

EXHIBIT A

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is made and entered into by and between the City of Mason ("Mason") and LensCrafters, Inc. setting forth the terms upon which the City of Mason will reimburse LensCrafters, Inc. up to \$200,000.00 to defray the cost of widening 1,900 linear feet of Western Row Road to accommodate LensCrafters, Inc.'s relocation and expansion project (the "Project") in the City of Mason.

BACKGROUND INFORMATION

- A. Mason desires to increase employment opportunities and to improve the economic welfare of the people of the City of Mason.
- B. \$200,000.00 in Funds have been granted to Mason by the Ohio Department of Development in accordance with the Grant Agreement attached hereto as Exhibit A.
- C. By this Development Agreement, Mason intends to essentially be an entity through which the Funds granted by the Ohio Department of Development pass through to LensCrafters, Inc. in accordance with the Grant Agreement attached hereto as Exhibit A.
- D. By this Development Agreement, LensCrafters, Inc. intends to accept the same obligations which the City of Mason accepts from the State of Ohio Department of Development under the Grant Agreement attached hereto as Exhibit A.

STATEMENT OF THE AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, the parties hereby agree as follows:

1. Reimbursement of Funds by the City of Mason. Mason agrees to reimburse LensCrafters, Inc. up to Two Hundred Thousand and No/100 Dollars (\$200,000.00)(the "Funds") for the purpose of undertaking and completing the Project. LensCrafters, Inc. shall undertake the Project as set forth in Exhibit 1 ("Scope of Work"), which is appended to Exhibit A, which is attached hereto and made a part hereof. LensCrafters, Inc. shall be reimbursed the Funds herein upon submission to, and approval by, Mason of proper invoices detailing expenditures already incurred by LensCrafters, Inc. in accordance with Exhibit 1. Mason shall be the sole judge of the adequacy of such invoices, but such approval shall not be unreasonably withheld.
2. Use of Funds by LensCrafters, Inc. The Funds and any and all interest income shall be used solely for the purposes stated in this Agreement and shall be supported by contracts, invoices, vouchers, paid receipts and other data, proving the costs already incurred by LensCrafters, Inc. in performing the work set forth in Exhibit 1. If the

Funds and any and all interest income are not expended in accordance with the terms, conditions and time period stated in this Agreement or the total amount of the Funds and any and all interest income exceeds the eligible costs of the Project, the amounts improperly expended or not expended shall be returned to the Grantor within thirty (30) days after the expiration or termination of this Agreement. If the Project does not become operational and/or is abandoned, all moneys paid by Mason to LensCrafters, Inc. under this Agreement shall be returned to Mason by LensCrafters, Inc. within thirty (30) days after such event has occurred.

3. Performance by LensCrafters, Inc. LensCrafters, Inc. hereby binds itself to the City of Mason in every way by which Mason binds itself under the Grant Agreement between the State of Ohio Department of Development and Mason, which is attached herewith as Exhibit A and incorporated here as if fully rewritten. LensCrafters, Inc. further agrees to cooperate with Mason in every way to assist Mason in receiving disbursement of the \$200,000.00 in Funds under the Grant Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed by their respective officers, duly authorized on the last day and year set forth below.

City of Mason

LensCrafters, Inc.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

GRANT AGREEMENT

This Grant Agreement (the "Agreement") is made and entered into by and between the **State of Ohio, Department of Development**, ("Grantor") and **City of Mason** ("Grantee"), to be used to defray the cost of widening 1,900 linear feet of Western Row Road to accommodate the LensCrafters, Inc. relocation and expansion project in the City of Mason (hereinafter referred to as the "Project"). This Agreement shall have the ODOD Grant Control Number of ECDD 02-020.

BACKGROUND INFORMATION

A. The Grantor desires to increase employment opportunities and to improve the economic welfare of the people of the State of Ohio.

B. The Roadwork Development Fund (629) was established by Amended Sub. H.B. 73, which was enacted by the 124th General Assembly of the State of Ohio for the purpose of funding the design, upgrade, and/or construction of Public Roadways serving commercial or industrial economic development projects.

