

1st AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This 1st Amendment to Chapter 380 Economic Development Program Agreement (the "Amendment") is made by and between the City of Jersey Village, a Texas home rule municipality (the "City"), and Argos USA LLC, a Delaware Limited Liability Company (the "Developer") (with the City and the Developer each being a "Party", and collectively, the "Parties"), and is made effective as of the date of execution below by the Parties' authorized representatives (the "Effective Date").

RECITALS

WHEREAS, Chapter 380 of the Texas Local Government Code ("Chapter 380") provides statutory authority for the City to establish and administer a program, including grants and loans of money, to promote local economic development and to stimulate business and commercial activity within the City, in order to accomplish a public purpose; and

WHEREAS, the Parties entered into an agreement under Chapter 380 on or about October 2, 2018 (the "Agreement") in order to, among other things, provide for the terms under which the Developer would provide development services for the City, including finding a suitable third party to locate a retail sales center (the "Retail Sales Center") in the City and to provide assistance with identifying a location for the Retail Sales Center, and to provide the terms under which the City would provide reimbursement grants to the Developer for a limited time in amounts equal to a portion of the City sales tax relating to certain property (the "Program"); and

WHEREAS, through this Amendment, the Parties wish to amend the Agreement in order to provide for potential tax collection adjustments by the City and to extend the original term of the Agreement; and

WHEREAS, the Council finds that this Amendment contains sufficient controls to ensure that the Program is carried out according to all applicable laws; and **NOW, THEREFORE**,

ACCORDING TO THE PROVISIONS CONTAINED HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

AMENDMENT

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. EXTENT AND EFFECT OF THIS AMENDMENT.

All portions of the Agreement shall remain in full force and effect unless specifically amended by the provisions of this Amendment, in which case the provisions of this Amendment shall act to

repeal and replace the applicable provisions of the Agreement. If a discrepancy or conflict arises due to the application of this Amendment to the Agreement, then the Agreement shall be interpreted so as to satisfy the intent of this Amendment. Capitalized terms used but not otherwise defined in this Amendment have the respective meanings attributed thereto in the Agreement.

SECTION 3. TERM.

The term of the Agreement shall be amended so that it shall commence as of the Effective Date of this Amendment and shall continue in effect for a period of twenty (20) years, unless terminated sooner under the provisions hereof (the "Term"). The Term may not be extended.

SECTION 4. DEFINITIONS.

A. The following provision shall be added to the definitions of the Agreement:

"Fire Control Revenue. The words "Fire Control Revenue" mean the sales and use tax revenue, at the rate of one-half of one percent (0.50%) generated for use by the Fire Control Prevention Emergency Medical Services District."

B. The following definitions contained in the Agreement are hereby amended as follows:

"Incentive Period. The words "Incentive Period" mean that portion of the Term that commences as of October 1, 2021 and ends with the expiration of the Term or through the termination of the Agreement, whichever occurs earlier."

"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 percent (1%), 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 percent (1%) Sales and Use Tax revenue herein is separate and distinct from the one-half of one percent (0.50%) Crime Control Revenue and the one-half of one percent (0.50%) Fire Control Revenue."

SECTION 5. OBLIGATIONS OF THE DEVELOPER.

The obligations of the Developer under the Agreement shall remain in full force and effect, except that commencing March 15, 2022, in order to be eligible to receive Program Grant Payments, the Developer shall have annually certify 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) of the Agreement 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; and
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 6. OBLIGATIONS OF THE CITY.

