

JOB CREATION AGREEMENT FOR POTATO BARN

This Job Creation Agreement for HB Enterprises, LLC dba Potato Barn, (the “Agreement”) is entered into as of the ____ day of _____, 2022 (the “Effective Date”) by and between HB Enterprises, LLC, an Arizona Limited Liability Company, dba as Potato Barn (“Potato Barn.”), and the City of Goodyear, an Arizona municipal corporation (the “City”). and the City are sometimes referred to herein collectively as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, the Potato Barn is Arizona family-owned retailer of unique furniture and one-of-a-kind design pieces home furnishings from around the world; and

WHEREAS, the Potato Barn has retail locations in the east valley, including Mesa, Scottsdale and Chandler; and

WHEREAS, the Potato Barn has identified the need for a new retail and warehouse facility in the west valley market and has identified Goodyear as its preferred location that will accommodate its immediate and long-term expansion plans and otherwise meet its business needs, and will cause to be constructed a new 100,000 square foot building generally located on southwest corner of Pebblecreek Parkway and McDowell Road within the City of Goodyear (the “Goodyear Facility”) as more particularly described in Exhibit “1” attached hereto; and

WHEREAS, the location of the Potato Barn at the Goodyear Facility should involve the investment of approximately \$18,500,000 in capital investments in causing the construction of a new 100,000 square foot building, and tenant improvements and equipping of the Goodyear Facility; and

WHEREAS, the City recognizes that the location of the Potato Barn within the City with its resulting capital investment and job creation will provide a significant public benefit to the City and its citizens and that the City’s citizens will receive direct consideration from the Parties’ obligations under this Agreement; and

WHEREAS, the City recognizes that the Potato Barn’s operations at the Goodyear Facility will have significant economic impact on the City, including but not limited to: the quantity and quality of the jobs that will result from the Potato Barn’s operations; tax revenues generated by the Potato Barn’s operations, its employees, vendors, service providers; increased economic activity, or multiplier effect, associated with its operations being located within the City; the qualitative value of the City having a high-profile, well-respected company locate a critical piece of its business within the City; the catalytic effect it will have on further development within the City, which will generate additional jobs and revenue within the City; and

WHEREAS, the Potato Barn along with its tenant John Michael's Designs, anticipates that over the course of five (5) years, its operations should cumulatively provide 45 full-time jobs to the City, paying employees a cumulative average hourly wage of \$22.78 per hour, not including overtime or; and

WHEREAS, the City commissioned Applied Economics to conduct an economic and fiscal impact analysis of Potato Barn's operations at the Goodyear Facility; and

WHEREAS, Applied Economics estimates the direct tax benefit to the City of Goodyear from the construction sales tax, personal property tax, occupancy tax, and real property tax generated by Potato Barn during the first five (5) years of operation will be approximately \$2,416,408; and

WHEREAS, Applied Economics estimates the total economic impacts of Potato Barn's operations in Goodyear will total approximately \$39,607,665 over the next five (5) years; and

WHEREAS, current economic conditions within the United States including increased construction and materials costs, supply chain issues, and increasing financing costs, have materially impacted the ability of the Goodyear Facility to move forward without the assistance from the City as provided in this Agreement; and

WHEREAS, the Parties understand that the decision of the Potato Barn to locate in the City and construct the facility upon which the Goodyear Facility will be located is based on the City's willingness to provide assistance to the Potato Barn regarding job creation; design review and permit fees, expedited development process, and waiver of certain development impact fees; and

NOW, THEREFORE, in consideration of the premises, promises and mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, it is hereby agreed as follows:

AGREEMENT

1. Acknowledgement of Recitals. The Parties acknowledge the accuracy and importance of the Recitals to the Parties' obligations below, and that the Recitals are the factors upon which the Parties based their respective decisions to enter into this Agreement.

2. Term. The term of this Agreement shall be for five (5) years from the date this Agreement is approved by the Goodyear City Council.

3. Definition. References to "Potato Barn" in this Agreement shall mean HB Enterprises, LLC, an Arizona Limited Liability Company, and its successors and/or permitted assignees.

4. Location in Goodyear. The Potato Barn has entered into a contract to have constructed a 100,000 square foot building for the location of the Goodyear Facility and the Potato Barn will soon begin construction of the Goodyear Facility and anticipates it will complete

construction of the facility by late 2022 or early 2023 and, within three (3) years of the Effective Date of this Agreement, the Potato Barn will have invested, or will cause to have been invested, at least \$15,300,000 in the acquisition and improvement the property upon which the Goodyear Facility will be located to include tenant improvements to a newly constructed building, fixturing, and equipping, the property for the Goodyear Facility.

5. Operations and Job Creation. The Potato Barn agrees that it shall operate the Goodyear Facility in the ordinary course of its business for a minimum period of five (5) years from the date the City issues a final Certificate of Occupancy authorizing the Potato Barn's occupancy of the Goodyear Facility. Additionally, over the course of five (5) years after issuance of a final Certificate of Occupancy, the Potato Barn and John Michael's Designs will maintain Minimum Employment as defined in Section 8 below.

