

**ECONOMIC INCENTIVE AGREEMENT BETWEEN
THE TOWN OF JOHNSTOWN AND UNCLE BENNY’S BUILDING SUPPLIES**

This Economic Incentive Agreement (“Agreement”) is made and entered into on this ____ day of _____, 2022 (“Effective Date”), by and between the Town of Johnstown, a home rule municipality and political subdivision of the State of Colorado (“Town”), and Uncle Benny’s Building Supplies, LLC, a Colorado limited liability company (“Uncle Benny’s”).

RECITALS

1. Uncle Benny’s owns approximately 5.03 acres of property located within the boundaries of the Town on the east side of U.S. Interstate 25 at or near Marketplace Drive, described on the map attached hereto and incorporated herein by reference as Exhibit A (“Property”).

2. Uncle Benny’s desires to construct a building supply store, known as Uncle Benny’s Building Supplies, consisting of at least 9,600 square feet of retail use on the Property (the “Project”).

3. To facilitate the development of the Project, Uncle Benny’s has requested that the Town provide certain economic incentives. As a part thereof, because construction of the Project has not commenced and will not be complete until a subsequent date, Uncle Benny’s requests authorization to construct and operate a temporary storage and staging area on a portion of the Property to allow Uncle Benny’s employees to access materials and merchandise for offsite sales to customers.

4. Colorado municipalities are entitled to encourage new and expanded retail development through inducements and incentives.

5. The Town has determined the Project will serve a public use and promote the health, safety, prosperity, security and general welfare of the citizens of the Town.

6. Based on the foregoing, including the anticipated economic benefits, the additional employment opportunities and the opportunity presented by the location of the Project in the Town, the Town desires to accommodate Uncle Benny’s request and provide economic incentives to Uncle Benny’s pursuant to the terms and conditions set forth in this Agreement.

7. The Town finds that this Agreement is in the best interests of the citizens of the Town.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Uncle Benny’s agrees as follows:

1. Recitals. The Recitals are incorporated as if set forth fully herein.

2. Town's Commitments. In furtherance of the development, construction and operation of the Project, and based on Uncle Benny's commitments set forth herein, the Town agrees as follows:

(a) Sales Tax Rebate. To share one percent (1%) of the sales tax revenue generated and collected from sales transactions at the Project with Uncle Benny's for a period of ten (10) years commencing on July 1, 2023, and ceasing on June 30, 2033 ("Sales Tax Rebate").

(i) The Sales Tax Rebate shall be payable by the Town to Uncle Benny's for each fiscal quarter, consisting of the following time periods: (i) January 1 through March 31, (ii) April 1 through June 30, (iii) July 1 through September 30, and (iv) October 1 through December 31 (each, a "Fiscal Quarter"). The Town shall submit the Sales Tax Rebate to Uncle Benny's on or before the last day of the second month following the end of a Fiscal Quarter, or, stated differently, on or before May 31, August 31, November 30 and February 28 (or 29) of each calendar for each respective Fiscal Quarter.

(ii) The Town's agreement to provide the Sales Tax Rebate is contingent on Uncle Benny's compliance with the Town-approved Site Development Plan for the Project (not yet approved as of the Effective Date of this Agreement), the Johnstown Municipal Code ("Code") and the Town rules and regulations and Section 3 of this Agreement. If the Town, at its discretion, determines that Uncle Benny's is not in compliance with the foregoing, the Town may, upon written notice to Uncle Benny's, cease payment of the Sales Tax Rebate until Uncle Benny's comes into compliance, as determined by the Town. The cessation of payment of the Sales Tax Rebate shall not cause an incremental increase in the duration of the time-period in which Uncle Benny's is entitled to receive the Sales Tax Rebate.

