

### **THIRD AMENDMENT TO PERFORMANCE AGREEMENT**

This THIRD AMENDMENT is made and entered this \_\_ day of September, 2022, by and between the **CITY OF WAYNESBORO, VIRGINIA**, a municipal corporation (the “City”), **KM HOTELS, LLC**, a Virginia Limited Liability Company (the “Company”), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WAYNESBORO, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “EDA”).

**WHEREAS**, the City, Company, and EDA entered into a Performance Agreement dated November 14, 2016, relating to the Company’s development of a mid-price chain hotel with approximately 90 rooms (the “Project”), and future development on the remaining acreage, on 101, 104, 105, 108, and 109 Chicurel Ln., off Windigrove Drive (the “Property”);

**WHEREAS**, the Parties entered into a First Amendment to the Performance Agreement on June 28, 2019 extending the rebate period start date to January 1, 2022;

**WHEREAS**, the Parties entered into a Second Amendment to the Performance Agreement in February, 2020 providing that the Company will construct the public road improvements;

**WHEREAS**, as a result of the COVID pandemic and resulting supply chain issues, the Company is requesting that the City and EDA extend the rebate period start date to the year following completion of the hotel, but no later than January 1, 2024;

**WHEREAS**, the Company began construction of the Project as soon as practical after the worst of the pandemic was over and the hospitality industry began to recover. The hotel is under construction with an estimated completion date in the second quarter of 2023;

**WHEREAS**, the Parties desire to enter a Third Amendment to the Performance Agreement to extend the rebate period start date;

**WHEREAS**, at the regular scheduled September 12, 2022 meeting, the EDA unanimously approved the amendment; and

**WHEREAS**, at the regularly scheduled September 26, 2022 meeting, City Council approved the Third Amendment to the Performance Agreement and authorized the City Manager to execute the Third Amendment to the Performance Agreement on behalf of the City, as detailed in Exhibit 1.

**NOW, THEREFORE**, in consideration of the mutual covenants herein and in the Performance Agreement, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the City, Company, and EDA agree as follows:

1. **Amendment**. Section 2. C. is deleted in its entirety and replaced with the following:
  2. C. **Rebate Period**: The rebate period will begin the year following the year that the hotel certificate of occupancy is issued, but no later than January 1,

2024, and end December 31 of the eighth year following the first year or until the maximum rebate as identified below has been reimbursed, whichever comes earlier. For illustrative purposes only, should the hotel receive its certificate of occupancy in September 2022, year one would be 2023, and the rebate period would end December 31, 2030.

2. **Ratification.** Except as modified by this Third Amendment, the Performance Agreement, the First Amendment and Second Amendment shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Economic Development Authority of the City of Waynesboro, Virginia, KM Hotels, LLC, and the City of Waynesboro, Virginia have caused this Third Amendment to Performance Agreement to be executed in their respective names, all as of the date first above written.

**CITY OF WAYNESBORO, VIRGINIA**

By: \_\_\_\_\_  
Michael G. Hamp, II, City Manager

*Attest:*

\_\_\_\_\_  
Julia Bortle, City Clerk

Approved as to form:

\_\_\_\_\_  
Melisa G. Michelsen, City Attorney

and

**KM HOTELS, LLC**

By: \_\_\_\_\_  
Anil Patel, Vice President Development & Construction

*Attest:*

\_\_\_\_\_  
Name:

and

**ECONOMIC DEVELOPMENT AUTHORITY  
OF THE CITY OF WAYNESBORO, VIRGINIA**

By: \_\_\_\_\_  
Chairman

*Attest:*

\_\_\_\_\_  
Greg Hitchin, Secretary