

authority at any time outstanding may from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as the Board of Directors may deem necessary, but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any costs, premiums or commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall hereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby, with the consent of the holders of the bonds so to be refunded, and regardless of whether the bonds to be refunded were issued in connection with the same facilities or separate facilities, and regardless of whether the bonds proposed to be refunded are payable on the same date or on different dates or are due serially or otherwise.

- B. All bonds shall be signed by the chair or vice-chair of the authority or shall bear his facsimile signature, and the corporate seal of the authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the signature of the secretary (or the secretary-treasurer) or the assistant secretary (or assistant secretary-treasurer) of the authority or shall bear his facsimile signature, and any coupons attached thereto shall bear the facsimile signature of the chair. In case any officer whose signature or a facsimile signature appears on any bonds or coupons ceases to be an officer before delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. When the signatures of both the chair or the vice-chair and the secretary (or the secretary-treasurer) or the assistant secretary (or the assistant secretary-treasurer) are facsimiles, the bonds shall be authenticated by a corporate trustee or other authenticating agent approved by the authority.
- C. If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, are less than the cost of the authority facilities for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements, or enlargements of the authority facilities for which such bonds shall have been issued.
- D. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds that are mutilated, destroyed, or lost. Bonds may be issued under the provisions of this division without obtaining the consent of any department, division, commission, board, bureau or agency of the commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions or things which are specifically required by this division; however, nothing contained in this division shall be construed as affecting the powers and duties now conferred by law upon the state

corporation commission.

- E. All bonds issued under the provisions of this division shall have and are hereby declared to have all the qualities and incidents of and shall be and are hereby made negotiable instruments under the Uniform Commercial Code of Virginia, Code of Virginia, § 8.1-101 et seq., subject only to provisions respecting registration of the bonds.
- F. In addition to all other powers granted to the authority by this division, the authority may issue, from time to time, notes or other obligations of the authority for any of its authorized purposes. The provisions of this division that relate to bonds or revenue bonds shall apply to such notes or other obligations insofar as such provisions may be appropriate.

**§ 03-313. Liability of commonwealth, political subdivisions, Directors, and officers.**

- A. Bonds issued pursuant to this division shall not be deemed to constitute a debt or a pledge of the faith and credit of the commonwealth, or the Town Council, but such bonds shall be payable solely from the funds provided Therefore as authorized in this division. All such bonds shall contain on the face thereof a statement to the effect that neither the commonwealth, nor any political subdivision thereof, nor the authority, shall be obligated to pay the bonds or the interest thereon or other costs incident thereto except the revenues and money pledged Therefore and that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of such bonds or the interest thereon or other costs incident thereto.
- B. Neither the Directors of the Economic Development Authority nor any person executing the bonds shall be liable personally for the bonds by reason of the issuance thereof.
- C. All expenses incurred in carrying out the provisions of this division shall be payable solely from the funds of the authority and no liability or obligation shall be incurred by the authority under this division beyond the extent to which money shall be available to the authority.
- D. Bonds issued pursuant to the provisions of this division shall not constitute indebtedness within the meaning of any debt limitation or restriction.

**§ 03-314. Security for payment of bonds; default.**

The principal of and interest on any bonds issued by the Economic Development Authority shall be secured by a pledge of the revenues and receipts out of which the same shall be made payable and may be secured by a trust indenture covering all or any part of the authority facilities from which revenues or receipts so pledged may be derived, including any enlargements of and additions to any such projects hereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the authority to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the Board of Directors shall deem advisable not in conflict with the provisions of this division. Each pledge, agreement, and trust indenture made for the benefit or security of any of the bonds of the authority shall continue effective until the principal of and

interest on such bonds has been fully paid. In the event of default in such payment or in any agreements of the authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any trust indenture executed as security. Therefore, such payment or agreements may be enforced by writ of mandamus, or by a suit, action or proceeding at law or in equity to compel the authority and the Directors, officers, agents or employees thereof to perform the terms, provisions, and covenants contained in any trust indenture of the authority, by the appointment of a receiver in equity or by foreclosure of any such trust indenture or any one or more of such remedies.

