LAND DISPOSITION AGREEMENT AND
OPTION TO LEASE AGREEMENT
BETWEEN THE ARGOS GROUP, LLC, WASHINGTON, DC and
THE TOWN OF CAPITOL HEIGHTS

THIS LAND DISPOSITION AGREEMENT AND OPTION TO LEASE AGREEMENT ("LDA" or "Agreement") entered into this ___ day of April, 2022, by and between THE ARGOS GROUP, LLC ("Argos") and PENNROSE, LLC ("Pennrose"), its successors and assigns (Argos and Pennrose, collectively, the "Developer") and THE TOWN OF CAPITOL HEIGHTS ("Town"), individually "Party" and collectively "Parties".

RECITALS

WHEREAS, the Town is fee simple owner of the unimproved parcels of land (the "Property") bounded by Davey Street, Sultan Avenue, Quire Avenue, Emmet Street and Capitol Heights Boulevard in The Town of Capitol Heights (the "Town"), which Property is more particularly depicted and described on Exhibit A attached hereto and incorporated herein by reference;

WHEREAS, The Developer shall develop the Property into a mixed-use project consisting of approximately 150 studio, one-bedroom, two-bedroom and three bedroom rental apartment units, approximately 4,300 gross square feet of retail uses and ancillary parking facilities (the "Project") substantially in accordance with the plans and drawings attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, the Town desires to have the Property developed, and the Developer shall cause to be developed and to operate the Project on the Property, all in accordance with this Agreement; and

WHEREAS, it is the desire and intent of the Town that the Developer commence construction of the Project within 18 months after the Tax Credit Award as hereafter defined, and Developer agrees to use best efforts to attempt to do so subject to Developer’s ability to obtain Project financing and the required Project Approvals (defined in Section 10.2); and

WHEREAS, the Mayor and Council of The Town of Capitol Heights pursuant to Ordinance No. 20-_____ approved the Project and this Agreement. Now, therefore,

WITNESSETH, that for and in consideration of the forgoing Recitals that are a material part of this Agreement and not merely prefatory, the mutual agreements and covenants in this Agreement, and other good and valuable considerations, the adequacy and receipt of which are acknowledged by the Parties, the Town and Developer agree as follows:
ARTICLE I
DEFINITIONS, INCORPORATION OF RECITALS, PREVIOUS AGREEMENTS

1.1 Definitions. For the purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

“Applicable Law” or “Law” means all applicable Maryland and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, and, if applicable, the Davis-Bacon Act.

“Architect” means Moya Design Partners, or another architect of record, licensed to practice architecture in the State of Maryland, which has been selected by Developer for the Project.

“Certificate of Occupancy” means a certificate of occupancy or similar document or permit (whether conditional, unconditional, temporary, or permanent) that must be obtained from the appropriate Governmental Authority (Prince George’s County MD) as a condition to the lawful occupancy of the Project, or any component or portion thereof, consistent with the Design Development Documents.

“Certificate of Substantial Completion” Means a Certificate issued by the Architect stating that the project is substantially complete in accordance with the construction plans and specifications, and that a Certificate of Occupancy is on hand so that the owner may occupy the building for its intended purpose.

“Closing” means the execution, delivery, and recordation by Ground Lease Tenant of the Ground Lease (or recordation of a memorandum of ground lease).

“Commencement of Construction” means that the Developer or Ground Lease Tenant has (i) executed a construction contract with the general contractor for the construction of the project; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Commercial Parcel equipment required to commence construction of the Project; (iv) obtained the Permits needed to commence construction and (v) commenced construction of the project pursuant to the Construction Drawings.

For purposes of this Agreement, the term "Commencement of Construction" does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to investigate environmental conditions or establish background information related to the suitability of the property for development of the Improvements to be located thereon.
“Concept Design Plans” are the design plans, submitted by Development Team and approved by DPIE and MNCPPC, which serve the purpose of establishing the major direction of the design of the Project.

“Construction Drawings” mean the Concept Plans, the Schematic Plans, the Design Development Plans and the Construction Plans and Specifications, which shall be submitted by Developer to the Department of Permitting, Inspections and Enforcement of Prince George’s County, if required.

“Construction Plans and Specifications” mean the detailed architectural drawings and specifications that are prepared for all aspects of the Project in accordance with the approved Design Development Plans and that are used to obtain Permits, detailed cost estimates, to solicit and receive construction bids, and to direct the actual construction of the Project.

“Contaminant Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers, and other receptacles containing any Hazardous Materials) of any Hazardous Materials.

“Contamination Soils” pollution is a part of land degradation, which is caused by the presence of xenobiotics (human-made) chemicals or other alteration in the natural soil environment.

“Design Development Documents” are the design documents produced after review and approval of Schematic Design Documents that reflect refinement of the approved Schematic Design Documents, showing all aspects of the Improvements at the correct size and shape. The Design Development Documents shall include: (a) the refined Schematic Design Documents supplemented with material and design details, including size and scale of façade elements, which are presented in detailed illustrations, and (b) responses to and revisions based on comments, concerns, and suggestions of DPIE, and MNCPPC relating to the Schematic Design Documents, if any.

“Developer” shall mean, collectively, The Argos Group LLC and Pennrose, LLC, and its permitted and approved successors and assigns, which shall include an entity that is owned and controlled by The Argos Group LLC and Pennrose, LLC.

“DPIE” means the Prince George’s County Department of Permitting, Inspection and Enforcement

“Effective Date” is the date the last Party to sign this Agreement sets forth on the signature pages attached hereto, provided that all Parties shall have executed and delivered this Agreement to one another.
“Ground Lease” means an agreement by which the Town leases the Property to the developer, or the Ground Lease Tenant, for the development and operation of the Project.

“Ground Lease Tenant” shall mean an entity whose managing member or general partner is controlled by the Developer or its affiliates.

“Hazardous Material” shall have the meaning defined in Section 9.11 hereof.

“MNCPPC” means the Maryland-National Capital Park and Planning Commission.

“Permits” means all demolition, site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from Prince George’s County government or other authority having jurisdiction over the Property (including, without limitation, the federal government and any utility Developer, as the case may be) necessary to commence and complete construction, operation, and maintenance of the Project in accordance with the Development Plan and this Agreement.

“Property” means the land owned by the Town of Capitol Heights bounded by Davey Street, Sultan Avenue, Quire Avenue, Emmet Street and Capitol Heights Boulevard described on Exhibit A.

“Property Stabilization” means that the completed Project has achieved residential occupancy of at least 90% for a period of no less than three (3) full calendar months.

“Schedule of Performance” means that schedule of performance, attached hereto as Exhibit C, setting forth the timelines for milestones in the design, development, construction, and completion of the Project (including a construction timeline in customary form) together with the dates for submission of documentation required under this Agreement, which schedule shall be attached to the Development Plan and to the Construction and Use Covenant.

“Schematic Design Documents” include the documents that present a developed design based on the approved Concept Design Plans, and illustrate the development of building facades, scale elements, and materials

“Other Definitions.” When used with its initial letter(s) capitalized, any term, which is not defined in this Article, I shall be given the definition assigned to it elsewhere in this Agreement.

