

**VILLAGE OF YELLOW SPRINGS**

**RESOLUTION #2007-36**

**WHEREAS** the Village has established and, with state help, funded an Economic Development Revolving Loan Fund, and

**WHEREAS** Council has adopted policies and guidelines for use and operation of this fund, and

**WHEREAS** a loan application, received from Don A. Beard, DBA Peach's Grill, for expansion of his current restaurant and the purchase of a deep fryer, has been reviewed and approved by the Loan Review Committee,

**NOW THEREFORE THE COUNCIL OF THE VILLAGE OF YELLOW SPRINGS OHIO HEREBY RESOLVES THAT**

**Section 1.** The application of Don A. Beard, DBA Peach's Grill, located at 104 Xenia Avenue, Yellow Springs, has been reviewed and meets the criteria established by Council for eligibility for low interest economic development loans.

**Section 2.** Suitable agreements, notes, and sureties are to be executed prior to the disbursement of any funds, all of which shall be in substantially the form currently on file with the Clerk of Council.

**Section 3.** The Village Manager is hereby authorized and directed to make an Economic Development loan of \$20,000.00 (twenty thousand dollars) for five (5) years at an interest rate of five percent (5%) per annum from the Economic Development Fund under the terms stipulated in the loan agreement.

**Section 4.** This Resolution shall be effective upon its adoption by Council.

\_\_\_\_\_  
President of Council

Passed:

Attest: \_\_\_\_\_  
Deborah Benning, Clerk of Council

Roll Call:

Karen Wintrow \_\_\_\_\_ Judith Hempfling \_\_\_\_\_ Kathryn Van der Heiden \_\_\_\_\_

Lori Askeland \_\_\_\_\_ John Booth \_\_\_\_\_

## PROMISSORY NOTE

\$20,000.00

November \_\_\_\_, 2007  
Yellow Springs, Ohio

DON A. BEARD (hereafter the "Borrower"), for value received hereby promises to pay to the order of THE VILLAGE OF YELLOW SPRINGS ("Lender") the principal sum of Twenty Thousand Dollars (\$20,000.00), together with interest at five percent (5%) per annum on the unpaid principal balance. Interest shall accrue beginning on the date of execution of this Note. Principal and interest shall be due and payable in sixty (60) equal consecutive monthly installments of not less than Three Hundred Seventy Seven and 42/100 Dollars (\$377.42) each, commencing on the first day of January, 2008 and continuing on the first day of each calendar month thereafter until principal and interest have been paid in full.

The Borrower may prepay its obligations hereunder at any time, in whole or in part, without penalty or premium. Prepayment amounts shall be applied first to payment of interest on the unpaid principal balance through the date of prepayment and then to payment of installments of principal in inverse order of maturity.

This Promissory Note is issued under and entitled to the benefits of a Development Agreement dated November, 2007 ("Loan Agreement"), between the Borrower and Lender to which Loan Agreement reference is hereby made for a statement of the rights in respect thereto of the holder of this Promissory Note. If the Borrower shall sell, transfer or otherwise dispose of the mortgaged premises, or any part thereof or interest therein, then, at the option of Lender, the entire indebtedness hereby secured, together with all accrued interest, shall be immediately due and payable without notice or demand.

In case an event of default, as defined in the Loan Agreement, shall occur, the Lender may declare the balance due under this Promissory Note due and payable immediately upon the conditions and in the manner and with the effect provided in the Loan Agreement. If any payments hereunder are delinquent for more than five (5) days, a late charge of Twenty-five Dollars (\$25.00) will be added to the balance due with said late payment and, in addition, the late payment amount will bear interest at the rate of ten percent (10%) per annum until paid. Borrower shall pay all late charges and additional interest within ten (10) days after the late charge is incurred.

The Borrower and every endorser now or hereafter appearing on this Promissory Note waive presentment, demand, protest, notice of protest or other notice of dishonor.

The Borrower hereby authorizes any attorney-at-law to appear in any court of record in the State of Ohio or any other state in the United States after the above obligation becomes due and to waive the issuing and service of process and to confess a judgment against it in favor of the holder hereof, for the amount then appearing due, together with costs of suit, and thereupon to release all errors and waive all right of appeal; provided that the Lender will mail or deliver written notice of any lawsuit or other legal action against the Borrower to the Borrower at its last known business address.

