

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this 11th day of December, 2019 (the "Effective Date"), by and among the **COUNTY OF HANOVER, VIRGINIA** (the "Locality"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **WEGMANS FOOD MARKETS, INC.** (the "Company"), a New York corporation authorized to transact business in the Commonwealth, the **ECONOMIC DEVELOPMENT AUTHORITY OF HANOVER COUNTY** (the "Authority"), a political subdivision of the Commonwealth, and the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY ("VEDP")**, a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$2,350,000 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through VEDP for the purpose of inducing the Company to construct, equip and operate a warehouse and distribution facility in the Locality (the "Facility"), thereby making a significant Capital Investment, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company promises to meet certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality, the Authority, the Company, and VEDP desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, the obligations of the Company regarding Capital Investment and New Jobs, and the repayment by the Company of all or part of the COF Grant under certain circumstances;

WHEREAS, the construction, equipping and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$175,000,000, of which approximately \$22,000,000 will be invested in tangible personal property, approximately \$5,000,000 will be invested in the purchase of land, approximately \$20,000,000 will be invested in site improvements, and approximately \$128,000,000 will be invested in the construction of new buildings or as permitted by Section 2.2-115(D) of the Virginia Code;

WHEREAS, the construction, equipping and operation of the Facility will further entail the creation and Maintenance of 700 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant:

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.

Section 1. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

“Capital Investment” means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. The purchase or lease of machinery and tools or furniture, fixtures, and business personal property, including under an operating lease, by or on behalf of the Company will qualify as Capital Investment. The Capital Investment is defined as capital expenditures in addition to the capital improvements that are existing at the Facility as of the Effective Date.

“Local Performance Date” means January 1, 2023. The Local Performance Date is not subject to extension.

“Maintain” or “Maintenance” means that the New Jobs will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$55,012 as of the Performance Date. Average annual wage means the average annual salary of full-time positions at the Facility determined by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

“Performance Date” means December 31, 2026. The Performance Date is not subject to extension.

“Regional Utility Improvements” means those improvements necessary to provide sewer service to properties in the vicinity of, and including, the property on which the Facility is located, in accordance with the Public Utility Plan within the Hanover County Comprehensive Plan. These improvements shall include design costs, costs to obtain necessary easements

(whether on the property on which the Facility is located or off-site), costs to obtain all necessary permits, construction costs, and costs for other miscellaneous activities (other than County personnel costs) related to the improvements.

“Targets” means the Company’s obligations to make Capital Investments at the Facility of at least \$175,000,000 and to create and Maintain at least 700 New Jobs at the Facility, all as of the Performance Date.

“Virginia Code” means the Code of Virginia of 1950, as amended.

Section 2. Targets; Statutory Criteria.

(a) *Targets:* The Company will construct, equip and operate the Facility in the Locality, and satisfy the Targets.

(b) *Encouragement to Offer New Jobs to Residents of the Commonwealth:* The Locality, the Authority, and VEDP hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

(c) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least \$55,012 is more than the prevailing average annual wage in the Locality of \$42,955. The Locality is not a high-unemployment locality, with an unemployment rate for 2018, which is the last year for which such data is available, of 2.6% as compared to the 2018 statewide unemployment rate of 3.0%. The Locality is not a high-poverty locality, with a poverty rate for 2017, which is the last year for which such data is available, of 5.4% as compared to the 2017 statewide poverty rate of 10.7%.

(d) *Disclosure of Political Contributions:* The Company acknowledges that the name of the Company will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. The Company acknowledges that within 18 months of the date of this Performance Agreement, the Governor, his campaign committee, and his political action committee will submit to the Virginia Conflict of Interest and Ethics Advisory Council a report listing any contribution, gift, or other item with a value greater than \$100 provided by the Company to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of the Company’s application for the COF Grant through the one-year period immediately after the date of this Agreement.

Section 3. Disbursement of COF Grant.

(a) *Disbursement of the COF Grant:* By execution and delivery of this Agreement, the Locality requests that the COF Grant be disbursed to it. VEDP will promptly arrange for the payment of the \$2,350,000 COF Grant to the Locality.

The potential disbursement of the COF Grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets.

No later than 90 days after the Performance Date, the Company will file with the Locality, the Authority and VEDP the Final Report described in Section 5(b) (the "Final Report"). The information in the Final Report is subject to verification by the Locality and VEDP.

