

ACTIONS
Joint Meeting with Albemarle County Planning Commission of September 14, 2005
4:00 P.M., Room 235

September 19, 2005

<u>AGENDA ITEM/ACTION</u>	<u>ASSIGNMENT</u>
<p>1. Call to Order.</p> <ul style="list-style-type: none"> • Meeting was called to order at 4:02 p.m. by the Chairman, Mr. Rooker, and Planning Commission Vice-Chairman, Ms. Joseph. All BOS members were present (Mr. Bowerman arrived at 4:15 p.m.). All Planning Commission members were present except William Craddock and William Rieley (Mr. Edgerton arrived at 4:03 p.m.). Also present were Bob Tucker, Larry Davis, David Benish, and Debi Moyers. 	
<p>2. Work Session: Rural Area Plan ZTA Implementation.</p> <ul style="list-style-type: none"> • HELD. • CONSENSUS of the Board for Planning Commission to develop information on the following four issues and bring back to the Board: <ul style="list-style-type: none"> • Phasing – How it would work; • Clustering – How it would work; • How Phasing and Clustering could be implemented together; and • The public information process. 	
<p>3. Closed Session.</p> <ul style="list-style-type: none"> • At 5:05 p.m., the Board went into closed session to consider appointments to boards, committees, and commissions. 	
<p>4. Certify Closed Session.</p> <ul style="list-style-type: none"> • At 5:59 p.m., the Board reconvened into open session and certified the closed session. 	

ACTIONS
Board of Supervisors of September 14, 2005
6:00 P.M., Meeting Room 241

<u>AGENDA ITEM/ACTION</u>	<u>ASSIGNMENT</u>
<p>5. Call to Order.</p> <ul style="list-style-type: none"> • Meeting was called to order at 6:00 p.m. by the Chairman, Mr. Rooker. All BOS members were present. Also present were Bob Tucker, Larry Davis, V. Wayne Cilimberg and Debi Moyers. 	
<p>8. From the Public: Matters Not Listed on the Agenda.</p> <ul style="list-style-type: none"> • Arin Sime, a resident of Crozet, asked the Board to adopt a resolution prohibiting transfer of condemned property to private parties. • Linda Goodling, a County resident, and speaking on behalf of The League of Women Voters, asked that time be set aside on agendas for Mr. Tucker to speak on the activities of the Rivanna Water and Sewer Authority. 	

9.2	Resolution to accept road(s) in Sunrise Farm Subdivision into the State Secondary System of Highways. <ul style="list-style-type: none"> • ADOPTED the attached resolution. 	<u>Clerk:</u> Forward signed resolution to Greg Cooley in Department of Community Development. (Attachment 1)
9.3	Resolution to accept road(s) in Western Ridge Subdivision, Phase 5B, into the State Secondary System of Highways. <ul style="list-style-type: none"> • ADOPTED the attached resolution. 	<u>Clerk:</u> Forward signed resolution to Greg Cooley in Department of Community Development. (Attachment 2)
9.4	Resolution to accept road(s) in Western Ridge Subdivision, Phase 5C, into the State Secondary System of Highways. <ul style="list-style-type: none"> • ADOPTED the attached resolution. 	<u>Clerk:</u> Forward signed resolution to Greg Cooley in Department of Community Development. (Attachment 3)
10.	Public hearing on the proposed issuance of Virginia Public School Authority (VPSA) general obligation bonds of Albemarle County in the estimated maximum principal amount of \$7,790,000. The purpose of the proposed bonds is to finance capital projects for public schools. <ul style="list-style-type: none"> • ADOPTED the attached resolution authorizing the issuance of bonds in the maximum principal amount of \$7,790,000. to finance certain capital improvements for the County's public schools. 	<u>Clerk:</u> Forward six original signed and sealed copies of resolution to Finance and copy OMB. (Attachment 4)
11.	ZMA-2004-002. Townhouses Fontaine Ave (Sign #80). <ul style="list-style-type: none"> • APPROVED ZMA-2004-002, by a vote of 6:0, as proffered and signed by the applicant dated September 6, 2005. 	(Attachment 5)
12.	SP-2005-018. Car Max (Sign #9). <ul style="list-style-type: none"> • APPROVED SP-2005-018, by a vote of 6:0, subject to the four conditions as recommended by the Planning Commission. 	(Attachment 6)
13.	SP-2004-052. Kenridge (Sign #40). <ul style="list-style-type: none"> • HELD public hearing. • DEFERRED until October 5, 2005. 	<u>Clerk:</u> Reschedule on October 5 th agenda to continue the public hearing.
	<ul style="list-style-type: none"> • The Board recessed at 7:58 p.m. and reconvened at 8:10 p.m. 	
14.	ZMA-2004-024. Old Trail Village (Signs #56,65,82,90). <ul style="list-style-type: none"> • APPROVED ZMA-2004-024, by a vote of 5:0, as proffered and amended by the applicant at the meeting. (Mr. Bowerman abstained and left the meeting at 8:11 p.m.). 	(Attachment 7)
15.	From the Board: Matters Not Listed on the Agenda. <u>Sally Thomas:</u> <ul style="list-style-type: none"> • Ms. Thomas offered motion which was seconded by Mr. Boyd to appoint the following applicants to the Natural Heritage Committee: Tom Dierauf, Michael Erwin, Diana Foster, E. N. Garnett, Jr., John Murphy, Richard Odom, Thomas Olivier, G. Carleton Ray, John Scrivani, Herman (Hank) Shugart, Peter Warren and Linda Wells. Motion PASSED by a vote of 5:0. • Ms. Thomas shared general statistics put together by staff on what is happening with Hurricane Katrina and the County's involvement. 	<u>Clerk:</u> Prepare appointment letters; update Boards and Commissions book and notify appropriate persons.