ARTICLE II
Ground Lease of Property, Scholarship Fund

2.1 Ground Lease. This Agreement constitutes an Option to Lease for Developer to enter into a Ground Lease with the Town (the “Option to Lease”). Subject to and
in accordance with the terms of this Agreement and the Ground Lease, and provided that Developer does not exercise its option to purchase the Property as provided in ARTICLE III, Town shall ground lease to Developer the Property for a period of 99 years, as detailed in the Ground Lease attached to this Agreement as Exhibit D, subject to reasonable changes required by the Community Development Administration, a unit of the Division of Development Finance of the Department of Housing and Community Development of the State of Maryland (“CDA”), and Tenant’s lenders and investors as the case may be; provided that such changes are acceptable to the Town and do not diminish the Tenant’s monetary or material non-monetary obligations under this Agreement.

2.2 Closing. Closing shall occur on or before the end of the Lease Option Term, as defined herein.

a. Tenant may exercise the Option to Lease on or before the expiration of the Lease Option Term (as hereinafter defined).

b. Tenant shall apply for an award of Low Income Housing Tax Credits in 2022. If Tenant does not receive a 2022 Tax Credit award, Tenant, at Tenant’s election, may re-apply for Tax Credits in 2023. In either 2022 or 2023, an award of Tax Credits shall be evidenced by Tenant’s receipt of documentation from the Maryland Department of Housing and Community Development and/or the Maryland Community Development Administration, including but not limited to an Allocation of Federal Low-Income Housing Tax Credits, a Reservation Letter and/or a 42(m) letter, awarding Tax Credits and other subsidy funds in an amount Tenant deems sufficient to finance the project (the “Tax Credit Award”).

c. Tenant shall have a period of eighteen (18) months from the Tax Credit Award to secure additional financing and to secure Project Approvals in accordance with Article X herein (as may be extended pursuant to Section 2.2.e, the “Project Approvals Deadline”).

d. Closing shall occur on or before the expiration of the eighteenth (18th) month following the Tax Credit Award (as may be extended pursuant to Section 2.2.e, the “Lease Option Term”).

e. Upon written request to the Town for good cause shown, the Town shall grant Developer up to two (2) ninety (90) day extensions to the Project Approvals Deadline and up to two (2) ninety (90) day extensions to the Lease Option Term. The Town and the Developer may agree on further extensions as mutually agreed to be necessary.

f. During the Lease Option Term, in addition to applying for Tax Credit financing, Tenant shall also make reasonable efforts to obtain Opportunity Zone financing.
2.3 **Scholarship.** Within thirty (30) days after the Effective Date of this Agreement, the Developer shall pay to the Town, in cash, the non-refundable amount of Forty Thousand Dollars ($40,000.00), of which Twenty Thousand Dollars ($20,000.00) will be used for the purpose of funding one or more two-year college scholarships for residents of The Town of Capitol Heights, and Twenty Thousand Dollars ($20,000.00) will be used for the purpose of funding student internships. The qualifications for eligibility and criteria for award of the scholarships shall be determined by the Mayor and Council of the Town within one hundred eighty (180) days after Developer pays the money to the Town.

2.4 **Ground Lease Initial Payment.** As provided in the Ground Lease, the initial payment under the Ground Lease shall be Nine Hundred Fifty Thousand Dollars ($950,000.00), payable by Developer to the Town, in cash, upon Closing of the Ground Lease.

2.5 **Ground Lease Annual Payments:** Subject to the terms of the Ground Lease, starting one year after Property Stabilization, and subject to cash-flow provisions contained in the Amended and Restated Operating Agreement of Developer, Developer shall pay rent to the Town in the form of a Ground Lease Annual Payment. The initial Ground Lease Annual Payment shall be Forty Thousand Dollars ($40,000.00) commencing one year after Property Stabilization, to be paid on the same date annually thereafter. The Ground Lease Annual Payment shall be increased by 2.25% annually starting with the second payment after Property Stabilization.

**ARTICLE III**

**Option to Purchase**

3.1 **Grant of Option to Purchase.** The Town grants to Developer an option to purchase the Property from the Town in fee simple, by special warranty deed, in accordance with the following terms.

3.2 **Exercise of Option.** Developer may exercise the option to purchase upon obtaining the Town’s written consent, which may be withheld in the Town’s sole and absolute discretion, at any time following ten (10) years from the Effective Date of this Agreement, except that Developer may exercise the option to purchase only if Tenant then is not in default after all applicable notices and cure periods under the Ground Lease.

3.3 **Purchase Price.** If Developer exercises the option to purchase, and the Town consents to the option to purchase, Developer shall pay the Town the fair market value of the Property. The fair market value shall be determined as follows: both Developer and the Town shall each promptly appoint a nationally recognized commercial real estate brokerage firm (such as Jones Lang LaSalle or CBRE), who has at least ten (10) years’ standing and established experience in selling
properties of similar type and quality, and in the market as the Property (an “Appraiser”) to establish the fair market value of the Property. If each of the Appraiser’s determinations of the fair market price is within five percent (5%) of the other (as measured from the lower of the two values), then the fair market price shall equal the value established by the Town’s Appraiser. If the Town’s Appraiser’s and Developer’s Appraiser’s determination of the fair market price differ by more than five percent (5%) (as measured from the lower of the two values), then such Appraisers shall jointly select a third qualified Appraiser (the “Third Appraiser”). Once the Third Appraiser has been appointed, the Third Appraiser shall submit its determination of the fair market price within twenty (20) days. In such case, the fair market price of the Property shall equal the average of the two (2) closest determinations of the three (3) proposed the fair market prices.

Upon such purchase, the Town will have no further ownership interests in the Property or the improvements. In the event Developer does not exercise the option to purchase or the Town does not consent to the Developer’s option to purchase, the Ground Lease shall remain in full force and effect.

3.4 Closing. Closing shall take place within thirty (30) days after Developer exercises its option to purchase at a nationally recognized title company selected by Developer. All costs of closing shall be borne by Developer.

3.5 Conveyance. Subject to and in accordance with the terms of this Agreement, the Town shall sell to the Developer and the Developer shall purchase from the Town, all of Town’s right, title, and interest in and to the Property. The conveyance of the Property shall be “as is, where is,” without representations or warranties. The Town will have no right to encumber the Property with debts or obligations other than in its governmental role (such as tax liens).

