PERFORMANCE AGREEMENT

This PERFORMANCE AGREEMENT (the “Agreement”) made and entered this day of _______________ 2021, by and between the CITY OF WAYNESBORO, VIRGINIA, a municipal corporation, (the “CITY”), MP WAYNESBORO, LLC, a North Carolina limited liability company, (the “COMPANY”), and the ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WAYNESBORO, a political subdivision of the Commonwealth, (the “EDA”) (collectively, the PARTIES).

RECITALS:

WHEREAS, the City Council of the City of Waynesboro, Virginia finds that the further development of the City’s tax base and the creation of new jobs within the City may require the use of economic incentives to attract certain business investments and/or expansions in the City; and

WHEREAS, the COMPANY has entered into a purchase agreement for 1930 Rosser Ave., Waynesboro, Virginia (the “PROPERTY”). The COMPANY plans to develop a retail commercial center on the PROPERTY (the “SITE”);

WHEREAS, the current plans for the SITE include six to seven stand-alone retail commercial buildings totaling up to 60,000-70,000 square feet of space, as shown in EXHIBIT A (provided that such site plan attached as EXHIBIT A is subject to being changed from time to time), which is attached hereto and incorporated herein;

WHEREAS, construction of off-site traffic improvements and roads is necessary for the development of the SITE, as shown in EXHIBIT B (“Rosser Ave. Improvements”), which is attached hereto and incorporated herein;

WHEREAS, the CITY has abandoned the waste water system on the PROPERTY, which will require additional costs to the COMPANY to develop the SITE;

WHEREAS, the COMPANY is expected to take ownership of the PROPERTY on or before July 1, 2021;

WHEREAS, the CITY is authorized pursuant to Section 15.2-953 of the Code of Virginia, 1950 as amended, to make donations and appropriations of public funds, personal property, or real estate to the EDA for the purposes of promoting economic development in the City;

WHEREAS, the PARTIES desire to enter into an incentive arrangement in order to ensure that the appropriation of public funds from the City promote the desired economic development and increase the prosperity and welfare of the inhabitants of the City;

WHEREAS, the EDA has approved the terms and conditions of this Agreement, upon due motion therefore duly made and seconded, at a regular public meeting of the EDA on February 12, 2021; and
WHEREAS, the CITY has approved the terms and conditions of this Agreement, in principle, as presented by the EDA, upon due motion therefore duly made and seconded, at a regular public meeting of the City Council on February 22, 2021.

NOW, THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the PARTIES hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals above are hereby acknowledged and affirmed by the PARTIES and, accordingly, are incorporated into and made a part of this Agreement.

2. **Economic Incentives.** Pursuant to the Council action on February 22, 2021, the City Council has shown its good faith intent to make appropriations to the EDA to be used for the benefit of COMPANY in order to facilitate COMPANY’s proposed development and creation of jobs in the City as described in this Agreement. Accordingly, to the extent the EDA, from time to time, shall receive cash contributions from the CITY for such purposes, the EDA shall pay COMPANY the amounts (collectively, the “Economic Incentives”), consisting of:

   A. **Real Property Tax Rebate:** The CITY, through the EDA, will rebate to the COMPANY the real property tax for the Property and the Site that is due during the rebate period according to the rebate schedule provided below.

      i. COMPANY and/or its tenants and/or the then current owner(s) of the Property will pay the CITY 100% of real property taxes due for the PROPERTY. The COMPANY will then request a reimbursement from the EDA for a portion of the real property tax paid according to the rebate schedule provided below. See Section 3 for reimbursement procedures.

   B. **Sales Tax Rebate:** The CITY, through the EDA, will rebate to the COMPANY a portion of the City sales tax that is generated from tenants of the SITE during the rebate period according to the rebate schedule provided below.

      i. The COMPANY and/or its tenants and/or the then current owner(s) of the Property will pay the Commonwealth of Virginia 100% of sales tax due. The COMPANY will then request a reimbursement from the EDA for a portion of sales tax paid according to the rebate schedule provided below. See Section 3 for reimbursement procedures.