<p><u>Ken Boyd:</u></p> <ul style="list-style-type: none"> • Asked Mr. Tucker that extended medical benefits for retirees be brought back to the Board on a future agenda. Mr. Tucker said he will see if it can be rescheduled for October. <p><u>Bob Tucker:</u></p> <ul style="list-style-type: none"> • Suggested staff take a look at how the County handles proffers, amendments and special permit conditions. Mr. Boyd said he would like to see staff come back with a proffer statement/policy. 	<p><u>Clerk:</u> Schedule on October 5th agenda.</p>
<p>16. Adjourn.</p> <ul style="list-style-type: none"> • The meeting was adjourned at 10:42 p.m. 	

/djm

- Attachment 1 – Resolution to accept road(s) in Sunrise Farm Subdivision into the State Secondary System of Highways
- Attachment 2 – Resolution to accept road(s) in Western Ridge Subdivision, Phase 5B, into the State Secondary System of Highways
- Attachment 3 – Resolution to accept road(s) in Western Ridge Subdivision, Phase 5C, into the State Secondary System of Highways
- Attachment 4 – Virginia Public School Authority Bond Resolution
- Attachment 5 – Townhouses Fontaine Ave Proffers dated September 6, 2005
- Attachment 6 - Conditions of Approval – SP-2005-018
- Attachment 7 - Old Trail Village Proffers dated September 14, 2005

ATTACHMENT 1

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 14th day of September 2005, adopted the following resolution:

RESOLUTION

WHEREAS, the street(s) in **Sunrise Farm Subdivision**, described on the attached Additions Form LA-5(A) dated **September 14, 2005**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Sunrise Farm Subdivision**, as described on the attached Additions Form LA-5(A) dated **September 14, 2005**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

* * * * *

The road(s) described on Additions Form LA-5(A) is:

- 1) **Sunrise Lane (State Route 1619)** from the intersection of Reas Ford Road (Route 66) to cul-de-sac, as shown on plat recorded 04/01/2003 in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2420, page 275, with a 40-foot right-of-way width, for a length of 0.19 miles.

Total Mileage – 0.19 miles

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 14th day of September 2005, adopted the following resolution:

RESOLUTION

WHEREAS, the street(s) in **Western Ridge Subdivision, Phase 5B**, described on the attached Additions Form LA-5(A) dated **September 14, 2005**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Western Ridge Subdivision, Phase 5B**, as described on the attached Additions Form LA-5(A) dated **September 14, 2005**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

* * * * *

The road(s) described on Additions Form LA-5(A) is:

- 1) **Lake Tree Lane (State Route 1251)** from the existing end maintenance to the intersection of Rolling Meadow Lane (Route 1374) as shown on plat recorded 05/22/2001 in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2027, pages 87-94, with a 50-foot right-of-way width, for a length of 0.11 miles.
- 2) **Lake Tree Lane (State Route 1251)** from the intersection of Rolling Meadow Lane (Route 1374) to the intersection of Vista View Lane (Route 1375) as shown on plat recorded 05/22/2001 in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2027, pages 87-94, with a 50-foot right-of-way width, for a length of 0.03 miles.
- 3) **Lake Tree Lane (State Route 1251)** from the intersection of Vista View Lane (Route 1375) to the end of maintenance, as shown on plat recorded 05/22/2001 in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2027, pages 87-94, with a 50-foot right-of-way width, for a length of 0.02 miles.
- 4) **Rolling Meadows Lane (State Route 1374)** from the intersection of Lake Tree Lane (Route 1251) to the cul-de-sac, as shown on plat recorded 05/22/2001 in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2027, pages 87-94, with a 40-foot right-of-way width, for a length of 0.11 miles.
- 5) **Vista View Lane (State Route 1375)** from the intersection of Lake Tree Lane (Route 1251) to the cul-de-sac, as shown on plat recorded 05/22/2001 in the office the Clerk of

Circuit Court of Albemarle County in Deed Book 2027, pages 87-94, with a 40-foot right-of-way width, for a length of 0.10 miles.

Total Mileage – 0.37 miles

ATTACHMENT 3

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 14th day of September 2005, adopted the following resolution:

RESOLUTION

WHEREAS, the street(s) in **Western Ridge Subdivision, Phase 5C**, described on the attached Additions Form LA-5(A) dated **September 14, 2005**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Western Ridge Subdivision, Phase 5C**, as described on the attached Additions Form LA-5(A) dated **September 14, 2005**, to the secondary system of state highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

* * * * *

The road(s) described on Additions Form LA-5(A) is:

- 1) **Lake Tree Lane (State Route 1251)** from the existing end maintenance to cul-de-sac, as shown on plat recorded 04/24/2002 in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2186, pages 614-621, with a 50-foot right-of-way width, for a length of 0.16 miles.