ARTICLE IV
Condition of Property

4.1 Feasibility Studies; Access to Property.

a. The provisions of this Article IV are supplementary to the provisions of Article IX relating to Developer’s Right-of-Entry.

b. The Developer hereby acknowledges that, prior to the Effective Date, it has had the right to perform Studies (as hereinafter defined) on the Property using experts of its own choosing and to access the Property for the purposes of performing Studies. From time to time prior to Closing, provided this Agreement is in full force and effect and the Developer is not then in default hereunder, and as provided in Article IX, Developer and Developer’s Agents (as hereinafter defined) shall continue to have the right to enter the Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and
investigations ("Studies") as Developer deems necessary or desirable to evaluate the Property; provided, Developer’s Agents shall not conduct any invasive Studies on the Property without the prior written consent of the Town, which shall not be unreasonably delayed or withheld (but no such consent shall be required if such invasive Studies are required by a Phase I environmental report, by the Tenant’s lender or by the Tenant’s investor), and, if approved or deemed approved, Developer shall notify and shall permit a representative of the Town to accompany the Developer or Developer’s Agents during the conduct of any such invasive Studies.

c. The Developer and Developer’s Agents are solely responsible for obtaining any necessary licenses and permits for the Studies and any work associated therewith, including transportation and disposal of materials. In addition, Developer and the Developer’s Agents shall be obligated to comply with all Applicable Law and the provisions of this Agreement during their entry on the Property and while conducting any Studies.

d. In the event Developer or Developer’s Agents disturbs, removes or discovers any materials or waste from the Property while conducting the Studies, or otherwise during its entry on the Property, which are determined to be Hazardous Materials as defined in Section 9.11, Developer shall notify the Town within five (5) business day after its discovery of such Hazardous Materials.

4.2 Title. At Closing, the Town shall execute and deliver the Property per the Ground Lease, “AS IS, WHERE IS” and subject to the Permitted Exceptions. The “Permitted Exceptions” shall be the following collectively: (i) all title matters, encumbrances or exceptions of record as of the Effective Date; (ii) encroachments, overlaps, boundary overlaps, strips, gores, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (iii) any documents described in this Agreement that are to be recorded in the Land Records pursuant to the terms of this Agreement; (iv) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer’s Agents or created as a result of or in connection with the use of or activities on the Property or any portion thereof by Developer or Developer’s Agents; (v) all building, zoning, and other Applicable Law affecting the Property as of the Effective Date; (vi) real property taxes and water and sewer charges which are not due and payable as of Closing, subject to the obligation to pro-rate taxes on the Property as set forth in this Agreement and (vii) any easements, rights-of-way, exceptions, and other matters of record as of the Effective Date.

4.3 No adverse actions. From and after the Effective Date through Closing, the Town agrees not to take any action that would cause a material adverse change to the status of title to the Property existing as of the Effective Date, except as expressly required by Applicable Law or as permitted by this Agreement.
4.4 Condemnation

a. Notice. If, prior to Closing, any condemnation or eminent domain proceedings shall be commenced by any competent public authority against the Property, the Town shall promptly give the Developer written notice thereof.

b. Total Taking. In the event of a taking of the entire Property prior to Closing, this Agreement shall terminate, the Parties shall be released from any and all obligations hereunder except those that expressly survive termination, and the Town shall have the right to any and all condemnation proceeds.

c. Partial Taking. In the event of a partial taking prior to Closing, Town and Developer shall jointly assess in good faith whether the development of the Project remains physically and economically feasible. If the Developer reasonably determines that the Project is no longer feasible, whether physically or economically, as a result of such condemnation, the Developer may terminate this Agreement and receive a full refund of any payments except for payments under 2.3, and the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein, and Town shall have the right to any and all condemnation proceeds. If the Developer determines that the Project remains economically and physically feasible and elects to proceed to Closing, the condemnation proceeds shall either be paid to Tenant at Closing or, if paid to Town, such amount shall be and credited against the Ground Lease Initial Payment; provided, however, that if no compensation has been actually paid by Tenant on or before Closing, Developer shall accept the Property without any adjustment to the Purchase Price and subject to the proceedings, in which event, Town shall assign to Developer at Closing all interest of Town in and to the condemnation proceeds that may otherwise be payable to Town, and Tenant shall receive a credit at Closing in the amount of any condemnation proceeds actually paid to Town prior to the Closing Date. In either event, Town (as the Landlord hereunder) shall have no liability or obligation to make any payment (other than to assign its interests in such payments) to Developer or Tenant with respect to any such condemnation. In the event the Parties elect to proceed to Closing, Town agrees that Developer shall have the right to participate in all negotiations with the condemning authority, and Town shall not settle or compromise any claim to the condemnation proceeds without Developer’s consent. Within forty-five (45) days after the date of receipt by Developer of notice of such condemnation, the Developer shall affirmatively elect to terminate or proceed to closing hereunder, such failure shall be deemed the Developer’s election to terminate this Agreement.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.1 Representations by the Town.

Town hereby represents and warrants to Developer as follows:

a. The execution, delivery and performance of this Agreement by Town and the transactions contemplated hereby between Town and Developer, including the Town’s disposition of the Property, shall have been authorized and approved by all necessary parties prior to Closing.

b. No agent, broker, or other person acting pursuant to express or implied authority of Town is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against Developer for a commission or finder's fee. Town has not dealt with any agent or broker in connection with the sale of the Property.

c. There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending against Town, which relates to the Property. There is no other litigation, arbitration, administrative proceeding, or other similar proceeding pending against Town, which, if decided adversely to Town, would impair Town's ability to perform its obligations under this Agreement.

d. The execution, delivery, and performance of this Agreement by Town and the transactions contemplated hereby between Town and Developer do not violate any of the terms, conditions or provisions of any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority to which Town is subject, or any agreement, contract or Law to which Town is a party or to which it is subject.

5.2 Representations by the Developer.

Developer hereby covenants, represents, and warrants to the Town as follows:

a. The Developer is a District of Columbia limited liability company, duly formed and validly existing and in good standing, and has full power and authority under the laws of the District of Columbia to conduct the business in which it is now engaged. Developer further covenants, represents and warrants that it is authorized to engage in and transact business in Maryland.
b. No agent, broker, or other person acting pursuant to express or implied authority of Developer is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against the Town for a commission or finder's fee. Developer has not dealt with any agent or broker in connection with its lease or purchase of the Property.

c. There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending against Developer that, if decided adversely to Developer, (i) would impair Developer's ability to enter into and perform its obligations under this Agreement or (ii) would materially adversely affect the financial condition or operations of the Developer.

d. Developer’s lease of the Property and its other undertakings pursuant to this Agreement are for the purpose of constructing the Project in accordance with the Development Plan and Construction Drawings and not for speculation in land holding.

e. Neither Developer nor any of its members are the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

f. Developer shall conduct all site acquisition activities, including review of all existing due diligence documentation to determine the site viability. The Developer has the right to terminate if it determines that the project is not viable, as a result of such action, this Agreement shall terminate. Town shall release the Deposits to Developer, the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein.

g. Developer shall obtain all entitlements, including but not limited to, construction and zoning/re-zoning consents, land use amendments, design review, zoning variances, CUP (Conditional Use Permits), building permits, site plan review, plat/cadastral maps), approvals and variances necessary for the Project.

h. Developer shall develop a capital procurement strategy via private and public sources of debt, equity and grants to fully capitalize all aspects of the project in addition to any equity invested by Developer and secure all project equity and project debt, guarantees for pre-construction, construction and permanent for this project. Identify and secure all project equity and project
debt, guarantees for pre-construction, construction and permanent for the Project.

i. The Developer’s obligations are subject to securing financing and receiving all necessary approvals from DPIE and MNCPPC.

