

RESOLUTION NO. 14-14
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Aherham ON THE 21st DAY
OF April, 2014.

**A RESOLUTION AUTHORIZING AND DIRECTING THE CITY
MANAGER TO ENTER INTO AN ECONOMIC DEVELOPMENT (PIR)
GRANT AGREEMENT WITH SOUTH POINT BUILDING INVESTMENT,
LLC, AND SOUTHWEST OHIO ENT SPECIALISTS, INC.**

WHEREAS, South Point Building Investment, LLC (hereinafter "Company") desires to renovate and redevelop the property located at 6601 Centerville Business Parkway within the City of Centerville for tenants; and

WHEREAS, Southwest Ohio ENT Specialists, Inc. (hereinafter "Tenant") desires to rent the Property located at 6601 Centerville Business Parkway within the City of Centerville; and

WHEREAS, the expansion will consist of making certain leasehold improvements to the facility located at 6601 Centerville Business Parkway and these improvements will create jobs and employment opportunities and will improve the economic welfare of the people of the State of Ohio and the residents of the City; and

WHEREAS, the City desires the Company to make these improvements and allow Tenant to locate and operate within the City to create jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio and the residents of the City; and

WHEREAS, the City desires to award a Property Investment Reimbursement Grant ("PIR") to Company to offset costs such as architecture, design, construction, and other costs associated with the redevelopment of the subject property;

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:


Section 1:

That the City Manager is authorized and directed to enter into an Economic Development (PIR) Grant Agreement with , South Point Building Investment, LLC and Southwest Ohio ENT Specialists, Inc., in a form with terms similar to the Agreement attached hereto as Exhibit "A" and incorporated herein.

Section 2:


That the City Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreement.

PASSED THIS 21st day of April, 2014.



Mayor of the City of
Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 14-14, passed by the Council of the City of Centerville, Ohio on the 21st day of April, 2014.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

**ECONOMIC DEVELOPMENT GRANT
AGREEMENT**

BY AND BETWEEN

City of Centerville

AND

South Point Building Investment, LLC

AND

Southwest Ohio ENT Specialists, Inc.

Dated as of April 21, 2014

EXHIBIT "A"

ECONOMIC DEVELOPMENT GRANT AGREEMENT

This Economic Development Grant Agreement (the "Agreement") is made and entered into as of _____, 2014, by and between the CITY OF CENTERVILLE, OHIO (the "City"), a municipal corporation organized and existing under the constitution and the laws of the State of Ohio, South Point Building Investment, LLC, (the "Company"), an Ohio limited liability company, and Southwest Ohio ENT Specialists, Inc., ("Tenant"), an Ohio corporation, under the circumstances summarized in the following recitals:

WITNESSETH:

WHEREAS, the Company desires to renovate and redevelop the property located at 6601 Centerville Business Parkway within the City of Centerville (the "Project"); and

WHEREAS, the Project shall include certain leasehold improvements for the Tenant;

WHEREAS, the Project will retain and create jobs and employment opportunities and will improve the economic welfare of the people of the State of Ohio and the residents of the City; and

WHEREAS, the City desires the Company to renovate and redevelop the property located at 6601 Centerville Business Parkway to retain and create jobs and employment opportunities in order to improve the economic welfare of the people of the State of Ohio and the residents of the City; and

WHEREAS, the City desires to award a Property Investment Reimbursement Grant ("PIR") to the Company to offset costs such as architecture, design, construction, and other costs associated with the redevelopment of the subject property; and

WHEREAS, the Company and Tenant each warrant that it is in compliance with all city, county, state and federal laws and ordinances;

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and agreements contained in this Agreement, the City and the Company agree as follows:

Section 1. The Company agrees to renovate and redevelop the property located at 6601 Centerville Business Parkway. The project will include, but may not be limited to, constructing certain leasehold improvements for Tenant within the building located on

the property, and generally renovating the building for occupancy by other third party lessees.

Section 2. Annually, for each of six consecutive years unless earlier terminated, commencing in calendar year 2015 the City shall, on or prior to April 1, pay to the Company an amount equal to the fifteen percent (15%) of payroll taxes collected by the City in the prior year using the amount collected in 2013 as a baseline. Additionally, the City shall pay to the Company an amount equal to forty percent (40%) of payroll taxes collected by the City in the prior year, above the 2013 baseline level, adjusted for inflation using the Federal Bureau of Labor Statistics Consumer Price Index in order to identify true payroll growth adjusted for inflation.

Section 3. From the date of execution of this Agreement until terminated, Company shall require the Tenant and the Tenant agrees, as a condition of its lease and a condition of this Agreement, to release to the City of Centerville Income Tax Administrator, City Manager, Finance Director, Economic Development Administrator, or their respective designees any and all reasonable financial information required by the Tax Administrator in order to verify that Company qualifies for the grant payment. Said release(s) shall be in writing and signed by a corporate officer of the Tenant that has the authority to authorize the release of such information to City. Additionally, Company shall require Tenant, as a condition of its lease, and Tenant agrees as a condition of this Agreement to also provide City the authority to verify proper payment of taxes (non-delinquency) to other applicable governmental jurisdictions referenced under Section 8 of this Agreement. Likewise, the Company further agrees to provide City the authority to verify proper payment of taxes (non-delinquency) to other applicable governmental jurisdictions referenced under Section 8 of this Agreement.