Total Mileage – 0.16 miles

**RESOLUTION AUTHORIZING THE ISSUANCE OF
GENERAL OBLIGATION SCHOOL BONDS, SERIES 2005A,
OF THE COUNTY OF ALBEMARLE, VIRGINIA,
IN A PRINCIPAL AMOUNT NOT TO EXCEED \$7,790,000
TO BE SOLD TO THE VIRGINIA PUBLIC SCHOOL AUTHORITY
AND PROVIDING FOR THE FORM AND DETAILS THEREOF**

WHEREAS, the Board of Supervisors (the "Board") of the County of Albemarle, Virginia (the "County"), has determined that it is necessary and expedient to borrow a principal amount not to exceed \$7,790,000 and to issue its general obligation school bonds for the purpose of financing certain capital projects for school purposes; and

WHEREAS, the County has held a public hearing, duly noticed, on September 14, 2005, on the issuance of the Bonds (as hereinafter defined) in accordance with the requirements of Section 15.2-2606, Code of Virginia 1950, as amended (the "Virginia Code"); and

WHEREAS, the School Board of the County has, by resolution, adopted on August 11, 2005, requested the Board to authorize the issuance of the Bonds and consented to the issuance of the Bonds; and

WHEREAS, the Bond Sale Agreement (as defined below) shall indicate that \$7,790,000 is the amount of proceeds requested (the "Proceeds Requested") from the Virginia Public School Authority (the "VPSA") in connection with the sale of the Bonds; and

WHEREAS, the VPSA's objective is to pay the County a purchase price for the Bonds which, in VPSA's judgment, reflects the Bonds' market value (the "VPSA Purchase Price Objective"), taking into consideration such factors as the amortization schedule the County has requested for the Bonds relative to the amortization schedules requested by other localities, the purchase price to be received by VPSA for its bonds and other market conditions relating to the sale of the VPSA's bonds; and

WHEREAS, such factors may result in the Bonds having a purchase price other than par and consequently (i) the County may have to issue a principal amount of Bonds that is less than the Proceeds Requested but in no case greater than the Proceeds Requested in order to receive an amount of proceeds that is substantially equal to the Proceeds Requested, or (ii) if the maximum authorized principal amount of the Bonds set forth in Section 1 below does not exceed the Proceeds Requested by at least the amount of any discount the purchase price to be paid to the County, given the VPSA Purchase Price Objective and market conditions, will be less than the Proceeds Requested.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBEMARLE, VIRGINIA:

1. **Authorization of Bonds and Use of Proceeds.** The Board hereby determines that it is advisable to contract a debt and issue and sell its general obligation school bonds in an aggregate principal amount not to exceed \$7,790,000 (the "Bonds") for the purpose of financing certain capital projects for school purposes, including without limitation, the projects described in Exhibit B. The Board hereby authorizes the issuance and sale of the Bonds in the form and upon the terms established pursuant to this Resolution.

2. **Sale of the Bonds.** It is determined to be in the best interest of the County to accept the offer of the VPSA to purchase from the County, and to sell to the VPSA, the Bonds at a price, determined by the VPSA to be fair and accepted by the Chairman of the Board and the County Executive, either of whom may act, that is substantially equal to the Proceeds Requested, except that the Bonds may be sold

for a purchase price not lower than 95% of the Proceeds Requested if issuing the Bonds in the maximum principal amount authorized by Section 1 of this Resolution is insufficient, given the VPSA Purchase Price Objective and market conditions, to generate an amount of proceeds substantially equal to the Proceeds Requested. The Chairman of the Board and the County Executive, either of whom may act, and such officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to enter into a Bond Sale Agreement dated as of September 28, 2005 (the "Bond Sale Agreement"), with the VPSA providing for the sale of the Bonds to the VPSA. The Bond Sale Agreement shall be in substantially the form submitted to the Board at this meeting, which form is hereby approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the officer executing the Bond Sale Agreement, his execution to constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes.

3. **Details of the Bonds.** The Bonds shall be dated the date of issuance and delivery of the Bonds; shall be designated "General Obligation School Bonds, Series 2005A"; shall bear interest from the date of delivery thereof payable semi-annually on each January 15 and July 15 beginning July 15, 2006 (each an "Interest Payment Date"), at the rates established in accordance with Section 4 of this Resolution; and shall mature on July 15 in the years (each a "Principal Payment Date") and in the amounts as determined by the County Executive (the "Principal Installments"), subject to the provisions of Section 4 of this Resolution.

4. **Interest Rates and Principal Installments.** The County Executive is hereby authorized and directed to accept the interest rates on the Bonds established by the VPSA, provided that each interest rate shall be ten one-hundredths of one percent (0.10%) over the interest rate to be paid by the VPSA for the corresponding principal payment date of the bonds to be issued by the VPSA (the "VPSA Bonds"), a portion of the proceeds of which will be used to purchase the Bonds, and provided further that the true interest cost of the Bonds does not exceed five and thirty-five one-hundredths percent (5.35%) per annum. The Interest Payment Dates are subject to change at the request of the VPSA. The County Executive is hereby authorized and directed to accept changes in the Interest Payment Dates at the request of the VPSA and to accept the Principal Installments requested by the VPSA, provided that the aggregate principal amount of the Bonds shall not exceed the amount authorized by this Resolution and provided further that the final maturity of the Bonds occurs no later than December 31, 2025. The execution and delivery of the Bonds as described in Section 8 hereof shall conclusively evidence such interest rates established by the VPSA and Interest Payment Dates and the Principal Installments requested by the VPSA as having been so accepted by the County Executive as authorized by this Resolution.