**ARTICLE VI**

**Conditions Precedent to Closing**

6.1 **Conditions Precedent.** The obligations of Developer under this Agreement to lease the Property from the Town at Closing, and the Town to lease the Property to the Developer, are subject to the satisfaction of each of the following conditions (any one of which may be waived in writing in whole or in part by the party for whose benefit the condition exists at or prior to Closing):

a. The Developer shall have determined that the Project is viable after having conducted all site acquisition activities, including review of all existing due diligence documentation.

b. The Developer shall have obtained all entitlements, including but not limited to, construction and zoning/re-zoning consents, land use amendments, design review, zoning variances, CUP (Conditional Use Permits), building permits, site plan review, plat/cadastral maps), approvals and variances necessary for the Project, including all necessary approvals for the Project from DPIE and MNCPPC.

c. The Developer shall have developed a capital procurement strategy via private and public sources of debt, equity and grants to fully capitalize all aspects of the Project in addition to any equity invested by Developer and secure all project equity and project debt, guarantees for pre-construction, construction and permanent for the Project; and have identified and secured all project equity and project debt, guarantees for pre-construction, construction and permanent financing for the Project.

d. All of the representations and warranties by Town and the Developer set forth in this Agreement shall be true and correct at and as of the date of Closing in all material respects as though such representations and warranties were made at and as of the date of Closing.

e. The Developer and the Town, in all material respects, shall have performed, observed and complied with all covenants, agreements and conditions required by this Agreement to be performed, observed and complied with prior to or as of the Closing date.
f. There shall not be pending or threatened on the Closing date any litigation or governmental proceedings affecting the Property or any portion thereof, which, in Developer’s reasonable judgment, materially and adversely impact Developer’s intended use of the Property.

g. The Property shall be free and clear of all written notices of violations of governmental laws, ordinances, rules and regulations, and any orders issued by any public authority having jurisdiction over the Property.

ARTICLE VII
Closing

7.1 **Time and Place of Closing.** Closing shall take place at a location selected by the Developer in Prince George’s County.

7.2 **Closing.** At the Closing the Town shall deliver or cause to be delivered to Developer the following:

   a. The Ground Lease, in recordable form, duly executed and acknowledged by the Town and in form reasonably satisfactory to Developer’s attorney conveying a 99-year leasehold estate to the Property.

   b. An affidavit, in accordance with the Foreign Investment in Real Property Tax Act, stating that Town is not a foreign person within the meaning of such Act and that Town is not subject to the withholding requirements set forth in such Act.

   c. Any instruments, settlement statements, agreements, affidavits and/or other documentation reasonably required by the title company insuring Developer’s leasehold estate in order to effectuate the transaction contemplated hereby, and the issuance of the title insurance policy.

7.3 At Closing, the Developer shall deliver to Town the following:

   a) The Ground Lease Initial Payment under Section 2.3 hereof and the Ground Lease, duly executed and acknowledged by the Developer.

   b) Any instruments agreements, affidavits and/or other documentation reasonably required by the title company insuring Developer’s leasehold estate in order to effectuate the transaction contemplated hereby, and the issuance of the title insurance policy.

ARTICLE VIII
Apportionments and Adjustments
8.1 **Unpaid Real Estate Taxes.** If, on the Closing date, bills for the real estate taxes imposed upon the Property for the tax fiscal period in which Closing occurs have been issued but shall not have been paid, such real estate taxes shall be paid at Closing by the Town. If such bills shall not have been issued on the Closing date, the amount of the real estate taxes shall be reasonably ascertained based upon the then current assessment and the anticipated tax rate, and the portions of such taxes to be borne by Developer and the Town shall be deposited with the Escrow Agent to be disbursed by the Escrow Agent promptly after the real estate tax bills have been issued, for the payment of such bills. If the actual taxes are greater than the amounts estimated, the Town and Developer shall each promptly pay to the Escrow Agent its pro rata share of such excess.

8.2 **Transfer Taxes and Closing Costs.** Developer shall pay at Closing the Escrow Agent fees and costs, and all transfer and recordation taxes applicable to this transaction. Developer shall bear the expense of its own legal fees for closing and shall pay Town’s actual and reasonable legal fees up to $30,000.00.

8.3 **Public Charges and Assessments.** Water, sewer, front foot benefit, and other public charges and assessments imposed on or against the Property shall be apportioned between the Town and Developer at closing and assumed thereafter by Developer.

8.4 **Post-Closing Adjustments.** Except as expressly provided herein, any item which cannot be accurately pro-rated as of the Closing date shall, at Closing, be pro-rated on the basis of the parties' good faith estimates, utilizing bills and receipts therefore for the comparable period during the preceding year, and shall be re-pro-rated after Closing within thirty (30) days after precise information becomes available. In the event any errors or omissions in computing the apportionments are discovered, the parties shall promptly make adjusting payments to each other. This Section 8.4 shall survive Closing.

**ARTICLE IX**

**Pre-Closing Right of Entry**

9.1 From and after the date of this Agreement, the Town hereby grants to Developer, and Developer’s employees, agents, contractors, subcontractors and invitees (collectively “Agents”) a license to enter and access the Property at any time during daylight hours Monday through Saturday, to perform any tests or work in connection with the Project Approvals (as defined in Section 10.2 of this Agreement), and the development of the Property. The license shall expire, unless otherwise extended by mutual agreement of the Town and Developer, upon the earlier of: (a) the conveyance by the Town of the Property to the Developer Ground Lease, or (b) the termination of this Agreement pursuant to its terms. Developer or its Agents may store equipment on the Property during the term of this right-of-entry; provided, however, that Developer and its Agents shall be solely responsible for securing such equipment on the Property and the Town
shall not be liable for any theft or damage to any equipment stored on the Property. Upon Town’s request, Developer shall promptly remove any equipment stored on the Property. No other use shall be made of the Property by Developer without Town’s prior written approval, which approval shall be within Town’s sole, unfettered and absolute discretion.

9.2 In the event Developer desires to conduct any physically invasive activities such as sampling of soils or drilling wells or archeological surveys on the Property, Developer shall provide the Town with the scope of work to be done and the name of the contractor to conduct such work, and shall request the prior written consent thereto of the Town, which consent shall not be unreasonably withheld, conditioned or delayed. If the Town has not responded within five (5) days after receipt of Developer’s request for consent under this Section 9.2, then the Town will be deemed to have denied the request for consent. Any such tests that are required by a Phase I assessment or by a senior secured lender or investor of the Tenant will be deemed approved.

9.3 Prior to entering the Property, Developer shall provide the Town with proof of insurance, as required in Article XI of this Agreement.

9.4 At the termination of the right-of-entry for reasons other than conveyance of the Property to the Developer, Developer shall, at its sole expense: (i) restore the Property to substantially the same condition that existed prior to any activities conducted pursuant to this right-of-entry; (ii) remove all tools, equipment, materials and other personal property from the Property which are brought onto the Property by Developer or Developer’s Agents, such removal shall be in accordance with the terms of this Article 9 and applicable law; and (iii) pay in full any and all liens by contractors, subcontractors, materialmen or laborers performing any inspections or any other work for Developer or Developer’s Agents on or related to the Property. Upon conclusion of each entry on to the Property, Developer or Developer’s Agents shall remove all trash, refuse and debris generated as a result of the entry onto the Property and shall leave the Property in a neat, clean and safe condition.