6. Development Process Assistance. The City agrees to waive or reimburse all plan review, site plan review and permit fees ("Plan Fees"), including the expedited portion of plan review fees, up to a maximum of \$132,952 related to the Goodyear Facility. The City will also process tenant improvement and ground up construction plans on an expedited basis if needed for the Goodyear Facility. To the extent that the Potato Barn paid (or had paid on its behalf) any Plan Fees to the City prior to the Effective Date of this Agreement, the City agrees to reimburse such fees to the Potato Barn or a third-party beneficiary designated by the Potato Barn in a written notice to the city within thirty days of the Effective Date of this Agreement. The City shall account for and provide documentation to the Potato Barn that expressly identifies the specific sums of fees waived within thirty (30) days of the effective date of this Agreement.

The City further agrees to waive development impact fees for the construction of the Goodyear Facility up to \$492,917. The Parties recognize that the City will be responsible for paying development impact fees that would have been assessed in the development of the Goodyear Facility as required by state law. Potato Barn shall be responsible for any development impact fees assessed for future expansion of the Goodyear Facility.

The development process assistance offered in this Section 6 is conditioned on Potato Barn's obligations under Section's 5, 7 and 8 of this Agreement and such assistance shall collectively be referenced as the "Development Process Assistance".

To further facilitate the timely construction of the Goodyear Facility, the City further agrees to provide a single point contact, initially designated as Tom Paradise, for inspections related to the construction of the Goodyear Facility with inspections conducted within 24 hours during the work week. Deputy City Manager Wynette Reed will also serve as the project sponsor on this project to assist the project through the development review and approval process in the City.

Should the Potato Barn not open the Goodyear Facility within twelve months (12) months of the issuance of a final Certificate of Occupancy or operate the Goodyear Facility for at least twenty-four (24) months prior to the expiration of this Agreement, then the Potato Barn shall reimburse the City for the cost of Development Process Assistance funds that were waived pursuant to this provision.

7. Minimum Capital Investment. As a term of this Agreement, Potato Barn agrees to make a Minimum Capital Investment, or cause to be invested, at least \$15,300,000 causing the construction of a new 100,000 square foot building and fixturing and equipping and land acquisition of the Goodyear Facility within eighteen months (18) months of the Effective Date of this Agreement.

8. Minimum Employment. As a condition of this Agreement, Potato Barn along with its tenant John Michael's Designs agrees to create and hire a minimum of forty-five (45) new positions at the Goodyear Facility paying an average wage of at least \$22.78 per hour within 18 months of receiving its final certificate of occupancy for the Goodyear Facility. Potato Barn along with its tenant John Michael's Designs shall maintain an average employment of thirty-eight (38) positions at the Goodyear Facility certified annually to Goodyear no later than December 31 of each calendar year.

Should Potato Barn and its tenant John Michael's Designs not meet the Minimum Employment requirements, the City shall send a Notice of Non-Compliance to Potato Barn. Upon receipt of the Notice of Non-Compliance, Potato Barn shall have six (6) additional months to meet the Minimum Employment requirements at the Goodyear Facility. After the additional six (6) month period, should Potato Barn still not have met the Minimum Employment requirements, as the sole and exclusive remedy, Potato Barn shall be obligated to reimburse the City for Development Process Assistance funding paid by the City pursuant to Schedule below. Should Potato Barn subsequently meet the Minimum Employment requirements threshold prior to the expiration of this Agreement, the City shall return to Potato Barn any funds previously returned to the City under this provision. In determining the portion of the incentives to be returned, if any, the City will consider all relevant circumstances including whether Potato Barn continues to maintain operations in the City and force majeure as described in Section 13. The City will make its determination upon concluding joint discussions with the Potato Barn. In the event Potato Barn breaches this agreement, the City's sole and exclusive remedy is to require reimbursement of the Development Process Assistance funding or waived that were actually paid and documented by the City.

Should the Goodyear Facility not cumulatively hire forty-five(45) new employees with eighteen months of receiving its certificate of occupancy or fail to maintain an average employee count of 38 employees annually for the five year period after receiving its certificate of occupancy, Potato Barn shall be responsible for reimbursing Goodyear twenty percent (20%) of the Development Process Assistance funding that was provided for its failure to maintain its required employment counts in any calendar year. For purposes of example, if during the five-year period, the Potato Barn did not meet its employment requirements in one single year, but successfully maintained the required employment the other four years, the Potato Barn would be required to reimburse only twenty percent (20%) of the Development Process Assistance funding following the calendar year in which it did not meet its employment requirements. Such reimbursement shall be due within one hundred and twenty days of the conclusion of the calendar year and additional six (6) months period in which employment requirements were not met.

