




To: Members of Dublin City Council
From: Dana L. McDaniel, City Manager 
Date: June 4, 2019
Initiated By: Colleen Gilger, CEcD, Director of Economic Development
Rachel Ray, AICP, Economic Development Administrator
Re: Ordinance 32-19 - Economic Development Agreement with Dave Thomas Foundation for Adoption

Background

Economic Development staff has been in discussions with the Dave Thomas Foundation for Adoption about the relocation and expansion of their corporate headquarters to Dublin. The company has outgrown their current headquarters in the City of Columbus, and has been conducting their real estate search in Dublin and other communities in Central Ohio.

Established in 1992 by Wendy's founder Dave Thomas, the Dave Thomas Foundation for Adoption is the only national nonprofit charity dedicated to dramatically increasing adoptions from North America's foster care system. Through its signature program, Wendy's Wonderful Kids®, the Foundation provides grants to adoption agencies to hire recruiters who use an evidence-based, child-focused recruitment model to find loving, permanent homes for children waiting in foster care. The company is seeking a new location to serve as the national headquarters for the Foundation to operate.

This project would result in the relocation of 36 existing Dave Thomas Foundation for Adoption jobs to Dublin, with the addition of 46 new jobs by 2025 for a total of 82 jobs. The company would be required to execute a minimum 10-year lease OR acquire an office facility within the City of Dublin for the agreement to take effect.

The Economic Development Agreement proposed to the Dave Thomas Foundation for Adoption is a seven year, 15% Performance Incentive on **net new** payroll withholdings (2021-2027), capped at \$75,000 for the term of the agreement. The payroll attributed to the initial regional 36 relocating jobs will not count toward the incentive.

The City is also proposing a \$25,000 relocation grant to offset moving and fit-up costs. In consideration, the company agrees to add 46 jobs to the Dublin community by the end of 2025. The company must purchase a property OR execute a minimum 10-year lease and reach predetermined annual withholdings targets to qualify for these performance incentives. The City expects to net approximately \$750,094 over the seven-year project term.

Of note: Per the local economic development rules of incentive engagement, there is professional agreement in the Columbus Region not to incentivize existing jobs moving intra-regionally. The one exception to the rule is when a company has exhausted its search for space/sites in its home community. If the company is willing to notify the home community that it will not stay within the community borders, the project then becomes "competitive" for all other communities in the region.

Only then can the existing jobs be considered for incentives. For this particular project, locations throughout the region, including the home community (City of Columbus) were under consideration, and therefore only the new payroll growth will be considered for incentives.

Recommendation

Staff recommends Council passage of Ordinance 32-19 at the second reading/public hearing on June 24, 2019. Please contact Rachel Ray at 614-410-4630 or rray@dublin.oh.us with any questions you may have.

RECORD OF ORDINANCES

Ordinance No. 32-19

Passed _____, _____

AN ORDINANCE AUTHORIZING THE PROVISION OF CERTAIN INCENTIVES TO DAVE THOMAS FOUNDATION FOR ADOPTION TO INDUCE IT TO LEASE OR PURCHASE A FACILITY TO RELOCATE AND EXPAND ITS OFFICE AND ITS ASSOCIATED OPERATIONS AND WORKFORCE, ALL WITHIN THE CITY; AND AUTHORIZING THE EXECUTION OF AN ECONOMIC DEVELOPMENT AGREEMENT.