9.5 Developer shall provide and adequately maintain any barricades, fences, signs, lanterns and other suitable devices as deemed necessary by OSHA or MOSHA for employee and public safety with respect to entry or work undertaken under this right-of-entry. Developer shall maintain the security of each of its work sites on the Property to the reasonable satisfaction of the Town during the entire period of entry under this right-of-entry. In the conduct of work undertaken herein, Developer shall exercise all reasonable and customary safety precautions and shall maintain all work areas on the Property in a clean and presentable manner. Developer shall, unless otherwise directed by the Town (a) use commercially reasonable efforts to secure the Property at all times until expiration or earlier termination of this right-of-entry, and (b) be solely responsible for ensuring that
only Developer and its Agents have access to the Property while it is conducting any work under this right-of-entry.

9.6 With respect to all activities permitted under this Article, Developer shall at all times conform with and abide by the orders and directions of Town officials or their duly authorized representatives, indemnifying the same as follows:

a. Developer shall indemnify and hold harmless Town, its officials, officers, employees, and agents from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses (including reasonable attorney’s fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property caused by Developer occurring in connection with, or in any way arising out of the use, occupancy, and performance of the work permitted by this right-of-entry; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of Town.

b. Developer shall indemnify and hold harmless Town, its officials, officers, employees, and agents from all liabilities, remedial costs, environmental claims, fees, or other expense related to, arising from, or attributable to, any Hazardous Materials transported on the Property by Developer or as a result of Developer’s activities on the Property; provided, however, the foregoing indemnity shall exclude any pre-existing conditions, or any claims or liabilities related to the negligence or willful misconduct of Town.

c. Developer expressly indemnifies and shall defend Town against any claims by Developer’s Agents who perform any activity on the Property; provided, however, the foregoing indemnity shall exclude any claims or liabilities caused by the gross negligence or willful misconduct of the Town. This right-of-entry shall not be construed as granting Developer or any Agent of Developer the right to place any lien, mechanic’s lien, or any charge on the Property.

d. If any action or proceeding as described in this Section is brought against Town, its officials, officers, or employees, upon written notice from Town to Developer, Developer shall, at its sole expense, pay for the Town to resist or defend such action or proceeding by counsel selected by the Town, except for indemnity exclusions as provided in 9.6.b above. In the event the Town Attorney or other counsel selected by the Town takes any legal action required to defend the Town against such action, Developer shall promptly reimburse Town for all liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages, disbursements or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred by Town in
investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Town or any of them in connection with or arising from or out of this right of entry; provided, however, the foregoing indemnity shall exclude any claims or liabilities for pre-existing conditions or related to by the negligence or willful misconduct of the Town.

9.7 The Developer’s obligations contained in this Article IX shall survive expiration or the earlier termination of this right-of-entry.

9.8 Without prejudice to any other rights Town may have, Developer is responsible, in accordance with applicable laws, for the acts and omissions of its Agents that cause injuries to persons or damages to the Property, including any claims arising from such injuries or damages, caused by or arising from the activities permitted under this right-of-entry. Town shall have no liability for the actions or negligence of Developer or its Agents. Neither the grant of this right-of-entry, nor any provision thereof, shall impose upon Town any new or additional duty or liability or enlarge any existing duty or liability of Town under this right-of-entry.

9.9 Developer is solely responsible for obtaining any necessary licenses and permits for the work permitted under this right-of-entry, including transportation and disposal of materials and waste. The spoil (soil and water), if any, produced by Developer shall be stored, and disposed of, in strict compliance with local and federal laws. Prior to the removal of any non-hazardous materials and debris from the Property, Developer shall provide Town written notice of the location to which the materials and debris are to be disposed.

9.10 Developer shall be solely responsible for coordinating with the utility companies regarding any activity to be performed on the Property. Developer shall be solely responsible for the proper containment and removal of all utility lines on or near the Property. Developer shall defend and hold harmless Town against any claims by any utility company resulting from Developer’s direct or indirect activities on the Property.

9.11 Developer shall immediately notify Town if it discovers Hazardous Materials (as defined below) or waste on the Property. Developer shall have no obligations with respect to any such materials prior to Closing except for Hazardous Materials that Developer transports onto the Property. Within ten (10) days of the disposal of any Hazardous Materials, Developer shall provide Town written evidence and/or receipts confirming the proper disposal of all Hazardous Materials removed from the Property, although Developer has no obligation to remove and/or dispose of Hazardous Materials discovered on the Property unless transported onto the Property by Developer. For purposes of this right-of-entry, “Hazardous Materials” means (a) asbestos and any asbestos containing material and any substance that is then defined or listed in, or otherwise classified pursuant
to, any Environmental Law or any other applicable law as a “hazardous substance,” “hazardous material,” “hazardous waste,” “infectious waste,” “toxic substance,” “toxic pollutant” or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (b) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (c) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Property or hazardous to health or the environment. “Environmental Law” means any present and future law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities applicable to the Property and relating to the environment and environmental conditions or to any Hazardous Material (including, without limitation, CERCLA, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 1101 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; and any so-called “Super Fund” or “Super Lien” law, any law requiring the filing of reports and notices relating to hazardous substances, environmental laws administered by the Environmental Protection Agency and any similar state and local Laws, all amendments thereto and all regulations, orders, decisions and decrees now or hereafter promulgated thereunder concerning the environment, industrial hygiene or public health or safety).

ARTICLE X
Development of the Project

10.1 Develop the Project on the Property. Developer agrees to develop and construct, and thereafter, use, operate and maintain, the Project on the Property as set forth in this Agreement, at Developer’s sole cost and expense. Developer shall not commence development and construction of the Project until after Closing.

10.2 Project Approvals The Parties acknowledge and agree that the Project requires approvals, entitlements and permits, which may include preliminary plans, detailed site plans, zoning and use variances, grading and building permits, licenses and other items necessary to develop the Property and construct the Project (the “Project Approvals”) from various agencies of the MNCPPC, Prince George’s County (“County”) and the Town, (with such governments and agencies, collectively, the “Planning Authorities”), and agree that Developer shall
have the right to pursue the Project Approvals at such times and in such manner as Developer believes to be reasonable and appropriate, provided that the Developer makes applications for and pursues the Project Approvals with due diligence commencing immediately following the Effective Date of this Agreement. The Developer has submitted conceptual designs for the Project to the Town for its informal review and approval. Developer shall provide final plans to the Town for its review and approval. Within fifteen (15) business days after Town receives such final plans, Town shall deliver to Developer written notice that it approves or rejects the plans; provided that, if the Town rejects all or any part of the plans, then such notice shall: (i) specify the part or parts that Town is rejecting; and (ii) include the specific basis for such rejection. If the Town fails to provide written notice of approval or rejection within such fifteen business-day period, the plans shall be deemed approved. It is understood by both parties that time is of the essence for approvals and submissions to DPIE, MNCPPC and utility companies, the Town shall timely process all informal reviews and approvals so not to delay the project.

