

## **PERFORMANCE AGREEMENT**

THIS PERFORMANCE AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, (“the EDA”) **BROOKDALE PARTNERS LP**, a Virginia limited partnership (the “Developer”), and **ALBEMARLE COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “County”).

WHEREAS, the Developer intends to develop affordable housing at Albemarle County Parcel Number 07600-00-00-046C1, located on Country Green Road, Albemarle County, Virginia, in substantial conformance with the Initial Site Plan application number SDP201700003 approved by the County on March 20, 2017 (the “Project”); and

WHEREAS, the Albemarle County Board of Supervisors (“Board of Supervisors”) desires to promote and encourage affordable quality housing for all income levels in the County of Albemarle, Virginia pursuant to Objective 6 of Chapter 9 in the Albemarle County Comprehensive Plan; and

WHEREAS, on September 6, 2017, the Board of Supervisors adopted a Resolution expressing the County’s commitment to support the development of affordable housing by agreeing to provide the Project with semi-annual grants through the EDA based on a certain percentage of the taxes paid by the Developer due to the increased real estate assessment; and

WHEREAS, the EDA desires to promote and encourage the economic development and vitality of the County and assist in providing affordable quality housing in the County by agreeing to provide the Developer with any grants submitted to the EDA by the County to support the development of affordable housing in the County; and

WHEREAS, the Board of Directors of the EDA approved a Resolution on \_\_\_\_\_, agreeing to the terms of this Agreement and authorized the Chairman of the EDA to sign this Agreement on behalf of the EDA; and

WHEREAS, the Board of Supervisors approved a Resolution on September 6, 2017, agreeing to the terms of this Agreement and authorized the County Executive to sign this Agreement on behalf of the County.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations herein contained, and other good and valuable consideration, the parties agree as follows:

1. The Developer agrees to the following:

(a) The Developer agrees to develop the Project in substantial conformity with the Initial Site Plan application number SDP201700003 approved by the County on March 20, 2017. The Developer specifically agrees to develop at least eighty-four (84) units reserved for households with incomes less than 60% Area Median Income (AMI). As recommended by County Planning staff during the Initial Site Plan process, the Developer intends to utilize Density Bonus provisions in the Albemarle County Code (Section 18.4.3) to develop up to ninety-six (96) units reserved for households with incomes less than 60% Area Median Income (AMI) to be shown in a Final Site Plan application. This Performance Agreement shall apply to all affordable units developed pursuant to an approved Final Site Plan. The Developer shall certify annually to the County Executive that these affordable housing uses are continuing with respect to the Project.

(b) The Developer shall obtain site plan and building permit approval from the County to construct at least eighty-four (84) residences at the Project. The Developer shall certify to the County it has been awarded Federal Low Income Housing Tax Credits eligible for

affordable housing development and has obtained approval from a reputable financial institution agreeing to finance the construction of the buildings and appurtenant site improvements.

(c) The Developer agrees to begin construction of the Project within One Hundred Eighty (180) days of obtaining building permit approval, subject to force majeure events or written agreement of the parties extending such time period.

(d) The Developer shall substantially complete the construction of the Project in substantial accordance with the approved conceptual elevation and site plan and obtain the required certificate of occupancy (which may be a temporary certificate of occupancy) for the first building within thirty-six (36) months from the date construction begins, subject to force majeure events or written agreement of the parties extending such time period.

(e) The Developer agrees to continuously operate and to maintain the Project during the term of this Agreement and be responsible for all maintenance, taxes, insurance and other costs associated with the Project. If the use of the Project changes during the term of this Agreement, the Performance Incentive will no longer be provided. If any County taxes on the Project are delinquent during the term of this Agreement, the Performance Incentive will not be provided until the delinquency is satisfied.

2. The County agrees to the following:

(a) The County agrees to provide to the EDA funding for a Performance Incentive Grant (the “Grant”) over a time period commencing with the first real estate tax bill that is based on an increased assessment of the property due to development of the Project which is billed after a certificate of occupancy (which may be a temporary certificate of occupancy) for the

Project is issued and ending nineteen (19) years from the date of issuance of the final certificate occupancy for the Project. The Performance Incentive Grant shall be as follows:

(i) Commencing on the date of issuance of the first tax bill reflecting an increased assessment arising out of the development of the Project after issuance of a certificate of occupancy (which may be a temporary certificate of occupancy) for Project and through 15 years after the issuance of the final certificate occupancy for the Project, the annual grant shall be based on 100% of real estate taxes paid on the tax increment (the amount of future increases in the real estate tax assessment above the existing assessment) (the “Tax Increment”) of the property owned by the Developer and comprising the Project (Albemarle County Tax Parcel Number 07600-00-00-046C1), which shall be determined annually by subtracting (i) the stipulated current assessed value of the property of \$1,057,800 from (ii) the future assessed value of the property based upon a re-assessment of the property arising out of development of the Project (as determined by the Albemarle County Commissioner of the Revenue on an annual basis).

(ii) In year 16, the Grant shall be based on 80% of the real estate taxes paid on the Tax Increment. In year 17, the Grant shall be based on 60% of the real estate taxes paid on the Tax Increment. In year 18, the Grant shall be based on 40% of the real estate taxes paid on the Tax Increment. In year 19, the Grant shall be based on 20% of the real estate taxes paid on the Tax Increment.

