

RESOLUTION NO. 92-01
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Roger W. Krass ON THE
17th DAY OF December, 2001.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH LAMAR COMPANIES, ON BEHALF OF THE CITY OF CENTERVILLE, TO ENCOURAGE ECONOMIC DEVELOPMENT ACTIVITIES WITHIN THE CITY OF CENTERVILLE.

WHEREAS, The City of Centerville desires to encourage economic development activities within the City to provide for the creation or preservation of jobs and employment opportunities and to improve the economic welfare of the people of the State and of the City, and

WHEREAS, Lamar Companies own part of a shopping center, a portion of which is owned by Spring Valley Investments, and

WHEREAS, Lamar desires to rehabilitate the property by making certain improvements thereto by acquiring the Spring Valley Investments property through, in part, by grants from the Montgomery County ED/GE program and the City of Centerville.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager be and is hereby authorized to enter into an Agreement between the City of Centerville and Lamar Companies for the rehabilitation of said property and that the City of Centerville make a \$100,000.00 economic development grant to Lamar to provide for the construction of the project.

Section 2. That this Resolution shall become effective immediately upon passage.

PASSED this 17th day of December, 2001.

Sally D. Beal
Mayor of the City of Centerville, Ohio

ATTEST:

Marie Jane Saughel
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 92-01, passed by the Council of the City of Centerville, Ohio, on the 17th day of December, 2001.

Marie Jane Saughel
Clerk of Council

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

Department of Law
Robert N. Farquhar
Municipal Attorney

ECONOMIC DEVELOPMENT
AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "*Agreement*") is made and entered into this 17th day of December, 2001, by and between the CITY OF CENTERVILLE, OHIO (the "*City*"), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the "*State*") and its Charter, and Grand Bench, LLC ("*Lamar*"), a corporation duly organized under the laws of the State of Colorado, under the circumstances summarized in the following recitals.

RECITALS:

WHEREAS, the City desires to encourage economic development activities within the City to provide for the creation or preservation of jobs and employment opportunities and to improve the economic welfare of the people of the State and the City, all as provided in Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, Lamar now owns certain real property in the City (as described and depicted on Exhibit A hereto and referred to herein as the "*Property*") which Property is part of a shopping center, a portion of which shopping center is leased by Spring Valley Investments (the "*Spring Valley Investments property*"); and

WHEREAS, a portion of the Property is leased to Kyle Kramer's Pro Fitness, Auto Zone, Dollar General and Pri-Med Physicians, with the remainder of the Property being vacant; and

WHEREAS, Lamar desires to rehabilitate the Property by making certain improvements thereto (which improvements are described on Exhibit B hereto and referred to herein as the "*Project*"), in an effort to retain the existing jobs offered by the current tenants and to facilitate the lease of the remainder of the Property and create new jobs and employment opportunities within the City; and

WHEREAS, the total cost of construction of the Project is estimated to be \$1,960,000 (the "*Total Project Cost*"); and

WHEREAS, Montgomery County, Ohio (the "*County*"), by Resolution No. 01-2248 adopted on December 4, 2001, has approved a \$300,000 ED/GE Grant (the "*ED/GE Grant*") to be administered by the City and applied towards the costs of the Project; and

WHEREAS, the City has determined, based on the County's action, the representations made by Lamar herein and by passage of Ordinance No. _____ on _____, 200__, that it would be in the best economic interests of the City through the creation and preservation of jobs and employment opportunities and improving the economic welfare of the people of the State and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution, to make a \$100,000

economic development grant (the “*City Grant*”) to Lamar to further induce Lamar to provide for the construction of the Project, all as more described herein;

NOW THEREFORE, the City and Lamar covenant, agree and obligate themselves as follows:

Section 1. Lamar to Acquire Spring Valley Investments Property and Complete the Project. In consideration of the ED/GE Grant and the City Grant to be provided by the City as described herein, Lamar agrees to acquire the Spring Valley Investments Property and complete construction of the Project. Lamar agrees that all plans for the construction of the Project shall be approved in writing by the City before construction of the Project may begin.

Section 2. City Disbursement of ED/GE Grant. The City agrees to administer and disburse the proceeds of the ED/GE Grant as follows:

(a) Disbursement of ED/GE Grant Proceeds:

(i) Upon completion of the construction of one-third of the Project, as evidenced by the City’s receipt of invoices in respect of such construction for an aggregate amount equal to or exceeding one-third of the Total Project Cost, the City will disburse to Lamar one-third of the proceeds of the ED/GE Grant (\$100,000);

(ii) Upon completion of the construction of two-thirds of the Project, as evidenced by the City’s receipt of invoices in respect of such construction for an aggregate amount equal to or exceeding two-thirds of the Total Project Cost, the City will disburse to Lamar an additional one-third of the proceeds of the ED/GE Grant (\$100,000, representing an aggregate disbursement of \$200,000); and

(iii) Upon completion of the construction of the entire Project, as evidenced by the City’s receipt of invoices in respect of such construction for an aggregate amount equal to or exceeding the Total Project Cost, or acceptance of all improvements as issued and noted on building permit plans approved by the City, the City will disburse to Lamar the remaining one-third of the proceeds of the ED/GE Grant (\$100,000, representing an aggregate disbursement of \$300,000) within 30 days of said approvals.

(b) Source of Disbursement Payments. The sole source of monies for disbursement of the ED/GE Grant shall be from monies received by the City from the County specifically for disbursement under the ED/GE grant (the “*ED/GE Grant Proceeds*”).

