

ORDINANCE NO. 49 -86

By: Albert J. Meyer

To approve a form of letter of credit pursuant to paragraph 12(F) of the Detailed Development Plan approved by Amended Ordinance No. 31-85, to authorize the execution of an agreement concerning force majeure and to declare an emergency.

BE IT ORDAINED BY THE CITY OF BEXLEY, OHIO.

Section 1: That, pursuant to paragraph 12(F) of the Detailed Development Plan approved by Amended Ordinance No. 31-85, the irrevocable standby letter of credit to be issued by Bank One of Columbus, N.A. for the benefit of the City of Bexley be, and the same hereby is, approved in the form attached to this Ordinance and incorporated herein by this reference.

Section 2. That the Agreement Concerning Force Majeure by and between the City and Clifton Trace Associates, Inc. be, and the same hereby is, approved in the form attached to this Ordinance and incorporated herein by this reference and that the Mayor and Auditor be, and each of them hereby is, authorized and directed to execute said agreement on behalf of the City.

Section 3. That this Ordinance is an emergency measure, necessary for the immediate preservation of the public peace, health and safety, and this Ordinance shall go into force and effect upon its passage and approval by the Mayor.

Passed: July 22, 1986

Attest: J. W. Harkins  
Clerk of Council

J. J. Tolchunt  
President of Council

Approved: July 22, 1986  
David H. Madison  
David H. Madison, Mayor

July 22, 1986 - 1<sup>st</sup> reading  
Susp. & Adopt.

NBI #25977  
07/22/86

[Form of Letter of Credit]  
[Bank One Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT

Beneficiary:

City of Bexley  
2242 East Main Street  
Columbus, Ohio 43209  
Attention: Mayor

Account Party/Applicant:

Clifton Trace Associates, Inc.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date and Place of Expiry

[December 1,] 198[8],  
Columbus, Ohio

Stated Amount:

\$509,288.42 U.S. Dollars

Advising Bank:

None

Letter of Credit No.: \_\_\_\_\_

Date:

[August 1,] 198[6]

Dear Sirs:

1. At the request and on the instructions of our customer, Clifton Trace Associates, Inc. as the account party/applicant (the "Developer"), Bank One, Columbus, N.A. (the "Bank") hereby issues in favor of the City of Bexley, Ohio (the "Beneficiary") this Irrevocable Standby Letter of Credit (the "Credit") in accordance with Paragraph 12(F) of the detailed development plan approved by the City of Bexley Amended Ordinance No. 31-85 (the "Ordinance"). All terms used but not otherwise defined herein shall have the same meaning as set forth in the Ordinance. The Bank will honor one or more of the Beneficiary's drafts at sight when drawn on Bank, bearing the clause stating that it is drawn under "Bank One, Columbus, N.A. Irrevocable

Standby Letter of Credit No. \_\_\_\_\_," and accompanied by Beneficiary's certificate signed by Beneficiary's then current Mayor or President of City Council substantially in compliance with the form attached hereto as Exhibit A (the "Certificate") for each draft presented. If Beneficiary presents the Certificate, then Beneficiary may draw upon this Credit in the amount of money specified in the Certificate for the particular draft presented.

2. Presentation of the drafts and Certificate shall be made at Bank's counters at 100 East Broad Street, Columbus, Ohio 43271, Attention: International Department, Letter of Credit Division. If a presentation in respect of payment is made by Beneficiary hereunder at or prior to 11:00 a.m., Columbus, Ohio time, on a business day, and provided that the documents so presented substantially comply with the terms and conditions hereof, payment shall be made in the amount specified, in immediately available funds, not later than 3:00 p.m., Columbus, Ohio time, on the same business day. If a presentation in respect of payment is made by Beneficiary hereunder after 11:00 a.m., Columbus, Ohio time, on a business day, and provided that the documents so presented substantially comply with the terms and conditions hereof, payment shall be made in the amount specified, in immediately available funds, not later than 3:00 p.m., Columbus, Ohio time, on the next succeeding business day. Payment under this Credit shall be made in immediately available funds by wire transfer to the financial institution and account specified by Beneficiary in the Certificate, substantially in compliance with Exhibit A hereto. As used herein, "business day"

shall mean a day, other than a Saturday, a Sunday or a day on which banks located in Columbus, Ohio are not required or authorized by law to remain closed.

3. The Stated Amount as set forth on page 1 of this Credit shall be decreased (and not reinstated) from time to time, upon completion of each unit in building phase 1, as evidenced by delivery to the Bank of a certificate of the Developer in the form of Exhibit B hereto, approved and executed by Beneficiary's then current Mayor or President of City Council, by an amount equal to ninety-five percent of the amount allocable to such unit as set forth in Exhibit C hereto, provided, however, that the Stated Amount allocable to the last unit completed in building phase 1 shall not be decreased until all private and public streets adjacent to each of the units in building phase 1 are completed in accordance with Beneficiary's requirements.