The COF Grant proceeds shall be retained by the Locality and shall be disbursed as follows:

If the Final Report indicates that, as of the Performance Date, the Company has made or caused to be made a Capital Investment of at least \$175,000,000 and has created and Maintained at least 700 New Jobs, all \$2,350,000 of the proceeds of the GOF Grant will be disbursed to the Company.

Alternatively, if the Final Report reveals that, as of the Performance Date, the Company has made or caused to be made a Capital Investment of at least \$5,000,000 and created and Maintained at least 50 New Jobs (which are the statutory minimum requirements for a COF Grant in the Locality), but has not achieved a Capital Investment of at least \$175,000,000 and created and Maintained at least 700 New Jobs, the Company will qualify to receive the benefit of a reduced disbursement of the COF Grant. In calculating the reduced disbursement, the COF Grant is to be allocated as 50% (\$1,175,000) for the Company's Capital Investment Target, and 50% (\$1,175,000) for the Company's New Jobs Target. If the Company met the statutory minimum requirements set forth above, but has not fully achieved the Targets, the Company will not receive the benefit of that part of the COF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if as of the Performance Date, only \$140,000,000 of the Capital Investment has been made (reflecting achievement of 80% of the Capital Investment Target), and only 525 New Jobs have been created and Maintained (reflecting achievement of 75% of the New Jobs Target), the Company will receive the benefit of \$940,000 (reflecting 80% of the \$1,175,000 allocated to the Capital Investment Target), *plus* \$881,250 (reflecting 75% of the \$1,175,000 allocated to the New Jobs Target), for a total amount of \$1,821,250. These amounts reflect the percentages of the shortfall from the expected amount of Capital Investment and expected number of New Jobs, each multiplied by the portion of the COF Grant proceeds allocated to that Target.

If the verification of the Final Report indicates that the Company has qualified for some or all of the COF Grant proceeds, within 30 days after verification, the Locality will disburse the appropriate amount of the proceeds of the COF Grant to the Authority. Within 30 days after its receipt of such COF Grant proceeds, the Authority will disburse such amount to the Company.

If any COF Grant proceeds are not to be disbursed to the Company, the Locality shall promptly return such proceeds to VEDP for redeposit to the Commonwealth's Development Opportunity Fund.

(b) *Use of the COF Grant Proceeds:* The Company will use the COF Grant proceeds to pay or reimburse the cost of construction or build-out of publicly or privately owned buildings for the Facility, and as otherwise permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. Break-Even Point; State and Local Incentives.

(a) *State-Level Incentives:* VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on discretionary incentives, including but not limited to the COF Grant. With regard to the Facility, the Commonwealth expects to provide discretionary incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
COF Grant	\$2,350,000

The proceeds of the COF Grant shall be used for the purposes described in Section 3(b).

(b) *Local-Level Incentives:* The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility by the Local Performance Date:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Real Estate and Business Personal Property Tax Rebates	\$2,350,000
Utility and Infrastructure	1,500,000
Merchants' Capital Tax Rebate	To be determined

(i) The Real Estate and Business Personal Property Tax Rebates incentive shall be disbursed as follows:

On or before January 1, 2023, the Company will provide notice and evidence reasonably satisfactory to the Locality and the Authority that it has made or caused to be made an aggregate Capital Investment of at least \$120,000,000 in the construction of new buildings and \$22,000,000 in tangible personal property. Such evidence will be subject to verification by the Locality. Within 30 days after the verification, the Locality will disburse \$2,350,000 (the Real Estate and Business Personal Property Tax Rebates) to the Authority. Within 30 days after its receipt of such proceeds, the Authority will disburse the Real Estate and Business Personal Property Tax Rebates to the Company.

Should the Company provide evidence that it was unable to achieve the Capital Investment described in this subsection by January 1, 2023 due to an Event of Force Majeure (as described in Section 9(f)), the Company may request an extension of time day-for-day of the Event of Force Majeure; however, any such extension of time shall not exceed 180 days.

(ii) The Utility and Infrastructure incentive shall be disbursed as follows:

The Locality or the Company shall endeavor to complete all steps necessary to construct the Regional Utility Improvements. Funds in the Utility and Infrastructure incentive shall be used to pay for the Regional Utility Improvements, and the Utility and Infrastructure incentive shall be reduced by all such costs incurred as follows:

a. Costs for the Regional Utility Improvements, if any, that are incurred by the Locality for the construction of those improvements shall be drawn from the funds in the Utility and Infrastructure incentive as costs are incurred;

b. If the Regional Utility Improvements are constructed, in whole or in part, by the Company, funds may be requested by the Company for costs it incurred for the construction of those improvements. To receive such funds, the Company will provide notice and evidence reasonably satisfactory to the Locality and the Authority that it completed the utility improvements as outlined in this section. Such evidence will be subject to verification by the Locality. Within 30 days after the verification, the Locality will disburse any remaining funds from the Utility and Infrastructure incentive, up to the amount verified by the Locality, to the Authority. Within 30 days after its receipt of such proceeds, the Authority will disburse the funds to the Company.

