

RESOLUTION NO. 45-11
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Beals ON
THE
17th DAY OF October, 2011.

A RESOLUTION RATIFYING THE ACTION OF THE CITY MANAGER, ON BEHALF OF THE CITY OF CENTERVILLE, IN SIGNING A SEVENTH AMENDMENT TO AN AGREEMENT BETWEEN THE CITY AND THE CORPORATE PREDECESSOR OF YANKEE TRACE DEVELOPMENT, INC. ORIGINALLY ON JUNE 27, 1994.

WHEREAS, the City and the corporate predecessor to Yankee Trace Development, Inc. originally entered into a development agreement on June 27, 1994 for the development of the City owned land in the vicinity of The Golf Club at Yankee Trace which agreement was amended on September 20, 1994, amended again on September 21, 1995, supplemented on December 21, 1998, amended on May 31, 2000, amended on November 20, 2000, amended on February 26, 2002, and amended again on October 20, 2008 (collectively the "Agreement"); and

WHEREAS, the parties wish to further amend the Agreement to provide for an increase in the compensation for the sale of land.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Council hereby ratifies the action of the City Manager in signing the agreement with Yankee Trace Development, Inc. which is set forth in Exhibit "A", a copy which is attached as Exhibit "A" and incorporated herein.

Section 2. This resolution becomes effective on the earliest date allowed by law.

PASSED this 17th day of October, 2011.



Mayor of the City of Centerville, Ohio

ATTEST:

Debra A. James
Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio hereby certifies that the foregoing is a true and correct copy of Resolution Number 45-11 passed by the Council of the City of Centerville, Ohio on the 17th day of October, 2011.

Debra A. James
Clerk of Council

Approved as to form, consistency
with existing Ordinances, the
Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney

SEVENTH AMENDMENT TO AGREEMENT

THIS Seventh AMENDMENT TO AGREEMENT ("Amendment") is entered into this 5th day of September, 2011 between THE CITY OF CENTERVILLE, OHIO (the "City") and YANKEE TRACE DEVELOPMENT, LLC, an Ohio limited liability company formerly known as Yankee Trace Development, Inc., an Ohio corporation (the "Developer"), under the following circumstances:

- A. The City and the Developer are currently parties to a certain Agreement dated June 27, 1994 as previously modified by an Amendment to Agreement dated September 20, 1994; a Second Amendment to Agreement dated September 21, 1995; a Supplemental Agreement dated September 21, 1998; a Third Amendment to Agreement dated May 31, 2000; a Fourth Amendment to Agreement dated November 21, 2000; a Fifth Amendment to Agreement dated February 26, 2002; and a Sixth Amendment to Agreement dated October 29, 2008 (collectively, the "Agreement").
- B. Pursuant to the terms of the Agreement, the Developer is to acquire from the City approximately 4.227 acres of the New Residential Property (the "Subject Property") as depicted on Exhibit A attached hereto and made a part hereof.
- C. The City and the Developer have agreed to modify the Agreement pursuant to the terms and conditions contained herein in order to extend the date by which the Developer must purchase the Subject Property from the City and to provide for the deferred payment of the purchase price for the same.

NOW THEREFORE, in consideration of the mutual agreements contained in the Agreement and this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties, the City and the Developer hereby agree as follows:

1. The purchase price will be \$38,083.39 per acre for the 4.227 acres for a total purchase price of \$160,980.60. Closing and payment will be pursuant to the following terms:
 - a. **Initial Closing:** Developer will close on the 0.284 acres of land described in Exhibit B on or before October 1, 2011. The purchase price allocated to this parcel will be \$1,000 and shall be due and payable at the initial closing. This acreage will be part of the record plat for The Highlands at Yankee Trace Section Three.
 - b. **Deferred Closing:** Developer has the option to defer the acquisition of the balance of the acreage (3.943 acres) depicted on Exhibit C (the "Balance Acreage") until construction plans have been approved by both the City and Montgomery County Water and Sewer Department

for the last section of the Highlands at Yankee Trace, and Developer informs the City of its intentions to commence construction activities on the Balance Acreage. Developer shall take title to the Balance Acreage by general warranty deed and shall give the City a mortgage on the Balance Acreage in order to secure the payment of the balance of the purchase price.


