

TOLLING AGREEMENT

THIS TOLLING AGREEMENT ("Agreement") is entered into effective June 18, 2025 ("Effective Date"), by and between Auxo Cap LLC ("Auxo Cap") and the Village of Nyack ("Village"). The foregoing parties are referred to herein individually as a "Party" and shall be collectively referred to herein as the "Parties."

WHEREAS, a dispute arose between the Parties after the Village Board of Trustees ("BOT"), on May 8, 2025, adopted an amendment to Village Code §360-3.2(B)(11)(c), by virtue of the BOT's adoption of Local Law #2 of 2025 ("LL #2 of 2025"), which modified the proximity regulations for adult-use retail cannabis dispensaries (i.e., recreational) and registered organization cannabis dispensaries (i.e., medical), amongst other modifications to Village Code §360-3.2(B)(11)(c) that are not relevant to this Agreement; and which LL #2 of 2025 caused Auxo Cap's pending building permit application to be disapproved by the Chief Building Inspector ("Dispute").

WHEREAS, on June 6, 2025, Auxo Cap notified the Village of its belief that LL #2 of 2025, as alleged by Auxo Cap: (1) is contrary to (and thus preempted by) New York State law regulating proximity requirements for State licensed cannabis dispensaries; (2) was amended without providing Auxo Cap with adequate notice and thus must be annulled; (3) violates Auxo Cap's vested rights, meaning that the building application must be reinstated; and (4) being politically motivated, is arbitrary and capricious and thus violates Auxo Cap's civil rights.

WHEREAS, the Parties desire to explore whether the Dispute can be resolved amicably, and wish to avoid the costs, expense and inconvenience of legal proceedings, including court proceedings, relating to any and all claims arising out of, or related to, the Dispute, while preserving the right to bring future legal proceedings.

NOW, THEREFORE, in consideration of the foregoing recitals, as well as the mutual promises and covenants set forth herein, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. **Agreement to Toll Applicable Statutes of Limitations.** The time that passes, including, and after, the Effective Date, and while this Agreement remains in effect, shall not be taken into account in calculating, determining or applying, and shall not be asserted as the basis for, any defense with regard to the statute of limitations or other timing of any legal action to be commenced arising out of, or relating to, the Dispute. This includes, but is not limited to, the following statutes of limitations: (1) CPLR Article 78's 120-day statute of limitations; (2) 28 U.S.C. § 1983's 3-year statute of limitations; and (3) NYS Village Law § 7-712-a(5)(b)'s 60-day statute of limitations. In all other respects, all defenses, counterclaims and offsets, however

described or relevant to the Dispute, shall remain in full force, and may be raised when, and if, the Dispute is asserted or filed.

2. **Term of Agreement and Termination.** The toll provided for under this Agreement shall remain in effect for 90 days after the Effective Date, unless either Party terminates this Agreement earlier, upon 20-day advance written notice in accordance with this Agreement. Service of the notice under this paragraph may be by email or overnight mail to the addresses stated below. This Agreement may be renewed with the written consent of all of the Parties.

3. **Notice.** Any written notice referred to in this Agreement shall be deemed given on the day in which it was received at the addresses listed below:

Auxo Cap LLC

Craig Weiner
Eamon O'Kelly
BLANK ROME LLP
Attorneys for Auxo Cap LLC
11271 Avenue of the Americas
New York, NY 10020
Tel.: (917) 885-5598
Emails: craig.weiner@blankrome.com
eamon.okelly@blankrome.com

The Village of Nyack

Dennis D. Michaels
Attorney for the Village of Nyack
Village of Nyack
9 North Broadway
Nyack, NY 10960
Tel.: (845) 358-0548, ext. 230
Email: dmichaels@nyack.gov

Joseph Rand
Mayor of the Village of Nyack
Village of Nyack
9 North Broadway
Nyack, NY 10960
Tel.: (845) 358-0229
Email: joerand@nyack.gov

4. **Admission and Non-Admission of Liability.** Nothing contained in this Agreement operates as, or may be deemed, an admission, declaration against interest or acknowledgement by any Party, either directly or by implication, of any liability, obligation or wrongdoing on its part. Neither this Agreement, nor any action taken pursuant to this Agreement, may be offered or received in evidence, or used as a prior inconsistent statement, in any action or proceeding as an admission of liability or wrongdoing by any Party, or for any purpose, other than to rebut a time-based defense asserted by any Party to this Agreement.

5. **Limitations.** No third party shall have the right to rely upon this Agreement between the Parties.

6. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof.

7. **Modification.** Any modification or amendment to this Agreement must be in writing and signed by an authorized representative of each of the Parties.

8. **Jurisdiction.** This Agreement shall be subject to the laws of the State of New York, without regard to conflict of law provisions thereof. Each party hereby submits to exclusive jurisdiction and venue in the Supreme Court of the State of New York, County of Rockland, for any claims arising under this Agreement.

9. **Authority to Bind.** By signing below, the Parties represent that the signatories are authorized to execute this Agreement on behalf of themselves or their respective business entities. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.

10. This Agreement, and any addenda or amendments thereto, may be executed in two, or more, counterparts, which all together shall constitute a single Agreement; and may be executed electronically/digitally, and transmitted to any other party via electronic mail (email) or facsimile (fax), which electronic/digital signature, and email or fax, shall be deemed to be, and utilized in all respects as, an original, wet-inked, manually executed document.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, affix their signatures hereto:

For Auxo Cap LLC:

Dated: 6/18/2025

By: Eamon O'Kelly
Eamon O'Kelly

BLANK ROME LLP
1271 Avenue of the Americas
New York, NY 10020
Tel.: (917) 885-5598
Email: eamon.okelly@blankrome.com

For the Village of Nyack:

Dated: 06/27/2025

By: Dennis D. Michaels
Dennis D. Michaels, Village Attorney

Village of Nyack
9 North Broadway
Nyack, NY 10960

Dated: 6/26/2025

By: Joseph Rand
Joseph Rand, Mayor

Village of Nyack
9 North Broadway
Nyack, NY 10960