10.3 The Town, at no expense to the Town, shall cooperate with any filings in connection with the Project Approvals and utility company approvals, and to the extent that any of these approvals require the review and consent of the Town, the Town shall, and shall cause the applicable Town agencies to, promptly review such filings, respond with any comments or corrections that may be necessary and approve such filings, which consent and approvals shall not be unreasonably withheld, conditioned or delayed. Further, the Town shall assist and cooperate, and shall cause the applicable Town agencies to assist and cooperate, with the Developer in obtaining the Project Approvals as expeditiously as practicable, the Parties acknowledging and agreeing that timing of approvals is critical to completing the Project when expected.

10.4 Intentionally Omitted.

10.5 During the Developer’s site design process, Developer shall invite the Town to participate in regularly occurring design process discussions with the Developer’s architectural design Team. The Town may review and comment on the Project plans and specifications. If the Town does not deliver comments to the Developer in a timely fashion, the Town will be deemed to have waived the right to do so. The Developer shall consider, but is not required to accept, the Town’s comments.

10.6 Provided that the Developer has used due diligence to obtain Project Approvals, if the initial building or grading permit required to develop and construct the Project has not been obtained on or before the last day of the eighteenth (18th) full calendar month following the Tax Credit Award, then the Developer may elect to terminate this Agreement on or any time after such date prior to Closing.

10.7 The Developer shall use best efforts to obtain Project Approvals and complete development and construction of the Project within the following deadlines:
a. Obtain all Project Approvals – within 18 calendar months after the Tax Credit Award.

b. Start of Construction – within 45 days after the Closing date.

c. Completion of site development and installation of roads and utilities infrastructure – within 18 months after the Closing date.

d. Substantial Completion and obtain certificates of occupancy – 24 months after the Closing date.

10.8 The deadlines set forth in Section 10.7 are subject to force majeure. For the purposes of this Agreement, force majeure shall mean delays in the performance of any obligation due to unforeseeable causes beyond the control of Developer, and without the fault of Developer, including, but not limited to, pandemic, public health event or emergency, fire, flood, earthquake, storm or other natural disaster, war, invasion, terrorist act, act of foreign enemies, hostilities (whether war is declared or not), embargo, labor dispute, strike, lockout, unavailability of materials (provided that Developer has no commercially reasonable alternatives to avoid the impact thereof on the progress of the Project), or litigation commenced by third parties that enjoins implementation of the Project.

ARTICLE XI

Insurance

11.1 Insurance to be maintained by the Developer during Construction. The Developer shall purchase and maintain at its cost and expense (or cause to be purchased and maintained) insurance at the following levels of coverage during the construction period with respect to the Project improvements:

a. Commercial general liability insurance with at least $1,000,000 combined single-limit coverage on an occurrence basis covering all premises and operations and including personal injury, independent contractor contractual liability and products and completed operations.

b. Automobile liability insurance with at least $1,000,000 combined single limit coverage to include owned, non-owned and hired automobiles.

c. Worker’s compensation statutory benefits as required by the laws of the State of Maryland and employee’s liability coverage with limits of at least $100,000 each accident, $100,000 each employee disease, and $500,000 disease policy limits.

d. Builder’s risk insurance and multi-peril insurance on an all-risk basis with an agreed-amount endorsement providing completed value coverage such
that for the full construction period the Project is insured in an amount not less than 100 percent of the value of the Project improvements. This insurance shall be written on a form acceptable to the Landlord; and

e. Excess liability coverage in the form of an umbrella endorsement over the coverages set forth in Sections 11.a. through 11.d. in an amount of at least $10,000,000.

11.2 Insurance to be maintained by the Developer and Management Company After Construction. After the completion of construction, the Developer shall maintain in full force and effect at its cost and expense the same insurance as required under Section 11.1, except that the Developer shall be under no obligation to maintain builder’s risk insurance. The Developer shall maintain commercial property insurance protecting against all loss and damages, at full replacement cost, sustained or suffered due to the loss of or damage to the improvements, betterments, fixtures, equipment and personal property as a result of fire, theft, lightning, windstorm, explosion, vandalism, malicious mischief or any other casualty (Causes of Loss – Special Form – ISO Form No. CP1030 or equivalent). The Developer also shall require each management company that provides management services for the Project to maintain in full force and effect during the term of its management contract insurance of such types, in not less than the minimum limits of coverage required by the Developer, and in accordance with such terms, required by this Section and Section 11.3.

11.3 Certificates of Insurance. The Developer and management company shall furnish the Town with certificates evidencing the type, amount, class of operations and effective dates of expiration of the insurance policies required in this Agreement. To the extent that the insurance companies providing policies required by this Agreement shall agree, the certificates shall include substantially the following statement: “The insurance covered by this certification shall not be canceled or materially altered, except after thirty (30) consecutive calendar days from when a written notice has been delivered to The Town of Capitol Heights.” The Town, and its agents, employees and officers, shall be named as an additional insured in all insurance policies required by this Agreement except for workers compensation and automobile liability policies. The Town shall have the right to approve all insurance companies providing policies required by this Agreement, and such approval shall not be unreasonably withheld.

11.4 Periodic Review of Insurance Coverage. The Town shall have the right to periodically review all documentation relating to the Developer’s insurance coverage to ascertain that the Developer is in compliance with the insurance requirements of this Agreement, and the Developer shall make such available within a reasonable time at the request of the Town. Moreover, periodically, but not more often than every three (3) years during the term of this Agreement, the Town may shall review the amounts of insurance coverage required under this Agreement. If the Town determines that the amounts should be increased or
decreased based on sound business and liability grounds, the Town shall inform the Developer, and the Developer shall comply with the change in the amount of insurance within thirty (30) days. Any changes in insurance coverage amounts requested by the Landlord shall be consistent with insurance coverage amounts generally required by commercial landlords in the Baltimore-Washington area for similar situations.

11.5 Casualty. In the event of a casualty involving any improvements on the Property, the Town and the Developer agree that Developer shall apply the proceeds of any hazard insurance to the restoration of the Property to the extent necessary to enable the Project to be restored to its prior condition and to comply with all other obligations of the parties set forth in this Agreement, subject to the rights and priorities of Developer’s leasehold mortgagees.

11.6 Insurance Requirements Survive Closing. The requirements of this Article XI survive Closing, to that in the event that a provision of the Ground Lease conflicts with this Article XI, the terms of the Ground Lease shall prevail.

ARTICLE XII
Compliance with Laws and Quality of Work

12.1 Compliance with Laws and Quality of Work. Developer shall perform the work associated with the development, construction, use and maintenance of the Project in a good and workmanlike manner and in strict accordance with the requirements of all applicable laws, ordinances, codes, orders, rules and regulations of all applicable governmental authorities. All the activities performed under this Agreement shall be performed in accordance with (a) standard practices in real estate development for comparable mixed-use developments in the greater Washington, D.C. metropolitan area; and (b) standards, criteria and other requirements imposed by applicable statutes, regulations, ordinances, and orders of all governmental authorities having jurisdiction over the Property. Developer shall use good faith diligent efforts to furnish the skill and judgment necessary to perform its obligations hereunder in an expeditious and economical manner. Developer shall use good faith diligent efforts to apply for, prosecute and obtain all necessary approvals, permits and licenses required for the performance of the construction of the improvements on the Property and the rental and sale of residential units. The Town agrees to cooperate with Developer’s efforts to obtain such approvals, permits and licenses, including, but not limited to the Project Approvals, provided that they are in accordance with this Agreement.

