

**CITY OF JERSEY VILLAGE, TEXAS
AND
ARGOS USA LLC**

**CHAPTER 380 ECONOMIC
DEVELOPMENT PROGRAM
AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** (hereinafter referred to as the “Agreement”) is made and entered into, as of October 1, 2018, by and between the **CITY OF JERSEY VILLAGE, TEXAS**, a Texas home rule municipality (hereinafter referred to as “City”), and **ARGOS USA LLC**, a Delaware limited liability company (hereinafter referred to as “Developer”), for the purposes and considerations stated below. City and Developer are referred to collectively as the “Parties.”

WHEREAS, the City finds that the administration of a program of grants including to Developer for a limited time in amounts equal to a portion of City sales tax relating to certain property (hereinafter referred to as “Program”) would promote local economic development and stimulate business and commercial activity within the City and would directly establish a public purpose; and

WHEREAS, the City has determined that the said Program contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources in the establishment and administration of the Program; and

WHEREAS, Chapter 380 Texas Local Government Code provides statutory authority establishing and administering the said Program, including making loans and grants of money (“Chapter 380”); and

WHEREAS, Developer will locate a retail sales center (“Retail Sales Center”) in the City and has applied to City under its Program for financial assistance to locate such Retail Sales Center in the City; and

WHEREAS, the Developer and the City desire to enter into this Agreement pursuant to Chapter 380 providing loans and/or grants of money in accordance therein and with required controls; and

WHEREAS, the City determines that entering into this Agreement serves the public purpose of promoting local economic development, and enhances business and commercial activity within the City;

NOW THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

SECTION 2. TERM.

- (a) This Agreement shall commence as of the Effective Date and shall continue in effect until the tenth anniversary of the date that the Retail Sales Center first has Sales and Use Tax allocable to the City, unless terminated sooner under the provisions hereof.
- (b) This Agreement may be extended by mutual consent in writing by the Parties for two additional five-year periods. The maximum amount paid in any 5-year extension period shall be \$5,000,000. If either party wishes to extend this agreement they shall notify the other party in writing at least 90 days before the end of the agreement or extension period.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **City.** The word “City” means the City of Jersey Village, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 16501 Jersey Drive, Jersey Village, Texas 77040.
- (c) **Crime Control Revenue.** The words “Crime Control Revenue” mean the sales and use tax revenue, at the rate of one-half of one percent (0.50%) percent, generated for use by the City.
- (d) **Developer.** The word “Developer” means Argos USA LLC, a Delaware limited liability company, its successors and assigns, whose address for the purposes of this Agreement is 3015 Windward Plaza, Suite 300, Alpharetta, GA 30005.
- (e) **Effective Date.** The words “Effective Date” means January 1, 2019.
- (f) **Employment Positions.** The words “Employment Position” or “Employment Positions” mean and include jobs at the location of the Retail Sales Center that provide a minimum

of Two Thousand (2,000) hours of paid time averaged over a twelve (12) month period and consistent with the Texas Workforce Commission records and which positions relate to the operation of the Retail Sales Center.

- (g) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (h) **Incentive Period.** The Incentive Period commences as of the date that Retail Sales Center first has Sales and Use Tax allocable to the City and ends with the Term of this Agreement.
- (i) **Program Grant or Program Grant Payment.** The words “Program Grant” or “Program Grant Payment” mean the economic development grants paid by the City to Developer in accordance with this Agreement, computed as a percentage of Sales and Use Taxes generated by the Retail Sales Center as further set forth in this Agreement. The Program Grant Payment shall be based upon reports filed by the entity occupying the Retail Sales Center with the Texas State Comptroller’s office. The Program Grant Payment shall be confirmed by the report provided by the Texas State Comptroller to the City for the Retail Sales Center and will be based on amounts of Sales and Use Taxes actually paid by the Texas State Comptroller’s office to City.
- (j) **Property.** The word “Property” shall mean the location of the Retail Sales Center.
- (k) **Retail Sales Center.** The words “Retail Sales Center” means a minimum 4,000 square feet of space located in the City and operated by Developer.
- (l) **Sales and Use Tax.** The words “Sales and Use Tax” or “Sales and Use Taxes” mean the amount of money equivalent to the City’s municipal sales and use tax, at the rate of one and one-half percent (1.5%), pursuant to Section 321.103 of the Texas Tax Code, as amended and actually received from the Texas State Comptroller. For clarity, the City’s one and one-half percent (1.5%) Sales and Use Tax revenue herein is separate and distinct from the one-half of one percent (0.50%) Crime Control Revenue.
- (l) **Texas State Comptroller or Comptroller.** The words “Texas State Comptroller” or “Comptroller” mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.