**§ 03-315. Rents, fees, and other charges.**

The Economic Development Authority shall fix and revise from time to time the rents, fees, and other charges to be paid to it in connection with the lease or sale of various authority facilities and for any other services furnished or provided by the authority. Such rents, fees, and charges shall provide at least sufficient funds to pay the cost of maintaining, repairing, and operating such projects and the principal and interest of any bonds issued by the authority or other debts contracted as the bonds become due and payable. The authority and the Town may agree on payment by the authority on account of governmental services to be rendered by the Town in such amounts as the authority may find to be consistent with the purposes of this division. A reserve may be accumulated and maintained out of the revenues and receipts of the authority for extraordinary repairs and expenses and for such other purposes as may be provided in any resolution authorizing a bond issue or in any trust indenture securing the authority's bonds. Subject to such provisions and restrictions as may be set forth in the resolution or in the trust indenture authorizing or securing any of the bonds or other obligations under this division, the authority shall have exclusive control of the revenues and receipts derived from the lease or sale of any authority facility and the right to use the revenues and receipts in the exercise of its powers and duties set forth in this division.

**§ 03-316. Exemption from taxation.**

The Economic Development Authority is hereby declared to be performing a public function on behalf of the Town and to be a public instrumentality of the Town. Accordingly, the income, including any profit made on the sale thereof from all bonds issued by the authority, shall always be exempt from all taxation by the commonwealth or any political subdivision thereof.

**§ 03-217. Authority to be nonprofit; excess earnings.**

The Economic Development Authority shall be nonprofit and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm, or corporation, except if the Board of Directors of the authority determines that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the authority then any net earnings of the authority hereafter accruing shall be paid to the Town. However, nothing contained in this section shall prevent the Board of Directors from transferring all or any part of its facilities or property in accordance with the terms of any contract entered into by the authority.

**§ 03-218. Dissolution of authority; disposition of property.**

Whenever the Board of Directors of the Economic Development Authority by resolution determines that the purposes for which the authority was formed have been substantially complied with and all bonds heretofore issued and all obligations heretofore incurred by the authority have been fully paid, the then members of the Board of Directors of the authority shall thereupon execute and file for record with the Town Council a resolution declaring such facts. If the Town Council is of the opinion that the facts stated in the authority's resolution are true and that the authority should be dissolved, it shall so resolve, and the authority shall stand dissolved. Upon such dissolution, the title to all funds and properties owned by the authority at the time of such dissolution shall vest in the Town and possession of such funds and properties shall forthwith be delivered to the Town.

**§ 03-219. Bonds as legal investments and lawful security.**

The bonds issued pursuant to this division shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and guardians and for all public funds of the commonwealth or other political corporations or subdivisions of the Commonwealth. Such bonds shall be eligible to secure the deposit of public funds of the commonwealth, localities, school districts, or other political corporations or subdivisions of the Commonwealth and shall be security for such deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto.

**§ 03-220. Facility sites.**

The Town may acquire, pursuant to Code of Virginia, § 15.2-1800, but not by condemnation, a facility site and may likewise transfer any facility site to the Economic Development Authority. Such transfer may be authorized by a resolution of the Town Council without submission of the question to the voters and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law. Such facility sites may be located within or outside or partially within or outside the Town. If a real estate broker licensed under the Code of Virginia, § 54.1-2100, represents a party in a transaction through which a facility site is acquired, the Town may pay a reasonable brokerage fee to such real estate broker.

