

## **JOB CREATION AGREEMENT FOR FAIRLIFE, LLC**

This Job Creation Agreement for Fairlife, LLC, (the "Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date") by and between Fairlife, LLC, a Delaware limited liability company ("Fairlife"), and the City of Goodyear, an Arizona municipal corporation (the "City"). Fairlife and the City are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

### **RECITALS**

WHEREAS, Fairlife is an international manufacturer and bottler of milk beverages, with its United States corporate headquarters located in Chicago, Illinois; and

WHEREAS, Fairlife has identified the need for a regional manufacturing and bottling facility to serve Arizona and portions of the western United States; and

WHEREAS, Fairlife identified the City as its preferred location for its new regional manufacturing facility that will accommodate its immediate and long-term expansion plans and otherwise meet its business needs, and will cause to be constructed and will operate a new 300,000 square foot building generally located at the northwest corner of N. Cotton Lane and W. Thomas Road in Goodyear, Arizona within the City (the "Goodyear Facility") as more particularly described in Exhibit "I" attached hereto; and

WHEREAS, the location of the Goodyear Facility should involve the investment of at least \$200,000,000 in capital investments in Phase I through the construction of a new building of approximately 300,000 sq. ft., and tenant improvements and equipping of the Goodyear Facility; and

WHEREAS, the City recognizes that the location of Fairlife 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 Fairlife'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 Fairlife's operations; tax revenues generated by Fairlife's operations, its employees, vendors, and 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

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WHEREAS, Fairlife anticipates starting operations in 2020 and over the course of five (5) years, its operations should cumulatively provide 140 full-time jobs to the City, paying each employee an annual wage of at least \$40,000, including overtime and bonuses; and

WHEREAS, the City commissioned Applied Economics to conduct an economic and fiscal impact analysis of Fairlife'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, and real property tax generated by Fairlife during the first five (5) years of operation will be approximately \$3.4 million; and

WHEREAS, Applied Economics estimates the total economic impacts of Fairlife's operations in Goodyear will total approximately \$817 million over the first five (5) years; and

WHEREAS, the Parties understand that the decision of Fairlife to locate in the City and lease the property upon which the Goodyear Facility will be located is based on the City's willingness to provide assistance to Fairlife regarding plan review and permit fees, and an expedited development process; 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 Fairlife in this Agreement shall mean Fairlife, LLC, a Delaware limited liability company, and its affiliates, successors and/or permitted assignees.
4. Definition. References to "Plan Fees or Plan Review and Permit Fees" in this Agreement shall mean fees pertaining to the submittal and review of construction plans and issuance of permits for both building and engineering plan reviews and permits. Fees pertaining to site plan approval or development impact fees are not included.
5. Location in Goodyear. Fairlife will construct or cause to be constructed a 300,000 square foot building for the Goodyear Facility and anticipates it will receive a final or temporary Certificate of Occupancy for the facility by the 4th quarter of 2020 and, within three (3) years of the Effective Date of this Agreement, Fairlife will have invested, or will cause to have been

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invested, a minimum of \$200,000,000 for the purchase of property, building construction, tenant improvements, fixturing, and equipping of the Goodyear Facility.

6. Operations and Job Creation. Fairlife 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 occupancy of the Goodyear Facility. Additionally, over the course of five (5) years after issuance of a final Certificate of Occupancy, Fairlife will maintain Minimum Employment as defined in Section 6 below.
7. Minimum Employment. Fairlife shall cumulatively hire and/or employ one hundred forty (140) full-time employees for Phase I (as defined herein) of the Goodyear Facility within thirty-six months (36) months of obtaining a final Certificate of Occupancy, and maintain an annual average of one hundred five (105) full-time employees ("Minimum Employment") at the Goodyear Facility after issuance of a final Certificate of Occupancy for a period of five years. Fairlife shall annually provide to Goodyear documentation that states the total number of employees who are employed at the Goodyear Facility each quarter. Fairlife agrees that each new employee at the Goodyear Facility who meets the following requirements will be counted towards the Minimum Employment figures in this Agreement: (i) the employee must be employed by Fairlife full-time (which shall be considered working at least thirty-six (36) hours per week); (ii) the full-time employee at the Goodyear Facility must be offered health insurance that is subsidized by Fairlife, with Fairlife paying at least sixty-five percent (65%) of the premium cost; and (iii) the full-time employee shall be paid an annual salary/wage of at least \$40,000 per year, including overtime and bonuses. Overtime and bonuses are included in the definition of annual wages. A new employee is defined as an employee hired after the Effective Date of this Agreement.