SECTION 4. OBLIGATIONS OF DEVELOPER.

Developer covenants and agrees with the City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Location of Retail Sales Center.** Developer covenants and agrees that the Retail Sales Center shall be located on Property located within the City by one year from the Effective Date. Developer must provide the location of the Property to City within 10 days of

securing same. Developer may change the location of the Retail Sales Center within the City upon written notification to the City.

(b) **Commencement of Operation and Operation of Retail Sales Center.** Operation of the Retail Sales Center shall commence within one year from the Effective Date and shall be continuously operated as a Retail Sales Center thereafter throughout the term of this Agreement. Commencement of operation of the Retail Sales Center shall be considered to have occurred for purposes of this Agreement upon the generation of Sales and Use Tax allocable to City.

(c) **Standard and Place of Operation.** Developer shall be responsible for ensuring that the Retail Sales Center is operated in accordance with this Agreement and with all applicable rules, laws and regulations, including the City's land use requirements such as procurement of certificates of occupancy, compliance with applicable standard building codes, etc.

During the Incentive Period, Developer will ensure that the Retail Sales Center maintains in the City a "place of business of the retailer" as defined in Section 321.002(a)(3) Texas Tax Code, and consummates sales in the City as determined pursuant to Section 321.203 Texas Tax Code and in accordance with all related applicable rules and regulations as may from time to time be amended.

(d) **Job Creation.** Developer covenants and agrees that by June 30, 2019 and during the term of this Agreement the Retail Sales Center will employ a minimum of fifteen (15) Employment Positions.

(e) **Reporting of Sales and Use Taxes.** Developer will provide City, on a monthly basis, a copy of the financial report that is being submitted to the Texas State Comptroller relating to the remission of sales and use taxes collected in the City as a result of the operation of the Retail Sales Center ("Sales Tax Report"). Additionally, Developer hereby consents for the Texas State Comptroller's office to release the monthly reported figures along with any State audit adjustments to the City. City hereby agrees to keep this information "Confidential" consistent with the Texas Tax Code, including, without limitation, Section 151.027 and to the extent allowed by law.

(f) **Reporting of Audits.** The Developer shall notify the City of any Sales and Use Tax audit conducted or being conducted regarding the Retail Sales Center by the Office of the Texas State Comptroller. Such notification shall be made as soon as practicable, but in no event later than sixty (60) days after the audit.

(g) **Payment of Ad Valorem Taxes.** All ad valorem taxes shall be paid when due on the Retail Sales Center, unless being protested in accordance with Texas law. For clarity, ad valorem taxes which are not being protested shall still be paid when due. Payment will not be required only for the portion of ad valorem taxes which are being protested in accordance with Texas law.

- (h) **Performance/Annual Certification.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Developer and City, and any related agreements between Developer and City.