(b) The County shall provide to the EDA the required funding for the Grant semi-annually subject to the terms and conditions of this Agreement. The County shall provide the EDA the required funding for the Grant within fifteen (15) days after the Developer has paid the full amount of the assessed County real estate taxes due for the applicable half of the year.

(c) The Grant shall commence with the first real estate tax bill issued that is based on an increased assessment of the property due to development of the Project after the issuance of a certificate of occupancy (which may be a temporary certificate of occupancy) for the Project. The Grant shall continue to be paid for a period of nineteen (19) years from the date of issuance of the final certificate occupancy for the Project.

3. The EDA Agrees to the following:

(a) Subject to the Developer performing each and all of its obligations under this Agreement, the EDA agrees to, on a semi-annual basis, and within fifteen (15) days of receipt of the semi-annual Grant funding from the County, to disburse the Grant funding proceeds to the Developer consistent with the terms and conditions of this Agreement as requested by the County.

(b) The EDA shall have no obligation to the Developer to provide the Grant if the County does not first provide the EDA with the funds. The EDA's only obligation to the Developer is to provide the Developer with the Grant funds that were provided to the EDA by the County.

4. This Agreement shall be governed by, construed, interpreted and the rights of the parties determined in accordance with the applicable laws of the United States and the Commonwealth of Virginia. The venue for any dispute between the parties relating to this Performance Agreement shall be exclusively state courts of competent jurisdiction in Albemarle County, Virginia or the United States District Court, Western District of Virginia, Charlottesville, Virginia.

5. Notice and other correspondence regarding this Agreement shall be hand delivered or mailed through the U.S. Mail or by national overnight carrier to the following addresses, or to such other or additional addresses as the parties may designate in writing:

EDA: Albemarle County Economic Development Authority  
Attention: Chair  
401 McIntire Road  
Charlottesville, VA 22902

Developer: Brookdale Partners LP  
Attention: William Park  
1821 Avon Street Extended, Suite 200  
Charlottesville, VA 22902

County: Albemarle County Executive's Office  
Attention: County Executive  
401 McIntire Road  
Charlottesville, VA 22902

6. This Agreement ~~may be assigned by Developers~~ shall inure to the benefit of any party acquiring the Project, without the written consent of the EDA or the County ~~to an entity wholly owned by such party~~ so long as the new entity expressly assumes the obligations herein and remains fully liable under this Agreement.

7. Each party shall execute and deliver, or cause to be executed and delivered, any and all instruments, documents and conveyances, and take any and all action as shall be necessary or convenient, required to vest in each party all rights, interests and benefits intended to be conferred in and under this Agreement.

8. This Agreement may be executed in Counterparts, each one of which, when all parties have signed, may be conformed and shall constitute an original document.

9. This Agreement shall be binding on the parties, their respective successors and assigns.

10. This agreement shall be subject to an annual appropriation by the Board of Supervisors. Failure by the Board of Supervisors to appropriate the Grant shall terminate this Performance Agreement with no further obligation upon the part of either party. Notwithstanding

the foregoing to the contrary, provided the Developer pays the full amount of assessed real estate taxes due, the County shall fund the Grant as set forth in this Agreement.

11. This Performance Agreement may be amended by the mutual written consent of all three parties.

12. This Agreement is the full and complete agreement between the parties and no amendment or modification can be made to this Agreement unless and until it is reduced to writing and executed and delivered by all parties.

WITNESS the following signatures and seals.

**DEVELOPER : BROOKDALE PARTNERS LP,  
a Virginia limited partnership**

By: BROOKDALE LLC,  
a Virginia limited liability company, its General Partner

By: BLUESTONE LAND, L.L.C.,  
a Virginia limited liability company, its Manager

By: \_\_\_\_\_  
William N. Park, Manager

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ by William N. Park, Manager of Bluestone Land, L.L.C., a Virginia limited liability  
company, in its capacity as the Manager of Brookdale LLC, a Virginia limited liability company,  
the General Partner of Brookdale Partners LP, on behalf of the partnership.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Registration Number: \_\_\_\_\_

SIGNATURES CONTINUE ON THE FOLLOWING PAGE



**ECONOMIC DEVELOPMENT AUTHORITY  
OF ALBEMARLE COUNTY, VIRGINIA**

\_\_\_\_\_  
W. Rod Gentry, Chair

COMMONWEALTH OF VIRGINIA  
CITY OF CHARLOTTESVILLE:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2018 by W. Rod Gentry, Chair, on behalf of the Economic Development Authority of Albemarle  
County, Virginia.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Registration number: \_\_\_\_\_

**COUNTY OF ALBEMARLE, VIRGINIA**

\_\_\_\_\_  
Jeffrey B. Richardson  
County Executive

COMMONWEALTH OF VIRGINIA  
CITY OF CHARLOTTESVILLE:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2018 by Jeffrey B. Richardson, County Executive, on behalf of the County of  
Albemarle, Virginia, Grantee.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Registration number: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
County Attorney

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