**§ 03-221. Provisions of division cumulative; construction of division.**

This division neither limits nor restricts any powers that the Economic Development Authority might otherwise have under any laws of the Commonwealth. No proceedings, notice, or approval shall be required for the organization of the authority or the issuance of any bonds or any instrument as security. Therefore, except as provided in this division. However, nothing in this section shall be construed to deprive the commonwealth and its political subdivisions of their respective police powers over properties of the authority or to impair any power thereover of any official or agency of the commonwealth and its political subdivisions which may be otherwise provided by law. Nothing contained in this division shall be deemed to authorize the authority to occupy or use any land, streets, buildings, structures, or other property of any kind, owned, or used by any political subdivision within its jurisdiction, or any public improvement

or facility maintained by such political subdivision for the use of its inhabitants, without first obtaining the consent of the governing body thereof.

**§ 03-222. Severability; conflicts with Charter or state law.**

The powers granted and the duties imposed in this division are independent and severable. If any one or more sections, subsections, sentences, or parts of any of this division are adjudged unconstitutional or invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions so held unconstitutional or invalid. Any provision of this division which is found to conflict with any statute of the state or the Charter shall be controlling and shall supersede such statute or the Charter to the extent of such conflict.

**§ 03-223. through § 03-299. (Reserved)**

**THE TOWN OF ONANCOCK, VIRGINIA  
DHCD LOAN  
COMPANY BUILDING RENOVATION  
PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** ("Agreement") made and entered this \_\_\_\_ day of \_\_\_\_\_, 2023, by and among, **PSP COMPANY, LLC**, (the "Company") a Virginia limited liability company authorized to transact business in the Commonwealth of Virginia, **THE TOWN OF ONANCOCK, VIRGINIA** (the "Town") a political subdivision of the Commonwealth of Virginia, and **TOWN OF ONANCOCK ECONOMIC DEVELOPMENT AUTHORITY** (the "Authority"), a political subdivision of the Commonwealth of Virginia, collectively referred to as the "Parties."

**WITNESSETH:**

**WHEREAS**, Company is the owner of 40 Market Street, Onancock VA 23417, Tax Map No. 85A2-A-77, located in the Town, and as more particularly described in Exhibit A attached hereto (the "Property"); and

**WHEREAS**, the Town submitted an application to the Department of Housing and Community Development ("DHCD") for funding to renovate the Property ("Work") which is located in the center of the Town's Downtown District; and

**WHEREAS**, DHCD awarded to the Town an Industrial Revitalization Fund Grant/Loan ("IRF Grant") in the amount of One Million Dollars (\$1,000,000.00) for the Town to lend funds to Company for said renovation ("Loan Funds"), and

**WHEREAS**, as a condition of the Loan, Company agrees to invest up to Eight Hundred Thousand Dollars (\$800,000.00) of its own funds towards completing the Work, and

**WHEREAS**, in addition the above condition, the grant agreement between DHCD and the Town (the "DHCD Agreement") will impose certain other responsibilities on the Town in accepting the DHCD IRF Grant, and in order to be a beneficiary of the Loan Funds, Company agrees to be bound by the terms of the DHCD Agreement and Contract Documents (as described herein below); and

**WHEREAS**, the Town is authorized pursuant to Section 15.2-953(B) of the *Code of Virginia* of 1950, as amended (the "Virginia Code"), to make donations and appropriations of money to the Authority for the purposes of promoting economic development and revitalization in the Town, and the Authority is authorized pursuant to Section 15.2-4905(12) of the Virginia Code, to accept such contributions, grants and other financial assistance from the Town, and pursuant to Section 15.2-4905(13) of the Virginia Code, to make grants to any person, partnership, association, corporation, business or governmental entity for the purposes of promoting economic development and revitalization within the Town; and

WHEREAS, the Authority was formed to support and contribute to the economic welfare of the Town, and it wishes to stimulate investment, economic growth, and development opportunities, and

WHEREAS, the Town, the Authority, and Company wish to outline the roles and responsibilities of each party now that the funds have been awarded.

