



701-833

STATE OF MICHIGAN
COUNTY OF CHARLEVOIX
RECEIVED FOR RECORD

**WYLER-WATERFRONT LIMITED PARTNERSHIP
PROPERTY AGREEMENT**

2005 AUG 29 A 11: 03

This agreement made as of this 2nd day of July, 1992 (notwithstanding *Raymond P. Inventory*
that the same may have been executed by one or more of the parties subsequent to such
date), by and between Marjory S. Wyler, Carl I. Wyler, John L. Wyler and William S.
Wyler (herein called "Wylers") and Waterfront Partners Limited Partnership (herein
called "Waterfront").

REGISTER OF DEEDS

10:30AM
AUG 29 REC'D

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, the Wylers own a parcel of property identified as Charlevoix Tax
Parcel No. 123 089 00 which parcel is herein referred to as "Wyler Parcel 1" and
property identified as Charlevoix Tax Parcel No. 123 090 00, which parcel is herein
referred to as "Wyler Parcel 2"; and

WHEREAS the Wylers also own two additional parcels of property abutting Lake
Charlevoix identified as Charlevoix Tax Parcel No. 123-086-00 which parcel is herein
referred to as the "Wyler Lakefront Parcel 1" and Charlevoix Tax Parcel 123-087-00 which
parcel is herein referred to as "Wyler Lakefront Parcel 2"; and

WHEREAS, Waterfront owns a parcel of property which includes all or a portion
of the former railroad right-of-way lying between Wylers' Parcel no. 1 and Parcel no. 2
and Wylers' Lakefront Parcel no. 1 and Parcel no. 2 and extending northward to the
proposed C&O Club. For the purposes hereof, a portion of Waterfront's property lying
between and adjacent to the Wylers' Parcel no. 1 and Parcel no. 2 and Wyler Lakefront
Parcel no. 1 and Parcel no. 2 shall be referred to as "Waterfront's Parcel"; 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 converse across the Waterfront Parcel; and

WHEREAS, the Wylers have cooperated with and assisted Waterfront, in the development of its Project; and

WHEREAS, Waterfront previously agreed to provide the Wylers with within agreement by agreement dated the 27th day of April, 1992 by and between Waterfront and Charles and Barbara Glueck, which agreement is made part hereof and the terminology and definitions of which, unless otherwise stated herein, shall apply to this agreement.

NOW THEREFORE, in consideration of the above and the mutual promises made herein, it is agreed as follows:

1. The Wylers shall, if so requested by Waterfront, notify the City of Charlevoix that the Wylers are in favor of the Waterfront project, as proposed.
2. Waterfront hereby grants to Wylers, their successors and assigns, and any future owners of any portion of the properties belonging to the Wylers, and their respective guests and invitees, the unrestricted right to use the portion of the Road lying within the "Pew easement", the "Glueck" easement area and the Waterfront Parcel for vehicular and pedestrian purposes.*
3. Waterfront shall, if permitted by the City of Charlevoix, install an access control gate at the Cherry Street entrance to the Road, coded access to which will be provided to Wylers. 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 in the residence of the C&O Club, Waterfront makes no undertaking to keep the

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*Waterfront shall not place any obstruction between the Road and the cinder road, lying opposite the Wyler Parcel 1 gate, so that vehicles can drive to the Wyler Lakefront Parcels. Should it be necessary for recording purposes, legal descriptions of the effected parcels shall be added subsequent to the signing hereof.

*In. S. W.
C I W
W S W*

access control gates operative. Such gate shall be similar to the type described in Exhibit "B" of the April 27, 1992 agreement between Gluecks and Waterfront. As of the date hereof, Waterfront has submitted to the City of Charlevoix and the city has granted preliminary approval to provide a plan to light to Waterfront's proposed Road to the C&O Club Condominiums. The illumination depicted in the plan is agreeable to the Wylers. 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 Waterfront's Parcel or that portion of Waterfront's property lying adjacent to the Wyler Parcels or Lakefront Parcels from that depicted in Waterfront's present development plan, without the approval of the Wylers and the Gluecks. If requested by either Gluecks or Wylers, Waterfront will provide appropriate shielding on the roadway lights so that the same shall not shine on the upland properties of Gluecks and Wylers.

4. Waterfront hereby grants to Wylers and their successors and assigns of any interest to the Wylers' Parcels, 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 Wylers' Parcels. Such trimming shall be done in a professional and reasonable manner and in such a way as not to endanger the life of trees being trimmed. Waterfront has granted, by said April 27, 1992 agreement, similar rights to the owners of the Glueck property.