5. **Form of the Bonds.** The Bonds shall be initially in the form of a single, temporary typewritten bond substantially in the form attached hereto as Exhibit A.

6. **Payment; Paying Agent and Bond Registrar.** The following provisions shall apply to the Bonds:

(a) For as long as the VPSA is the registered owner of the Bonds, all payments of principal, premium, if any, and interest on the Bonds shall be made in immediately available funds to the VPSA at or before 11:00 a.m. on the applicable Interest Payment Date, Principal Payment Date or date fixed for prepayment or redemption, or if such date is not a business day for Virginia banks or for the Commonwealth of Virginia, then at or before 11:00 a.m. on the business day next preceding such Interest Payment Date, Principal Payment Date or date fixed for prepayment or redemption.

(b) All overdue payments of principal and, to the extent permitted by law, interest shall bear interest at the applicable interest rate or rates on the Bonds.

(c) SunTrust Bank, Richmond, Virginia, is designated as bond registrar and payment agent for the Bonds (the "Bond Registrar"). The County may, in its sole discretion, replace at any time the Bond Registrar with another qualified bank or trust company as successor Bond Registrar.

7. **Prepayment or Redemption.** The Principal Installments of the Bonds held by the VPSA coming due on or before July 15, 2015, and the definitive Bonds for which the Bonds held by the VPSA

may be exchanged that mature on or before July 15, 2015, are not subject to prepayment or redemption prior to their stated maturities. The Principal Installments of the Bonds held by the VPSA coming due after July 15, 2015, and the definitive bonds for which the Bonds held by the VPSA may be exchanged that mature after July 15, 2015, are subject to prepayment or redemption at the option of the County prior to their stated maturities in whole or in part, on any date on or after July 15, 2015, upon payment of the prepayment or redemption prices (expressed as percentages of Principal Installments to be prepaid or the principal amount of the Bonds to be redeemed) set forth below plus accrued interest to the date set for prepayment or redemption:

<u>Dates</u>	<u>Prices</u>
July 15, 2015, through July 14, 2016	101.0%
July 15, 2016, through July 14, 2017	100.5
July 15, 2017, and thereafter	100.0

Provided, however, that the Bonds shall not be subject to prepayment or redemption prior to their stated maturities as described above without first obtaining the written consent of the registered owner of the Bonds. Notice of any such prepayment or redemption shall be given by the Bond Registrar to the registered owner by registered mail not more than ninety (90) and not less than sixty (60) days before the date fixed for prepayment or redemption.

8. **Execution of the Bonds.** The Chairman or Vice Chairman of the Board, either of whom may act, and the Clerk of the Board or any Deputy Clerk, either of whom

may act, are authorized and directed to execute and deliver the Bonds and to affix the seal of the County thereto.

9. **Pledge of Full Faith and Credit.** For the prompt payment of the principal of and premium, if any, and the interest on the Bonds as the same shall become due, the full faith and credit of the County are hereby irrevocably pledged, and in each year while any of the Bonds shall be outstanding there shall be levied and collected in accordance with law an annual ad valorem tax upon all taxable property in the County subject to local taxation sufficient in amount to provide for the payment of the principal of and premium, if any, and the interest on the Bonds as such principal, premium, if any, and interest shall become due, which tax shall be without limitation as to rate or amount and in addition to all other taxes authorized to be levied in the County to the extent other funds of the County are not lawfully available and appropriated for such purpose.

10. **Use of Proceeds Certificate and Certificate as to Arbitrage.** The Chairman of the Board, the County Executive and such officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to execute a Certificate as to Arbitrage and a Use of Proceeds Certificate, each setting forth the expected use and investment of the proceeds of the Bonds and containing such covenants as may be necessary in order to show compliance with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and applicable regulations relating to the exclusion from gross income of interest on the Bonds and on the VPSA Bonds. The Board covenants on behalf of the County that (i) the proceeds from the issuance and sale of the Bonds will be invested and expended as set forth in such Certificate as to Arbitrage and such Use of Proceeds Certificate and that the County shall comply with the other covenants and representations contained therein and (ii) the County shall comply with the provisions of the Code so that interest on the Bonds and on the VPSA Bonds will remain excludable from gross income for Federal income tax purposes.

11. **State Non-Arbitrage Program; Proceeds Agreement.** The Board hereby determines that it is in the best interests of the County to authorize and direct the Director of Finance of the County to participate in the State Non-Arbitrage Program in connection with the Bonds. The Chairman of the Board, the County Executive and such officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to execute and deliver a Proceeds Agreement with respect to the deposit and investment of proceeds of the Bonds by and among the County, the other participants in the sale of the VPSA Bonds, the VPSA, the investment manager and the depository, substantially in the form submitted to the Board at this meeting, which form is hereby approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the officer

executing such Proceeds Agreement, his execution to constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes.

12. **Continuing Disclosure Agreement.** The Chairman of the Board, the County Executive and such officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to execute a Continuing Disclosure Agreement, substantially in the form attached as Appendix F to the Bond Sale Agreement, setting forth the reports and notices to be filed by the County and containing such covenants as may be necessary in order to show compliance with the provisions of the Securities and Exchange Commission Rule 15c2-12 and directed to make all filings required by Section 3 of the Bond Sale Agreement should the County be determined by the VPSA to be a MOP (as defined in the Continuing Disclosure Agreement).