4. In addition to any other rights which Beneficiary has to draw on the Credit, if Beneficiary makes drawing(s) on this Credit because Developer has failed to complete all of the private and public streets adjacent to each of the units in building phase 1, Beneficiary shall be entitled to draw the entire Stated Amount then outstanding.

5. Only Beneficiary may make drawings under this Credit, provided, however, that Beneficiary may assign the proceeds of this Credit. Upon the payment to Beneficiary or Beneficiary's assignee of the entire Stated Amount as decreased from time to time pursuant to the terms of paragraph 3 hereof, Bank shall be fully discharged of its obligation under this

Credit and Bank shall not thereafter be obligated to make any further payments under this Credit to Beneficiary or to any other person.

6. Upon the earlier of (a) the Expiry Date as set forth on page 1 of this Credit or (b) Bank's receipt of a certificate signed by the Developer and Beneficiary's then current Mayor or President of City Council, appropriately completed, in substantially the form of Exhibit D hereto, this Credit shall automatically terminate and shall be delivered to Bank for cancellation.

7. Except as modified herein, this Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce, Publication No. 400 (the "Uniform Customs"). This Credit shall be deemed to be made under the laws of Ohio, including Article 5 of the Uniform Commercial Code. Unless otherwise provided herein, if (a) the Uniform Customs and the Uniform Commercial Code conflict, or (b) matters are not covered by the Uniform Customs, the Uniform Commercial Code as enacted in Ohio shall govern this Credit and performance hereunder.

8. This Credit is neither transferable nor assignable in whole or in part, provided, however, that Beneficiary may assign the proceeds of this Credit.

9. This Credit sets forth in full Bank's undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except only Exhibits A through D

hereto, the sight drafts, the Uniform Customs, the Uniform Commercial Code as enacted in Ohio, and, for the purpose of certain definitions, the Ordinance; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

10. Any and all funds drawn under this Credit are to be applied to the substantial completion of the exterior of the units within building phase 1 in accordance with the Plan (including changes thereto submitted from time to time), as approved by or on behalf of the City (the "Plan"), and/or to the completion of the private and public streets adjacent to each of the units in building phase 1, and for no other purpose.

Very truly yours,

BANK ONE, COLUMBUS, N.A.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT A TO  
LETTER OF CREDIT

CERTIFICATE OF DRAWING

The undersigned, the duly authorized [Mayor] [President of City Council] of the City of Bexley, Ohio (the "City"), hereby certifies to Bank One, Columbus, N.A. (the "Bank"), with reference to Bank One, Columbus, N.A. Irrevocable Standby Letter of Credit No \_\_\_\_\_ (the "Letter of Credit") issued by the Bank in favor of the City that:

(1) The City is making a drawing under the Letter of Credit in the amount of \$\_\_\_\_\_.

(2) Clifton Trace Associates, Inc. has failed to complete substantially the exterior of unit(s) no(s). \_\_\_\_\_ in building phase 1 in accordance with the Plan and/or Clifton Trace Associates, Inc. has failed to complete all of the private and public street adjacent to each of the units in building phase 1 in accordance with the City's requirements.

(3) The amount of the draft accompanying this Certificate was computed in accordance with the terms and conditions of the Letter of Credit.

(4) If this drawing is for the entire Stated Amount of the Letter of Credit remaining as of the date hereof, this certificate is accompanied by the original Letter of Credit.

(5) The amount of the draft accompanying this Letter of Credit will be applied to complete substantially the exterior of the units in building phase 1 in accordance with the Plan and/or to complete the private and public streets adjacent to each of the units in building phase 1, and for no other purpose.

(6) All funds drawn under this Letter of Credit are to be wire transferred by Bank to account number \_\_\_\_\_ at \_\_\_\_\_, pursuant to the terms of the Letter of Credit.

Terms used herein and not otherwise defined herein have the meaning set forth in the Letter of Credit.

IN WITNESS WHEREOF, the City of Bexley has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

CITY OF BEXLEY, OHIO

By: \_\_\_\_\_  
Title: [Mayor]  
or  
[President of City Council]



EXHIBIT B TO  
LETTER OF CREDIT

CERTIFICATE OF REDUCTION OF STATED AMOUNT

The undersigned hereby certifies to Bank One, Columbus, N.A. (the "Bank") with reference to the Bank's Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit"), that the exterior of unit number \_\_\_\_\_ in building phase 1 has been completed in accordance with the Plan and that the Stated Amount of the Letter of Credit shall be reduced by an amount equal to ninety-five percent (95%) of the portion of the Stated Amount of the Letter of Credit allocable to such unit as set forth in Exhibit C to the Letter of Credit, which amount is \$\_\_\_\_\_.