C. By the authority vested in it by Section 6 of Amended Sub. H.B. 73 of the 124th General Assembly, the Grantor desires to induce Grantee to undertake and complete the Project that will retain or attract businesses for Ohio.

D. Funds in the amount of Two Hundred Thousand and No/100 Dollars (\$200,000.00) have been made available to the Grantor by Controlling Board Action No. DEV-013, dated July 23, 2001.

STATEMENT OF THE AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, the parties hereby agree as follows:

1. Grant of Funds. The Grantor hereby grants funds to the Grantee in the amount of Two Hundred Thousand and No/100 Dollars (\$200,000.00) (the "Funds"), for the sole and express purpose of undertaking and completing the Project. The Grantee shall undertake the Project as set forth in Exhibit I, "Scope of Work", which is attached hereto and made a part hereof. Grantee shall receive the Funds granted herein on a reimbursement basis upon submission to the Grantor and approval by the Grantor of proper invoices detailing expenditures already incurred by the Grantee in accordance with Exhibit I. The Grantor shall be the sole judge of the adequacy of such invoices.

2. Use of Funds. The Funds and any and all interest income shall be used solely for the stated purposes set forth in this Agreement and shall be supported by contracts, invoices, vouchers, paid receipts and other data as appropriate, evidencing the costs already incurred by the Grantee in performing the work set forth in Exhibit I. If the Funds and any and all interest income are not expended in accordance with the terms, conditions and time period set forth in this Agreement or the total amount of the Funds and any and all interest income exceeds the eligible costs of the Project, the amounts improperly expended or not expended shall be returned to the Grantor within thirty (30) days after the expiration or termination of this Agreement. In the event that the Project does not become operational and/or is abandoned, all moneys paid by the Grantor to the Grantee under this Agreement shall be remitted to the Grantor by the Grantee within thirty (30) days after such event has occurred.

3. Accounting of Funds. The Funds and any and all interest income therefrom shall be deposited and maintained in a separate account upon the books and records of the Grantee (the "Account"). The Grantee shall keep all records of the Account in a manner which is consistent with generally accepted accounting principles. All disbursements from the Account shall be for obligations incurred in the performance of this Agreement and shall be supported by contracts, invoices, vouchers, paid receipts and other data, as appropriate, evidencing the necessity of such expenditure. Failure to comply with this requirement shall allow Grantor to withhold payment allocation requests until such compliance is demonstrated.

4. Representations of the Grantor. The Grantor shall submit a description of the Project to be funded to the State of Ohio, Department of Transportation to ensure that funds are distributed in accordance with Article XII, Section 5a of the Ohio Constitution.

5. Competitive Bid Requirements. The Grantee shall comply with all applicable state and local competitive bidding requirements.

6. Highway Designation Requirements. If the Project involves a highway designated as United States or State Route under the jurisdiction of the State of Ohio, Department of Transportation and is outside the limit of a municipal corporation, then the Grantee shall submit, in writing, prior to undertaking any construction, a complete set of construction plans, specifications, and a construction time schedule to the State of Ohio, Department of Transportation for approval.

7. Project Completion. The Project shall be completed not later than January 23, 2003 (the "Project Completion Date"). If it is anticipated that the Grantee will not have completed the Project by the Project Completion Date, the Grantee must request an extension of time for the Project Completion Date within sixty (60) days before the Project Completion Date, unless otherwise agreed upon by the Grantor. It will be within the sole discretion of the Grantor to grant such extension of time.

8. Submission of Annual Progress Reports. The Grantee shall submit to the Grantor an Annual Employment Verification Report, as specified by the Grantor, detailing the progress of the Project, the number of employees who have been hired and retained by the company or companies that have benefited from this grant of funds. Such Annual Employment Verification Report shall be received by the Grantor no later than January 15th of each year. Failure of the Grantee to submit the Annual Employment Verification Report shall be cause for the Grantor to terminate this Agreement as set forth in Section 20 of this Agreement. All costs incurred by the Grantee in complying with the reporting requirements contained in this Agreement shall be borne by the Grantee and shall not be an allowable expense of the Funds.

