

ORDINANCE RECORD
COUNCIL OF THE CITY OF BRECKSVILLE

Ordinance No. 5536

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH DMS RETAIL ENTERPRISES, LLC DBA TIDE CLEANERS CONCERNING THE GRANTING BY THE CITY OF CERTAIN INCENTIVES TO CREATE AND PRESERVE JOBS WITHIN THE CITY OF BRECKSVILLE; AND DECLARING AN EMERGENCY

WHEREAS, the City, in an effort to maintain and increase the number of jobs generated by DMS Retail Enterprises, LLC dba Tide Cleaners within the City of Brecksville, and to provide certain economic incentives for DMS Retail Enterprises, LLC dba Tide Cleaners to maintain or expand its current operations, has offered certain economic incentives to DMS Retail Enterprises, LLC dba Tide Cleaners in exchange for the contractual obligation to maintain its business within the City for no less than ten (10) years subject to the city's Municipal withholding income tax and to maintain a Minimum Level of Operation; and

WHEREAS, the City has determined that these efforts will result in substantial benefits to the City through the creation of jobs, economic opportunities and the generation of additional tax revenues.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Brecksville, County of Cuyahoga, and State of Ohio, that:

SECTION 1. The Mayor be and is hereby authorized to execute an Agreement on behalf of the City of Brecksville with DMS Retail Enterprises, LLC dba Tide Cleaners relating to the creation and preservation of jobs within the City of Brecksville and the State of Ohio, a copy of such Agreement is attached hereto, expressly made a part hereof by reference and marked Exhibit "A."

SECTION 2. The Council hereby appropriates sufficient funds to effectuate the provisions contained in Section 1 hereof, and the Director of Finance is hereby authorized to transfer the funds necessary to complete this expenditure from the available, non-tax revenue, funds of the City. The Director of Finance be and is hereby further authorized to issue the fiscal officer's certificate necessary to make the expenditures as described in Section 1 hereof and is further directed to issue vouchers of this City in the amounts and for the purposes as expressed in Section 1 hereof, said amounts to be charged to the appropriately designated Fund.


SECTION 3. The Council declares this Ordinance to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, the reason for the emergency is that the Company is scheduled to begin its operations in the City, said Ordinance shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise, from and after the earliest period allowed by law.


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COUNCIL OF THE CITY OF BRECKSVILLE

Ordinance No. 5536

PASSED: August 16, 2022

APPROVED: August 16, 2022


MAYOR


CLERK OF COUNCIL

I do hereby certify that the foregoing is a true and correct copy of Ordinance No. 5536 duly passed by the Council of the City of Brecksville, Ohio, on 8-16, 20 22 and that same was duly posted in accordance with the existing Charter of the City of Brecksville on 8-19, 20 22



CLERK OF COUNCIL

EXHIBIT "A"

ECONOMIC INCENTIVE AND JOB PRESERVATION AGREEMENT

This agreement (the "Agreement") is made and entered into this ____ day of _____, 2022, by and between DMS RETAIL ENTERPRISES, LLC, an Ohio Limited Liability Company doing business as and a franchisee of Tide Cleaners (hereinafter referred to as "Grantee") with its principal place of business relocated to 10303 Brecksville Road, Brecksville, Ohio, 44141; DMS CONSTRUCTION ENTERPRISES, LLC, an Ohio Limited Liability Company (hereinafter referred to as the "Guarantor"); and the CITY OF BRECKSVILLE, OHIO (the "City"), an Ohio Municipal Corporation, and under the authority of Ordinance No. _____, passed the ____ day of _____, 2022 and attached as Exhibit A (the "Ordinance").

WHEREAS, the City desires to encourage economic growth and the creation and preservation of employment opportunities within the City; and

WHEREAS, the City, in an effort to increase and maintain the number of jobs generated by the Grantee within the City and to provide certain economic incentives for the Grantee's relocation to the City, has offered certain economic incentives to the Grantee in exchange for this contractual obligation to maintain a presence and Minimum Level of Operation, as defined herein, within the City and the State of Ohio (the "State") for a period of at least ten (10) years (the "Incentive Period"); and

WHEREAS, the City has determined that these efforts will result in substantial benefits to the City through the preservation and creation of jobs and the generation of additional tax revenues.