WHEREAS, consistent with its Economic Development Strategy (the "*Strategy*") approved by Dublin City Council Resolution No. 07-94 adopted on June 20, 1994, and the updated Strategy approved by Dublin City Council Resolution No. 30-04 adopted on July 6, 2004, the City desires to encourage commercial office development and create and preserve jobs and employment opportunities within the City; and

WHEREAS, Dave Thomas Foundation for Adoption (the "*Company*") recently performed a comprehensive examination of its workforce needs, and based on the results of this examination, and induced by and in reliance on the economic development incentives provided in the proposed Economic Development Agreement (as described below), the Company is desirous of leasing or purchasing a facility to relocate and expand the Company's office and its associated operations and workforce, all within the City, in order to achieve the payroll withholding targets set forth in the Economic Development Agreement; and

WHEREAS, this Council has determined that it is necessary and appropriate and in the best interests of the City to provide for certain economic development incentives to the Company, as described in the proposed Economic Development Agreement; and

WHEREAS, this Council has determined to offer the economic development incentives, the terms of which are set forth in a substantially final form of Economic Development Agreement presently on file in the office of the Clerk of Council, to induce the Company to lease or purchase a facility to relocate and expand the Company's office and its associated operations and workforce, all within the City, which will result in the relocation of existing and creation of new jobs and employment opportunities, thereby improving the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, State of Ohio, _____ of the elected members concurring, that:

Section 1. The Economic Development Agreement by and between the City and the Company, in the form presently on file with the Clerk of Council, providing for, among other things, the provision of certain economic development incentives in consideration for the Company's agreement to lease or purchase a facility for the relocation and expansion of the Company's office and its associated operations and workforce, all within the City, which will result in the relocation of existing and creation of new jobs and employment opportunities, is hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, is hereby authorized to execute that Economic Development Agreement, provided further that the approval of changes thereto by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the City Manager, for and in the name of the City, to execute any amendments to the Economic Development Agreement, which amendments are not inconsistent with this Ordinance and not substantially adverse to this City.

Section 2. This Council further hereby authorizes and directs the City Manager, the Director of Law, the Director of Finance, the Clerk of Council, or other appropriate

RECORD OF ORDINANCES

Ordinance No. 32-19

Passed Page 2 of 2, _____

officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

Section 3. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in open meetings of this Council or committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

Section 4. This Ordinance shall be in full force and effect on the earliest date permitted by law.

Signed:

Mayor - Presiding Officer

Attest: _____
Clerk of Council

Passed: _____, 2019

Effective: _____, 2019

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “*Agreement*”) is made and entered into this _____ day of _____, 2019 (the “*Effective Date*”), by and between the CITY OF DUBLIN, 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 DAVE THOMAS FOUNDATION FOR ADOPTION, an Ohio nonprofit corporation (the “*Company*” and together with the City, the “*Parties*”), under the circumstances summarized in the following recitals.

RECITALS:

WHEREAS, consistent with its Economic Development Strategy (the “*Strategy*”) approved by Dublin City Council Resolution No. 07-94 adopted on June 20, 1994, and the updated Strategy approved by Dublin City Council Resolution No. 30-04 adopted on July 6, 2004, the City desires to encourage commercial office development and create and preserve jobs and employment opportunities within the City; and

WHEREAS, based on the results of the Company’s recent comprehensive examination of workforce needs, and induced by and in reliance on the economic development incentives provided in this Agreement, the Company desires to either lease or purchase a facility to relocate and expand the Company’s office and its associated operations and workforce, all within the City; and

WHEREAS, pursuant to Ordinance No. ___-19 passed on _____, 2019 (the “*Ordinance*”), the City has determined to offer the economic development incentives described herein to induce the Company to lease or purchase a facility for the relocation and expansion of the Company’s office and its associated operations and workforce, all within the City, which will result in the relocation of existing and creation of new jobs and employment opportunities to improve the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, the City and the Company have determined to enter into this Agreement to provide these incentives in order to induce the Company to lease or purchase a facility to relocate and expand the Company’s office and its associated operations and workforce, all within the City;

NOW THEREFORE, in consideration of the foregoing, the promises contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the City and the Company covenant, agree and obligate themselves as follows:

Section 1. Company’s Agreement to Lease or Purchase a Facility to Relocate and Expand the Company’s office and its Associated Operations and Workforce Within the City.