13. **Filing of Resolution.** The appropriate officers or agents of the County are hereby authorized and directed to cause a certified copy of this Resolution to be filed with the Circuit Court of the County.

14. **Further Actions.** The members of the Board and all officers, employees and agents of the County are hereby authorized to take such action as they or any one of them may consider necessary or desirable in connection with the issuance and sale of the Bonds and any such action previously taken is hereby ratified and confirmed.

15. **Effective Date.** This Resolution shall take effect immediately.

Original Proffer X

PROFFER FORM

Date of Proffer Signature: 09/06/05

ZMA # 2004-02

Tax Map 76 and Parcel Numbers 12A and 12G

12.606 Acres to be rezoned from H-C (Highway Commercial) to PRD (Planned Residential Development) in accordance with the Application Plan dated September 6, 2005

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the owner, or its duly authorized agent, hereby voluntarily proffers the conditions listed below which shall be applied to the property, if rezoned with the offered plans approved for development. These conditions are proffered as a part of the requested rezoning and it is agreed that: (1) the rezoning itself gives rise to the need for the conditions; and (2) such conditions have a reasonable relation to the rezoning request.

- (1) No building permit shall be issued unless and until the Director of Community Development, or his assigns, determines that the dwelling unit façades are in general accord with the building elevations provided on plans entitled "Fontaine Townhomes Concept Elevation" by Weather Hill Development, LLC and Bosserman, dated April 28, 2004. The façades shall be determined to be in general accord if they include architectural features that break up the massing of the building, such as porches, porticos, balconies, variation in building materials, and gables which break up the rooflines.
- (2) The Owner shall construct, at its expense, an off-site asphalt-paved pedestrian walkway and other improvements in accordance with standards for such walkways of the Virginia Department of Transportation (VDOT) from the southeast corner of the site along the north side of Fontaine Avenue to the Fontaine Business Park intersection as shown on the "Pathway and Wall Exhibit" prepared by Timmons Group, dated September 6, 2005. The walkway and other improvements shall be completed prior to the issuance of the building permit for the thirtieth (30th) unit. The walkway and other improvements shall be deemed completed when they are accepted or bonded for acceptance by VDOT.
- (3) The Owner shall design and construct a pedestrian/bicycle bridge crossing Morey Creek, as shown on the Application Plan, to a standard approved by the County Engineer and is to be a fully engineered clear span bridge, similar to the "Connector" bridge as manufactured by the Steadfast Bridge Company (1-800-749-7515), or an approved equal type of bridge. The bridge shall be designed and constructed above the 100-year flood plain. The bridge shall be completed, as determined by the County Engineer, prior to the issuance of the building permit for the thirtieth (30th) unit.
- (4) Prior to final site plan approval, the Owner shall dedicate a right-of-way to the County for public use for the purpose of constructing a greenway trail connecting Fontaine Avenue and TM 76, Parcel 12D, as indicated and noted on the Application Plan. The Owner shall pay all costs of surveying and preparing legal documents in a form acceptable to the County Attorney necessary to dedicate the right-of-way.
- (5) There shall be a maximum of 61 dwelling units in the development. Fifty-five units are illustrated on the Application Plan, originally prepared by Terra Concepts, PC, dated May 2, 2005 and last revised by Timmons Group, dated September 6, 2005. Six of the 55 units are identified on the Application Plan as housing two-dwelling units (Units 1, 6, 7, 13, 14, and 20). These six units shall be constructed and maintained as two-family dwellings as defined in the Virginia Uniform Statewide Building Code. The declaration of covenants for Fontaine Townhomes shall contain the following

ATTACHMENT 6

SP-2005-018. Car Max (Sign #9). Public hearing on a request to allow outdoor display of vehicles in accord w/Sec 30.6.3.2 (b) of the Zoning Ord which allows for outdoor storage, display and/or sales in the EC Dist. TM 78, P 10 contains approx 5.112 acs. Loc on N side of St Rt 250 E at 1448 Richmond Rd, currently site of White House Motel. Znd HC & EC. [This site is also subject of Site Development Plan public hearing (SDP 2005-057).] Rivanna Dist.

1. Final site plan approval is subject to Architectural Review Board (ARB) approval of the landscape plan (submitted with the site plan). Landscaping shown on the plan may be required to be in excess of the ARB guidelines or the Zoning Ordinance;
2. Vehicles shall not be elevated anywhere on site;
3. Vehicles shall be displayed only in areas indicated for display shown on the plan entitled "Car Max Preliminary Site Plan" prepared by Charles J. O'Brien, Architect and dated July 18, 2005. Display parking shall be only in designated parking spaces, as identified on this plan; and
4. Prior to final site plan approval, the applicant shall provide documentation that all easement holders do not object to proposed construction, grading, planting, etc. in their easements.

**PROFFER STATEMENT
OLD TRAIL VILLAGE**

Date: September 14, 2005
ZMA #: ZMA 2004-024 Old Trail Village
Tax Map Parcel Number: 55E-1-A1 (portion)

An approximately 237 acre portion of tax map parcel 055E0-01-00-000A1 is subject to rezoning application ZMA 2004-024 and thus to this Proffer Statement (the "Property"). The Property is described with more particularity on sheet 6 of 9 of the General Development Plan entitled "Old Trail Village Rezoning ZMA-04-024 General Development Plan" prepared by Timmons Group, containing nine (9) sheets, dated June 24, 2005, last revised September 12, 2005, and attached hereto as **Exhibit A** (the "General Development Plan"). The Owner of the Property is March Mountain Properties, L.L.C., a Virginia limited liability company (the "Owner").