5. Waterfront acknowledges that the Wylers currently have two recorded four foot wide crossing easements over the Waterfront Parcel which are located approximately

_____ feet and _____ feet north of the south end of the Waterfront Parcel. Both such easements shall be known as the "crossing easements".

6. Waterfront hereby grants to Wylers the right to install and maintain underground utilities under the two crossing easements, referred to in the paragraph above, for the purpose of providing utility service to the Wylers' Parcels and/or the Wylers' Lakefront Parcels; also the right to tap into 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 Waterfront's Parcel for the purposes of serving either the Wylers' Parcels and/or the Wylers's Waterfront Parcels. Such underground utility lines to include by way of illustration, but not by way of limitation, lines for sewer, water, gas, cable TV and electricity.

7. Subject to the approval of the City of Charlevoix, Waterfront shall construct a white picket fence along the common boundary line between the Waterfront Parcel and the Wylers Parcels and shall place operative gates in said fence at each crossing easement referred to above, so as not to restrict Wylers' access to said crossing easements. To that extent, it shall be presumed that the gate for Wyler's Parcel 1 shall be placed at the bottom of presently constructed steps.

8. 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, as described in the agreement between Waterfront and Gluecks.

9. Waterfront agrees that if, in the future, it intends to sell Waterfront's Parcel running between the Wylers' upland Parcels and Wyler Lakefront Parcels it will first,

subject to previously granted rights to the Gluecks, give Wylers' notice of his intention to do so, which notice shall include a statement as to the price which Waterfront is willing to accept said parcel. Wyler shall have forty-five (45) days within which to elect to purchase the parcel by paying the purchase price indicated in said notice. In the event Wylers elect to purchase the parcel pursuant hereto, closing shall take place within forty-five (45) days of the expiration of said aforesaid forty-five (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 methods conveyance. In the event the Wylers fail to elect to purchase parcel within said forty-five (45) days 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 or on terms more favorable to the buyer than that offered to the Wylers, without first notifying Wylers 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. Wyler shall then have ten (10) days within which to elect to match said third party offer. If the Wylers elect to match such third party offer within said ten day period, closing shall take place in accordance with the terms of said third party offer. If the Wylers 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.

10. Wylers and Waterfront each claim an ownership interest in the former railroad right-of-way easement lying between the Waterfront's Parcel and the Wylers Lakefront Parcels or portions of such former right-of-way. As of the date hereof, each party is uncertain as to the extent of such property claimed by the other. Accordingly,

Wylers 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 Waterfront Parcels and the Wylers Lakefront Parcels without the consent of the other first being obtained. "Development" as used herein shall mean construction of buildings or structure in the former of right-of-way. This agreement shall run with the land and be binding upon the respective successors in interest of the parties hereto; Provided, however, that this paragraph shall only continue in existence until and if it is determined that Waterfront owns fifty (50) feet from the railroad center line and the Wylers own fifty (50) feet from the right-of-way center line easement lying between Waterfront's Parcel and Wyler's Lakefront Parcel. If it should be determined at a subsequent time that either party owns more than to the center line of such easement, this entire paragraph shall be void.

11. This agreement, and the rights and benefits grants 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 the Wylers (being the Wylers' Parcel and the Wylers Lakefront Parcels) and the Waterfront (being the Waterfront's Parcel).

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

WITNESSES:
Harry Muder
Sandy Auszman
Harry Muder
Sandy Auszman

Marjory S. Wyler
MARJORY S. WYLER

Carl I. Wyler
CARL I. WYLER

Harry Muder
Sandy Cuszman
Harry Muder
Sandy Cuszman
Harry Muder
Sandy Cuszman
Harry Muder
Sandy Cuszman

JOHN L. WYLER

WILLIAM S. WYLER

JOAN G. WYLER (AS TO DOWER)

ELLEN H. WYLER (AS TO DOWER)

Waterfront LIMITED
PARTNERSHIP,
A Michigan Limited Partnership,
By: Waterfront GROUP
CORPORATION
A Michigan corporation
Its: General Partner

By: STUART M. KAUFMAN
President

L. Hatch
Joanne Nordman

STATE OF OHIO)
)ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 29th day of June, 1992 by Marjory S. Wyler.

Donna M Bergmann
NOTARY PUBLIC

Hamilton County, Ohio
My Commission Expires:



DONNA MARY BERGMANN, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date, Section 147.03 O.R.C.

STATE OF OHIO)
)ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 29th day of June, 1992 by Carl I. Wyler.