In order to be eligible to receive Program Grant Payments, Developer shall have annually certified commencing March 15, 2019 the following:

1. The current location of the Retail Sales Center as well as for the previous year.
2. The dates of operation of the Retail Sales Center for the previous year.
3. That it currently is and has been compliant with the standard of operation set forth in Section 4(c) above for the previous year.
4. The total number of Employment Positions at the Retail Sales Center and the number of Employment Positions for the previous year.
5. The total amount of Sales and Use Tax relating to the Property for the previous year.
6. The status of the payment of ad valorem taxes for the previous year for the Property, including any delinquencies or contested amounts from any prior year.
7. The status of any Sales and Use Tax audit being conducted by the Texas State Comptroller regarding the Retail Sales Center for the previous year.

SECTION 5. OBLIGATIONS OF CITY.

City covenants and agrees with the Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Program Grant Payment.** The City agrees to make payments to Developer using the following schedule:

- (1) Each calendar year during the Incentive Period, the City will pay Developer an amount of money equal to \$50,000 per Employment Position at the Retail Sales Center up to a maximum of 25 Employment Positions, which is a maximum of \$1,250,000 per calendar year (prorated to account for any partial calendar year), from the City's one and one-half percent (1.5%) Sales and Use Tax revenue generated by and attributable to the Retail Sales Center; **SAVE AND EXCEPT AS FOLLOWS:**

If the City's one and one-half percent (1.5%) Sales and Use Tax Revenue generated by and attributable to the Retail Sales Center is less than \$1,562,500 during any calendar year prorated to account for any partial calendar year during the Incentive Period, the City will reduce its payment to Developer for that

calendar year in an amount that equals 80% of the total amount otherwise payable pursuant to this Section 5(a)(1).

For example, if the taxable sales generated by and attributable to the Retail Sales Center are \$83,000,000 for a calendar year during the Incentive Period, the Sales and Use Tax revenue would be \$1,245,000. City would pay Developer an amount equal to 80% of such Sales and Use Tax revenue, which would be \$996,000 for that calendar year.

For further example, if the taxable sales generated by and attributable to the Retail Sales Center are \$160,000,000 for a calendar year during the Incentive Period, the Sales and Use Tax Revenue would be \$2,400,000. City would pay Developer a maximum of \$1,250,000 of the Sales and Use Tax Revenue for that calendar year.

- (2) The cumulative reimbursements to the Developer pursuant to Section 5(a)(1) above shall not exceed \$10,000,000.
- (3) The cumulative reimbursements to the Developer in any 5-year extension period as defined in Section 2(b) shall not exceed \$5,000,000.

For clarification, if both 5-year extension periods are agreed upon by both parties the cumulative reimbursements to the Developer over the original period and the extension periods shall not exceed \$20,000,000.

- (b) **City Minimum.** For each calendar year during the Incentive Period, the City will be guaranteed that the Sales and Use Tax revenue generated by and attributable to the Retail Sales Center, after subtracting out Program Grant Payments, will be at least one hundred thousand dollars (\$100,000), pro-rated to account for any partial calendar year (the "City Minimum"). For example, if the City's net proceeds for the second year of the Incentive Period is \$80,000, the Developer agrees that the City is entitled to withhold \$20,000 from the next scheduled payment in order to make up the shortfall from the previous year consistent with the True-up process described in Section 5(d).
- (c) **Time of Payments.** The formula set forth above for calculation of Program Grant Payments will be based on the amount of net Sales and Use Tax revenue and specifically excludes any collection fee that may be imposed by the Texas State Comptroller and shall only be that net revenue actually paid by the Comptroller's office to City. Payment will be made quarterly and will be due within thirty (30) days following the receipt by the City of: (1) the Sales Tax Report specified in Section 4(a) of this Agreement for each month of the applicable quarter; and (2) the City's share of the Sales and Use Tax revenue from the Texas State Comptroller's office for the applicable quarter.