WARNING: BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME, A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON ITS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

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DON A. BEARD

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11/16/07

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is entered into as of this \_\_\_\_ day of November, 2007, between the VILLAGE OF YELLOW SPRINGS, an Ohio political subdivision ("Village") and DON A. BEARD, an individual, dba PEACH'S GRILL ("Beard").

- A. The Village has determined it in the best interest of the community to promote economic development within the Village and Miami Township, Ohio (the "CEDA District").
- B. The Village desires to utilize certain development funds from the Economic Development Revolving Loan Fund for purposes of promoting economic development within the Village.
- C. Peach's is an existing restaurant within the Village located at 104 Xenia Avenue, Yellow Springs, Ohio (the "Property"), and Beard's desires to expand his restaurant and to purchase a deep fryer.
- D. The Village desires to lend the development funds to Beard to facilitate the physical improvement of the Property within the Village and to promote the economic development of such Property on the terms set out herein.
- E. The proceeds of the development funds loaned to Beard will be utilized to pay for the acquisition by Beard of a deep fryer for the Property, along with a physical expansion of the structure of the Property.
- F. Beard is willing to accept the development funds loaned hereunder and to utilize the development funds for the purposes set out herein.

NOW THEREFORE, the parties agree as follows:

1. **Loan.** Subject to the terms of this Agreement, the Village hereby agrees to lend to Beard Twenty Thousand Dollars (\$20,000.00) for a period of five (5) years with an annual interest rate of five (5) percent (the "Funds"). The obligation of Beard to repay the Funds shall be evidenced by a promissory note (the "Note").
2. **Term.** The term of this Agreement shall commence on the date of execution of this Agreement and shall terminate upon the earlier to occur of (i) the Note being paid in full or (ii) five (5) years from the date of execution of this Agreement.
3. **Disbursements.** The Funds shall be disbursed within thirty (30) days after the date of execution of this Agreement.
4. **Scope of Work.** In consideration of the Funds, Beard hereby agrees to fully and timely perform the obligations, covenants, terms and conditions set out herein.
5. **Use of Proceeds.** The Funds shall be used by Beard exclusively for the costs of acquiring a deep fryer for the Property, for expanding the physical structure of the Property, and other uses stated on his application for the loan.
6. **Repayment.** Regular payments of principal and interest for any portions of the Funds outstanding shall not be required under this Agreement; rather, such regular payments shall be governed by the Note. Upon the sale, transfer or assignment of the Property to a third-party purchaser for development, the Funds shall be due and payable in full to the Village
7. **Conditions.** The Village's obligations under this Agreement to disburse the Funds to Beard are subject to the fulfillment of each of the following conditions:
  - 7.1 **Policies of Insurance.** Beard shall furnish to the Village copies of the policies of casualty and liability insurance with respect to the Property with limits and coverage acceptable to the Village and naming the Village as an additional insured thereon.

7.2 Work Progress. Beard shall make diligent and satisfactory progress on the improvements to the Property, with time being of the essence.

8. Representations and Warranties. Beard represents and warrants to the Village that the following statements are true and correct as of the date of this Agreement and shall at all times remain true and correct throughout the term of this Agreement:

8.1 Enforceability of the Documents, Etc. The Notes, this Agreement and the other loan documents to which Beard is a party have all been duly executed and delivered to the Village by Beard and, to the best of Beard's knowledge, constitute legal, valid and binding obligations of Beard's enforceable in accordance with their respective terms.

8.2 Compliance with Other Instruments, Etc. To the best of Beard's knowledge, neither the entry into nor the performance of and compliance with this Agreement, the Notes or any of the other loan documents has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which Beard is bound.

9. Covenants of Beard. Beard covenants and agrees with the Village that so long as this Agreement remains in force:

9.1 Records. Beard will keep true, accurate and complete records and books of accounts related (a) generally to its financial matters, (b) to the use of funds under this Agreement, and (c) to the operation, progress and status of the improvements to the Property.

9.2 Indemnity. Beard shall protect, defend, indemnify and hold the Village harmless from and against any loss suffered or liability incurred by Beard on account of any damage to the person or property of the parties hereto or to third parties by reason of the performance of the work required hereunder, unless such injury or damage is due to the gross negligence or willful misconduct of the Village or its employees or agents.

9.3 Compliance with Applicable Laws. Beard shall comply in all respects with existing laws, rules and regulations relating to the performance of the improvements to the Property and the general conduct of its business, including but not limited, zoning, building and other applicable federal, state, and local ordinances, laws, rules, and regulations affecting the Property.