Should Fairlife not meet the Minimum Employment requirements, the City shall send a Notice of Non-Compliance to Fairlife. Upon receipt of the Notice of Non-Compliance, Fairlife shall have six (6) additional months following receipt of the Notice of Non-Compliance to meet the Minimum Employment requirements at the Goodyear Facility. After this additional six (6) month period, should Fairlife still not have met the Minimum Employment requirements, as the City's sole and exclusive remedy, Fairlife shall be obligated to reimburse the City for a prorated share of the waived Plan Fees (as defined below), based on the number of jobs created versus the Minimum Employment requirement, waived by the City. For example, if Fairlife only meets 75% of the required employment, then 25% of the waived and/or reimbursed Plan Fees shall be reimbursed to the City by Fairlife. In determining the portion of the incentives to be returned, if any, the City will consider all relevant circumstances including whether Fairlife continues to maintain operations in the City and force majeure as described in Section 14. The City will make its determination upon concluding joint discussions with Fairlife. Should Fairlife subsequently meet the Minimum Employment requirements threshold prior to the expiration of this Agreement, the City shall return to Fairlife any funds previously reimbursed to the City under this section.

8. Development Process Assistance. The City agrees to waive all plan review and permit fees ("Plan Fees"), including the expedited portion of any plan review fees (only if expedited plan

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review is available) up to a maximum of \$900,000 for Phase I from the date of the Effective Date of this Agreement. "Phase I" is defined as the period of time when initial investments are made resulting the Goodyear Facility obtaining a full Certificate of Occupancy. To the extent that Fairlife paid (or had paid on its behalf) any plan review or permit fees to the City prior to the Effective Date of this Agreement, the City agrees to reimburse such fees to Fairlife or a third party beneficiary designated by Fairlife in a written notice to the City within thirty (30) days of the Effective Date of this Agreement. The City shall account for and provide documentation to Fairlife that expressly identifies the specific sums of fees waived.

Should Fairlife not open the Goodyear Facility within twelve (12) months of the issuance of a final Certificate of Occupancy, or operate the Goodyear Facility for at least twenty-four (24) months (excluding reasonable or ordinary shutdown periods) prior to the expiration of this Agreement, then Fairlife shall reimburse the City for the cost of the Plan Fees that were waived pursuant to this provision.

9. Minimum Capital Investment. As a term of this Agreement, Fairlife agrees to invest, or cause to be invested, at least \$200,000,000 in Phase I for the purchase of property, construction of an approximately 300,000 square foot new building, tenant improvements, fixturing, and equipping of the Goodyear Facility, within three (3) years of the Effective Date of this Agreement.

10. 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.

11. 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 understandings of the Parties, oral or written, are hereby superseded and merged herein.

12. 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.

13. 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.

14. 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 Fairlife. The amount of such extension shall be determined by the City after consultation with Fairlife.

15. 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.

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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.

16. Representation of Counsel. The City and Fairlife acknowledge that they were each represented by 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.

17. 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).

18. 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.

19. 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.

20. Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, 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.

21. 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.

22. 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.

23. No Personal Liability. No member, shareholder, partner, owner, manager, officer, director, representative, agent, official, or employee of the City or Fairlife shall be personally monetarily liable to the other party, or any successor or assignee, (a) in the event of any default or

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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.

24. 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.

25. 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. Fairlife represents and warrants that it is duly formed and validly existing under the laws of the State of Delaware and that it is duly qualified to do business in the State of Delaware and is in good standing under applicable state laws. Fairlife 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.

26. 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 85175

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Fairlife:	Fairlife, LLC [To Be Provided]
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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 the 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]*

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

**FAIRLIFE, LLC, A DELAWARE  
LIMITED LIABILITY  
COMPANY**

By: Kaleo J. Angelin

Its: Vice President of Finance & Acct.

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

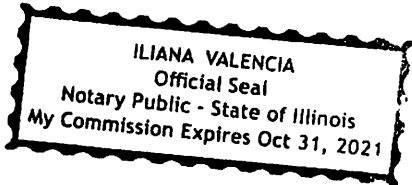
On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Fairlife, a Delaware limited liability company, and he, in such capacity, being authorized to do so, executed the foregoing instrument on behalf of Fairlife, LLC, for the purposes contained therein.

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

*Ilana Valencia*  
Notary Public

My Commission Expires: 10/31/2021

NOTARY SEAL:





**CITY**

**CITY OF GOODYEAR,**  
an Arizona municipal corporation

By: \_\_\_\_\_  
Julie Arendall  
Its: City Manager

STATE OF ARIZONA       )  
  ) ss.  
COUNTY OF MARICOPA )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ 2019, before me, personally appeared Julie Arendall, the City Manager of the City of Goodyear, an Arizona municipal corporation, and he, 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

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