12.2 Compliance with EEO Laws. In addition to the requirements of Section 12.1, the Developer, in its development, construction, use and maintenance of the Project, shall comply with the Federal Fair Housing Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Title 20 of the State Government Article of the Maryland Annotated Code, and any other laws that
prohibit discrimination on the grounds of race, religion, color, national origin, sex, age, physical or mental handicap or disability, or any other class or characteristics protected by applicable law.

ARTICLE XIII

No Liens

13.1 No Liens. No Party, without the prior written approval of the other Party, shall encumber the Property, or the Project, except for Developer's acquisition of the Property or, after Closing, financing of the Development and related costs. Developer shall pay or cause to be paid all costs and charges for work done by it or caused to be done by it, by its contractors, subcontractors, agents and employees, in or to the Property, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the construction of the Development.

ARTICLE XIV

Defaults

14.1 Events of Developer’s Default. At the option of the Town, the occurrence of any of the following events shall constitute an “Event of Default” by Developer:

a. The Property or any part of the Property is subjected to any recorded lien by any creditor of Developer or claimant against Developer, other than the lien of a creditor making a loan or funds available in connection with the acquisition of the leasehold estate in the Property, and such recorded lien is not discharged or bonded (by payment or by other means permitted by law) within sixty (60) days after its levy.

b. Any representation or warranty made by Developer in this Agreement is false, incorrect or misleading in any material respect, which is not corrected by Developer within ten (10) days of receiving written notice from the Town.

c. Developer breaches any provisions of this Agreement or any of the other agreements, terms, covenants, or conditions that this Agreement requires Developer to perform, and such breach continues for a period of thirty (30) days after receipt of notice by the Town to Developer; provided, however, if the nature of the breach is such that it cannot be cured by the Developer reasonably within the period of sixty (60) days, Developer shall not be deemed in default of this Agreement if Developer commences the curing of such breach within such period of sixty (60) days of such notice and prosecutes in good faith the curing of same within sixty (60) days of its receipt of the original notice of such breach.
d. Developer becomes insolvent, is adjudged bankrupt, makes a general assignment for the benefit of creditors, or becomes a subject of any proceeding commenced under any statute or law for the relief of debtors; provided, that, the Developer shall have ninety (90) days to effect the dismissal or stay of any such involuntary proceeding.

14.2 **Town Remedies.** If any one or more Events of Default on the part of Developer occurs, then the Town may exercise any one or combination of the following remedies: (a) terminate this Agreement by written notice to Developer of its intention to terminate this Agreement on the date of such notice or on any later date specified in such notice, provided such termination occurs before Closing; and/or (b) exercise any rights or remedies it may have under applicable law or otherwise.

14.3 **Events of Town’s Default.** At the option of the Developer, the occurrence of any of the following events shall constitute an “Event of Default” by Town:

a. The Property or any part of the Property is subjected to any recorded lien by any creditor of Town or claimant against Town, and such recorded lien is not discharged or bonded (by payment or by other means permitted by law) within sixty (60) days after its levy.

b. Any representation or warranty made by the Town in this Agreement is false, incorrect or misleading in any material respect, which is not corrected by Town within ten (10) days of receiving written notice from the Town.

c. If Town breaches any provision of this Agreement or of any of the other agreements, terms, covenants, or conditions that this Agreement requires Town to perform, and such breach continues for a period of thirty (30) days after receipt of notice by the Developer to the Town; provided, however, if the nature of the breach is such that it cannot be cured by the Town reasonably within the period of sixty (60) days, the Town shall not be deemed in default of this Agreement if Town commences the curing of such breach within such period of sixty (60) days of such notice and prosecutes in good faith the curing of same within sixty (60) days of its receipt of the original notice of such breach.

d. The Town becomes insolvent, is adjudged bankrupt, makes a general assignment for the benefit of creditors, or becomes a subject of any proceeding commenced under any statute or law for the relief of debtors; provided, that, the Town shall have ninety (90) days to effect the dismissal or stay of any such involuntary proceeding.

14.4 **Developer Remedies.** If any one or more Events of Default on the part of the City occurs, then Developer may: (a) terminate this Agreement by written notice to Town of its intention to terminate this Agreement on the date of such notice or
on any later date specified in such notice, provided such termination occurs before Closing; and/or (b) exercise any rights or remedies it may have under applicable law or otherwise.

ARTICLE XV
Covenant Running with Land

15.1 Covenant. The Developer and Town hereby declare that, from and after the date of this Agreement, the Property shall be held, conveyed, encumbered, sold, leased, rented, used, occupied and improved subject to such covenants, conditions, restrictions, use limitations, easements, obligations and equitable servitudes as are set forth in this Agreement and the Ground Lease, all of which covenants, conditions, restrictions, use limitations, easements, obligations, and equitable servitudes shall be deemed to run with and bind to the land and be binding on the Developer, the Tenant and Town, their respective successors and assigns, and shall not be construed merely as personal obligations or covenants of the Developer, the Tenant or the Town.

ARTICLE XVI
Indemnification

Indemnification. The Developer shall defend, indemnify and hold harmless the Town and its agents, servants, officials and employees from and against any and all loss, damage, cost, expense or liability, including court costs and reasonable attorney's, consultants and expert witness fees and expenses, in any way arising out of any breach by Developer of any covenant, agreement, representation or warranty set forth in this Agreement, and any other acts or omissions on the part of the Developer, its agents, servants, officers, employees, invitees, tenants, guests and invitees in the development, operation, maintenance, repair and replacement of the Project, except to the extent caused by the gross negligence or willful misconduct of the Town, its agents, servants, officers, or employees. This obligation shall survive any termination of this Agreement.

ARTICLE XVII
Miscellaneous

17.1 Amendment. This Agreement shall be amended, modified or supplemented only with the written agreement of the Town and the Developer. Any amendment shall be recorded among the Land Records of Prince George’s County at the expense of the Party requesting the amendment promptly following execution.

17.2 No Waiver. The waiver by either Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of such breach by the other Party, as an amendment of this Agreement, or as a waiver of any subsequent breach of the same or any other provision of this Agreement by the waiving party or by the other Party.
17.3 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective Parties. The Developer may not assign this Agreement, or any portion thereof, without obtaining the Town’s prior written consent, which the Town may withhold at its sole and arbitrary discretion. However, the Town acknowledges that Pennrose is co-developer with Developer on the Project and Town hereby confirms that Pennrose, is an approved joint venture party with Developer. Developer shall be permitted to assign its rights under this Agreement to any person or entity which directly or indirectly controls, is controlled by or is under common control with Developer, or to any person or entity resulting from a merger or consolidation with Developer or its members, or to any person or entity which acquires all the assets of Developer or its members’ business as a going concern pursuant to a written agreement, provided that (i) the assignee assumes, in full, the obligations of Developer under this Agreement, pursuant to a written agreement in form reasonably acceptable to the Town, and (iii) Developer provides the Town with prior written notice of any such assignment.

17.4 **Headings.** The headings of this Agreement are for reference only and shall not be deemed to limit or define the meaning hereof.