10. Default.

10.1 Events of Default. Any one or more of the following shall constitute an Event of Default hereunder:

(1) Default by Beard in the due and punctual payment of any amount payable under the Note, whether principal, interest or any other payment, within thirty (30) days after the due date (unless all or a portion of such amounts has been forgiven, deferred or otherwise abated by the Village);

(2) Default by Beard in the due and punctual payment of any amount payable under this Agreement, or any of the other loan documents, whether payable to the Village or to any third party, which default is not cured within thirty (30) days after written notice from the Village;

(3) Default by Beard in the due and punctual performance of any term, covenant, condition, obligation or agreement of Beard under this Agreement, now existing or hereafter arising, on the date such performance is due under this Agreement, which default is not cured within thirty (30) days after written notice (or, if the matter cannot reasonably be cured within thirty (30) days, Beard's failure to promptly commence and diligently proceed to effect the cure within a reasonable time);

10.2 Remedies Upon Event of Default. After any applicable cure period, at any time as of which an Event of Default shall have occurred and be continuing, Village, at its option, may, but shall not be obligated to,

exercise any one or more of the following remedies without notice or demand, which notice and demand Beard hereby expressly waives:

- (1) The Village may declare the indebtedness evidenced by the Note and all other indebtedness and obligations of Beard to the Village hereunder and under the loan documents to be forthwith due and payable, and thereupon such Note, interest accrued thereon (if any) and all such other indebtedness and obligations shall become and be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Beard;
- (2) The Village may enforce, or otherwise avail itself of, any and all remedies provided in any of the loan documents;
- (3) Terminate or suspend its obligation to disburse any Funds hereunder; and/or
- (4) The Village may enforce, or avail itself of, any other remedies available to it at law or in equity.

10.3 Remedies Cumulative. All powers and remedies given by this Section 10 shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to the Village under the Loan Documents and/or applicable law to enforce the performance or observance of the covenants and agreements of Beard contained in this Agreement. No delay or omission of Village to exercise any right or power accruing upon the occurrence of any Event of Default shall constitute a waiver of any subsequent Event of Default or impair any rights or remedies consequent thereto. Every power and remedy given to Village may be exercised from time to time and as often as may be deemed necessary by the Village, and such powers and remedies may be exercised by the Village simultaneously or in such order as the Village may determine in its sole discretion.

## 11. Miscellaneous.

11.1 Sole Parties. This Agreement is made exclusively for the benefit of and solely for the protection of the Village and Beard, and no other person or persons shall have the right to enforce the provisions hereof by action or legal proceedings or otherwise or to rely on any representations, certificates, warranties or determinations which are required to be made or may be made hereunder.

11.2 Binding Effect and Amendment; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and may be amended, altered or changed only by an instrument in writing signed by the parties hereto.

11.3 Captions. The captions used in this Agreement are inserted solely for convenience of reference and are not a part of, nor intended to govern, limit or aid in the construction of, any term or provision hereof.

11.4 Time of the Essence. Time shall be of the essence in every obligation of Beard under this Agreement.

11.5 Applicable Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the remaining provisions of this Agreement, or any part thereof.

11.6 Entire Agreement; Counterparts. This Agreement and the other loan documents executed pursuant hereto represent the entire agreement between the parties with respect to the Funds and either embody or supersede all prior agreements, commitments and negotiations with respect thereto. This Agreement may be executed in one or more counterparts, each of which shall be a duplicate original, but all of which shall constitute the same Agreement.

11.7 References; Pronouns. Any and all references in this Agreement to any other document or documents shall be references to such other document or documents as the same may from time to time be modified, amended, renewed, consolidated or extended. Except as required by the context, the singular includes the plural and the masculine includes the feminine or the neuter and vice versa.

11.8 Notices. All notices given under this Agreement shall be given to the parties at the following addresses:

The Village of Yellow Springs	Don A. Beard, dba Peach's Grill
Attn: Eric Swansen	104 Xenia Avenue
100 Dayton Street	Yellow Springs, Ohio 45387
Yellow Springs, Ohio 45387	

*(Remainder of page intentionally left blank; signatures to follow)*

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the day and year first aforesaid.

**THE VILLAGE OF YELLOW  
SPRINGS, OHIO**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DON A. BEARD**

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

Don A. Beard

Approved as to form:

\_\_\_\_\_  
John C. Chambers, Esq.