(a) In consideration for the economic development incentives to be provided by the City herein, the Company agrees that it will lease or purchase a Facility (as defined in subsection 1(b)) to relocate and expand the Company’s office and associated operations and workforce, all within the City, and all consistent with the terms of this Agreement. The Company expects to relocate Thirty-Nine (39) employee positions to the City by December 31, 2020. The Company also expects to create

Forty-Three (43) new employee positions within the City by December 31, 2025. The total estimated payroll withholdings for the relocated and new employee positions is estimated to be Nine Hundred Thirty Thousand and 00/100 Dollars (\$930,000.00) over the term of this Agreement.

(b) For purposes of this Agreement, the “*Facility*” shall be (i) a building located within the City, (ii) the situs of employment for the Employees (as defined in subsection 2(c)(1)) of the Company referred to in subsection 1(a) and (iii) the subject facility of either the Lease Agreement or the Purchase Agreement (as each is defined below).

(c) The Company agrees that the City’s obligations to remit payments pursuant to Section 2 of this Agreement shall be contingent upon (i) the Company delivering to the City either (A) a photocopy of a fully executed agreement evidencing the Company’s lease of the Facility within the City for a minimum term of ten (10) years (the “*Lease Agreement*”) which term shall commence no later than January 1, 2020 or (B) such documentation which reasonably demonstrates to the City that the Company has purchased the Facility (the “*Purchase Agreement*”), which in either case, will accommodate the relocation and expansion of the Company’s office and associated operations and workforce, (ii) the City issuing to the Company (which issuance will not be unreasonably withheld, delayed or conditioned) a certificate of occupancy (the “*Certificate of Occupancy*”) upon completion of the renovation work on the Facility, (iii) the Company occupying the Facility and (iv) such other conditions as are set forth in Section 2; *provided, however*, and notwithstanding any provision herein to the contrary, if the Company shall, after having acted in good faith, fail to execute one of either the Lease Agreement or the Purchase Agreement, receive the Certificate of Occupancy or occupy the Facility within the respective periods set forth in subsections 3(s)(i), 3(s)(ii) and 3(s)(iii), (v) this Agreement will terminate without such failure constituting a breach by the Company, (vi) the City’s obligation to remit the Relocation Incentive Payment or any Annual Incentive Payments will be terminated and (vii) the Company will owe no penalties to the City as a result of such failure.

Section 2. City’s Agreement to Provide Incentives.

(a) General. In consideration for the Company’s agreement to lease or purchase the Facility and relocate and expand its associated operations and workforce, and to relocate existing and create new jobs and employment opportunities, all within the City, the City agrees to provide economic development incentives to the Company in accordance with this Section.

(b) Relocation Incentive.

(i) Relocation Incentive Payment to the Company. The Company agrees to lease or purchase the Facility and to relocate and expand the Company’s office and its associated operations and workforce, all within the City. In consideration of the Company’s agreement to lease or purchase the Facility and to relocate and expand that office and relocate existing and create new jobs and employment opportunities, all within the City, and subject to the Company’s compliance with the requirements set forth in subsection 2(d), the City agrees to provide to the Company a relocation incentive payment (the “*Relocation Incentive Payment*”) in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), payable to the Company no later than One (1) Year following the date on which the City shall have

determined that all of the conditions set forth in subsections 1(c)(i), 1(c)(ii) and 1(c)(iii) shall have been satisfied.

(ii) Forfeiture of Right to Receive Relocation Incentive Payment. The Company agrees and acknowledges that the Relocation Incentive Payment provided for in subsection 2(b)(i) is being made by the City to the Company in consideration for the Company's agreement to lease or purchase the Facility and relocate and expand the Company's office and its associated operations and workforce, and to relocate existing and create new jobs and employment opportunities, all within the City. The Company further agrees that if the requirements of subsection 2(b)(i) are not satisfied, the City shall not be obligated to remit the Relocation Incentive Payment to the Company as required by this subsection 2(b).

(c) Workforce Creation Incentive.