17.5 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument.

17.6 **Time of the Essence.** Time is of the essence in this Agreement and in performance of all obligations under this Agreement.

17.7 **Notices.** All notices and other communications required under this Agreement shall be hand delivered, e-mailed, telecopied or delivered by commercial courier with receipt, or mailed, by registered or certified mail, postage prepaid and return receipt requested, to the parties at the following addresses (or at such other address as any party may designate in writing):

**To the Developer:**

The Argos Group, LLC  
45 Sutton Square, S.W., Suite 806  
Washington, D.C. 20024  
Attention: Gilberto Cardenas and Dennis Cotto

Pennrose, LLC  
230 Wyoming Avenue  
Kingston, Pennsylvania 18704  
Attn: Mark Dambly, President

and a copy to:  
Klein Hornig LLP  
1325 G Street, NW, Suite 770
Washington, DC 20005
Attention: Erik T. Hoffman

To the Landlord:
Mayor
The Town of Capitol Heights
1 Capitol Heights Boulevard
Capitol Heights, Maryland 20743

With a copy to:
Town Administrator
The Town of Capitol Heights
1 Capitol Heights Boulevard
Capitol Heights, Maryland 20743

Kevin J. Best, Esq.
106B Defense Highway, Suite A
Annapolis, Maryland 21401
Email: kevin@kevinbestlaw.com

Such notice shall be deemed received on the date sent if by hand delivery or by confirmed e-mail or telecopy, on the date set forth on the receipt if delivered by commercial courier, or on the third business day subsequent to mailing as specified herein.

17.9 Entire Agreement. This Agreement constitutes the entire understanding and agreement for the Parties. All previous agreements, understandings, promises, and representations, whether written or oral, relating to this transaction, are superseded by this Agreement.

17.10 Governing Law and Forum for Actions. This Agreement shall be construed under and governed by the laws of the State of Maryland, without regard to those principles governing conflicts and choice of laws. Any action arising from or relating to this Agreement shall be brought in the State courts of Maryland located in Prince George’s County. To the extent permitted by law, Town and the Developer waive their right to remove any such action to federal court.

17.11 Estoppel Certificates. The Town and the Developer shall, without charge, at any time and from time to time, within fifteen (15) days after receipt of request therefore from the other party, execute, acknowledge and deliver to the requesting Party, and to such mortgagee or other Party as may be designated by the requesting Party, a written estoppel certificate in form and substance as may be reasonably required by either Party or by a mortgagee or other Party.

---

1 Correct Notice Party for Town to be confirmed.
17.12 **Recordation.** The Town shall record this Agreement promptly after execution in the Land Records of Prince George’s County, Maryland, at the expense of the Developer.

17.13 **Interpretation.** This Agreement has been prepared jointly by Town and the Developer. In the event of any ambiguity in this Agreement, such ambiguity shall not be resolved against either Party solely because that party prepared this Agreement.

17.14 **Attorney’s fees Upon Breach.** If Developer or Town breaches any part of this Agreement, each party shall pay the reasonable attorney’s fees, court costs, cost of suit, and expenses incurred by the injured Party in enforcing the provisions of this Agreement with respect to the breach or in obtaining damages for the breach.

17.15 **Non-Waiver of Immunity.** Nothing in this Agreement shall be construed as a waiver of any sovereign or governmental immunity to which the Town may be entitled and such immunity is expressly affirmed to the extent permitted by law.

17.16 **Further Assurances.** The Parties to this Agreement shall execute and deliver, each at their respective expense, such further agreements, documents, and other instruments and do such further acts as may be reasonably required to carry out the intent and purposes of this Agreement.

17.17 **No Third Party Beneficiary.** No person or entity other than the Town and the Developer is or shall be entitled to bring any action to enforce any provision of this Agreement or the performance of any obligation under this Agreement by either Party. The provisions of this Agreement are solely for the benefit of and shall be enforceable only by the Town and the Developer and their respective successors and assigns as permitted hereunder.

17.18 **Waiver of Trial by Jury.** The Town and Developer both waive any right to trial by jury to which either of them may be entitled in any action arising from or relating to this Agreement.

17.19 **Subject to Funding.** Any financial obligation of the Town under this Agreement is subject to all provisions of law and is subject to appropriation and availability of funds.

17.20 **Cooperation.** The Parties shall cooperate with and assist each other (at no cost to the cooperating party) in obtaining any and all permits, licenses, certificates and/or other approvals required or convenient for the development, construction, operation, leasing, repair and maintenance of the Property and the Project, including, but not limited to, the Project Approvals, building permits, use and occupancy certificates, zoning permits and all other necessary or appropriate permits or approvals.
17.21 **Agreement Survives Closing.** This Agreement shall survive Closing of the Ground Lease, and should there be a subsequent closing of the sale of the Property by the Town to Developer if Developer exercises its option to purchase the Property pursuant to Article III of this Agreement, subject to and only to the extent that its terms are incorporated into the Ground Lease or the documentation effectuating the purchase of the Property, should that occur, as the case may be.

17.22 **No Partnership.** This Agreement is not intended to, and does not, establish a partnership, joint venture or any other type of business relationship between the Parties.

17.23 **Materiality of Recitals.** The Recitals at the beginning of this Agreement are a material part of this Agreement and not merely prefatory.

17.24 **“Rules of Construction”** Unless the context clearly indicates to the contrary, for all purposes of this Agreement, (a) words importing the singular number include the plural number and words importing the plural number include the singular number; (b) words of the masculine gender include correlative words of the feminine and neuter genders; (c) words importing persons include any Person; (d) any reference to a particular Section shall be to such Section of this Agreement; and (e) any reference to a particular Exhibit shall be to such Exhibit to this Agreement; and to all sub-Exhibits related thereto (e.g., references to Exhibit A shall include Exhibit A-1, Exhibit A-2, etc.).

17.25 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, all other provisions hereof shall nevertheless continue in full force and effect.

17.26 **Status Meetings.** Developer and the Town shall use best efforts to establish a regular schedule of periodic status check-in meetings, phone calls or virtual meetings as the case may be during the time period running from the Effective Date of this Agreement through the expiration of the Lease Option Term.

**ARTICLE XVIII**

**List of Exhibits**

The following Exhibits are attached to and incorporated into this Agreement:

18.1 **Exhibit A:** Property Description Tax and Lot Numbers
18.2 **Exhibit B:** Plans and Drawings
18.3 **Exhibit C:** Schedule of Performance
18.4 **Exhibit D:** Ground Lease
IN WITNESS WHEREOF, the Developer and the Town, by their duly authorized representatives, have executed, sealed, and delivered this Agreement as of the date and year written below.

WITNESS/ATTEST:

THE ARGOS GROUP, LLC

__________________________
By:__________________________ (SEAL)
Authorized Member

Date: ______________________

PENNROSE, LLC

__________________________
By:__________________________ (SEAL)
Authorized Member

Date: ______________________

THE TOWN OF CAPITOL HEIGHTS

__________________________
By:__________________________ (SEAL)

Date: ______________________

[Signature Page for Disposition Agreement, The Developer, and The Town of Capitol Heights]