If any funds remains after these amounts are subtracted from the Utility and Infrastructure incentive, funds may be requested by the Company for costs it incurred for the construction of improvements to public roadways that serve the property on which the Facility is located and properties in the immediate vicinity. To receive such funds, the Company will provide notice and evidence reasonably satisfactory to the Locality and the Authority that it completed road improvements as outlined in this section. Such evidence will be subject to verification by the Locality. Within 30 days after the verification, the Locality will disburse any remaining funds from the Utility and Infrastructure incentive, up to the amount verified by the Locality, to the Authority. Within 30 days after its receipt of such proceeds, the Authority will disburse the funds to the Company.

Upon the request of the Company, the Locality will provide a summary of the amount of funds allocated from the Utility and Infrastructure incentive, the dates and amount of any expenditures from the funds in the incentive, and the amount of the funds remaining in the incentive. The Locality will provide the requested information within five (5) business days of receipt of the request.

- (iii) The Merchants' Capital Tax Rebate shall be disbursed as follows:

Starting in the first year that the Company has a tax liability for Merchants' Capital Tax or 2023, whichever occurs first, at the beginning of each calendar year, the Company shall notify the Locality and the Authority of the amount of the Merchants' Capital tax paid for the previous calendar year. Within 30 calendar days after the Locality's receipt of such notification, the Locality shall disburse funds (the "Merchants' Capital Tax Rebate") in an amount equal to fifty percent of the total Merchants' Capital Tax liability attributable to the Facility for the previous calendar year. Within 30 days after its receipt of such Grant proceeds, the Authority will disburse such proceeds to the Company. The Company shall be eligible to receive a Merchants' Capital Tax Rebate for a total of ten consecutive tax years.

If, by the Local Performance Date, the total of all Local-Level Incentives disbursed or provided, or committed to be disbursed or provided, by the Locality to the Company is less than the \$2,350,000 COF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference promptly after Performance Date, so long as the Company has met its Targets.

The proceeds of the Locality's Real Estate and Business Personal Property Tax Rebates and Merchants' Capital Tax Rebate may be used by the Company for any lawful purpose. The Utility and Infrastructure incentive will be used for utility and transportation improvements that will benefit the Company and the surrounding community.

(c) *Other Incentives:* This Agreement relates to the COF Grant and to the Local-Level Incentives. The qualification for, and payment of any other State-Level Incentives or Local-Level Incentives will be governed by separate arrangements between the Company and the entities offering the other incentives.

Section 5. Company Reporting.

(a) *Progress Reporting:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit A, detailed verification reasonably satisfactory to the Locality, the Authority, and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually, starting at May 31, 2021, and covering the period through the prior

December 31. Further, the Company shall provide such progress reports at such other times as the Locality, the Authority, or VEDP may reasonably require.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax or, as applicable, shall provide to VEDP a copy of its Virginia income tax form filed with respect to its status as a pass-through entity. VEDP hereby represents to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

(b) *Final Report:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit B, detailed verification reasonably satisfactory to the Locality, the Authority, and VEDP of the Company's progress toward the achievement of the Targets. This Final Report shall be filed within 90 days after the Performance Date.

Section 6. Verification of Targets.

(a) *Verification of Capital Investment:* The Company hereby authorizes the Locality, including the Locality's Commissioner of the Revenue and Treasurer, to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If the Locality, the Office of the Commissioner of the Revenue or the Office of the Treasurer should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality, the Authority, or VEDP may request. In accordance with Virginia Code Section 58.1-3122.3, VEDP is entitled to receive the Company's real estate tax, business personal property tax and machinery and tools tax information from the Locality's Commissioner of the Revenue.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VEDP, the Locality, the Authority, or VEDP, may each require such other documentation, including invoices, or audits as may be required to properly verify the Capital Investment.

(b) *Verification of New Jobs and Wages:* The Company must submit copies of its four most recent Employer's Quarterly Tax Reports (Form FC-20) with the Virginia Employment Commission with the final report. The forms shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the New Jobs Target. In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive the Company's employment level and wage information from the Virginia Employment Commission.