Donna M Bergmann
NOTARY PUBLIC

Hamilton County, Ohio
My Commission Expires:



DONNA MARY BERGMANN, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration date. Section 147.03 O.R.C.

STATE OF OHIO)
)ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 29th day of June, 1992 by John L. Wyler.

Donna M Bergmann
NOTARY PUBLIC

Hamilton County, Ohio
My Commission Expires:



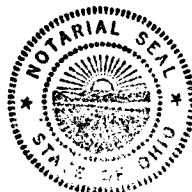
DONNA MARY BERGMANN, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration date. Section 147.03 O.R.C.

STATE OF OHIO)
)ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 29th day of June, 1992 by William S. Wyler.

Donna M Bergmann
NOTARY PUBLIC

Hamilton County, Ohio
My Commission Expires:



DONNA MARY BERGMANN, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration date. Section 147.03 O.R.C.

STATE OF OHIO)
)ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 29th day of June, 1992 by Joan G. Wyler.

Donna M Bergmann
NOTARY PUBLIC

Hamilton County, Ohio
My Commission Expires:

STATE OF OHIO)
)ss:
COUNTY OF HAMILTON)



DONNA MARY BERGMANN, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date. Section 147.03 O.R.C.

The foregoing instrument was acknowledged before me this 29th day of June, 1992 by Ellen H. Wyler.

Donna M Bergmann
NOTARY PUBLIC

Hamilton County, Ohio
My Commission Expires:

STATE OF MICHIGAN)
)ss:
COUNTY OF OAKLAND CHARLEVOIX)



DONNA MARY BERGMANN, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date. Section 147.03 O.R.C.

The foregoing instrument was acknowledged before me this 2nd day of JULY, 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.

L. Hatch
NOTARY PUBLIC

~~Charlevoix County, Michigan~~
~~My commission Expires:~~

LIZ HATCH
Notary Public, Oakland County, MI
My Commission Expires April 13, 1994

Addendum to Agreement dated 2nd day of July 1992

This addendum to the Agreement by and between the Wylers and Waterfront, entered on the 2nd day of July, 1992, is provided to permit recording of the forgoing agreement, as contemplated in that Agreement. This addendum does not alter the Agreement and provides only that information required by the Registrar of Deeds to permit recording.

The legal description of the property belonging to the "Wylers" in the forgoing instrument is attached hereto as Exhibit "A"

The legal description of the property belonging to "Waterfront" in the forgoing instrument is attached hereto as Exhibit "B"

The address of the "Wylers" referred to in the foregoing instrument is

% William S. Wyler
2900 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202

The address of "Waterfront" referred to in the foregoing instrument is

% Stuart M. Kaufman
The Rankauf Company
1533 North Woodward, Ste 240
Bloomfield Hills, Michigan 48304

This Agreement was prepared by:

William S. Wyler, Esq.
Schwartz, Manes & Ruby
2900 Carew Tower
Cincinnati, Ohio 45202

513-579-1414
wwyler@smrfirm.com

PARCEL I

Commencing at a point in the East line of Section 23, Township 34 North, Range 8 West distant 1507.4 feet south from the East quarter corner of said Section 23 (which point is also distant 80 feet Northwesterly from the center line of Main tract of the Chesapeake & Ohio Railway Company's Chicago-Petoskey Division, measured at right angles thereto); Thence Southwesterly at an angle of 32 ° 44' to the right from the East line of said Section 23, One Hundred Fifty (150) feet to a point, and which said point is the POINT OF BEGINNING of this description; Thence continuing Southwesterly at an angle of 32 ° 44' to the right from the East line of said Section 23, One Hundred Fifty (150) feet to a point; Thence Northwesterly at an angle of 90° to the right from said last described course 250.5 feet to the Southeasterly line of Mercer Boulevard in said city; Thence Northeasterly along the Southeasterly line of said Mercer Boulevard approximately One Hundred Fifty (150) feet to its intersection with a line running Northwesterly at an angle of 90 ° to the right from said course running Southwesterly at an angle 32 ° 44' to the right from the East line of said Section 23 at the point of beginning of this description; Thence Southeasterly parallel to the Southwesterly boundary of this description approximately 224.95 feet to the point of beginning of this description; the same being a strip of land 150 feet in width and being the southwesterly 150 feet of a parcel of land heretofore conveyed by George L. Smith and Marjorie V. Smith, husband and wife, to Said Carl I. Wyler and Marjory Wyler, his wife, by deed recorded in Liber 145 of Deeds, page 435, Charlevoix County Register of Deeds Office, Charlevoix, Michigan, and being a part of said Section 23, Township 34 North, Range Eight (8) West; in the City of Charlevoix, Charlevoix, Michigan. And a partial conveyance by said Carl I. Wyler and Marjory Wyler, his wife, by Deed recorded in Liber 262 of Deeds, page 301; Liber 262, page 916; Liber 279, page 360; and Liber 289, page 777, Charlevoix County Register of Deeds Office, Charlevoix, Michigan to the said William S. Wyler and John L. Wyler, and being a part of said Section 23, Township 34 North, Range Eight (8) West; in the City of Charlevoix, Charlevoix, Michigan.