9. Term of Agreement. The term of this Agreement (the "Term") shall be from the date of Controlling Board approval and shall expire three (3) years from the Project Completion Date (the "Expiration Date").

10. Final Closeout Report. Within forty-five days after the Expiration Date, the Grantee shall submit to the Grantor a Final Closeout Report detailing the results of the Project, the total number of full time employees hired and/or retained by the company or companies that have benefited from this grant of funds during the Term of the Agreement, and the total expenditure of the funds by the Grantee.

11. Contingency of the Grant of Funds. The grant of Funds shall be contingent upon the acquisition of funds from other financing sources. By executing this Agreement, the Grantee represents that sufficient funding, in addition to the Funds, has been obtained to complete the Project.

12. Job Creation and/or Retention. As a result of this grant of funds it is estimated that 265 jobs will be created, as further set forth in Exhibit I.

13. Effect of Failure to Create and/or Retain Jobs. If the company or companies that have benefited from this grant of funds fail to retain and/ or create at least ninety (90) percent of the total estimated full time jobs as stated in Exhibit I or fail to maintain the above-referenced employment levels during the Term of this Agreement for reasons other than Market Conditions, as defined in this Agreement, the Grantor, in its sole discretion, may require the Grantee to reimburse the Grantor in an amount equal to the ratio of the Funds to the total full time jobs to be created and/or retained hereunder, multiplied by the number of full time jobs which the company or companies have failed to create and/or retain. It is the sole option and responsibility of the Grantee to seek restitution or contribution from the participating company or companies.

14. Minority Hiring Requirement. Grantee shall make a good faith effort to hire minorities for the completion of the Project in the same percentage as the average percentage of minorities represented in the population and demographics of the county the Project is located and any contiguous Ohio counties.

15. Equal Employment Opportunity. The Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, veteran status, or ancestry. The Grantee shall ensure that applicants for employment are considered for employment and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, veteran status, or ancestry. The Grantee will incorporate the requirements of this paragraph in all of its respective contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials), and the Grantee will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work. Further, the Grantee agrees that it and any subcontractor shall comply with Ohio Administrative Code 5501-1-02, Appendix B, State Equal Employment Opportunity Covenant (For State Assisted Construction Contracts).

16. Prevailing Wage. In accordance with Ohio Revised Code Chapter 4115, construction projects involving moneys allocated from General Revenue Fund 195-629, Roadwork Development Program, may require the recipient of the funds to pay prevailing wage rates for workers involved in any construction activity on the Project. It shall be the responsibility of the Grantee to comply with all prevailing wage requirements. The Ohio Department of Commerce, Division of Labor & Worker Safety, Wage & Hour Bureau, will make all determinations on the requirements of paying prevailing wages. If the Ohio Department of Commerce, Division of Labor & Worker Safety, Wage & Hour Bureau determines that prevailing wage rates are to be paid, then pursuant to Ohio Revised Code Section 4115.032, the Ohio Department of Development shall designate a Prevailing Wage Coordinator who shall be vested with all the powers, duties, and responsibilities required by law of a Wage Coordinator. The parties agree that it is the responsibility and duty of the Grantee to comply with all prevailing wage requirements as set forth in the O.R.C. 4115 et.seq., and which may be lawfully imposed by the Prevailing Wage Coordinator.

17. Definition of Market Conditions. For the purposes of this Agreement, "Market Conditions" shall be determined by the Director of Development, with the advice from the Federal Reserve Bank of Cleveland. The Director of Development shall consider the following:

- a. Two consecutive quarters of decline in manufacturing employment in the State of Ohio as a whole or when possible by relevant manufacturing sector. Employment figures will be those reported by the Ohio Bureau of Employment Services.
- b. A decline, as a whole or by relevant sector, in twelve (12) of the last thirty-six (36) months as detailed in the Federal Reserve's national industrial production index.
- c. The performance of the relevant sector as reported in Standard & Poor's "Industry Surveys" or the "U.S. Industry & Trade Outlook".