- (d) **True-up.** Notwithstanding anything contained in this Agreement to the contrary, the Parties' intent is for Program Grant Payments to be made each quarter to Developer, subject to a true up calculation to ensure any annual performance metrics are met and to reconcile annual Program Grant Payments as set forth in this Section 5. As part of this true up calculation, Developer will summarize the taxable sales generated by the Retail Sales Center for each calendar year during the Incentive Period and provide such summary to City to ensure that the Program Grant Payments have been properly calculated based on this Section 5. If the true up calculation shows that the City has over or underpaid Developer, City will adjust subsequent Program Grant Payments to make up for such difference. The true up calculations will be made within three months of the end of the applicable calendar year.
- (e) **Adjustments.** Adjustments made by the Texas State Comptroller in payments to the City to correct prior overages or underage and which amount affects calculation of the Program Grant Payments shall oblige the City to adjust future Program Grant Payments due accordingly to reflect such adjustment or adjustments as the case may be.
- (f) **Performance.** City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between City and Developer, and any related agreements between City and Developer.
- (g) **Notification of Dispute.** If the Texas State Comptroller determines that Sales and Use Tax included in one or more Sales Tax Reports provided to City by Developer exceed the amount of Sales and Use Tax that should have been generated by and attributable to the Retail Sales Center and included on such Sales Tax Report(s) (the excess being for purposes of this Agreement a "Disputed Amount"), then the City shall not be required to pay Developer on such Disputed Amount while the dispute is being resolved.

SECTION 6. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **Locate a Retail Sales Center.** Failure of Developer to cause a Retail Sales Center to locate on Property within the City consistent with Section 4 of this Agreement
- (b) **Operate a Retail Sales Center.** Failure of Developer to operate a Retail Sales Center consistent with Section 4 of this Agreement.
- (c) **Job Creation.** Failure of Developer to cause to be employed a minimum of 15 Employment Positions working at the Retail Sales Center consistent with Section

4(d) of this Agreement.

- (d) **Reporting of Sales and Use Taxes, or audit.** Failure of Developer to ensure the reporting Sales and Use Taxes and of an audit consistent with Section 4(e) or 4(f) of this Agreement.
- (e) **Payment of Ad Valorem Taxes. Failure of Developer to ensure payment of all ad valorem taxes on the Retail Sales Center consistent with Section 4(g) of this Agreement.**
- (f) **Insolvency.** The dissolution or termination of Developer's existence as a going business or concern; Developer's insolvency, appointment of receiver for any part of Developer's property; any assignment of all or substantially all of the assets of Developer for the benefit of creditors of Developer; or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.
- (g) **Failure to Make Program Grant Payments.** Failure of City to make quarterly Program Grant Payments in accordance with this Agreement.
- (h) **Other Defaults.** Failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents.

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

(a) **General Defaults.** In the event of default under subsections 6(b)-6(h) of this Agreement, the non-defaulting party shall give written notice to the defaulting party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement upon written notice to the defaulting party. The sole and exclusive remedies of the non-defaulting party shall be limited to either termination of this Agreement or a suit for specific performance.

(1) **Section 6(a) Default.** In the event of default under Section 6(a) occurs and Developer fails to cure such event of default within one year after written notice by City to Developer, this Agreement shall terminate automatically without additional notice of any kind.

SECTION 8. TERMINATION OF AGREEMENT WITHOUT DEFAULT.

- (a) Either Party may terminate this Agreement without an event of default effective immediately if (i) any state or federal statute, regulation, case law, or other law renders

this Agreement ineffectual, impractical or illegal, including case law holding that a Chapter 380 Economic Development Agreement rebating Sales and Use Taxes such as this Agreement is an unconstitutional debt; or (ii) the federal government implements the streamlined sales and use tax or similar legislation in such a manner as to change the consummation of a sales and use tax event to a tax situs outside of the City, thereby eliminating the City's rights in the sales tax proceeds paid by the operator of the Retail Sales Center.

Termination of this Agreement under this subsection of the Agreement shall render this Agreement null and void from that point forward with each Party having no further rights against each other under this Agreement or at law; provided, however, save and except those rights and obligations accruing on the part of either Party prior to such termination including entitlement for receipt of Program Grant Payments from City to Developer, and including the obligation for repayment of Program Grant Payments by Developer to City.