- c. **Deferred Purchase Price:** The Balance Acreage will be developed as sixteen lots (eight duplex building sites). The deferred purchase price will be the total purchase price of \$160,980.60, less the \$1,000 payment for the initial closing, for a total of \$159,980.60. As part of the sale of each of the first ten lots of the Balance Acreage to builders or individuals, Developer shall pay to the City the amount of \$15,998.06 (the "Release Price") per lot. Upon receipt of the Release Price for a lot, the City shall execute and deliver to Developer a partial mortgage release for such lot. Upon payment of the Release Price for the tenth lot or upon payment in full of the outstanding balance remaining due to the city, the City shall execute and deliver to Developer a full and final mortgage release.
2. The provision of Section 2(c) notwithstanding, the Release Price, and the corresponding amount needed to satisfy the balance of the deferred purchase price, will increase four percent (4%) commencing on August 1, 2012 and on each anniversary thereof until such time as the City has received the balance of the deferred purchase price.
3. Developer shall have the option and ability to assign its right and obligation to acquire the Balance Acreage to a third party developer provided that the product to be developed by such third party developer is approved by the City, which approval shall not be unreasonably withheld. In the event of such assignment, Developer shall be released from all obligations as to the acquisition of the Balance Acreage and Developer's assignee shall have the right and be obligated to acquire the Balance Acreage upon the terms set forth herein.
4. All capitalized terms contained in this Amendment that are not typically capitalized, unless otherwise defined herein, shall have the meanings assigned to such terms by the Agreement.
5. Except as specifically modified by the terms of this Amendment, all of the terms and provisions of the Agreement remain in full force and effect and unmodified.

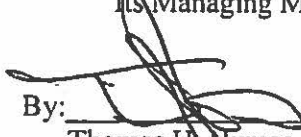
[Remainder of page left blank intentionally. Signature page follows.]

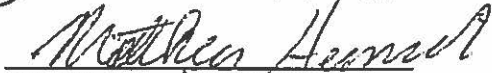
Executed as of the day and year first above written.

WITNESSES:

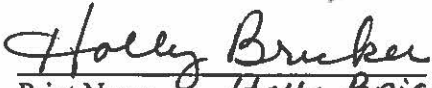
YANKEE TRACE DEVELOPMENT, LLC.
an Ohio limited liability company
By: Great Traditions Development Group,
Inc., an Ohio Corporation,
Its Managing Member

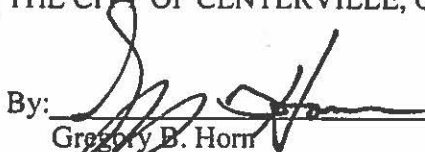

Print Name JAMES E. KIEFFER

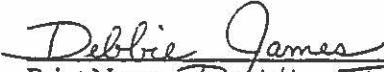
By: 
Thomas H. Humes
Its President


Print Name Matthew Hammerick

THE CITY OF CENTERVILLE, OHIO


Print Name HOLLY BRICKER

By: 
Gregory B. Horn
Its City Manager


Print Name Debbie James

Approved as to form:

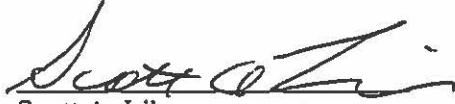
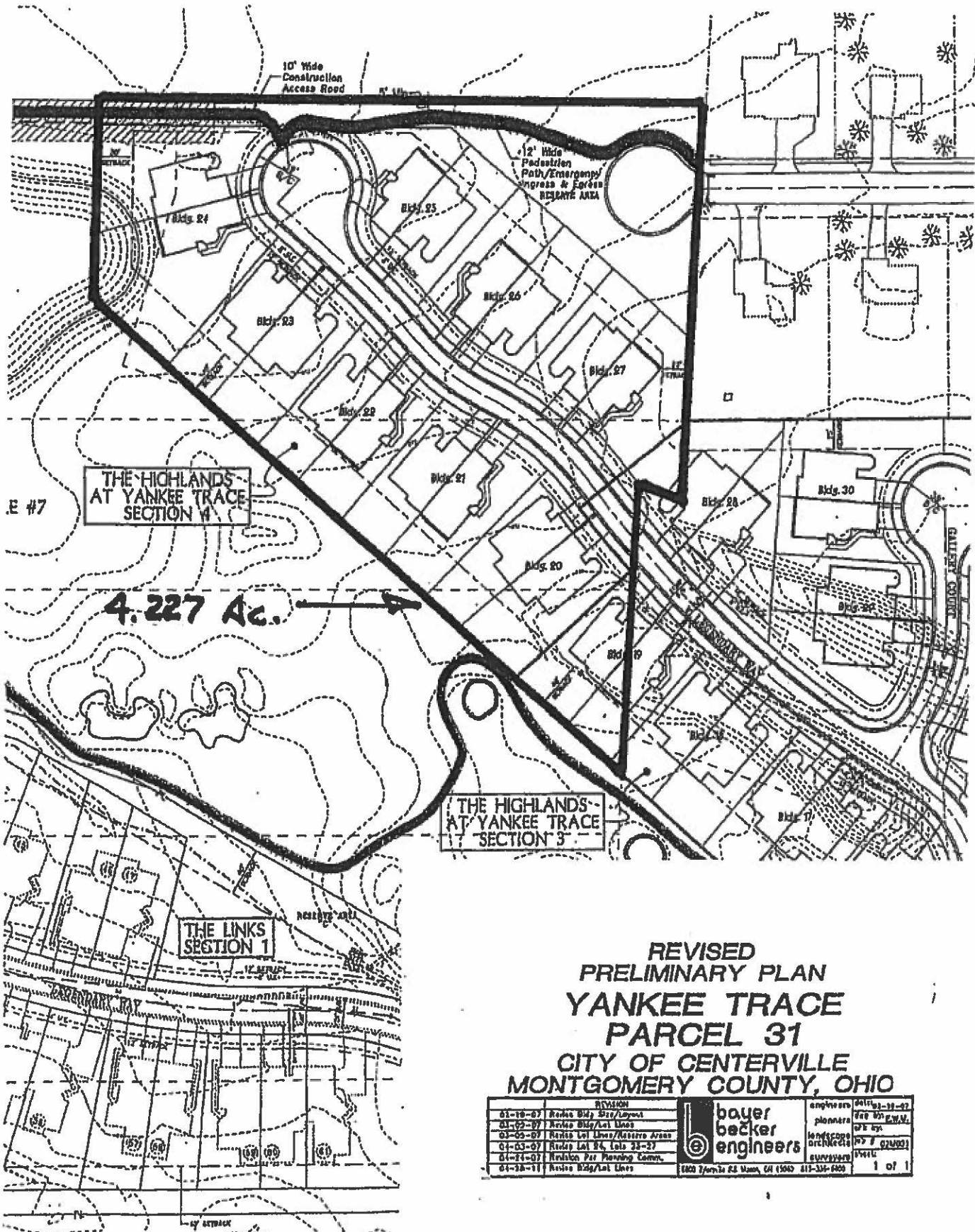