   C. **Rebate Period:** The rebate period will begin January 1, 2023 and end December 31, 2029, or until the maximum rebate, as defined below, has been reimbursed, whichever comes earlier.

   D. **Rebate Schedule:** The EDA, upon sufficient payment from the CITY, will rebate the paid taxes as follows:
i. Real Property Tax

At this time, the 2021 tax assessment for the PROPERTY has not yet been determined. Once determined, the entire 2021-year tax assessment on the PROPERTY shall serve as the base line for the calculation of the entitled rebate.

1. In 2023 and 2024 (years one and two of the rebate period):
   75% of the incremental increase over the 2021 real property tax shall be reimbursed to the COMPANY.

   For example, if the 2021 real property tax equals $38,892 and the 2023 real property tax owed on the PROPERTY is $69,991, the reimbursement would equal $23,324 ($69,991 - $38,892 = $31,099 X 75% = $23,324).

2. In 2025, 2026, and 2027 (years three, four, and five of the rebate period):
   50% of the incremental increase over the 2021 real property tax shall be reimbursed to the COMPANY.

   Using the example above, if the 2025 real property tax owed on the PROPERTY is $75,425, the reimbursement would equal $18,266.50 ($75,425 - 38,892 = $36,533 X 50% = $18,266.50).

3. In 2028 and 2029 (years six and seven of the rebate period):
   30% of the incremental increase over the 2021 real property tax shall be reimbursed to the COMPANY.

   Using the example above, if the 2028 real property tax owed on the PROPERTY is $93,872, the reimbursement would equal $16,494 ($93,872 - 38,892 = $54,980 X 30% = $16,494).

ii. Sales Tax

1. In 2023 and 2024 (years one and two of the rebate period):
   50% of the City portion\(^1\) of the sales tax paid to the Commonwealth of Virginia.

2. In 2025 (year three of the rebate period):
   35% of the City portion of the sales tax paid to the Commonwealth of Virginia.

\(^1\)The City portion of the sales tax is currently 1% of 5.3% paid to the Commonwealth, which is subject to change.
3. In 2026 (year four of the rebate period):
   25% of the City portion of the sales tax paid to the Commonwealth of Virginia.

4. In 2027 and 2028 (years five and six of the rebate period):
   15% of the City portion of the sales tax paid to the Commonwealth of Virginia.

5. In 2029 (year seven of the rebate period):
   10% of the City portion of the sales tax paid to the Commonwealth of Virginia.

E. Maximum Rebate: This Economic Incentive is intended to assist the COMPANY with the increased costs in development to connect to the City wastewater system and for the Rosser Ave. Improvements, as set forth in Ex. B.

i. It is estimated that the maximum benefit, as described in section E. iv. below, can be achieved if certificates of occupancy for 100% of the square feet of the planned development are issued by December 31, 2024.

ii. If 100% is not developed by December 31, 2024, but at least 20% of planned square feet is operational by December 31, 2022, then the maximum benefit reduces to $100,000.

iii. If less than 20% of the planned square feet is not operational by December 31, 2022, there is no benefit.

iv. The maximum rebate shall be $500,000 or the total actual costs for all of the public improvements, whichever is less, to be calculated by adding the total improvement costs for the public road construction (shown in EXHIBIT B and estimated to be $400,000) and the costs of demolition of the City abandoned wastewater line and construction of a new line (estimated to be $100,000).

3. Reimbursement Procedures: As soon as practical after December 31, but no later than May 1 of each year, the COMPANY will request reimbursement from the EDA by submitting the following.

A. A completed reimbursement request form with back up documentation, including without limitation:

i. Real Property tax documents:
   1. Copy of tax bill(s) and documentation confirming payment, such as a canceled check(s), ACH confirmation, bank statement, real estate
tax payment record from the City, etc. from COMPANY and/or tenants and/or the then current owner(s) of the Property.

ii. Sales tax documentation:

1. Aggregated sales tax paid to Commonwealth of Virginia on behalf of the City from all tenants on SITE for the prior calendar year.

a. For your tenants, this will be the number reported on line 12, column B of Virginia form ST-9.

iii. Infrastructure Improvements:

1. Final contract and paid invoices for costs related to the offsite traffic improvements and abandonment and construction of new wastewater system.

iv. Other relevant documents that may be required.