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to rezone the Property to Neighborhood Model District as requested, the Owner shall develop the Property in accord with the following proffers pursuant to Section 15.2-2298 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.3 of the Albemarle County Zoning Ordinance. These conditions are voluntarily proffered as part of the requested rezoning, and the Owner acknowledges that (1) the rezoning itself gives rise to the need for the conditions; and (2) such conditions have a reasonable relation to the rezoning requested. If rezoning application ZMA 2004-24 is denied, these proffers shall immediately be null and void and of no further force and effect.

This Proffer Statement shall relate to the General Development Plan and to the Code of Development dated September 12, 2005, and attached hereto as **Exhibit B** (the "Code of Development").

1. **Green Space; Park Land and Greenway Dedication.** The Owner shall devote a minimum of twenty percent (20%) of the land within the Property to green space as shown on sheet 5 of 9 of the General Development Plan. Of this green space land, within five (5) years after the date that ZMA 2004-024 is approved by the County, or within thirty (30) days after the request of the County, whichever is sooner, the Owner shall dedicate to the County for public use for parks and open space resources and for a greenway, a 25-acre park, a 10.8-acre greenway area, and a 6.7-acre greenway area, each as further shown on sheet 5 of 9 of the General Development Plan (collectively, the "Park and Greenway Area"). After it is dedicated to public use, the Park and Greenway Area shall continue to be included in the total area of green space and amenities within the Property. At the time of the conveyance and dedication, the Park and Greenway Area land will be subject to the Architectural and Landscape Standards for Old Trail Village, as provided in the Code of Development. The remaining green space land within the Property that will not be dedicated to the County for public use shall be maintained by the Old Trail Owner's Association. The dedication of the Park and Greenway Area land shall be a fee simple interest in such land. If the Park and Greenway Area land is not dedicated as part of a site plan or subdivision plat, the Owner shall pay the costs of surveying the land and preparing the deed of dedication. The Owner shall construct the trail through the 6.7-acre Greenway Area, as shown on sheet 5 of 9 of the General Development Plan, within six (6) months after the approval by the County of the first subdivision plat or site plan applicable to any portion of block 30 or 31. The trail shall be constructed to the County standards for a Class A trail, with a surface of compacted stone dust.

2. **Affordable Housing.** The Owner shall provide affordable housing equal to fifteen percent (15%) of the total residential units constructed on the Property, in the form of for-sale condominiums and townhouses, and for-rent condominiums, townhouses, apartments and accessory units. The affordable housing dwelling units shall be reasonably interspersed throughout the Property as provided in this paragraph 2, subject to the requirements of the General Development Plan and the Code of

Development. If the Owner elects at its option to provide for-sale single family detached units at affordable rates (as defined herein), such units shall be applied toward the 15% requirement. Each subdivision plat and site plan for land within the Property shall designate the lots or units, as applicable, that will, subject to the terms and conditions of this proffer, incorporate affordable units as described herein, and the aggregate number of such lots or units designated for affordable units within each subdivision plat and site plan shall constitute a minimum of fifteen percent (15%) of the lots in such subdivision plat or site plan. Notwithstanding the foregoing, however, the Owner may “carry-over” or “bank” credits for affordable units in the event an individual subdivision plat or site plan designates affordable units that in the aggregate exceed the fifteen percent (15%) minimum for such subdivision plat or site plan, and such additional affordable units may be allocated toward the fifteen percent (15%) minimum on any future subdivision plat or site plan, provided however, that the maximum number of affordable units that may be carried over or banked shall not exceed fifteen percent (15%) of the total units on any subdivision plat or site plan.

The Owner shall convey the responsibility of constructing the affordable units to the subsequent owners of lots within the Property. The subsequent owner/builder shall create units affordable to households with incomes less than eighty percent (80%) of the area median income such that housing costs consisting of principal, interest, real estate taxes and homeowners insurance (PITI) do not exceed thirty percent (30%) of the gross household income.

A. **For-Sale Affordable Units.** All purchasers of the for-sale affordable units shall be approved by the Albemarle County Housing Office or its designee. The subsequent owner/builder shall provide the County or its designee a period of ninety (90) days to identify and prequalify an eligible purchaser for the affordable units. The ninety (90)-day period shall commence upon written notice from the then-current owner/builder that the unit(s) will be available for sale. If the County or its designee does not provide a qualified purchaser during this ninety (90)-day period, the then-current owner/builder shall have the right to sell the unit(s) without any restriction on sales price or income of the purchaser(s). This proffer shall apply only to the first sale of each of the for-sale affordable units.

B. **For-Rent Affordable Units.**

(1). **Rental Rates.** The initial net rent for each for-rent affordable unit shall not exceed the then-current and applicable maximum net rent rate approved by the County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent affordable unit may be increased up to three percent (3%). For purposes of this proffer statement, the term “net rent” means that the rent does not include tenant-paid utilities. The requirement that the rents for such for-rent affordable units may not exceed the maximum rents established in his paragraph 2B shall apply for a period of five (5) years following the date the certificate of occupancy is issued by the County for each for-rent affordable unit, or until the units are sold as low or moderate cost units qualifying as such under either the Virginia Housing Development Authority, Farmers Home Administration, or Housing and Urban Development, Section 8, whichever comes first (the “Affordable Term”).