(b) Temporary Storage and Staging Area. To permit the construction and operation of a temporary storage and staging area on the portion of the Property shown on Exhibit B, attached hereto and incorporated herein by reference ("Temporary Storage and Staging Area"), to allow Uncle Benny's employees to access materials and merchandise for offsite sales to customers, subject to the following conditions:

(i) Uncle Benny's shall utilize Conex trailers on crushed concrete surfaces for on-site storage of materials and merchandise;

(ii) The maximum height of the Temporary Storage and Staging Area shall not exceed eight (8) feet;

(iii) Employees shall not remain on the premise including picking up and accepting delivery of materials and merchandise from the Temporary Storage and Staging Area for a period exceeding four (4) hours in any twenty-four (24) hour period;

(iv) Customers shall not be permitted to visit the Temporary Storage and Staging Area. No point of sale shall occur at the Temporary Storage and Staging Area. All business shall be conducted off-site in the form of deliveries by Uncle Benny's employees to customers;

(v) One (1) portable restroom shall be allowed at the Temporary Storage and Staging Area;

(vi) Uncle Benny's shall cease all operations at, and all use of, the Temporary Storage and Staging Area when the Project opens for retail business to the public or by April 5, 2023, whichever occurs first. The foregoing time period may be extended, at the Town's discretion, upon request of Uncle Benny's and written approval of the Town;

(vii) Uncle Benny's shall disassemble the Temporary Storage and Staging Area, in full, within thirty (30) days of the cessation of the right to use and conduct business at the Temporary Storage and Staging Area, as provided in Paragraph 2(b)(vii) above; and

(viii) Uncle Benny's shall remain in compliance with this Agreement, the Code and the Town's rules and regulations.

(c) Construction Office Trailer. Upon approval of the Site Development Plan for the Project, Uncle Benny's may park a construction office trailer on the Property during: (i) construction of public improvements on the Property or (ii) construction on Lot 1 of the Property, as such Lot is shown on Exhibit A.

3. Uncle Benny's Commitments. In furtherance of the development, construction and operation of the Project, and based on the Town's commitments set forth herein, Uncle Benny's agrees as follows:

(a) To operate the Project for a minimum period of ten (10) years and, if it fails to do so, reimburse the Town for the Sales Tax Rebates paid;

(b) To construct a "Makerspace" within two (2) years of the Effective Date of this Agreement, providing a collaborative workspace for members of the public; and

(c) To comply with, and remain in compliance with during operation of the Project, the Town-approved Site Development Plan for the Property, the Code and the Town's rules and regulations.

4. Assignment. Uncle Benny's may not assign its rights or duties under this Agreement without receiving the prior written consent of the Town.

5. No Third-Party Beneficiaries. This Agreement, including the incentives provided herein, is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto.

6. Notices. All notices, consents or other instruments provided for under this Agreement shall be deemed properly given when: (1) hand-delivered; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth; or (3) sent by electronic mail return receipt requested and received. Either party, by notice to be given, may change the address to which future notices shall be sent.

TO UNCLE BENNY'S:

Uncle Benny's Colorado, LLC
Attention:

TO TOWN:

Town of Johnstown
Attention: Town Manager
450 So. Parish
P. O. Box 609
Johnstown, CO 80534
Email: mlecerf@townofjohnstowntown.com

7. Governing Law and Venue. This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado and the Code. Venue for any claim, proceeding or action arising out of this Agreement shall be in the County of Weld, State of Colorado.

8. Dispute Resolution. In the event of default by either party hereunder, the non-defaulting party shall notify the defaulting party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days and the non-defaulting party desires to seek recourse, the parties shall participate in mediation, the costs of which shall be shared equally by the parties. If mediation is not successful after ninety (90) days, either party may then commence an action and be entitled to such remedies as are provided by law.

9. No Presumption. Each party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The parties agree that this Agreement reflects the joint drafting efforts of all parties and in the event of any dispute, disagreement or controversy arising from this agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

10. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements or understandings. Any amendment to this Agreement must be in writing and signed by the parties.

11. Severability. If any provision or part of this Agreement is judged to be unenforceable or invalid, to the extent practicable, such judgment shall not affect, impair or invalidate the remaining parts of this Agreement, the intention being that the various parts and provisions hereof are severable.

12. Headings. The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

TOWN OF JOHNSTOWN, COLORADO

By: _____
Gary Lebsack, Mayor

Attest:

Diana Seele, Town Clerk

UNCLE BENNY’S BUILDING SUPPLIES,
LLC

By: _____
Benjamin R. Aste, Owner

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this _____ day of _____ 2022, by _____ as the Managing Member of Uncle Benny’s Building Supplies, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A
Property

EXHIBIT B
Temporary Storage and Staging Area