B. Upon verification, the EDA will invoice the CITY.

C. The EDA will pay the COMPANY the reimbursement amount within 30 days of receipt of the required documentation, provided that the COMPANY has not materially defaulted on its obligations which default has continued for more than 30 days from the date of the COMPANY’s receipt of written notice thereof from EDA, and further provided that the EDA has received sufficient funds from the CITY to cover the reimbursement. The above process shall be repeated for each subsequent year that the COMPANY requests reimbursement until the maximum rebate amount is reached or the rebate period ends.

4. Limitation of Obligations of EDA under this Agreement.

A. The EDA, CITY, and COMPANY acknowledge and agree that the ability of the EDA to pay to the COMPANY the Economic Incentive shall be subject to and dependent upon receipt by the EDA from the CITY of sufficient appropriation(s) therefor, from time to time, during the term of this Agreement. Accordingly, the EDA’s obligations hereunder to pay any portion or all of the Economic Incentive described in Section 2 shall be expressly limited as set forth in Sections 5.

B. Upon verification of COMPANY’s development, as set forth in this Agreement, the EDA shall recommend to the City Council that an appropriation be made to the EDA in order for the EDA to pay the COMPANY the appropriate amount as set forth in this Agreement. In such event, the EDA shall notify the City Manager to include such payment amount due to the COMPANY in his budget submitted to the City Council for the following Fiscal Year as an appropriation to the EDA pursuant to the provisions of this Agreement. The EDA shall request the City Manager to deliver to the Chairman or Vice-Chairman of the EDA, with a copy to the COMPANY, within ten (10) business days after the adoption of the CITY’s budget for each Fiscal Year, a written confirmation stating whether the City Council has appropriated to the EDA an amount sufficient for its purposes described in this
Agreement, including the precise amount thereof and any applicable payment instructions by the EDA to the COMPANY.

C. It is to be understood, however, that, notwithstanding anything herein to the contrary, any and all payments by the CITY to the EDA for payment over to the COMPANY, as described in this Agreement, shall be subject to the provisions of Section 5 below, and, further, shall be payable from funds of the CITY that are lawfully available and appropriated for such purposes, from time to time.

5. **Nature of Payments to COMPANY under this Agreement.** Pursuant to the Council’s action of February 22, 2021, the City Council has undertaken a non-binding obligation to appropriate the aggregate amount equal to the Economic Incentives to the EDA for the benefit of the COMPANY, as may be requested by the City Manager from time to time, to the fullest degree and in such manner as is consistent with the Constitution and laws of the Commonwealth of Virginia. The City Council, while recognizing that it is not empowered to make any binding commitment to make such appropriations in future Fiscal Years, has stated its good faith intent to make such appropriations in future Fiscal Years during the term of this Agreement and in accordance with its provisions. While it is reasonably anticipated that future City Councils shall do likewise in order for the City to achieve the significant public benefits described herein, it is to be understood that nothing contained in the Council’s action of February 22, 2021, or in this Agreement, is or shall be deemed to be a lending of the credit of the CITY, and nothing herein contained therein is or shall be deemed to be a pledge of the faith and credit or the taxing power of the CITY; nor shall anything therein contained legally bind or obligate the City Council to appropriate funds to the EDA for the purposes described herein, all in accordance with Virginia law. The COMPANY’S signature to this agreement is an acknowledgement of this Section 5. This Agreement contains a moral obligation of the CITY only, and nothing in this Agreement shall bind the CITY.