NOW THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the Parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. **Contract Documents.** The Contract Documents shall consist of the following:
  - (a) This Agreement,
  - (b) the DHCD Agreement (Grant Contract Number VATI #2020SC-002), attached as Exhibit B
  - (c) Terms and Conditions, attached as Exhibit C,
  - (d) The submitted application, attached as Exhibit D,
  - (e) project management schedule and budget, attached as Exhibit E;
  - (f) Restriction Agreement, attached as Exhibit F,
  - (g) Loan Agreement and Promissory Note, attached as Exhibit G; and
  - (h) Deed of Trust, attached as Exhibit H

All of which are attached and incorporated herein by reference.

2. **Scope of Work.** Company shall perform and complete all or a portion of the Work and all Grant Activities as described in the DHCD Agreement and Contract Documents
3. **Term.** The parties hereto acknowledge that the Work shall have commenced upon as of February 1, 2023 the execution of this Agreement and said work shall be complete on or before October 1, 2026. ~~(insert date).~~
4. **Disbursement of Loan Funds.**

(a) The total renovation cost is anticipated to be up to One Million Eight Hundred Thousand Dollars (\$1,800,000.00) and is comprised of the following funds, ~~or such amounts representing the Work completed within each eighteen (18) month period:~~

DCHD contribution	\$1,000,000.00
Company contribution	\$800,000.00
	\$1,800,000.00

(b) Company agrees to use the Loan Funds for purposes of the Work as described and in accordance with the terms and conditions in accordance with the terms and conditions in this Agreement and the Contract Documents.

(e) The parties acknowledge and understand that performance and disbursement of funds under this Contract are contingent upon (i) execution of the DHCD Agreement, (ii) Town receipt of funds from DHCD, (iv) receipt of funds by the Authority from the Town, and (v) satisfactory performance by Company of the Work and conditions provided in the Contract Documents, such satisfaction being granted in a commercially reasonable manner. ~~It is further understood that DHCD reserves the right to curtail funding at any point should the project, in its discretion, prove nonviable.~~

(c)

(d) ~~Company further understands and agrees that final disbursement of the Loan Funds will not be processed if Company's entire monetary contribution as provided in 4(a) has not been fulfilled.~~

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5. **Process of Payment.** Loan Funds will be disbursed on a reimbursement basis only, which shall include the capital used to purchase the Property and the Work that has been conducted prior to the execution of this Agreement. Company shall submit monthly invoices and supporting documentation (such as invoices, ~~uncashed~~ ~~uncashed~~ checks, payroll documents, source documents, etc.) to the Town and Authority for payment for the Work

(a) The Town and Authority shall review and verify all pay requests from Company and verify that Work has been completed or equipment has been ordered and received prior to distributing funds.

(b) The Town shall have thirty-five (35) days after its receipt of pay requests from Company to deliver the requested payment of Loan Funds by the Town to the Authority.

(c) Subject to the delivery of the Loan Funds by the Town to the Authority, within seven (7) days of its receipt of the Loan Funds, the Authority shall disburse the Loan Funds to Company.

(d) No DHCD funds shall be distributed unless and until (i) Company has submitted all requested documents and (ii) the Town and Authority have verified that pre-construction and/or construction work has been completed or materials and/or equipment has been ordered and received.

(e) The Authority will not have any obligation to disburse any portion of the Loan Funds provided for in this Agreement until and unless the Authority has received such funds from DHCD.

(f) No costs incurred prior to execution of this Agreement shall be eligible for reimbursement with Loan Funds. All costs incurred for this project after February 1, 2023 shall be reimbursed.



6. Reporting.

(a) Quarterly Progress Reports. Upon request, the Company shall provide quarterly reports, no later than the 5<sup>th</sup> fifteenth (15<sup>th</sup>) day of each month following the end of the calendar quarter, to the Town and Authority which shall include progress on the Property and its economic impacts. News articles, press releases, pictures, and other documentation should be submitted along with the written report.

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(b) Final project progress report. Company shall submit a final progress report to the Town and Authority reflecting achievements with meeting performance goals as indicated in the approved grant proposal. In partnership with the Town, a Final Report will be prepared for presentation to DHCD according to its terms.