The Company agrees that it will report to the Virginia Employment Commission with respect to its employees at a facility-level, rather than at the company-level.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VEDP, the Locality, the Authority or VEDP, may each require such other documentation or audits as may be required to properly verify the New Jobs.

Section 7. Repayment Obligation; Determination of Inability to Comply.

(a) *COF Grant Proceeds:* If the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Locality must repay to VEDP all of the COF Grant proceeds. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the COF Grant.

(b) *Local-Level Incentives:*

(i) Failure by the Company to meet at least 80% of the Capital Investment Target at the Local Performance Date shall constitute a breach of this Agreement as to Local-Level Incentives and the Company must repay to the Authority all the Local-Level Incentives previously disbursed to the Company in accordance with subsection (ii), below.

(ii) If the Company has met at least 80% of the Capital Investment Target as of the Local Performance Date, but has not fully achieved the Capital Investment Target, the Company shall repay to the Authority that part of the Local-Level Incentives previously disbursed to the Company that is proportional to the Capital Investment Target for which there is a shortfall. For example, if as of the Performance Date, the Company has received all \$2,350,000 of the Real Estate and Business Personal Property Tax Rebates and \$1,500,000 of the Utility and Infrastructure incentive has been expended by the County, but the Company has only met 85% of the Capital Investment Target, it shall refund 15% (\$577,500) of the funds that it has received from the Locality for the Real Estate and Business Personal Property Tax Rebates and 15% of the amount that the County has expended for Regional Utility Improvements. The funds received for Merchants' Capital Tax shall be subject to a similar repayment if the Capital Investment Target is not met by the Local Performance Date.

(c) *Repayment:* The Company shall be liable for any repayment of all or a portion of the Local-Level Incentives, as described in this Section 7. Such repayment shall be due from the Company to the Authority within ninety days after the Local Performance Date. Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums payable by the Company hereunder unless said sums have been received by the Authority from the Company.

Any repayment required from the Company under this Section 7 shall be due from the Company within ninety days after the Local Performance Date, as applicable.

Any repayment from the Locality required under Section 3 or this Section 7 shall be due from the Locality within ninety days after the Performance Date or the Determination Date, as applicable.

(d) *Failure to Repay:* If any repayment due pursuant to this Section 7 is not made by the Company when due, the Locality may pursue any available action for collection of funds due from the Company. In any matter for collection, the Company shall be liable to pay interest, administrative charges, attorneys' fees and other applicable fees. Interest on any outstanding repayment shall accrue at the rate set forth in Section 6.2-301 A. of the Virginia Code (currently 6.0% per year) for the period from the Local Performance Date, until paid.

Section 8. Notices.

Formal notices and communications between the parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

Wegmans Food Markets, Inc.
1500 Brooks Avenue
P.O. Box 30844
Rochester, New York 14603-0844
Email: ralph.uttaro@wegmans.com;
dan.aken@wegmans.com
Attention: Senior Vice President, Real
Estate/Development

with a copy to:

Wegmans Food Markets, Inc.
1500 Brooks Avenue
P.O. Box 30844
Rochester, New York 14603-0844
Email: steve.vanarsdale@wegmans.com;
michelle.daubert@wegmans.com
Attention: General Counsel

if to the Locality, to:

County of Hanover, Virginia
P.O. Box 470
Hanover, VA 23069
Email:
Attention: County Administrator

with a copy to:

County of Hanover, Virginia
P.O. Box 470
Hanover, VA 23069
Email: dawalter@hanovercounty.gov
Attention: Dennis Walter, County Attorney

if to the Authority, to:

Economic Development Authority of
Hanover County
8200 Center Path Lane, Suite E
Mechanicsville, VA 23116
Email: jekickler@hanovercounty.gov
Attention: Chairman

with a copy to:

County of Hanover, Virginia
8200 Center Path Lane, Suite E
Mechanicsville, VA 23116
Email: elthomas@hanovervirginia.com
Attention: Director, Economic Development

if to VEDP, to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: moret@vedp.org
Attention: President and CEO

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: smcnych@vedp.org
Attention: General Counsel

Section 9. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the COF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced in accordance with the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

(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) *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.

(e) *Attorneys' Fees:* Except as set forth in Section 7(d), attorneys' fees shall be paid by the party incurring such fees.