(i) Calculation of Actual Payroll Withholding Taxes. On or before March 15 of each of the years 2022 through 2028, the City shall calculate the actual payroll withholding taxes collected and received during the then preceding calendar year and in respect of that preceding calendar year by the City from all Employees (as defined below). For purposes of that calculation, the Company acknowledges and agrees that the total amount of actual payroll withholding taxes in respect of any calendar year shall be determined based solely upon the amount of payroll withholding tax payments actually received by the City from the Company during that calendar year. The Company further acknowledges and agrees that any amount received by the City in respect of any calendar year, but following the conclusion of that calendar year, will not be considered in the total amount of actual payroll withholding taxes for that calendar year. The City reserves in its sole discretion the right to waive this limitation. For purposes of this Section 2, "Employees" shall include only those individuals employed by the Company and working within the City.

(ii) Information Relating to Employees. The Company agrees that, in accordance with the City's codified ordinances, as may hereafter be amended from time to time (the "Dublin City Code"), the annual payroll reconciliation and related W-2 forms relating to its Employees will be provided to the City prior to February 28 of each calendar year.

(iii) Employer Identification Number. The Company's Federal Employer Identification Number is _____. The Company agrees that if the Federal Employer Identification Number changes at any time during the term of this Agreement, the Company will notify the City of such change, including the new Federal Employer Identification Number, within thirty (30) days of the occurrence of such change.

(iv) Annual Incentive Payments to the Company. Subject to the Company's compliance with the requirements set forth in subsection 2(d), if the actual payroll withholding taxes collected and received by the City pursuant to subsection 2(c)(i) during the then preceding calendar year and in respect of that preceding calendar year from all Employees, net of refunds (such amount being referred to as the "Actual Withholdings"), equal or exceed the Target Withholdings (as defined in subsection 2(c)(v)) for that preceding calendar year, the City shall, on or before April 15 of the then current calendar year, pay to the Company,

solely from nontax revenues (as defined in subsection 2(f)), an amount equal to the product of (A) the difference between (I) an amount equal to the Actual Withholdings for that preceding calendar year minus (II) an amount equal to the Base Withholdings for that preceding calendar year (if such difference is less than zero dollars, then for purposes of this computation, that difference shall equal zero dollars), multiplied by (B) fifteen percent (15%) (with each such product being referred to as an “Annual Incentive Payment”); *provided, however,* that (1) the City shall not be required pursuant to this subsection 2(c) to remit an Annual Incentive Payment to the Company in excess of the Annual Cap (as defined in subsection 2(c)(v)) in any calendar year, and (2) the aggregate amount of all Annual Incentive Payments remitted pursuant to this subsection 2(c) by the City to the Company shall not exceed Seventy-Five Thousand and 00/100 Dollars (\$75,000.00).

(v) Base Withholdings, Target Withholdings and Annual Cap. The Base Withholdings, the Target Withholdings and the Annual Cap for each of the calendar years 2021 through 2027 shall be as follows:

<u>Calendar Year</u>	<u>Base Withholdings¹</u>	<u>Target Withholdings¹</u>	<u>Annual Cap</u>
2021	\$2,871,914	\$4,700,000	\$7,000
2022	2,871,914	5,300,000	8,500
2023	2,871,914	5,800,000	9,500
2024	2,871,914	6,200,000	11,000
2025	2,871,914	6,700,000	12,500
2026	2,871,914	6,834,000	13,000
2027	2,871,914	6,970,680	13,500

(1) The Base Withholdings represents the estimated payroll withholding taxes which will be collected in respect of the Company’s thirty-nine (39) existing employees which will be relocated to the City. The difference between the Target Withholdings and the Base Withholdings for each calendar year reflects the anticipated minimum withholdings attributable to new employee positions created after the Company relocates to the City.