If this certificate is being presented upon completion of the last unit in building phase 1, the undersigned further certifies to Bank that all private and public streets adjacent to each of the units in building phase 1 have been completed in accordance with Beneficiary's requirements.

Terms used herein and not otherwise defined herein have the meanings set forth in the Letter of Credit.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_.

CLIFTON TRACE ASSOCIATES, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved by:

CITY OF BEXLEY, OHIO

By: \_\_\_\_\_  
Its: [Mayor]  
or  
[President of City Council]

EXHIBIT C TO  
LETTER OF CREDIT

ALLOCATION OF STATED AMOUNT FOR BUILDING PHASE 1

	<u>Unit Number</u>	<u>Stated Amount Allocable</u>
1.	Unit #4	\$ 99,675.79
2.	Unit #5	96,562.11
3.	Unit #6	102,345.26
4.	Unit #7	97,572.63
5.	Unit #8	113,132.63

EXHIBIT D TO  
LETTER OF CREDIT

CERTIFICATE

The undersigned hereby certify to Bank One, Columbus, N.A. (the "Bank") with reference to Bank One, Columbus, N.A. Irrevocable Letter to Credit No. \_\_\_\_ (the "Letter of Credit") issued by the Bank in favor of the City of Bexley that the Letter of Credit has been terminated and is being delivered herewith to the Bank for cancellation.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Certificate this \_\_\_\_ day of \_\_\_\_\_, 198\_.

CLIFTON TRACE ASSOCIATES, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY OF BEXLEY, OHIO

By: \_\_\_\_\_  
Its: [Mayor]  
or  
[President of City Council]

AGREEMENT CONCERNING FORCE MAJEURE

Clifton Trace Associates, Inc., a \_\_\_\_\_  
corporation having its principal place of business at  
\_\_\_\_\_ ("Developer") and The City of Bexley,  
Ohio, a municipality organized under the laws of the State of  
Ohio (the "City"), for valuable consideration, the receipt of  
which is hereby acknowledged, intending to be legally bound,  
hereby recite and agree as follows:

Recitals:

1. Developer has contracted with the City to construct 18 attached and detached single-family homes abutting a private street with the sole entrance off of Clifton Avenue in the City of Bexley in accordance with the plan (including changes thereto submitted from time to time) as approved by or on behalf of the City (the "Plan").

2. Units 4, 5, 6, 7 and 8 in the Plan are in Building Phase 1.

3. Pursuant to Paragraph 12(F) of the detailed development plan approved by City of Bexley Amended Ordinance No. 31-85, Developer has requested Bank One, Columbus, N.A. to issue its Irrevocable Standby Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 1986 in favor of the City (the "Credit").

4. In addition to and notwithstanding any other rights of the City to draw on the Credit, Developer and the City wish to clarify the City's rights to draw on the Credit in the

event of delays in the Developer's completion of Building Phase 1 of the Plan because of weather, strikes or acts of God (collectively, "Force Majeure").

Agreement:

5. Subject to the provisions of paragraph 6 hereof, Developer shall complete Building Phase 1 of the Plan within 23 months after the issuance date of the Credit (the "Completion Date") and the City may draw on the Credit at that time if (a) the exterior of each of the units in Building Phase 1 of the Plan and/or (b) the private and public street(s) adjacent to each of the units in the Building Phase 1 are not completed at that time.

6. Developer shall have up to four months after the Completion Date to complete construction of (a) Building Phase 1 of the Plan and (b) the private and public streets adjacent to each of the units in Building Phase 1 in the event of Force Majeure.

7. In addition to any other rights which the City has with respect to drawing on the Credit and notwithstanding Developer's failure to complete Building Phase 1 of the Plan and/or the private and public streets adjacent to each of the units in Building Phase 1 within 27 months after the issuance date of the Credit because of Force Majeure, the City shall have the right to draw on the Credit 27 months after the issuance of the Credit if (a) the exterior of each of the units in Building Phase 1 of the Plan and/or (b) the private and public street(s)

adjacent to each of the units in Building Phase 1 are not completed at that time.

8. Developer and the City shall execute agreements concerning Force Majeure similar to this Agreement for all additional building phases in the Plan.

9. This Agreement shall inure to the benefit of and be binding upon the successors and the permitted assigns of the parties hereto.

10. This Agreement shall be governed by the provisions of the laws of the State of Ohio.

11. Notwithstanding any prior oral or written agreement to the contrary, this Agreement shall constitute the entire agreement between the parties hereto with respect to Force Majeure in the construction of Building Phase 1.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 1986.

CLIFTON TRACE ASSOCIATES, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF BEXLEY, OHIO

By: \_\_\_\_\_

Its: Mayor

By: \_\_\_\_\_

Its: Auditor