(f) *Force Majeure:* Notwithstanding the foregoing provisions of this Agreement, if any party fails to take any action required under this Agreement because of an "Event of Force Majeure" (as defined below), the time for taking such action will be extended day-for-day, but not to exceed 180 days, by the delay in taking such action caused by the Event of Force Majeure. "Event of Force Majeure" means without limitation, any of the following: any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; labor strike, lockout or other labor or industrial disturbance; civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake; landslides; lightning; tornadoes; storms; washouts; droughts; or other casualty; insurrection, epidemic, arrests; restraint of government and people; explosions; breakage or accident to machinery, transmission pipes or canals not caused by the party invoking this subsection; partial or entire failure of utilities; any change in law, order, regulation or other action of any governing authority other than those governing authorities that are a party to this Agreement; or any other cause or event not reasonably within the control of the party invoking this subsection.

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IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

COUNTY OF HANOVER, VIRGINIA

By Cecil P. Harris Jr.
Name: Cecil P. Harris Jr.
Title: County Administrator
Date: 12/11/19

**ECONOMIC DEVELOPMENT
AUTHORITY OF HANOVER
COUNTY**

By James E. Kiebler
Name: James E. Kiebler
Title: Chairman
Date: 12/12/19

WEGMANS FOOD MARKETS, INC.

By _____
Name: _____
Title: _____
Date: _____

**VIRGINIA ECONOMIC
DEVELOPMENT PARTNERSHIP
AUTHORITY**

By Stephen Moret
Name: Stephen Moret
Title: President & CEO
Date: 02/03/20

Exhibit A: Annual Progress Report Form
Exhibit B: Final Report Form

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

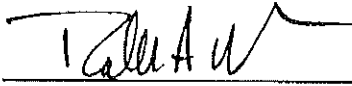
COUNTY OF HANOVER, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

**ECONOMIC DEVELOPMENT
AUTHORITY OF HANOVER
COUNTY**

By _____
Name: _____
Title: _____
Date: _____

WEGMANS FOOD MARKETS, INC.

By  _____
Name: Ralph A. Uttaro
Title: Senior Vice President, Real Estate and
Development
Date: January 17, 2020

**VIRGINIA ECONOMIC
DEVELOPMENT PARTNERSHIP
AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

Exhibit A: Annual Progress Report Form
Exhibit B: Final Report Form

**ANNUAL PROGRESS REPORT
COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND**

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Reporting Period	
Performance Date	

PROJECT PERFORMANCE:

Performance Measurement	Target	As of _____	% Complete
New Jobs (over ___ baseline) ¹			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Capital Investment (provide breakdown below) ²			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Average Annual Wage			N/A
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Standard Fringe Benefits (check one)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A
Virginia Corporate Income Tax Paid in Prior Calendar Year ³	\$ _____		

¹ Data will be verified using Virginia Employment Commission records.

² Data will be verified with locality records.

³ This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA.

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	\$
New Construction or Expansion	\$
Renovation or Building Up-fit	\$
Production Machinery and Tools	\$
Furniture, Fixtures and Equipment	\$
Other	\$
Total	\$

COMMENTS:

Discuss project status, including the current level of new jobs and capital investment, progress on targets, changes or likely changes in project's nature that may impact achievement of targets, and other information relevant to project performance. If the project is not on track to meet targets, please provide an explanation.

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Company: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Please return to:

Kim Ellett, Incentives Coordinator, Virginia Economic Development Partnership,
804.545.5618, kellett@vedp.org

**FINAL REPORT
COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND**

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Date	

PROJECT PERFORMANCE:¹

Performance Measurement	Target	As of	% Complete
New Jobs (over ___ baseline) ²			
Capital Investment (provide breakdown below) ³			
Average Annual Wage			N/A
Standard Fringe Benefits			
Virginia Corporate Income Tax Paid in Prior Calendar Year ⁴	\$		

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	\$
New Construction or Expansion	\$
Renovation or Building Up-fit	\$
Production Machinery and Tools	\$
Furniture, Fixtures and Equipment	\$
Other	\$
Total	\$

¹ Final, actual performance will be reported on VEDP's public reporting website.

² Attach the company's four most recent Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.

³ Data will be verified using records from the Commissioner of the Revenue and, if requested, invoices.

⁴ This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA.

LOCAL MATCH:

Goal	
Actual	

COMMENTS:

Discuss Project status or the importance of the Project to the locality and region.

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Company: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Please return to:

Kim Ellett, Incentives Coordinator, Virginia Economic Development Partnership,
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