# PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT, made and entered into this 22nd day of February, 2016, by and between the COUNTY OF MONTGOMERY, VIRGINIA, hereinafter referred to as the "County", the ECONOMIC DEVELOPMENT AUTHORITY OF MONTGOMERY COUNTY, VIRGINIA, hereinafter referred to as the "EDA", and FIELDSTONE SENIOR LP, a Virginia limited partnership, ("FS Senior") and FIELDSTONE FAMILY PARTNERS LP, a Virginia limited partnership ("FS Family") and collectively with FS SENIOR, the "Developer of Fieldstone");

W I T N E S S E T H:

WHEREAS, the Developer of Fieldstone intends to develop affordable workforce and senior housing at 401 Givens Lane in the Town of Blacksburg, County of Montgomery, Virginia, in conformance with the zoning application approved by the Blacksburg Town Council on February 10, 2015; and

WHEREAS, the Town of Blacksburg has provided land use approval of the Developer of Fieldstone's proposed affordable workforce and senior housing project and has committed to financially supporting the project by waiving building permit, water and sewer connection fees and by providing an annual grant over a fifteen (15) year period equal to the increased Town real estate taxes paid by the Developer based on the increased assessment due to the Developer's investment; and

WHEREAS, the Board of Supervisors of the County of Montgomery, Virginia ("Board of Supervisors") desire to promote and encourage affordable quality housing for all income levels in the County of Montgomery; and

WHEREAS, on March 23, 2015, the Board of Supervisors adopted a Resolution expressing the County's commitment to support the development of affordable workforce and senior housing on Givens Lane in the Town of Blacksburg, County of Montgomery, Virginia by agreeing, subject to annual appropriation, to provide annual grants through the EDA based on a certain percentage of the taxes paid by the Developer of Fieldstone due to the increased real estate assessment; and

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

WHEREAS, the Board of Directors of the EDA approved a Resolution on February 23, 2016, agreeing to the terms of this Performance Agreement and authorized the Chairman of the EDA to sign this Agreement on behalf of the EDA; and

WHEREAS, the Board of Supervisors of the County of Montgomery, Virginia approved a Resolution on February 22, 2016, agreeing to the terms of this Performance Agreement and authorized Christopher A. Tuck, Chair 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 of Fieldstone agrees to the following:

    a) The Developer of Fieldstone specifically agrees to develop, as set forth in the zoning application approved by the Blacksburg Town Council on February 10, 2015 (Town Ordinance 1758), in substantial conformity with the plans shown therein and the proffers submitted as a part thereof, Age and Income Restricted Multi-Family Residential Dwellings. The FS Family specifically agrees to develop on the FS Family Parcel eight-four (84) units reserved for households with incomes less than 60% Area Median Income (AMI) and FS Senior agrees to develop on the FS Senior Parcel sixty (60) units reserved for senior households with incomes less than 40%, 50% and 60% AMI as part of the development ("the Project"). FS Senior and FS Family shall each certify annually to the County Administrator that these affordable housing uses are continuing with respect to their respective parcels.

    b) The FS Senior and FS Family agree to continuously operate and to maintain their portions of the affordable housing project during the term of this Agreement. If the use of a respective portion of the Project changes during the term of this Agreement the County and the EDA shall no longer have any obligation to provide the Performance Incentive Grants to FS Senior of FS Family, as applicable. FS Senior and FS Family shall be responsible for paying all their annual County and Town taxes owed for the calendar year prior to receiving any Performance Incentive Grants from the County and the EDA.

    c) The Developer of Fieldstone shall obtain site plan and building permit approval from the Town of Blacksburg to construct sixty (60) senior residences and eighty-four (84) affordable workforce residences on 401 Givens Lane. The Developer of Fieldstone shall certify to the County that FS Senior and FS Family have 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. The Developer shall provide the County with a copy of the plan of development (including a conceptual elevation and site plan for the purposed

housing and associated improvements prepared by a registered engineer or land surveyor) approved by the Town that provides for the construction of eight-four (84) units reserved for affordable workforce households and sixty (60) units reserved for senior households on the Fieldstone Property. The Developer of Fieldstone shall certify to the County that the existing mobile home tenants on the Project site have been relocated to the satisfaction of the Town of Blacksburg.

d) The Developer of Fieldstone agrees to begin construction of the Project within One Hundred Eighty (180) days of obtaining site plan approval from the Town of Blacksburg, subject to force majeure events or written agreement of the parties extending such time period.

e) The Developer shall substantially complete the construction of the project and the associated improvements in substantial accordance with the approved conceptual elevation and site plan and obtain the required Certificate of Occupancy from the Town within twenty-four (24) months from the date construction begins, subject to force majeure events or written agreement of the parties extending such time period.

2. The County agrees to the following:

a) The County agrees to provide, subject to annual appropriation by the Board of Supervisors, to the EDA funding for a Performance Incentive Grant over a nine (9) year grant period. The Grant shall not exceed a total payout of Four Hundred Twelve Thousand, One Hundred Eighteen Dollars ($412,118) over the nine year period with year one beginning on January 1 following the issuance by the Town of Blacksburg of the final Certificate of Occupancy for the Development. The Performance Incentive Grant shall be as follows:

(1) In years 1-5, subject to annual appropriation by the Board of Supervisors, the annual grant shall be based on 100% of the Real Estate Taxes paid to the County by the Developer of Fieldstone that were assessed based on the increased real estate assessment of up to $7,200,000 above and beyond the stipulated current assessed value of the Fieldstone property of $658,000 allocated as follows: (i) $397,824.20 for the 6.630 acre parcel acquired by FS Senior (the "FS Senior Parcel") and (ii) $260,175.80 for the 4.336 acre parcel acquired by FS Family ("the FS Family Parcel") due to the Developer of Fieldstone affordable workforce and senior housing project, not to exceed a maximum annual grant in any of the years 1-5 of $58,874.