The obligations of the City to the Developer provided under the Agreement are hereby repealed and replaced with the following:

1. **Program Grant Payment.** The City agrees to make payments to the Developer using the following schedule:

a. For each twelve month period (October 1 – September 30) during months one (1) through one hundred twenty (120) of the Incentive Period, the City will pay the Developer an amount of money equal to fifty thousand dollars (\$50,000) per Employment Position, up to a maximum of twenty-five (25) Employment Positions which is a maximum of one million two hundred fifty thousand dollars (\$1,250,000) each year from the City's one percent (1%) Sales and Use Tax revenue generated by and attributable to the Retail Sales Center (the "1st Incentive Period Payments").

b. ***The 1st Incentive Period Payments are subject to the following exceptions and restrictions:*** If the City's one percent (1%) Sales and Use Tax Revenue generated by and attributable to the Retail Sales Center is less than one million five hundred sixty-two thousand five hundred dollars (\$1,562,500) during each twelve (12) month period beginning with the effective date of this portion of the Incentive Period, then the City will reduce its payment to Developer in an amount that equals eighty percent (80%) of the total amount.

For Example: If the taxable sales generated by and attributable to the Retail Sales Center are eighty-three million dollars (\$83,000,000) for a twelve (12) month period of this portion of the Incentive Period, then the Sales and Use Tax Revenue would be eight hundred and thirty thousand dollars (\$830,000). The City would pay the Developer an amount equal to eighty percent (80%) of the Sales and Use Tax Revenue, which would be six hundred and sixty-four thousand dollars (\$664,000) for this portion of the Incentive Period.

For Further Example: If the taxable sales generated by and attributable to the Retail Sales Center are one hundred sixty million dollars (\$160,000,000) for a twelve (12) month period of this portion of the Incentive Period, then the Sales and Use Tax Revenue would be one million six hundred thousand dollars (\$1,600,000). The City would pay the Developer a maximum of one million two hundred fifty thousand dollars (\$1,250,000) of the Sales and Use Tax Revenue for this portion of the Incentive Period.

c. For each twelve month period (October 1 – September 30) during months one hundred twenty-one (121) through two hundred forty (240) of the Incentive Period, the City will pay the Developer an amount of money equal to sixty thousand dollars (\$60,000) per Employment Position up to a maximum of thirty (30) Employment Positions, which is a maximum of one million eight hundred thousand dollars (\$1,800,000), each year from the City's one percent (1%) Sales and Use Tax revenue generated by and attributable to the Retail Sales Center constituting Sales and Use Tax (the "2nd Incentive Period Payments").

d. ***The 2nd Incentive Period Payments are subject to the following exceptions and restrictions:*** If the City's one percent (1%) Sales and Use Tax Revenue generated by and attributable to the Retail Sales Center is less than two million two hundred fifty thousand dollars (\$2,250,000) during each twelve (12) month period beginning with the effective date of this portion of the Incentive Period, then the City will reduce its payment to the Developer in an amount that equals eighty percent (80%) of the total amount.

For Example: If the taxable sales generated by and attributable to the Retail Sales Center are eighty-three million dollars (\$83,000,000) for a twelve (12) month period of this portion of the Incentive Period, then the Sales and Use Tax Revenue would be eight hundred and thirty thousand dollars (\$830,000). The City would pay the Developer an amount equal to eighty percent (80%) of the Sales and Use Tax Revenue, which would be six hundred and sixty-four thousand dollars (\$664,000) for this portion of the Incentive Period.

For Further Example: If the taxable sales generated by and attributable to the Retail Sales Center are two hundred sixty million dollars (\$260,000,000) for a twelve (12) month period of this portion of the Incentive Period, then the Sales and Use Tax Revenue would be two million six hundred thousand dollars (\$2,600,000). The City would pay the Developer a maximum of one million eight hundred thousand dollars (\$1,800,000) of the Sales and Use Tax Revenue for this portion of the Incentive Period.

e. The cumulative reimbursements to the Developer pursuant to this Section shall not exceed twenty million dollars (\$20,000,000).

2. **City Minimum.** From October 1 - September 30 of any given 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) (the "City Minimum").

For Example: If the City's net proceeds for the second twelve (12) months of the Incentive Period is eighty thousand dollars (\$80,000), then the Developer agrees that the City is entitled to withhold twenty thousand dollars (\$20,000) from the next scheduled payment in order to make up the shortfall from the previous quarter consistent with the True-up process described below.