(2). **Conveyance of Interest.** All deeds conveying any interest in the for-rent affordable units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this paragraph 2. In addition, all contracts pertaining to a conveyance of any for-rent affordable unit, or any part thereof, during the Affordable Term shall contain a complete and full disclosure of the restrictions and controls established by this paragraph 2B. At least thirty (30) days prior to the conveyance of any interest in any for-rent affordable unit during the Affordable Term, the then-current owner shall notify the County in writing of the conveyance and provide the name, address and telephone number of the potential grantee, and state that the requirements of this paragraph 2B(2) have been satisfied.

(3). **Reporting Rental Rates.** During the Affordable Term, within thirty (30) days of each rental or lease term for each for-rent affordable unit, the then-current owner shall provide to the Albemarle County Housing Office a copy of the rental or lease agreement for each such unit rented that shows the rental rate for such unit and the term of the rental or lease agreement. In addition, during the Affordable Term, the then-current Owner shall provide to the County, if requested, any reports, copies of rental or lease agreements, or other data pertaining to rental rates as the County may reasonably require.

C. **Mixture of Types of Affordable Units.**

(1). At least forty percent (40%) of the affordable housing dwelling units shall be for-sale units.

(2). No more than thirty percent (30%) of the affordable housing dwelling units may be for-rent apartments.

(3). No more than thirty percent (30%) of the affordable housing dwelling units may be accessory units. For purposes of this proffer statement, "accessory units" shall mean Accessory Apartments as defined in the Albemarle County Code, Chapter 18, Section 3.1, and as regulated by the Albemarle County Code, Chapter 18, Section 5.1.34, and a unit within a two-family dwelling as a two-family dwelling is defined in the Virginia Uniform Statewide Building Code.

3. **Cash Proffer for School Projects.** For each dwelling unit constructed on the Property, the Owner shall contribute cash to Albemarle County for funding school projects within the Community of Crozet and shown on the County's Capital Improvements Program, as follows: one thousand dollars (\$1,000.00) for each single family detached unit, five hundred dollars (\$500.00) for each townhouse unit, and two hundred fifty dollars (\$250.00) for each multifamily unit. The cash contribution for each dwelling unit shall be paid at the time of the issuance of the building permit for such dwelling unit. If the cash contribution has not been exhausted by the County for the stated purpose within ten (10) years from the date of the issuance of the last residential building permit within the Property, all unexpended funds shall be refunded to the Owner.

4. **Cash Proffer for Park Master Plan.** Within one (1) year after the date that ZMA 2004-024 is approved, or within thirty (30) days after the request by the County, whichever is sooner, the Owner shall make a cash contribution to the County in the amount of fifty thousand dollars (\$50,000.00) for the purpose of funding a master plan for the 25-acre park land shown on sheet 5 of 9 of the General Development Plan (the "Park Master Plan"). If the Park Master Plan is completed for less than fifty thousand dollars (\$50,000.00), any remaining funds may be retained by the County and used to fund parks and recreation projects and improvements as described in paragraph 5. If such cash contribution is not expended for the Park Master Plan within two (2) years from the date of the contribution, all unexpended funds shall be refunded to the Owner; provided that any portion of the cash contribution not required to fund the Park Master Plan that is retained by the County as provided herein, shall be refunded to the Owner as provided in paragraph 5 if such funds are not expended within the time provided therein.

5. **Cash Proffer for Park Projects.** For each dwelling unit constructed on the Property, the Owner shall contribute cash to Albemarle County for funding parks and recreation projects and improvements identified on the County's Capital Improvements Program within the Park and Greenway Area in general accord with the Park Master Plan as available funding allows, as follows: one thousand dollars (\$1,000.00) for each single family detached unit, five hundred dollars (\$500.00) for each townhouse unit, and two hundred fifty dollars (\$250.00) for each multifamily unit. Notwithstanding the terms of this paragraph 5 to the contrary, however, the Owner shall receive a "credit" against the first fifty thousand dollars (\$50,000.00) that would otherwise be owed to the County pursuant to this paragraph 5, in recognition of the cash proffer referenced in paragraph 4. In the event the cash proffer referenced in paragraph 4 is not sufficient to fund the Park Master Plan, the County may apply a portion of the cash proffer described in this paragraph 5 as required to fully fund the Park Master Plan. If the County determines it to be a more reasonable use of funds, the County may substitute facilities shown on the Park Master Plan or locate facilities shown on the Park Master Plan elsewhere in the Community of Crozet. The cash contribution for each dwelling unit shall be paid at the time of the issuance of the building permit for such dwelling unit. If the cash contribution has not been exhausted by the County for the stated purpose within ten (10) years from the date of the issuance of the last residential building permit within the Property, all unexpended funds shall be refunded to the Owner.