Subject to restrictions of record, if any, that may exist by operation of deeds recorded in Liber 42 of Deeds, page 287, and in Liber 42 of Deeds, page 285, in the office of the Register of Deeds for Charlevoix County, Michigan.

PARCEL II

Part of Government Lot 4, Section 23, and part of Government Lot 4, Section 24, Township 34 North Range 8 West: To locate the place of beginning, commence at the east 1/4 corner of said Section 23, thence south, on and along the east line of said Section 23, a distance of 1,507.4 feet to a concrete monument, thence at an angle 32 ° 44' to the right a distance of 150.0 feet to an iron stake, thence southeasterly, on and along a line perpendicular to the last described course, a distance of 130.0 feet, more or less, to an iron stake in a line distant 50.0 feet southeasterly from, measured at right angles to, and parallel with the center line of the main line tract of The Chesapeake and Ohio Railway Company, which point is

the place of beginning, thence southwesterly, on and along said line distant 50.0 feet southeasterly from, measured at right angles to, and parallel with the center line of said main line track of The Chesapeake and Ohio Railway Company, a distance of 150.0 feet to an iron stake; thence southeasterly, on and along a line perpendicular to the last-described course, to the shore of Lake Charlevoix; thence northeasterly, on and along said shore, to its intersection with a line which is perpendicular to the first-described course of this description and which passes through the place of beginning; thence northwesterly, on and along said line perpendicular to the first-described course, a distance of 24.5 feet, more or less, to the place of beginning; containing an area of 0.165 acre, more or less; the same being the property previously transferred from The Chesapeake and Ohio Railway Company to Carl I. Wyler and Marjory S. Wyler, husband and wife, by deed recorded in Liber 222, page 968 of Deed records, Charlevoix County Register of Deeds Office, Charlevoix, Michigan. And by partial conveyance from the said Carl I. Wyler and Marjory S. Wyler, husband and wife, to said John L. Wyler and William S. Wyler, by Deed recorded in Liber 262, page 301; Liber 262, page 916; Liber 279, page 360; and Liber 289, page 777 of the Deed records, Charlevoix County Register of Deeds Office, Charlevoix, Michigan.

EXHIBIT "B"

LEGAL DESCRIPTION:

A strip of land 50 feet wide being 50 feet on the northerly side of the centerline of the former Chesapeake & Ohio Railway Company right-of-way located in Government Lot 4 of Section 23, Town 34 North, Range 8 West and a strip of land 100 feet wide being 50 feet on either side of the centerline of the former Chesapeake & Ohio Railway Company right-of-way in Government Lot 4, West of the West 1/8 line of Section 24, Town 34 North, Range 8 West, and a strip of land 50 feet wide being 50 feet on the southerly side of the centerline of the former Chesapeake & Ohio Railway Company right-of-way in Government Lot 3 of Section 24, T34N, R8W and in Government Lot 4 of said Section East of the West 1/8 line, for which the point of beginning is established as follows: Commencing at a 1" rod at the East 1/4 corner of Section 23, Town 34 North, Range 8 West as set by E.K. Robinson (past county surveyor); thence along said section line South 0°39'18" West 1562.69 feet to an iron stake being 50 feet northwesterly of the centerline of the former Chesapeake & Ohio Railroad right-of-way, as measured perpendicular thereto; thence parallel with the centerline of said railroad right-of-way, South 32°26'44" West 630.00 feet to an iron stake; thence perpendicular to said centerline, South 57°33'16" East to a point on the centerline of said railroad right-of-way FOR THE POINT OF BEGINNING OF THIS RIGHT-OF-WAY; thence in a northeasterly direction along said centerline through aforesaid government lots to a point of ending established as follows: Commencing at the North 1/4 corner of Section 24, Town 34 North, Range 8 West; thence South 0°58'06" East along the North and South 1/4 line of said section, 1985.22 feet; thence South 56°00'32" West 996.30 feet TO THE POINT OF ENDING OF THIS RIGHT-OF-WAY.

' = degrees