3. **Time of Payments.** The formula set forth above for calculation of the 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 the City. Payment will be made quarterly and will be due within thirty (30) days following the receipt by the City of: (a) the Sales Tax Report specified in the Agreement for each month of the applicable quarter; and, (b) the City's share of the Sales and Use Tax revenue from the Texas State Comptroller's Office for the applicable quarter.

4. **True-up.** Notwithstanding anything contained in the Agreement to the contrary, the Parties' intent is for the Program Grant Payments to be made each quarter to the Developer, subject to a true up calculation to ensure all annual performance metrics have been met and to reconcile annual Program Grant Payments as set forth in this Section (the "True-up"). As a part of the True-up, the Developer will summarize the taxable sales generated by the Retail Sales Center for each twelve (12) month period during the Term and provide such summary to the City to ensure that the Program Grant Payments have been properly calculated based on this Section. If the True-up shows that the City has over or underpaid the Developer, then the City will adjust subsequent Program Grant Payments to make up for such difference. The True-up calculations will be made within three (3) months of the end of each applicable twelve (12) month period throughout the Term.

5. **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.

6. **Performance.** The City agrees to perform and comply with all terms, conditions, and provisions set forth in the Agreement and in all other instruments and agreements between the City and the Developer, and any related agreements between the City and the Developer.

7. **Notification of Dispute.** If the Texas State Comptroller determines that the Sales and Use Tax included in any Sales Tax Reports provided to the City by the Developer exceed the amount of the 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 the Developer on such Disputed Amount while the dispute is being resolved.

SECTION 7. NOTIFICATIONS.

Any notice or other communication required or permitted by the Agreement or this Amendment (a "Notice") is effective when in writing and: (a) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand; or, (b) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

To the Developer: Argos USA LLC Attn: Legal Department	To the City: The City of Jersey Village Attn: City Manager
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3015 Windward Plaza, Suite 300 Alpharetta, Georgia 30005	16501 Jersey Drive Jersey Village, Texas 77040
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SECTION 8. PROHIBITIONS.

In the Agreement and this Amendment, the Developer hereby certifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates comply with and agree to abide by the requirements of the Texas Government Code: Chapter 2264 regarding undocumented workers; Chapter 2270 relating to the boycott of Israel; Section 2252.152 regarding Iran, Sudan, and foreign terrorist organizations; and, Chapter 2274 regarding other various prohibitions.

THE PARTIES HEREBY ENTER INTO THIS AMENDMENT ON October 29, 2021

[SIGNATURE AND ACKNOWLEDGEMENT ON FOLLOWING PAGES]

SIGNATURES

FOR THE CITY:

Austin Blees

AUSTIN BLEES, CITY MANAGER

[Signature]
LORRI COODY, CITY SECRETARY

FOR THE DEVELOPER

[Signature]

NAME [SIGNATURE]

Richard Edwards

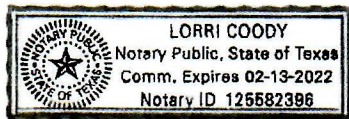
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ACKNOWLEDGEMENTS

State of Texas §

County of Harris §

This instrument was acknowledged before me on the 29 day of October, 2021, by Austin Blees, City Manager of the City of Jersey Village, a Texas home-rule municipal corporation on behalf of said corporation.



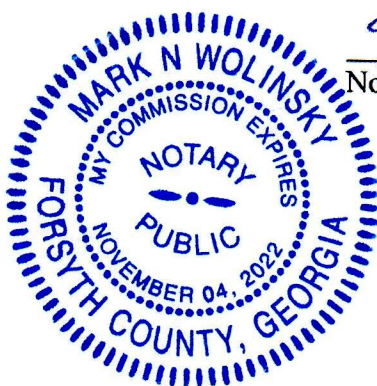
[Signature]

Notary Public, State of Texas

State of Georgia §

County of Forsyth §

This instrument was acknowledged before me on the 29 day of October, 2021, by Richard Edwards (name) Vice President (title) of Argos USA, LLC, State of Georgia limited liability company, on behalf of said company.



[Signature]
Notary Public, State of Georgia