

PERFORMANCE AGREEMENT

This Performance Agreement made and entered into this 18th day of September 2018, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (hereinafter the "County"), a political subdivision of the Commonwealth of Virginia, **WILLOWTREE, INC.**, (hereinafter the "Company") a Virginia corporation, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, (hereinafter the "Authority"), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, the Commonwealth of Virginia will grant the Company a Commonwealth Opportunity Fund of five hundred thousand dollars (\$500,000.00) contingent upon the County providing a sum that equals the Commonwealth's grant; and

WHEREAS, the County is willing to provide funds (hereinafter "County Grant") to the Authority as its local match to the Commonwealth Opportunity Fund with the expectation that the Authority will provide the monies to the Company; provided that the Company meets its lease obligation and workforce location commitment pursuant to this Agreement; and

WHEREAS, the County, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the County Grant, the lease obligation and the workforce location commitment of the Company, and the termination of all or part of the County Grant under certain circumstances; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Company's location in the County constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the County 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. Lease Obligation and Workforce Location Commitment.

Lease Obligation. The Company will lease and occupy at least forty thousand (40,000) square feet of real property at 2100 East Market Street, Albemarle County Tax Map Parcel 07800-00-00-021B0, located in Albemarle County, Virginia (hereinafter the "Property") beginning for a period of at least five (5) years after the issuance date of the certificate of occupancy for the Property. For purposes of this Agreement, this leasing arrangement shall be referred to as the "Lease Obligation".

Workforce Location Commitment. The Company agrees that seventy-five percent (75%) of its full-time Virginia employees shall work at the Property at all times for at least five (5) years after the issuance date of the certificate of occupancy for the Property. For purposes of this

Agreement, a full-time employee shall be defined as an employee that is employed by the Company at least i) 35 hours per week for at least 48 weeks per year, or ii) one thousand, six hundred and eighty (1,680) hours in a calendar year. For purposes of this Agreement, this workforce arrangement shall be known as the "Workforce Location Commitment".

Section 2. Refund of Business License and Real Estate Taxes.

The County agrees to appropriate a grant to the Authority on an annual basis in an amount equal to fifty percent (50%) of the business license tax that the Company pays to the County pursuant to Albemarle County Code §8-100, et seq. (hereinafter "BPOL tax refund grant").

The County agrees to appropriate a grant to the Authority on an annual basis in an amount equal to fifty percent (50%) of the difference between the annual real estate tax levied upon the Property after the certificate of occupancy is issued to the Company and the real property taxes levied upon the Property in the year preceding the execution of this agreement that are paid to the County pursuant to Albemarle County Code Chapter 15 (hereinafter "real property tax refund grant").

The County agrees to appropriate the BPOL tax refund grant and the real property tax refund grant on an annual basis to the Authority before June 30 of the applicable calendar year.

The Authority agrees to disburse the BPOL tax refund grant and the real property tax refund grant to the Company within thirty (30) days of receipt from the County.

In no event shall the annual sum of the BPOL tax refund grant and the real property tax refund grant equal a sum of less or more than one hundred thousand dollars (\$100,000.00) regardless of the amount of business license taxes paid by the Company and real property taxes levied upon the Property.

If, at the end of the term of this agreement, the total annual sums of the BPOL tax refund grant and the real property tax refund grant (hereinafter "total rebated tax liability") exceed five hundred thousand dollars (\$500,000.00), the County agrees to make a grant to the Authority in the amount of the difference between the total rebated tax liability and \$500,000.00 (hereinafter "final payment").

The Authority agrees it will disburse the final payment to the Company within thirty (30) days of receipt from the County.

Section 3. Termination.

If, at any time during the term of this Agreement, the Company fails to meet the Lease Obligation or the Workforce Location Commitment or both, this Agreement shall automatically terminate. The Company shall not receive any payments pursuant to Section 2 of this Agreement after the date of termination.

The Company agrees to notify the County within seven (7) calendar days of its inability to meet its Lease Obligation or Workforce Location Commitment or both.

If, at any time during the term of this Agreement, the Company fails to pay any taxes due to the County, the County shall notify the Company of its overdue tax liability. The County shall provide the Company thirty (30) days from receipt of the notice to pay any overdue taxes to the County. If the Company does not pay the overdue taxes to the County at the expiration of the 30 day curative period, this Agreement shall automatically terminate, and the Company shall not receive any payments pursuant to Section 2 of this Agreement after the date of termination.

Section 4. Company Reporting.

The County's Chief Finance Officer will submit requests for information to the Company concerning its lease status and the geographic location of the Company's full-time employees. The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the County and the Authority that the Company is fulfilling its Workforce Location Commitment and its Lease Obligation. Upon submission of the County's request for information, the Company shall respond to the request within thirty (30) days. These requests for information will be submitted to the Company at such times as the County or Authority may require.

Section 5. 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 or certified mail or overnight courier package not accepted by the addressee):

If to the Company, to:

WillowTree, Inc.
2100 East Market Street
Charlottesville, Virginia 22902
Attention: Tobias Dengel

With a copy to:

WillowTree, Inc.
2100 East Market Street
Charlottesville, Virginia 22902
Attention:

If to the County, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Jeff Richardson

Albemarle County Finance Department
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Bill Letteri

If to the Authority, to:

Economic Development Authority
Albemarle County

Economic Development Authority
Albemarle County

401 McIntire Road
Charlottesville, Virginia 22902
Attention: Rod Gentry, Chair
Section 6. Miscellaneous.

401 McIntire Road
Charlottesville, Virginia 22902
Attention: Roger Johnson

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

B. *Governing Law; 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. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of Albemarle County, and such litigation shall be brought only in that 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 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 the unenforceable 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. *Term:* This agreement shall run for a period of five calendar years from the issuance date of a certificate of occupancy for the Property.

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

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey Richardson, County Executive

Date: _____

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

By: _____
W. Rod Gentry, Chairman

Date: _____

WILLOWTREE, INC.

By:  _____
Tobias Dengel, CEO

Date: August 10, 2018