(vi) Forfeiture of Right to Receive Annual Incentive Payment. The Company agrees and acknowledges that the Annual Incentive Payments provided for in subsection 2(c) are being made by the City to the Company in consideration for the Company’s agreement to lease or purchase the Facility to relocate and expand the Company’s office and its associated operations and workforce, and to relocate existing and create new jobs and employment opportunities, all within the City. The Company further agrees that if the Target Withholdings requirement is not met for any given calendar year as set forth in subsection 2(c)(v), the City shall not be obligated to make an Annual Incentive Payment to the Company for the calendar year in respect of which the Target Withholdings requirement was not satisfied. Failure to satisfy the Target Withholdings requirement in respect of any one calendar year does not prohibit the Company from receiving an Annual Incentive Payment for any subsequent calendar year in respect of which the Target Withholdings requirement is satisfied.

(d) Filing of Municipal Income Tax Returns and Remission of Related Taxes.

(i) The Company agrees that it shall timely (A) file directly with the City all municipal income tax returns and (B) remit directly to the City all municipal income tax payments, each as required by the Dublin City Code. While Ohio law currently permits the

Company to file its municipal income tax returns and remit its municipal income tax payments directly through the Ohio Business Gateway, the Company acknowledges that if in respect of any of the tax years 2021 through 2027 (inclusive) the Company either (C) files a related municipal income tax return or (D) remits a related municipal income tax payment, in either case directly with the Ohio Business Gateway instead of the City, then notwithstanding subsection 2(d)(ii), the Company shall forfeit its right to receive and the City shall not be obligated to remit any payment which the City might otherwise be required to pay pursuant to subsections 2(b)(i) or 2(c)(iv) (each applicable payment being referred to as a “*Required Payment*”) in respect of that tax year.

(ii) Not earlier than fifteen (15) days preceding the date on which the City is required to make a Required Payment to the Company, the City shall determine whether the Company is in full compliance with its obligation to remit municipal income taxes to the City pursuant to the Dublin City Code. If the City reasonably determines that the Company is not in full compliance, the City shall not be obligated to make the Required Payment on the required payment date and will promptly provide written notification of such determination to the Company. If within sixty (60) days following the date of the City’s written notification the City receives a payment from the Company which the City reasonably determines will cause the Company to be in full compliance with its municipal income tax obligations pursuant to the Dublin City Code (including any applicable interest and penalties), the City will within fifteen (15) days of receipt of such payment remit to the Company the Required Payment. If, however, the Company fails to timely remit sufficient payment to the City in accordance with the preceding sentence, the City may in its sole discretion determine that the City’s obligation to remit such Required Payment is voided and that such Required Payment will not be made, and will promptly provide written notification to the Company of such determination.

(e) Method of Payment. The payments to be paid to the Company as provided in this Section 2 shall be made by the City to the Company by electronic funds transfer or by such other manner as is mutually agreed to by the City and the Company.

(f) City’s Obligation to Make Payments Not Debt; Payments Limited to Nontax Revenues. Notwithstanding anything to the contrary herein, the obligations of the City pursuant to 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 the Company 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 herein. Consistent with Section 13 of Article VIII, Ohio Constitution, any payments or advances required to be made by the City pursuant to this Section 2 shall be payable solely from the City’s nontax revenues and on a subordinated basis to the payment of debt service charges as may hereafter be payable on securities of the City which are payable from the City’s nontax revenues. Further, since 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 this Section 2 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 such nontax revenues. For purpose of this Agreement, “*nontax revenues*” shall mean, all moneys of the City which are not moneys raised by taxation, to the extent available for such purposes, including, but not limited to the following: (i)

grants from the United States of America and the State; (ii) payments in lieu of taxes now or hereafter authorized to be used for the purposes by State statute; (iii) fines and forfeitures which are deposited in the City's General Fund; (iv) fees deposited in the City's General Fund from properly imposed licenses and permits; (v) investment earnings on the City's General Fund and which are credited to the City's General Fund; (vi) investment earnings of other funds of the City that are credited to the City's General Fund; (vii) proceeds from the sale of assets which are deposited in the City's General Fund; (viii) rental income which is deposited in the City's General Fund; and (ix) gifts and donations.