6. **Severability.** If any provision of this Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

7. **Applicable Law; Entire Understanding.** This Agreement shall be governed by the applicable laws of the Commonwealth of Virginia. This Agreement states the entire understanding and all agreements between the EDA, CITY, and COMPANY with respect to the subject matter hereof and may not be modified except in a writing signed by all of the parties. This Agreement may not be modified unless all parties shall consent in writing. provided, however, it is to be understood that the ability of the EDA to pay any amount to the COMPANY hereunder shall in all cases be subject to the provisions contained within this Agreement. This Agreement shall continue, and the COMPANY shall be entitled to the benefits and rights under this Agreement, even if the COMPANY sells all or any portion of the SITE.

8. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute but one and the same instrument.
9. **Notices.** Except as may otherwise be provided herein, all demands, submissions, notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be delivered or given by first class mail, postage prepaid, or by overnight courier or via hand-delivery, as may be convenient, addressed as follows:

**If to the EDA, at:**

Economic Development Authority of the  
City of Waynesboro, Virginia  
301 West Main Street  
Waynesboro, VA 22980  
Attention: Chairman

**If to the CITY, at:**

City Manager City of Waynesboro  
503 West Main Street  
Waynesboro, VA 22980  

With a copy to:  
Office of Economic Development, Director  
301 West Main Street  
Waynesboro, VA 22980

**If to COMPANY, at:**

Bill Mitchener  
MP WAYNESBORO, LLC  
200 Queens Rd. #300  
Charlotte, NC 28204

The EDA, the CITY and COMPANY, or any of them, may, by notice given hereunder, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests and other communications shall be sent or persons to whose attention the same shall be directed.

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Signature page to follow
IN WITNESS WHEREOF, the Economic Development Authority of the City of Waynesboro, Mitchener Properties, LLC, and the City of Waynesboro, have caused this Agreement to be executed in their respective names, all as of the date first above written.

ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF WAYNESBORO, VIRGINIA

By: ______________________________ (SEAL)
    Chairman

Attest:

______________________________
Secretary

and

MP WAYNESBORO, LLC

By: ______________________________ (SEAL)
    William Mitchener, Manager

And

CITY OF WAYNESBORO, VIRGINIA

By: ______________________________ (SEAL)
    Michael G. Hamp, II, City Manager

Attest:

______________________________
City Clerk

Approved as to form by the City Attorney:

______________________________
Melisa G. Michelsen
EXHIBIT B
Rosser Ave. Improvements

Item six from ZMA 16-198 --Proffer Statement for the Waynesboro Marketplace Rezoning

Off-Site Traffic Improvements: Prior to the issuance of any certificate of occupancy, the following off-site traffic improvements, as generally depicted on the Off-Site Traffic Improvement Exhibit, Attachment C, shall be completed and accepted by the City Engineer:

a. a continuous right-turn lane serving both the northbound approach of the Rosser Ave & Lucy Lane intersection and the southern right-in access depicted on Attachment C, extending in full-width to the southern property line,

b. a left-turn lane serving the southbound approach of the Rosser Ave & Lucy Lane intersection, with storage extending to existing taper, and closure of the median opening which presently serves the northern-most Ladd School entrance,

c. re-striping of the eastbound approach of Lucy Lane at the Rosser Ave intersection, to allow for through movements

d. modifications to the Rosser Ave & Lucy Lane intersection traffic signal to allow for added movements and lane configurations

e. full closure of the Rosser Ave median between existing southbound left-turn lane at Lew Dewitt Boulevard and existing northbound left-turn lane at Lucy Lane, as generally depicted on the next page; to include a left turn lane serving northbound Rosser with 100' storage and 100' taper opposite 7-11's northern entrance, and reasonable landscaping where appropriate (the exact design for the median, turn lanes, and landscaping will be determined at time of site plan submittal/approval)

f. crosswalks shall be provided running from the southeastern to northeastern quadrants and from the northeastern to the northwestern quadrants of the Rosser Avenue/ Lucy Lane intersection and these crosswalks shall include pedestrian signals, conduit for pedestrian signals, crosswalk striping and handicap accessible curb ramps. Pedestrian signals shall be provided to the City in functioning order, but shall remain non-operating until work has been inspected and associated bond has been released.