(2) In year 6, subject to annual appropriation by the Board of Supervisors, the annual grant shall be based on 80% of the Real Estate Taxes paid to the County by the Developer of Fieldstone that were assessed based on the increased real estate assessment of up to $7,200,000 above and beyond the stipulated current assessed value for the FS Senior Parcel and FS Family Parcel stated above in paragraph 2(a)(1), not to exceed a maximum annual Performance Incentive Grant in year 6 of $47,099.

(3) In year 7, subject to annual appropriation by the Board of Supervisors, the annual grant shall be based on 60% of the Real Estate Taxes paid to the County by the Developer of Fieldstone that were assessed based on the increased real estate assessment of up to $7,200,000 above and beyond the stipulated current assessed value for the FS Senior Parcel and the FS Family Parcel stated above in paragraph 2 (a)(1) not to exceed a maximum annual performance incentive in year 7 of $35,324.

(4) In year 8, subject to annual appropriation by the Board of Supervisors, the annual grant shall be based on 40% of the Real Estate Taxes paid to the County by the Developer of Fieldstone that were assessed based on the increased real estate assessment of up to $7,200,000 above and beyond the stipulated current assessed value for the FS Senior Parcel and FS Family Parcel stated above in paragraph 2 (a)(1), not to exceed a maximum annual grant in year 8 of $23,550.

(5) In year 9, subject to annual appropriation by the Board of Supervisors, the annual grant shall be based on 20% of the Real Estate Taxes paid to the County by the Developer of Fieldstone that were assessed based on the increased real estate assessment of up to $7,200,000 above and beyond the stipulated current assessed value for the FS Senior Parcel and FS Family Parcel stated above in paragraph 2 (a)(1), not to exceed a maximum annual grant in year 9 of $11,775.

b) The County shall provide to the EDA the required funding for the Performance Incentive Grant each year subject to the terms and conditions of this Agreement and annual appropriation by the Board of Supervisors. The County shall provide the EDA the required funding for the Performance Incentive Grant only after FS Senior and FS Family, respectively, have paid the full amount of the assessed Town and County real estate taxes due.

3. The EDA agrees to the following:

a) The EDA agrees within thirty days of receipt of the annual Performance Incentive Grant funding from the County to disburse the Grant funding proceeds to FS Senior and FS Family respectively consistent with the terms and conditions of this Agreement as requested by the County.

b) The EDA shall have no obligation to the Developer of Fieldstone to provide the Performance Incentive Grant if the County does not first appropriate the proceeds and provide the EDA with the funds. The EDA's only obligation to the Developer of Fieldstone under this Performance Agreement is to provide the Developer with the Performance Incentive Grant funds that were provided to the EDA by the County.

4. This Performance 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 Montgomery County, Virginia or the United States District Court, Western District of Virginia, Roanoke, Virginia.

5. Notice and other correspondence regarding this Performance 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:

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| EDA: | Brian Hamilton<br>Secretary, EDA<br>755 Roanoke Street, Suite 2H<br>Christiansburg, VA 24073 |
| Developer: | Fieldstone Senior LP and Fieldstone Family Partners LP<br>Attention: William Park<br>1821 Avon Street Extension<br>Charlottesville, VA 22902 |
| County: | County of Montgomery, Virginia<br>F. Craig Meadows, County Administrator<br>755 Roanoke Street, Ste. 2E<br>Christiansburg, VA 24073 |

6. This Agreement may be assigned by FS Senior or FS Family (only as to such party's respective rights and obligations) 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 Performance Agreement.

7. This Agreement embodies the entire understanding of the parties, there being no promises or undertakings, written or oral, other than those expressly set forth herein. This Agreement shall be governed by the laws of the Commonwealth of Virginia.

8. 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.

9. 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.

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

11. 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.

**ECONOMIC DEVELOPMENT AUTHORITY OF MONTGOMERY COUNTY**

By:_____
ERIC JOHNSEN, Chair

COMMONWEALTH OF VIRGINIA,
COUNTY OF MONTGOMERY:

Acknowledged before me this ____day of February, 2016, by Eric Johnsen, Chair of the Economic Development Authority of Montgomery County.

_____
Notary Public

Registration No. _____
My Commission expires: _____

**COUNTY OF MONTGOMERY, VIRGINIA**

By:_____
CHRISTOPHER A TUCK, Chair

COMMONWEALTH OF VIRGINIA,
COUNTY OF MONTGOMERY:

Acknowledged before me this ____ day of February, 2016, by Christopher A. Tuck, Chair for the Board of Supervisors of Montgomery County, Virginia.

_____
Notary Public

Registration No. _____
My Commission expires: _____

**FIELDSTONE SENIOR LP**

By: Fieldstone Realty Partners 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
COUNTY OF _____

Acknowledged before me this ____day of February, 2016, by William N. Park, Manager of Bluestone Land, L.L.C., a Virginia limited liability company, in its capacity as manager of Fieldstone Realty Partners LLC, a Virginia limited liability company, in its capacity as general partner of Fieldstone Senior LP, a Virginia limited partnership.

_____
Notary Public

Registration No. _____
My Commission expires: _____

**FIELDSTONE FAMILY PARTNERS LP**

By: Fieldstone Family 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
COUNTY OF _____

Acknowledged before me this ____day of February, 2016, by William N. Park, Manager of Bluestone Land, L.L.C., a Virginia limited liability company, in its capacity as manager of Fieldstone Family LLC, a Virginia limited liability company, in its capacity as general partner of Fieldstone Family Partners LP, a Virginia limited partnership.

_____
Notary Public

Registration No. _____
My Commission expires: _____

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