NOW, THEREFORE, in exchange for the mutual covenants expressed herein, the parties hereby agree as follows:

1. Description of Grantee Business and Operations – The Grantee is the franchisee of Tide Cleaners, a nationwide professional dry cleaning and laundry service franchise, for the Northeast Ohio region. In 2008, the Tide Cleaners franchise was established by Agile

Pursuits Franchising, Inc., a subsidiary of P&G, to offer dry cleaning storefront locations, delivery, pick-up and drop-off locations, and more. Tide Cleaners is headquartered in Cincinnati, Ohio, and has approximately one hundred and ninety (190) locations across the United States.

The Grantee is under common ownership of the owner of the land and facility with a mailing address of 10303 Brecksville Road, Brecksville, Ohio, 44141, and Permanent Parcel Number 605-21-019 (the “Property”), and said owner of the Property is DMS Construction Enterprises, LLC. The Grantee has relocated its operations from the City of Akron, Ohio to the Property, and has expanded said operations to include its executive offices and a processing facility for ten (10) Tide Cleaners storefront locations and six (6) pick-up routes.

The Grantee will employ approximately thirty (30) full-time employees with an estimated minimum annual payroll subject to the City’s Municipal Withholding Income Tax of One Million Six Hundred Thousand Dollars (\$1,600,000), on which income tax will be collected by the City through its proper agency, Regional Income Tax Agency (hereinafter referred to as “RITA”).

2. Incentive by City – The City will provide the economic incentive to the Grantee as set forth below. This “Incentive Amount” is payable to the Grantee based upon the following conditions, formula, and terms:
 - a. The “Incentive Period” begins on the date of issuance of the unconditional Certificate of Occupancy, June 14, 2022 (hereinafter referred to as the “Incentive Period Commencement Date”) and ends on June 13, 2032 (hereinafter referred to as the “Incentive Period End Date”).
 - b. The City shall pay the Grantee the Incentive Amount annually in the amount equal to thirty-five percent (35%) of the City’s Municipal Withholding Income Tax paid for the Grantee’s payrolls subject to the City’s Municipal Withholding Income Tax

in each tax year of the Incentive Period only when the Minimum Level of Operation as described in the Minimum Level of Operation Chart herein is met.

c. Minimum Level of Operation Chart

Tax Year	Minimum Payroll	2% Tax
2022*	\$881,095.89*	17,621.92
2023	\$1,600,000.00	\$32,000.00
2024	\$1,600,000.00	\$32,000.00
2025	\$1,600,000.00	\$32,000.00
2026	\$1,600,000.00	\$32,000.00
2027	\$1,600,000.00	\$32,000.00
2028	\$1,600,000.00	\$32,000.00
2029	\$1,600,000.00	\$32,000.00
2030	\$1,600,000.00	\$32,000.00
2031	\$1,600,000.00	\$32,000.00
2032**	\$718,904.11**	\$14,378.08

*Minimum payroll required to meet Minimum Level of Operation is prorated from the Incentive Term Commencement Date, June 14, 2022 to December 31, 2022.

** Minimum payroll required to meet Minimum Level of Operation is prorated from January 1, 2032 to the Incentive Term End Date of June 13, 2032.

- d. The Grantee shall receive payment of its annual Incentive Amount from the City based on the actual amount of the City's Municipal Withholding Income Tax and paid by the City to the Grantee within thirty (30) days of the Grantee's filing of its annual withholding reconciliations with RITA in the year following the year that said actual City Municipal Withholding Income Tax was paid.

3. Commitment by the Grantee – In consideration of payment of the Incentive Amount by the City set forth above, the Grantee agrees to maintain its business within the City for a period of no less than ten (10) years, ending on June 13, 2032, subject to termination as set forth below, and to achieve and maintain the payrolls subject to the City’s Municipal withholding Income Tax and described in the Minimum Level of Operation Chart.