7. Availability of Documents. Company shall make all applicable and relevant project documents related to the Work available for review by the Town and DHCD upon request, such requests being reasonable and required to make a decision on the funding requirements of this Agreement. This provision does not require the Company to make any other information available to the Town and DHCD.

8. Maintenance of Records. Company shall retain financial records, supporting documents, statistical records, and all other records pertinent to the DHCD award for a period of no less than five years from the date of submission of the final expenditure report. Relevant and applicable records shall be made available to the Town and DHCD upon request.

9. Indemnification. Company shall indemnify, defend and hold the Town and the Authority harmless for any failures by Company to: (a) complete any Grant Activities described in the Contract Documents on or before [DATE of Grant Expiration] and/or (b) achieve any project Outcomes by [insert date].

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10. Default and Repayment. If the Work as described in this Agreement is not complete on or before [insert date], any and all Loan Funds provided under this Agreement may be terminated and Company shall return all unexpended funds to the Authority, unless an amendment to the Contract Documents provides otherwise.

11. Notices. Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

If to Company: [insert owner name] PSP Lilliston, LLC  
25020 Shore Parkway  
Suite 2A  
Onley, VA 23418-2857

*If to the Town:* Matt Spuck  
Town Manager  
15 North Street  
Onancock, VA 23417

With a copy to:  
Town Attorney  
100 West Franklin Street, Suite 300  
Richmond, Virginia 23220

**2.10 Miscellaneous.**

- (a) **Governing Laws; Venue.** This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth of Virginia without regard to its conflict-of-laws provisions.
- (b) **Attorney's Fees.** In any action or proceeding brought by ~~the Town or Authority; either party~~ to enforce any provision of this Agreement, the Town-prevailing party shall be entitled to recover reasonably attorney's fees, and court costs, in addition to any other available remedy.
- (c) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.
- (d) **Assignment.** This Contract shall not be assignable by the Company in whole or in part without the written consent of the Town and Authority.
- (e) **Severability.** If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the Parties as nearly as possible in accordance with applicable law.
- (f) **Entire Agreement.** This Agreement is the entire agreement between the Parties as to the contained subject matter, supersedes all other agreements, whether written or oral, and may only be modified or amended in writing signed by the Parties.

**IN WITNESS WHEREOF**, all Parties acknowledge authority to sign this Agreement and the Parties hereto have executed this Performance Agreement as of the date first written above.

**PSP LILLISTON, LLC**

By: \_\_\_\_\_  
[insert name of owner]

Date: \_\_\_\_\_

**THE TOWN OF ONANCOCK, VIRGINIA,  
a political subdivision of the Commonwealth of Virginia**

By: \_\_\_\_\_  
Matt Spuck, Town Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

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

**ACCOMACK ECONOMIC DEVELOPMENT AUTHORITY  
a political subdivision of the Commonwealth of Virginia**

By: \_\_\_\_\_  
Chair

Date: \_\_\_\_\_

APPROVED AS TO FORM:

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

**Attachment**  
(Legal Description)

All those certain lots or parcels of real estate situate in the Town of Onancock, Accomack County, Virginia, fronting on Market Street and being shown on that certain plat of survey entitled, "Physical Survey of 40 Market Street Town of Onancock Lee magisterial District Accomack County, Virginia for County of Accomack," dated April 19, 2005, made by MSA, P.C., which said plat is recorded in the Clerk's Office for the Circuit Court of Accomack County, Virginia, in Plat Book 2005, at Page 102, and being described thereon as PARCEL 1 being a 2-Story Brick #40 shown on said plat and being "COUNTY OF ACCOMACK TAX PARCEL 85A2-A-77 NO DEDICATED REFERENCE FOUND AREA = 9,725 SF or 0.223 AC."

Being the same property conveyed by Disaster Medicine Associates, LLC, a Virginia limited liability company to PSP Lilliston, LLC, a Virginia limited liability company, and recorded in the Accomack County Circuit Court Clerk's Office as Instrument # 220001939.

**Attachment B  
(Plat)**