Section 4. In the event that the Company fails to qualify for the PIR grant by the end of tax year 2015, the grant award provided herein shall become null and void. In the event that the annual payroll of the Tenant falls below ninety percent (90%) of the 2013 baseline amount, the grant shall be terminated.

Section 5. The PIR grant shall be used by Company to offset one time costs associated with renovating and redeveloping the property.

Section 6. All amounts to be paid by the City pursuant to this Agreement are payable solely from Non-tax Revenues available in the year any payment is due. If sufficient Non-tax Revenues are not available in any year to pay the amount due in that year, the City has no obligation to pay in that year any amount in excess of the amount of Non-tax Revenues available for payment; provided, however, (i) nothing in this Agreement shall be deemed to prohibit the City, on its volition, from using, to the extent it is lawfully authorized, any other resources or revenues to fulfill any of its obligations under this Agreement, and (ii) any amount due that is not paid in the year it is due shall be paid by the City in the first succeeding year in which Non-tax Revenues are available to the City to pay the amount not previously paid. For purposes of this Section, "Non-tax Revenues" means all money of the City that is not raised by taxation including, but not

limited to: (i) grants from the United States of America and the State of Ohio lawfully available for the purpose; (ii) payments in lieu of taxes now or hereafter authorized by the laws of the State of Ohio and lawfully available for the purpose; (iii) fines and forfeitures that are deposited into the City's general fund; (iv) fees that are deposited into the City's general fund; (v) investment earnings on funds of the City that are lawfully credited to the City's general fund; (vi) proceeds from the sale of assets that are deposited in the City's general fund; (vii) rental income that is deposited in the City's general fund; (viii) gifts and donations that are deposited in the City's general fund; and (ix) charges for services and payments received in reimbursement for services that are deposited in the City's general fund.

Section 7. Company and Tenant each agree to comply with all Federal, State and local laws with regards to its operations and with the Project, including but not limited to prevailing wage requirements of ORC Chapter 4115, if applicable.

Section 8. In the event the Company or Tenant should become delinquent in paying any city, county, state, or federal taxes, without remedy within 180 days, or if the Company or Tenant is in violation of any city, county, state or federal law, City shall be able to, at its sole discretion, terminate this Agreement immediately. Any amounts due to Company not yet paid will be forfeited by Company and not paid by City in the event this Agreement is terminated under the provisions of this section.

Section 9. 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 City Company, or the Tenant, as appropriate, at the appropriate Notice Address or to such other address as that recipient shall have previously notified the sender of in writing as provided in this Section. The City or the Company, by notice given hereunder, may designate any further addressee or different Notice Address to which subsequent notices, certificates, requests, or other communications shall be sent.

For purposes of this Section, Notice Address Means:

- (a) As to the City: City of Centerville
100 West Spring Valley Road
Centerville, OH 45458-3759
Attention: City Manager
- With copy to: Scott A. Liberman
Altick & Corwin Co., L.P.A.
One South Main Street, Suite 1590
Dayton, OH 45402
- (b) As to the Company: South Point Building Investment, LLC

Attn: Anthony Taylor
122 N. Jefferson Street
Dayton, OH 45402

(c) As to the Tenant: Southwest Ohio ENT Specialists, Inc.
Attn: _____

Section 10. All representations, warranties, covenants, agreements, and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of these representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement, or obligations of any present or future member, officer, agent, or employee of the City in other than his or her official capacity.

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 member, officer, agent, or employee of the City, Company or Tenant, in an individual capacity. No official executing or approving the City's, the Company's or Tenant's participation in this Agreement shall be liable personally under this Agreement.

Section 11. This Agreement shall inure to the benefit of and shall be binding upon the City, Company and Tenant and their respective successors and assigns.

The City, the Company and the Tenant shall each observe and perform faithfully at all times all its covenants, agreements, and obligations under this Agreement.

Each covenant, agreement, and obligations of the City under this Agreement is binding upon each officer of the City who may have the authority or duty from time to time under law to take any action which may be necessary or advisable to observe or perform that covenant, agreement, or obligation.

Section 12. 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.

Section 13. 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,

(a) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any covenant,

agreement, obligations, or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if illegal or invalid portion were not contained herein or therein,

- (b) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof, and
- (c) 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 that manner and to the full extent permitted by law.

Section 14. This Agreement shall be governed by and construed in accordance with the laws of the State. All claims, counterclaims, disputes, and other matters in question regarding the City and its agents and employees, and the Company and its employees, contractors, subcontractors, and agents arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the State.

Section 15. All representations and warranties of the Company, the Tenant and the City contained in this Agreement shall survive the execution and delivery of this Agreement and the recording of any deed contemplated hereby.

IN WITNESS WHEREOF, the City, the Company and the Tenant have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above, but actually on the dates by their respective executions.

CITY OF CENTERVILLE, OHIO

Date: _____, 2014

By: Gregory B. Horn
Its: City Manager

**SOUTH POINT BUILDING
INVESMENT, LLC**

Date: _____, 2014

By: _____
Its: _____

**SOUTHWEST OHIO ENT
SPECIALISTS, INC.**

Date: _____, 2014

By: _____
Its: _____

FISCAL OFFICER'S CERTIFICATE

The undersigned, Finance Director of the City of Centerville, Ohio under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of the City during the year 2014 under the foregoing Agreement will, upon the issuance of bonds or notes for that purpose, have been lawfully appropriated for that purpose, and will be 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 Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2014

Finance Director
City of Centerville, Ohio

Approved as to Form:

Scott A. Liberman, City Law Director