Section 3. Miscellaneous.

(a) Assignment. This Agreement may not be assigned without the prior written consent of all non-assigning Parties.

(b) Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

(c) 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.

(d) Day for Performance. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.

(e) Economic Development Assistance Certification. The Company has made no false statements to the City in the process of obtaining approval of the incentives described in this Agreement. If any representative of the Company has knowingly made a false statement to the City to obtain the incentives described in this Agreement, the Company shall be required to immediately return all benefits received under this Agreement pursuant 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 Ohio Revised Code Section 9.66(C)(1). The Company acknowledges that 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 Ohio Revised Code Section 2921.13(F)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months

(f) Entire Agreement. This Agreement constitutes the entire Agreement between the Parties on the subject matter hereof and supersedes all prior negotiations, agreements and understandings, both written and oral, between the Parties with respect to such subject matter. This Agreement may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

(g) Events of Default and Remedies. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any Party hereto, such defaulting Party shall, upon written notice from any non-defaulting Party, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after

receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting Party shall upon written notice from any non-defaulting Party commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.

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

(i) Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City or the Company other than in his or her official capacity, and neither the members of the legislative body of the City nor any City or Company official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the City and the Company contained in this Agreement.

(j) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its principles of conflicts of laws. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Company, 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 Franklin County, Ohio.

(k) Legal Authority. The Parties respectively represent and covenant that each is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. The Parties further respectively represent and covenant that this Agreement has, by proper action, been duly authorized, executed and delivered by the Parties and all steps necessary to be taken by the Parties have been taken to constitute this Agreement, and the covenants and agreements of the Parties contemplated herein, as a valid and binding obligation of the Parties, enforceable in accordance with its terms.

(l) Limit on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event shall the City or the Company be liable to each other for punitive, special, consequential, or indirect damages of any type and regardless of whether such damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law.

(m) 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 Dublin, Ohio
5800 Shier Rings Road
Dublin, Ohio 43016-7295
Attention: Economic Development Director

- (ii) the Company at: Dave Thomas Foundation for Adoption

_____, Ohio 43_____
Attention: _____

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.

(n) No Waiver. No right or remedy herein conferred upon or reserved to any Party is intended to be exclusive of any other right or remedy, and each and every right or remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of any event of default hereunder. The failure of any Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the Parties hereto may be exercised from time to time and as often as may be deemed expedient by the parties hereto, as the case may be.

(o) Recitals. The Parties 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.

(p) Reporting Requirements. The Company acknowledges that it is hereby advised by the City that certain accounting reporting requirements may obligate the City to treat and report payments remitted hereunder to the Company as a tax abatement. Notwithstanding any such reporting requirements, the Company acknowledges and agrees that the Company is not entitled hereunder to an abatement or exemption of any tax obligation that would otherwise be payable pursuant to the Dublin City Code.

(q) Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each

such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

(r) Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

(s) Term of Agreement. This Agreement shall become effective as of the Effective Date and shall continue until the earlier of (i) December 31, 2019 provided that as of that day the Company shall have theretofore failed to satisfy the requirements of subsection 1(b)(i), (ii) July 31, 2020 provided that as of that day the Company shall have theretofore failed to satisfy the requirements of subsection 1(b)(ii), (iii) July 31, 2020 provided that as of that day the Company shall have theretofore failed to satisfy the requirements of subsection 1(b)(iii) or (iv) the day on which the final Annual Incentive Payment which the City is obligated to pay hereunder is received by the Company.

(t) Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the City and the Company 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 DUBLIN, OHIO

By: _____

Printed: Dana L. McDaniel

Title: City Manager

Approved as to Form:

By: _____

Printed: Jennifer D. Readler

Title: Director of Law

DAVE THOMAS FOUNDATION FOR ADOPTION

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 under the foregoing Agreement during Fiscal Year 2019 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 Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2019

Angel L. Mumma
Director of Finance
City of Dublin, Ohio