4. Non-Compliance Process – The City and the Grantee agree that if the Grantee fails to operate within the City for each of the years of the Incentive Period at the level necessary to achieve the incentive granted under the terms of the Agreement, the Grantee shall promptly meet with the City to discuss ways in which the Grantee will increase their level of operations so that in the subsequent year, the Grantee not only meets such level, but makes up any deficiency in the payrolls subject to the City's Municipal Withholding Income Tax. The City and the Grantee agree that the intent and goal is that the Grantee maintain, at least, the payrolls subject to the City's Municipal Withholding Income Tax necessary to achieve payment of the Incentive Amount, but if that is not achieved on an annual basis, the Grantee shall increase its operations (subject to force majeure) to assure that the total incentive as set forth in the Agreement shall be achieved. The Grantee and the City agree that the process to address the Grantee's compliance is as follows:
 - a. The Grantee is required to timely submit to the City all City tax filing information and the City will review annually such information for compliance with this Agreement.

 - b. The City will only make annual payments of the Incentive Amount in years in which the Grantee pays to the City at least ninety percent (90%) of their projected City Income Tax prescribed in the Minimum Level of Operation Chart. If, in subsequent years, the Grantee makes sufficient City tax payments to cover the previous shortfall, the payment of incentive payback will be made by the City.

 - c. If the Grantee fails to meet ninety percent (90%) of their projected City Income Tax for three (3) consecutive calendar years, the Grantee will be required to meet with

the Mayor and City Council to present a plan for 1) meeting their Agreement commitment, 2) making agreed upon modifications to the Agreement commitment, or 3) the Grantee will make plans to exit from the Agreement.

5. Penalty for Non-Compliance – The City and the Grantee agree that if the Grantee ceases to operate within the City at the Minimum Level of Operation defined in the Minimum Level of Operation Chart for a period of at least ten (10) years from the Incentive Period Commencement Date, the Grantee shall reimburse to the City under the following formula:

a. If the Grantee ceases to meet its obligation specified as in Sections 2, 3, and 4 in the first five (5) years after the Incentive Period Commencement Date, the Grantee shall reimburse the City one hundred percent (100%) of the incentive paid by the City.

b. Thereafter, if the Grantee fails to meet its obligation as specified in Sections 2, 3, and 4 hereof in years six (6) through ten (10) after the Incentive Period Commencement Date, the Grantee shall reimburse the City the percentage of the reimbursement as set forth below:

- i. Year 6 90%
- ii. Year 7 80%
- iii. Year 8 70%
- iv. Year 9 60%
- v. Year 10 50%

c. Upon failure of the Grantee to make a timely reimbursement to the City, the City shall provide written notice of default. In the event that the Grantee fails to make the reimbursement to the City within the thirty (30) days of the date of the notice, the City may enforce its rights against the Property, as described in Section 8.

6. Proof of Level of Operation – The Grantee agrees to provide to the City such proof as may be reasonably required by the City, including but not limited to payroll records to demonstrate that the Grantee is maintaining its agreement with the City.
7. Reimbursement of Funds – In the event the City determines that the Grantee has failed to meet its obligations as specified herein, the Grantee agrees to pay the City the amount or that portion of the amounts of the incentive paid to or expended on behalf of the Grantee by the City as provided in Section 5 hereof and within thirty (30) days of the date written notice is provided by the City to Grantee of such determination.
8. Security for Agreement – As additional consideration for the City’s economic incentive granted to the Grantee herein, the Grantee agrees that until the passage of ten (10) years from the Incentive Period Commencement Date, the obligation to reimburse the City for the amount prescribed above may constitute a lien against the Property upon which the Grantee’s operations are located in the City. The Grantee is under common ownership of the owner of the land and facility with a mailing address of 10303 Brecksville Road, Brecksville, Ohio, 44141, and Permanent Parcel Number 605-21-019 (the “Property”), and said owner of the Property is DMS Construction Enterprises, LLC. The Grantee and Guarantor hereby authorize and permit the placement of a lien against DMS Construction Enterprises, LLC to secure this obligation, which may only be recorded upon the expiration of thirty (30) days after the City provides the Grantee written notice of default pursuant to the Agreement. The authorization for this lien shall be evidenced by the Grantee and the Guarantor being signators of the Agreement. The City agrees to permit this lien to be subordinate to any bank financing the Grantee may undertake.
9. Authority to Sign – The Grantee, the Guarantor, and the City acknowledge that this Agreement must be approved by formal action of the Council of the City and as a condition for the Agreement to take effect. This Agreement takes effect upon such City Council approval and the execution by the parties hereto.
10. Assignment or Transfer – Grantee agrees that this agreement is not transferrable or assignable without the express, written approval of the City, not to be unreasonably withheld. The City acknowledges that it would be unreasonable to withhold such consent

