East 29.75 feet; South 44°04'51" East 33.05 feet; South 27°04'51" East 49.29 feet; and South 15°19'32" East 75.00 feet to the Point of Ending; being a part of Government Lot 4, Section 24, Township 34 North, Range 8 West.

LIBER 376 PAGE 0395

Certificate of survey may be subject to recording requirements pursuant to P.A. 280, 1972.

I HEREBY CERTIFY that the survey hereon delineated is true and correct, that the accuracy is within 1:5000, and it complies with P.A. 132- 1970



James E. Evans
James E. Evans, PS 22431

Charlevoix Abstract & Engineering Co.

ABSTRACTS of TITLE
TITLE INSURANCE



SURVEYING
ENGINEERING

616 347-9901

Charlevoix, Michigan 49720

FOR: Mary Otis

DATE: 8-23-1993

JOB #: 12562c.SB