9. Incorporation of Exhibits. All exhibits attached hereto and referred to in this Agreement are incorporated herein by this reference and made a part of this Agreement.

10. Entire Agreement. This Agreement, including any exhibits attached hereto, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations, and understanding of the Parties, oral or written, are hereby superseded, and merged herein.

11. Amendment of the Agreement. This Agreement may be amended or cancelled, in whole or in part, only by a written agreement or amendment fully executed by the Parties.

12. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties. No person other than the Parties has any right of action based upon any provision of this Agreement.

13. Force Majeure. The deadlines contemplated in this Agreement shall be extended if the delay is caused by an act of God, adverse weather conditions, casualty, third party malicious mischief, moratoriums imposed by any governmental entity, unreasonable delays by governmental authorities, civil or military disturbance, war, or other events that are not reasonably foreseeable and not within the reasonable control of the Potato Barn. The amount of such extension shall be determined by the City after consultation with the Potato Barn.

14. Cooperation and Further Acts. The Parties shall act reasonably with respect to any and all matters that require either Party to review, consent or approve any act or matter hereunder. Each of the Parties shall promptly and expeditiously execute and deliver any and all documents and perform any and all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

15. Representation of Counsel. The City and the Potato Barn acknowledge that they were each represented by counsel, or have waived their opportunity to seek the advice of counsel in connection with the drafting of this Agreement, that each of them and their respective counsel reviewed and revised this Agreement, that each of them and their respective counsel have independently reached their own conclusions as to the enforceability of this Agreement, that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement and that the language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning.

16. Governing Law. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the substantive laws of the State of Arizona (without reference to conflict of law principles).

17. Venue. Any action arising from this Agreement, which includes by way of example, but not limitation, any action to enforce or interpret any provision of this Agreement, shall be commenced and maintained in a court of competent jurisdiction located within Maricopa County, Arizona, and the Parties hereby irrevocably waive any right to object to such venue.

18. Severability. Any provision of this Agreement that is declared void or unenforceable shall be severed from this Agreement, and the remainder of this Agreement shall otherwise remain in full force and effect.

19. Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through the impasse process, the Parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, either Party may request the presiding judge of the Superior Court of Maricopa County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

20. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

21. Attorneys' Fees and Costs. If either Party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees and court costs.

22. No Personal Liability. No member, shareholder, partner, owner, manager, officer, director, representative, agent, official, or employee of the City or the Potato Barn. shall be personally monetarily liable to the other party, or any successor or assignee, (a) in the event of any default or breach by any Party, (b) for any amount which may become due to such Party or its successor or assign, or (c) pursuant to any obligation of any Party under the terms of this Agreement.

23. Conflict of Interest. Pursuant to Arizona law, rules, and regulations, no member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. This Agreement is subject to, and may be terminated by the City, in accordance with the provisions of A.R.S. § 38-511.

24. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Potato Barn represents and warrants that they are duly formed and validly existing under the laws of the State of Arizona and that they are duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Potato Barn and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing.

25. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and the signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

27. Notices. All notices and communications provided for herein, or given in connection with this Agreement, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

The City:	City of Goodyear Attn: City Manager 190 N. Litchfield Rd. P.O. Box 5100 Goodyear, Arizona 85358 and City of Goodyear Attn: City Attorney 190 N. Litchfield Rd. P.O. Box 5100 Goodyear, Arizona 85338
To the Potato Barn:	HB Enterprises, LLC 5222 E. Fresno Drive Phoenix, AZ 85018

Notice of address may be changed by either Party by giving notice to the other Party in writing of a change of address. Such change will be deemed to be effective five days after date the written notice of change of address is personally delivered to the other Party or as of the seventh business day after mailing the written notice of change of address to the other Party by registered or certified United States Postal Service mail, return receipt requested, postage prepaid.

28. Date of Performance. If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday or legal holiday, then said obligation shall be due and owing, and said time period shall expire, on the first day thereafter which is not a Saturday, Sunday or legal holiday.

[signature page follows]

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as follows:

HB Enterprises, LLC, an Arizona Limited Liability Company

By: _____

Name:

Its:

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2022, before me, personally appeared _____, the _____ of the HB Enterprises, LLC, an Arizona Limited Liability Company, and he, in such capacity, being authorized to do so, executed the foregoing instrument on behalf of HB Enterprises, LLC., for the purposes contained therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

NOTARY SEAL:

CITY

CITY OF GOODYEAR,
an Arizona municipal corporation

By: _ Julie Karins
Its: City Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, _____ 2022, before me, personally appeared Julie Karins, the City Manager of the City of Goodyear, an Arizona municipal corporation, and she, in such capacity, being authorized to do so, executed the foregoing instrument on behalf of the City of Goodyear for the purposes contained therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

NOTARY SEAL:

ATTEST:

APPROVED AS TO FORM

City Clerk

City Attorney

Exhibit "1"

Goodyear Facility

Location of Potato Barn