in the event of a proposed transfer or assignment by Grantee to any parent, subsidiary or affiliate of Grantee or to any other party so long as with respect to all or any of such proposed transfers or assignments, the proposed transferee or assignee adequately and sufficiently demonstrates to the City's reasonable satisfaction, its financial ability and intentions to continue its Minimum Level of Operation in a manner similar to that of Grantee in all pertinent respects. The intent of any assignment or transfer shall not be to circumvent or avoid the provisions of this agreement.

11. Choice of Law – This Agreement shall be governed and interpreted in accordance with the laws of the State of Ohio and the parties hereto agree that any dispute or any other matter arising out of the interpretation or operation of this Agreement shall be determined in a Court of competent jurisdiction located within the State of Ohio and County of Cuyahoga.

12. Binding Agreement – The Agreement shall be binding on each of the parties and their respective successors and assigns.

13. Miscellaneous

- a. Any notice or communication required or permitted to be given under this Agreement by either party to the other shall be deemed sufficiently given if delivered personally or mailed by United States registered or certified mail postage prepaid and addressed as follows:

To the City:
Office of the Mayor
City of Brecksville
9069 Brecksville Road
Brecksville, Ohio 44141

To the Grantee:
James Sherman

10303 Brecksville Road
Brecksville, Ohio 44141

To the Guarantor:

Any party may change its address for notice purposes by providing written notice of such address to the other parties.

- b. This Agreement may only be amended by written instrument executed by all parties.
- c. This Agreement is signed by the parties as a final expression of all the terms, covenants and conditions of their agreement and as a complete and exclusive statement of its terms, covenants and conditions and is intended to supersede all prior agreements and understandings concerning the subject matter of this Agreement.
- d. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.
- e. The invalidity or unenforceability of any one or more phrases, sentences, clauses, or sections in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part thereof.

IN WITNESS WHEREOF, the parties hereto, by and through their duly authorized representatives, have executed this Agreement on behalf of the entities identified herein, on the date first written above.

GRANTEE

**DMS RETAIL ENTERPRISES, LLC
AN OHIO LIMITED LIABILITY COMPANY**

BY: _____

James Sherman, President

GUARANTOR

**DMS CONSTRUCTION ENTERPRISES, LLC
AN OHIO LIMITED LIABILITY COMPANY**

BY: _____

THE CITY OF BRECKSVILLE

BY: _____

Jerry N. Hruby, Mayor Approved as to Form:

BY: _____

Law Director, City of Brecksville

This Agreement has been authorized by the Council of the City of Brecksville by Ordinance No. _____, adopted on the ____ day of _____, 2022.

Tammy Tabor, Clerk of Council

STATE OF OHIO)
) SS: NOTARY PUBLIC
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named James Sherman, who is the duly authorized President of DMS Retail Enterprises, LLC who, after first being duly cautioned to law, acknowledged that he has the power to bind the aforesaid limited liability company to the terms and conditions of the foregoing instrument and that he did sign the foregoing instrument and that the same is his free act and deed and the corporate act and deed of the said DMS Retail Enterprises, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this ____ day of _____, 2022.

Notary Public

STATE OF OHIO)
) SS: NOTARY PUBLIC
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named _____, who is the duly authorized President of DMS Construction Enterprises, LLC who, after first being duly cautioned to law, acknowledged that he has the power to bind the aforesaid limited liability company to the terms and conditions of the foregoing instrument and that he did sign the foregoing instrument and that the same is his free act and deed and the corporate act and deed of the said DMS Construction Enterprises, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this ____ day of _____, 2022.

Notary Public

STATE OF OHIO)

) SS:

NOTARY PUBLIC

COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Jerry N. Hruby, the duly elected and acting Mayor of the City of Brecksville, who acknowledged that he did sign the foregoing instrument on behalf of the City of Brecksville after being first duly authorized by appropriate Councilmatic action, and that the same is his free act and deed and the act and deed of the said City of Brecksville.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this ____ day of _____, 2022.

Notary Public