18. Records, Access and Maintenance. The Grantee shall establish and maintain for at least three (3) years from the termination of this Agreement such records as are required by the Grantor, including but not limited to, financial reports, intake and participant information, and all other relevant information. The parties further agree that records required by the Grantor with respect to any questioned costs, audit disallowances, litigation or dispute between the Grantor and the Grantee shall be maintained for the time needed for the resolution of said question and that in the event of early termination of this Agreement, or if for any other reason the Grantor shall require a review of the records related to the Project, the Grantee shall, at its own cost and expense, segregate all such records related to the Project from its other records of operation.

19. Audits and Inspections. At any time during normal business hours upon written notice and as often as the Grantor may deem necessary, the Grantee shall make available to the Grantor, for examination, and to appropriate state agencies or officials, all of its records with respect to matters covered by this Agreement including, but not limited to,

records of personnel and conditions of employment and shall permit the Grantor to audit, examine and make excerpts or transcripts from such records.

20. Termination. If, as determined by the Grantor, the Grantee has failed to perform satisfactorily any requirements of this Agreement, or if the Grantee is in violation of any provision of this Agreement, or any provisions of any other agreement entered into by and between the Grantor and/or the Director of the Grantor and the Grantee, or upon just cause, the Grantor may:

(a) Terminate the Agreement after providing the Grantee with written notice, in accordance with the notice provisions of this Agreement, (the "Notice"), of its failure to perform satisfactorily any requirement of this Agreement. The Notice shall provide the Grantee with a thirty (30) day period to cure any and all defaults under this Agreement. During the thirty day cure period, the Grantee shall incur only those obligations or expenditures in furtherance of the Project which are pre-approved by the Grantor, and which are necessary to enable the Grantee to achieve compliance as set forth in the Notice; or

(b) Immediately terminate the Agreement.

21. Effects of Termination. Within sixty (60) days after termination of this Agreement, the Grantee shall provide the Grantor with a Final Closeout Report setting forth the number of full time employees hired and/or retained by the company or companies that have benefited from this grant of funds before the Agreement was terminated, the total expenditure of the Funds by the Grantee and the status of the Project at the time of termination. In addition, the Grantee shall surrender all reports, documents, and other materials assembled and prepared pursuant to this Agreement which shall become the property of the Grantor. Upon review of the Closeout Report, the Grantor shall determine whether or not the Grantee shall be required to return any portion of the Funds. This decision will be within the sole discretion of the Grantor on behalf of the State of Ohio. In no event shall the Grantee be required to return an amount in excess of the total Funds granted under this Agreement. Grounds for termination include, but are not limited to, outstanding liabilities and/or the falsification of information.

22. Forbearance Not a Waiver. No act of forbearance or failure to insist on the prompt performance by the Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the Grantor of any of its rights hereunder.

23. Conflict of Interest. No personnel of the Grantee, any subcontractor of the Grantee or public official, who exercises any functions or responsibilities in connection with the review or approval of the work completed under this Agreement shall, prior to the completion of said work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Any such person who, prior to or after the execution of this Agreement, acquires any personal interest, involuntarily or voluntarily, shall immediately disclose his interest to the Grantor in writing. Thereafter, he shall not participate in any action affecting the work under this Agreement unless the Grantor determines that, in light of the personal interest disclosed, his participation in any such action would not be contrary to the public interest.

24. Indemnification. To the extent permitted by law, the Grantee agrees to hold the Grantor harmless from any and all liabilities or claims caused by or resulting from Grantee's performance of the obligations or activities set forth in this Agreement. The Grantee shall reimburse the Grantor for any judgments which may be obtained against the Grantor, related to the performance of this Agreement including, but not limited to, judgments for infringements of patents or copyrights. The Grantee agrees to reimburse the Grantor for all costs incurred by the Grantor in defending against any such claims or legal actions if called upon by the Grantor to do so.

25. Certification of Funds. None of the rights, duties and obligations described in this Agreement shall be binding on either party until all statutory provisions of the Ohio Revised Code, including but not limited to, Section 126.07, have been complied with, and until such time as all funds have been made available and are forthcoming from the appropriate state agencies.