(b) Developer may terminate this Agreement effective immediately or at any future date upon written notice to City if Developer elects to cease operation of the Retail Sales Center in the City or otherwise changes such operations for any reason whatsoever whereby no local Sales and Use Taxes are thereafter generated. Termination of this Agreement under this subsection of the Agreement shall render this Agreement null and void from that point forward with each Party having no further rights against each other under this Agreement or at law provided, however, save and except those rights and obligations accruing on the part of either Party prior to such termination including entitlement for receipt of Program Grant Payments from City to Developer.

SECTION 9. REPRESENTATIONS AND WARRANTIES.

- (a) Developer represents and warrants to City that to Developer's actual current knowledge as of the Effective Date:
- (i) Except as set forth in Section 9(b), Developer is not relying upon any representation or warranty of the City regarding the City's power or authority to enter into this Agreement under the provisions of the Act and Chapter 380, Texas Local Government Code, or the appropriate determination of the tax situs of transactions contemplated by this Agreement.
 - (ii) Developer represents and warrants that it is a limited liability company organized and existing under and by virtue of the laws of the State of Delaware and is qualified to conduct business and enter into this Agreement pursuant and by virtue of the laws of the State of Texas, and has the power and authority to carry on the business as presently conducted and as represented in this Agreement.

- (b) City represents and warrants to Developer that to City's actual current knowledge as of the Effective Date:
 - (i) City is a home rule municipality exercising governmental functions and powers and is organized and existing under the State of Texas and has taken all actions required by law to approve the execution of this Agreement.
 - (ii) City has the legal right, power and authority to enter this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement has been duly authorized and no other action by City is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.
 - (iii) City is not aware of any pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of City's obligations under this Agreement.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Harris County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Harris County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the Parties upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Developer warrants and represents that the individual executing this Agreement on Developer's behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience

purposes only and are not to be used to interpret or define the provisions of the Agreement.

- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Force Majeure.** It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (h) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and
 - (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or
 - (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Developer: Argos USA LLC Attn: Legal Department 3015 Windward Plaza, Suite 300 Alpharetta, GA 30005	If to the City: The City of Jersey Village Attn: City Manager 16501 Jersey Drive. Jersey Village, Texas 77040
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- (i) **Record Retention and Accessibility of Records.** Developer shall maintain and make available to City upon request all records and supporting documentation relating to the performance of this Agreement, including all Sales and Use Tax revenue information relating to the Property, operation of the Retail Sales Center, Employment Positions, ad valorem payments and contests, and other matters relating to performance under this Agreement. Developer shall retain such records, and any supporting documentation for the greater of (1) five (5) years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.
- (j) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included to

the extent it does not frustrate the intent of this Agreement.

- (k) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (l) **Undocumented Workers.** Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended.
- (m) **Boycott Prohibition.** Developer must provide a written verification that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

Developer

Argos USA LLC
A Delaware Limited Liability Company

By: [Signature]
Name: Mark Prybylski
Title: Secretary and General Counsel
Date: 10/10/18

State of Georgia §
County of Fulton §

This instrument was acknowledged before me on the 10 day of October, 2018, by Mark Prybylski (name) Secretary and General Counsel (title) of Argos USA LLC a Delaware limited liability company.

[Signature]
Notary Public, State of Georgia



City

City of Jersey Village,
A Texas home-rule municipality

By: Austin Bless
Name: Austin Bless
Title: City Manager
Date: 10-2-18

State of Texas §
 §
County of Harris §

This instrument was acknowledged before me on the 2nd day of October, 2018,
by Austin Bless, City Manager of the City of Jersey Village, a Texas home-rule municipality.

[Signature]

Notary Public, State of Texas



Seal



Attest:

[Signature]

Lorri Coody, City Secretary