

ORDINANCE NO. 81 -87

BY: Albert Myers

To approve a form of letter of credit for Unit 11 at Lyonsgate 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 COUNCIL OF 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, said emergency being the need to begin construction of Unit 11 prior to the winter season, and this Ordinance shall go into force and effect upon its passage and approval by the Mayor.

Passed: October 27, 1987

J. Holmquist
President of Council

Attest: J. H. Huber
Clerk of Council

Approved: OD. 27, 1987

D. Madison
David H. Madison, Mayor

Oct. 27, 1987 - 1st reading
Susp. & Adopt.



Bob Webb Builders, Inc.

Date: October 20, 1987

OCT 20 1987

To: CITY OF BEXLEY
2242 East Main Street
Bexley, Ohio 43209

Re: Lyonsgate

The cost for construction of the exterior shell of Lyonsgate unit eleven (11) is certified as of October, 1987 to be as follows:

\$ 135,572.00

The items included in this total are as follows:

Clear Lot	Nails & Staples
Survey Lot & Building	Lumber: Rough
Permits, Cap Chg, Water Tap	Exterior Trim
Sewer	Exterior Doors & Frames
Excavation & Trenching	Roofing: Material
Hauling Dirt	Labor
Crawl & Foundation Gravel	Valleys & Flashing
Concrete: Ftrs, Posts, Chim.	Windows: Above Grade
Flrs, Hearth, Sump	Basement & Wells
Porches & Steps	Masonry: Walls
Gar Flr, Drain, Sill	Chimney
Stone Drive	Stucco or Alum/Vinyl Siding
Driveway	Overhead Garage Door
Foundation Walls	Sod
Termite Treatment	Landscaping
Waterproofing	Carpentry: Framing Labor
Backfill & Grading	Exterior Trim
Steel & Crane	Insurance
	Arch & Engineering Fees

Respectfully submitted,

Thomas W. Brown

Thomas W. Brown
Project Manager

TWB/hja

BANK ONE

SWIFT ADDRESS: BONEUS33
CABLE ADDRESS: BANKONEA
TELEX NUMBER: 4949515
TELEPHONE NBR: (614) 463-6815

Opening Bank: BANK ONE, COLUMBUS, NA
International Department
100 E. Broad Street
Columbus, Ohio 43271-0135

Letter of Credit No.: _____

Date: October _____, 1987

Applicant: Clifton Trace Associates, Inc.
65 East State Street
Suite 912
Columbus, Ohio 43215

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

Amount: \$ 135,572

Expiration Date: March 1, 1989, at our counters

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

BANK ONE

Page 2
BANK ONE, COLUMBUS, N.A.
Letter of Credit No.:

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 the 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.

INTENTIONALLY OMITTED

4.

INTENTIONALLY OMITTED

5. Only Beneficiary may make drawings under this Credit, provided, however, that Beneficiary may assign the proceeds of this Credit. Upon the payment to the 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 B 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.

BANK ONE.

Page 3
BANK ONE, COLUMBUS, NA
Letter of Credit No.:

8. This Credit is neither transferable or assignable in whole or in part, provided, however, that Beneficiary may assign the proceeds of this Credit.

9. This Credit set forth in full Bank's undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any documents, 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 unit known as Unit No. 11 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 for no other purpose.

Very truly yours,

BANK ONE, COLUMBUS, NA

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 Trac Associates, Inc. has failed to complete substantially the exterior of unit ~~(s)~~ no ~~(s)~~. 11 in accordance with the Plan.

(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 Unit No. 11 in accordance with the Plan

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

The undersigned hereby certify to Bank One, Columbus, N.A. (the "Bank") with reference to Bank One, Columbus, N.A. Irrevocable Letter of 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., an Ohio corporation having its principal place of business at 65 East State Street, Suite 912, Columbus, Ohio 43215 ("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. Unit 11 in the Plan has been approved for construction.
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 October _____, 1987 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 Unit No. 11 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 Unit No. 11 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 the exterior of Unit No. 11 of the Plan is not completed at that time.

6. Developer shall have up to four months after the Completion Date to complete construction of Unit No. 11 of the Plan 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 Unit No. 11 of the Plan 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 the exterior of Unit No. 11 of the Plan is 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 Unit No. 11.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the _____ day of _____, 1987.

CLIFTON TRACE ASSOCIATES, INC.

By: _____

Its: _____

CITY OF BEXLEY, OHIO

By: _____

Its: Mayor

By: _____

Its: Auditor

CONSENT TO ACCESS TO AND
CONSTRUCTION ON PROPERTY

The undersigned, Clifton Trace Associates, Inc., an Ohio corporation having its principal place of business at 65 East State Street, Suite 912, Columbus, Ohio 43215 ("Developer and Owner"), hereby grants consent to the City of Bexley, including but not limited to its elected and appointed officials and all employees, agents, contractors and subcontractors of the City of Bexley (the "City"), to have access to the property described below (the "Property") and for the City to take all actions with respect to the Property necessary for the completion of Unit No. 11 of the Plan (as defined in Bank One's Irrevocable Standby Letter of Credit No. _____, dated October _____, 1987).

The Property is more particularly described as follows:

Lot 11 of LYONSGATE, Phase II, Bexley, Ohio.

Owner and Developer agree, and shall take all actions necessary to insure, that this Consent shall inure to the benefit of and be binding upon the successors, heirs and permitted assigns of the parties hereto and upon all persons who now or in the future may have an interest in the Property.

IN WITNESS WHEREOF, the undersigned have executed this
Consent to be effective as of the ____ day of October, 1987.

CLIFTON TRACE ASSOCIATES, INC.

By: _____

Its: _____

OWNER AND DEVELOPER

CLIFTON TRACE ASSOCIATES, INC.
65 EAST STATE STREET, SUITE 912
COLUMBUS, OHIO 43215

October 19, 1987

City of Bexley
2242 East Main Street
Bexley, Ohio 43209

Re: Release of Letter of Credit--Lyonsgate

Gentlemen:

Pursuant to zoning text requirements, a letter of credit in the amount of \$509,288.42, bearing date of July 29, 1986, was posted to insure completion of the exteriors of units 4-8, Lyonsgate.

The undersigned does hereby certify that, in fact, completion has been accomplished and we respectfully request that the letter of credit be terminated, released and delivered back to the issuer, Bank One, Columbus, N.A.

Very truly yours,

CLIFTON TRACE ASSOCIATES, INC.

By: W. J. Little, President