Section 3. City’s Agreement to Provide City Grant. In consideration of Lamar’s agreement to acquire the Irrevocable Assignment of Lease of the Spring Valley Investments Property and complete construction of the Project, the City hereby agrees to award the City Grant to Lamar. The City will disburse the entire proceeds of the City Grant (\$100,000) to Lamar upon satisfaction of the two following conditions:

(a) Completion of the construction of the entire Project, as evidenced by the City's receipt of invoices in respect of such construction for an aggregate amount equal to or exceeding the Total Project Cost; and

(b) Acquisition by Lamar of the Spring Valley Investments Property, as evidenced by receipt by the City of an executed and recordable Irrevocable Assignment of Lease evidencing ownership of the Spring Valley Investments Property by Lamar;

provided, however, the City will have no obligation to pay to Lamar any proceeds of the City Grant if Lamar does not acquire the Spring Valley Investments Property and complete construction of the Project.

Section 4. City's Obligation to Make Payments Not Debt; Payments Sources Limited.

(a) Notwithstanding anything to the contrary herein, the obligation of the City to make disbursements pursuant to Sections 2 and 3 of this Agreement shall not be a general obligation debt or bonded indebtedness, or a pledge of the general credit or taxes levied by the City, and Lamar shall have no right to have excises or taxes levied by the City, the State or any other political subdivision of the State for the performance of any obligations of the City set forth in this Agreement. Consistent with Section 2 herein, any payments or advances required to be made by the City in respect of the ED/GE Grant and pursuant to Section 2 of this Agreement shall be payable solely from the ED/GE Grant Proceeds. Consistent with Section 13 of Article VIII, Ohio Constitution, any payments or advances required to be made by the City pursuant to Section 3 of this Agreement shall be payable solely from the City's nontax revenues. Further, because Ohio law limits the City to appropriating monies for such expenditures only on an annual basis, the obligation of the City to make payments pursuant to Sections 2 and 3 of this Agreement shall be subject to annual appropriations by the City Council and certification by the Director of Finance of the City as to the availability of (i) ED/GE Grant Proceeds in the case of the ED/GE Grant and (ii) such nontax revenues in the case of the City Grant.

(b) If and to the extent that amount of (i) ED/GE Grant Proceeds in the case of the ED/GE Grant and (ii) such nontax revenues in the case of the City Grant, are insufficient in a particular calendar year for appropriation and payment to Lamar, the City will make payment to Lamar in the amount of (i) ED/GE Grant Proceeds in the case of the ED/GE Grant and (ii) such nontax revenues in the case of the City Grant, available for appropriation and payment to Lamar. The difference between the amount required to be paid by the City to Lamar pursuant to the respective Sections 2 and 3 of this Agreement and the amount actually paid shall be carried forward to the next succeeding calendar year and paid to Lamar in addition to any other payment for that succeeding year required by Sections 2 and 3 of this Agreement.

Section 5. Miscellaneous.

(a) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be

in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this agreement, notices shall be addressed to:

(i) the City at:

City of Centerville, Ohio
100 W. Spring Valley Road
Centerville, Ohio 45458
Attention: Economic Development Administrator

(ii) Lamar at:

Lamar Companies
365 South Street
Morristown, New Jersey 07960
Attn: Cory D. Boss, Executive Vice President

and

Lamar Companies
10288 West Chatfield, Suite 200
Littleton, Colorado 80127
Attn: Mark Kalkus

The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

(b) Extent of Provisions; No Personal Liability. All rights, remedies, representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. No representation, warranty, covenant, agreement, obligation or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future trustee, member, officer, agent or employee of the City or Lamar in other than his or her official capacity. No official executing or approving the City's or Lamar's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

(c) Successors. This Agreement shall be binding upon and inure to the benefit of Lamar and its successors and assigns.

(d) Recitals. The City and Lamar acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

(e) Amendments. This Agreement may only be amended by written instrument executed by the City and Lamar.

(f) Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(g) Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason,

(i) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,

(ii) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof, and

(iii) each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

(h) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(i) Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and Lamar, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Montgomery County, Ohio.

(j) Survival of Representations and Warranties. All representations and warranties of Lamar and the City in this Agreement shall survive the execution and delivery of this Agreement.

(remainder of this page intentionally left blank; signature page follows)

IN WITNESS WHEREOF, the City and Lamar have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF CENTERVILLE, OHIO

By: _____

Name: Gregory B. Horn

Title: City Manager

By: _____

Name: Mark A. Schlagheck

Title: Director of Finance

Approved as to Form:

By: _____

Name: Robert N. Farquhar

Title: Municipal Attorney

GRAND BENCH, LLC

By: _____

Printed: _____

Title: _____

FISCAL OFFICER'S CERTIFICATE

The undersigned, Director of Finance of the City under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 2002 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Section 5705.41, Ohio Revised Code.

Dated: _____, 200__

Mark Schlagheck
Director of Finance
City of Centerville, Ohio

EXHIBIT A

DESCRIPTION AND DEPICTION OF THE PROPERTY

Said property is located at the Northeast intersection of State Route 48 (South Main Street) and East Spring Valley Road in the City of Centerville, Montgomery County, State of Ohio.



EXHIBIT B

DESCRIPTION OF THE PROJECT

The improvements to be made to the Property include:

- New façade for the entire building, including the existing Pri-Med and Spring Valley Investments section. (The façade will include the same components as the Kyle Kramer's Pro Fitness section of the building.)
- New curb, asphalt, drainage basins, concrete sidewalks, lighting islands and lighting fixtures for the entire parking lot, including work that remains to be completed for Kyle Kramer's Pro Fitness.
- New and updated roof for the building.
- Updated landscaping in landscape islands, existing landscape areas and new landscape areas located in the sidewalk near the front entrances of the building.
- New screening between property and adjacent property to the east.