Scott A. Liberman
Centerville Municipal Attorney

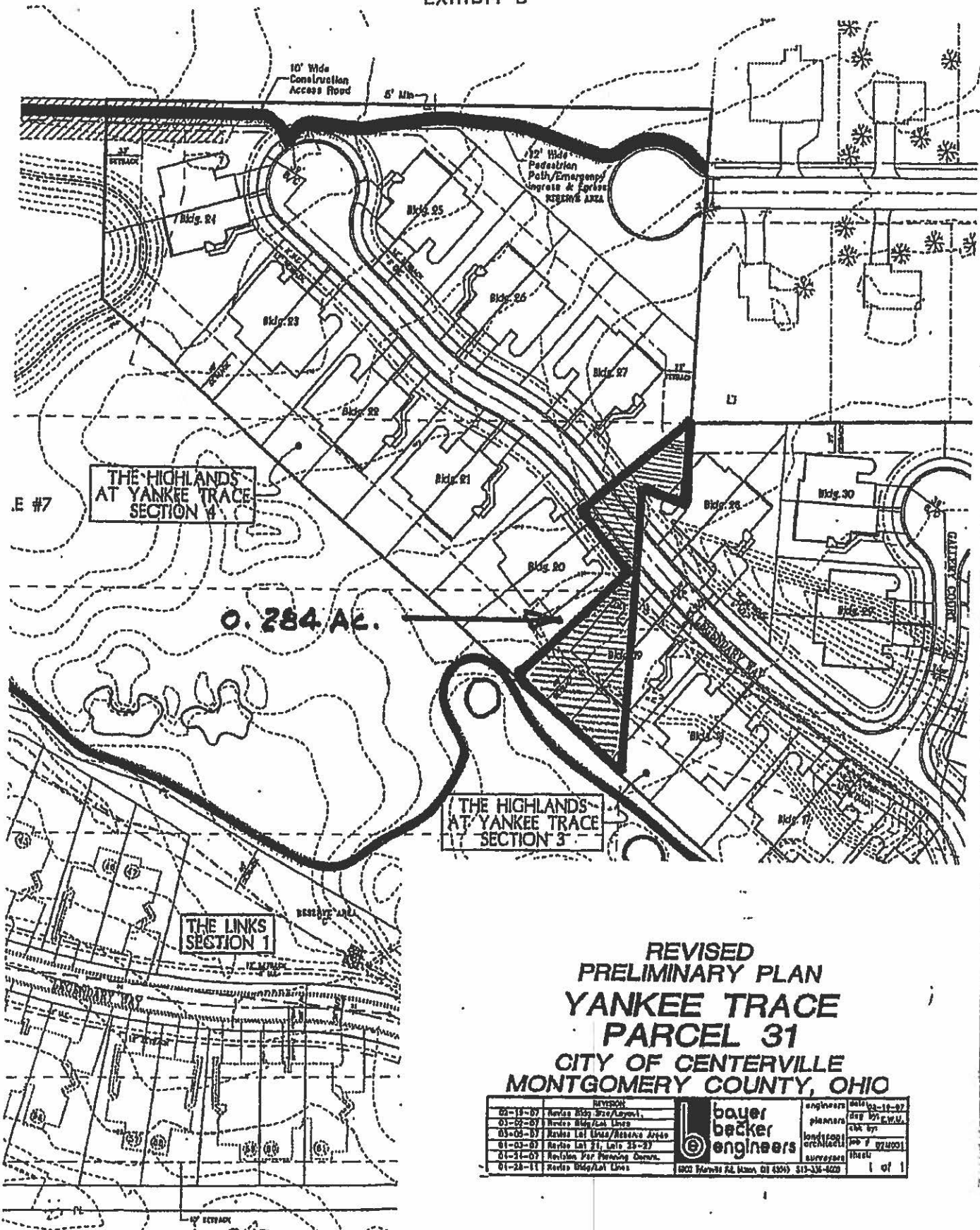
EXHIBIT A



REVISED
 PRELIMINARY PLAN
 YANKEE TRACE
 PARCEL 31
 CITY OF CENTERVILLE
 MONTGOMERY COUNTY, OHIO

01-18-07	Revised Bldg Size/Layout		engineers	DATE: 03-23-07
01-22-07	Revised Bldg/Lot Lines		planners	PREP BY: E.W.M.
03-05-07	Revised Lot Lines/Access Areas		landscape architects	PROJECT: 0210021
04-03-07	Revised Lot 24, Lots 25-27		surveyors	SCALE:
04-24-07	Revised Pav Planning Comm.			
04-28-11	Revised Bldg/Lot Lines			1 of 1

EXHIBIT B



REVISED
PRELIMINARY PLAN
YANKEE TRACE
PARCEL 31
CITY OF CENTERVILLE
MONTGOMERY COUNTY, OHIO

02-19-07	REVISION	engineers	02/19/07
03-05-07	Revise Bldg Size/Layout	planner	03/05/07
03-08-07	Revise Bldg/Lot Lines	landscaper	03/08/07
04-03-07	Revise Lot Lines/Reserve Area	architect	04/03/07
04-03-07	Revise Lot 31, Lots 25-27	surveyor	04/03/07
04-25-07	Revision Per Planning Comm.	thru	04/25/07
07-25-11	Revise Bldg/Lot Lines		07/25/11



1800 Kew-Forest Rd., Columbus, OH 43234 614-451-4000

EXHIBIT C