26. Adherence to State and Federal Laws, Regulations. The Grantee agrees to comply with all applicable federal, state, and local laws related to the Grantee's performance of the obligations of this Agreement. The Grantee accepts full responsibility for payments of all unemployment compensation, insurance premiums, workers' compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in the performance of the requirements of this Agreement.

27. Outstanding Liabilities. The Grantee affirmatively covenants that it does not owe: (1) any delinquent taxes to the State of Ohio (the "State") or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

28. Falsification of Information. The Grantee affirmatively covenants that it has made no false statements to the Grantor in the process of obtaining this grant of Funds. If the Grantee has knowingly made a false statement to the Grantor to obtain this grant of Funds, the Grantee shall be required to return all Funds immediately pursuant to Ohio Revised Code Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to O.R.C. Section 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to O.R.C. 2921.13(D)(1), which is punishable by a fine of not more than \$1,000.00 and/or a term of imprisonment of not more than six months.

29. Miscellaneous.

a). Governing Law. This Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance.

b). Forum and Venue. All actions regarding this Agreement shall be forumed and venued in a court of competent subject matter jurisdiction in Franklin County, Ohio.

c). Entire Agreement. This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

d). Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

e). Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, or by a delivery service that can provide proof of mailing and receipt by both parties, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

- 1). In case of the Grantor, to:
Deputy Director, Economic Development Division
Ohio Department of Development
P.O. Box 1001
Columbus, Ohio 43216-1001

- 2). In case of the Grantee, to:

City of Mason
202 W. Main Street
Mason, Ohio 45040

FTI Number: 31-6001070

3). In the case of Prevailing Wage Coordinator to:
Prevailing Wage Coordinator
Ohio Department of Development
P. O. Box 1001
Columbus, Ohio 43216-1001

f). Amendments or Modifications. Any party may at any time during the term of this Agreement request amendments or modifications. Requests for amendment or modification of this Agreement shall be in writing and shall specify the requested changes and the justification of such changes. The parties shall review the request for modification in terms of the regulations and goals relating to the Project. Should the parties consent to modification of the Agreement, then an amendment shall be drawn, approved, and executed in the same manner as the original agreement.

g). Pronouns. The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

h). Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

i). Assignment. Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned or subcontracted by the Grantee without the prior express written consent of the Grantor which shall not be unreasonably withheld.

j). Travel Expenses. If contemplated under this Agreement, the Grantee, its employees or agents, shall be reimbursed for travel expenses in amounts not to exceed the maximum rates as determined by Ohio Administrative Code Section 126-1-02.

k). Successor in Interest. Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of not only the Grantee but to its respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed by their respective officers thereunto duly authorized on the last day and year set forth below.

GRANTEE:

GRANTOR:

City of Mason

State of Ohio
Department of Development

By: _____

By: _____

Bruce Johnson
Director

Title: _____

Date: _____

Date: _____

EXHIBIT I

SCOPE OF WORK

CITY OF MASON

Controlling Board approved the release of \$200,000 from the Roadwork Development (629) Account to the City of Mason in Warren County. The State assistance will be used to defray the cost of widening 1,900 linear feet of Western Row Road to accommodate the LensCrafters, Inc. relocation and expansion project in the City of Mason.

As a result of this project and the State assistance provided to the City of Mason, LensCrafters, Inc. will create 265 full time jobs, and retain 700 existing full time positions, at the project site. Based on the estimated number of jobs to be created, the average cost of Roadwork Development (629) Account assistance is \$207 per job.

The total investment at the project site is \$456,815. The total amount of local assistance provided to the project is \$256,815. The \$200,000 in Roadwork Development (629) Account assistance represents 44 percent of the eligible costs estimated to be \$456,815. The City of Mason has committed to funding the balance of the project.

This project encompasses establishing a new corporate headquarters for LensCrafters to support the company's optical retail business. It will be located in a building to be owned by LensCrafters which will consist of approximately 225,000 square feet on approximately 43 acres at the northwest corner of Western Road and Tylersville Road in Mason, Ohio. The new site and its surrounding infrastructure will allow for improved access to the facility.

LensCrafters, Inc. is also requesting a Business Development (412) Account grant in the amount of \$300,000 (DEV012) for this project.