6. **Phasing of Retail Development.** Prior to the issuance of a building permit for the five hundredth (500th) dwelling unit within the Property, the aggregate retail space within the Property shall not exceed forty-eight thousand (48,000) square feet. Prior to the issuance of a building permit for the one thousandth (1000th) dwelling unit within the Property, the aggregate retail space within the Property shall not exceed ninety-six thousand (96,000) square feet. Prior to the issuance of a building permit for the

one thousand five hundredth (1,500th) dwelling unit within the Property, the aggregate retail space within the Property shall not exceed one hundred forty-four thousand (144,000) square feet. Prior to the issuance of a building permit for the two thousandth (2,000th) dwelling unit within the Property, the aggregate retail space within the Property shall not exceed one hundred ninety-two thousand (192,000) square feet. Retail space shall not include office space or any health and fitness facility.

7. **Overlot Grading Plan.** The Owner shall submit an overlot grading plan meeting the requirements of this section (hereinafter, the "Plan") with the application for each subdivision of the single family detached and single family attached dwelling units shown on the General Development Plan. The Plan shall show existing and proposed topographic features to be considered in the development of the proposed subdivision. The Plan shall be approved by the County Engineer prior to final approval of the subdivision plat. The subdivision shall be graded as shown on the approved Plan. No certificate of occupancy shall be issued for any dwelling on a lot where the County Engineer has determined the lot is not graded consistent with the approved grading Plan. The Plan shall satisfy the following:

A. The Plan shall show all proposed streets, building sites, surface drainage, driveways, trails, and other features the County Engineer determines are needed to verify that the Plan satisfies the requirements of this paragraph 7.

B. The Plan shall be drawn to a scale not greater than one (1) inch equals fifty (50) feet.

C. All proposed grading shall be shown with contour intervals not greater than two (2) feet. All concentrated surface drainage over lots shall be clearly shown with the proposed grading. All proposed grading shall be shown to assure that surface drainage can provide adequate relief from the flooding of dwellings in the event a storm sewer fails.

D. Graded slopes on lots proposed to be planted with turf grasses (lawns) shall not exceed a gradient of three (3) feet of horizontal distance for each one (1) foot of vertical rise or fall (3:1). Steeper slopes shall be vegetated with low maintenance vegetation as determined to be appropriate by the County's program authority in its approval of an erosion and sediment control Plan for the land disturbing activity. These steeper slopes shall not exceed a gradient of two (2) feet of horizontal distance for each one (1) foot of vertical rise or fall (2:1), unless the County Engineer finds that the grading recommendations for steeper slopes have adequately addressed the impacts.

E. Surface drainage may flow across up to three (3) lots before being collected in a storm sewer or directed to a drainage way outside of the lots.

F. No surface drainage across a residential lot shall have more than one-half (1/2) acre of land draining to it.

G. All drainage from streets shall be carried across lots in a storm sewer to a point beyond the rear of the building site.

H. The Plan shall demonstrate that driveways to lots will not be steeper than twenty (20) percent unless certified by an engineer that the driveway at the proposed steepness would be safe and convenient for vehicles (including emergency vehicles) to use the driveway, and shall include grading transitions at the street that the agent determines will allow passenger vehicles to avoid scraping the vehicle body on the driveway or the street. Additionally, the driveway grading shall provide an area in front of the proposed garage, or an area proposed for vehicle parking where no garage is proposed, that is not less than eighteen (18) feet in length that will be graded no steeper than eight (8) percent.

I. The Plan shall demonstrate that an area at least ten (10) feet in width, or to the lot line if it is less than (10) feet, from the portion of the structure facing the street, has grades no steeper than ten (10) percent adjacent to possible entrances to dwellings that will not be served by a stairway. This graded area also shall extend from the entrances to the driveways or walkways connecting the dwelling to the street.

J. Any requirement of this condition may be waived by the County Engineer by submitting a waiver request with the preliminary plat. If such a request is made, it shall include: (i) a justification for the

request contained in a certified engineer's report; (ii) a vicinity map showing a larger street network at a scale no smaller than one (1) inch equals six hundred (600) feet; (iii) a conceptual plan at a scale no smaller than one (1) inch equals two hundred (200) feet showing surveyed boundaries of the property; (iv) topography of the property at five (5) foot intervals for the property being subdivided and on abutting lands to a distance of five hundred (500) feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, stream buffers, steep slopes, floodplains, known wetlands; and (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable. In reviewing a waiver request, the County Engineer shall consider whether the alternative proposed by the Owner satisfies the purpose of the requirement to be waived to at least an equivalent degree. In approving a waiver, the County Engineer shall find that requiring compliance with the requirement of this condition would not forward the purposes of the County's Subdivision and Water Protection Ordinances or otherwise serve the public interest; and granting the waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the Project, and to the land adjacent thereto.

K. The Owner may request that the Plan be amended at any time. All amendments shall be subject to the review and approval by the County Engineer.

L. In the event that the County adopts overlot grading regulations after the date ZMA 2004-024 is approved, any requirement of those regulations that is less restrictive than any requirement of this paragraph 7 shall supersede the corresponding requirement of this paragraph, subject to the approval of the Director of the Department of Community Development.

8. **Construction of School Connections**. The Owner shall construct the pathway connections to the schools, shown as "Pathway Connection to Schools," and "Road and Sidewalk Connection to Schools" on sheet 5 of 9 of the General Development Plan, within six (6) months after the approval by the County of the first subdivision plat or site plan applicable to any portion of a block that either includes or is adjacent to any such connection.

WITNESS the following signature:

MARCH MOUNTAIN PROPERTIES, L.L.C.

By: _____
Gaylon T. Beights, Manager

This is a conformed version of the proffer statement presented to and approved by the Board with manuscript changes on September 14, 2005.