

ACTIONS	
Board of Supervisors Meeting of August 2, 2006	
August 10, 2006	
<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 12:00 by the chairman, Mr. Rooker. All BOS members were present; Mr. Dorrier arrived at 12:05. Also present were Bob Tucker, Larry Davis, Diane Mullins, and Meagan Hoy. 	
<p>2. Closed Session. Personal and Legal Matters.</p> <ul style="list-style-type: none"> At 12:03 p.m., the Board went into closed session to consider appointments to boards, committees, and commissions, and to discuss the acquisition of property for a public facility. 	
<p>3. Certified Closed Session</p> <ul style="list-style-type: none"> At 1:35 p.m., the Board reconvened into open session in Meeting Room 235 and certified the closed session. 	
<p>7. Boards and Commissions: Appointments</p> <ul style="list-style-type: none"> APPOINTED Myra Anderson to the Region Ten Community Services Board with said term to end June 30, 2009. APPOINTED George Emmitt to the Eastern Connector Alignment Study Committee. APPOINTED Morgan Butler to the Fiscal Impact Advisory Committee with said term to end July 8, 2008. APPOINTED Colston C. Burrell to the Natural Heritage Committee with said term to end September 30, 2007. 	<p><u>Clerk:</u> Prepare appointment/reappointment letters, update Boards and Commissions book and notify appropriate persons.</p>
<p>8. From the Public: Matters not listed on the Agenda</p> <ul style="list-style-type: none"> David Blount spoke about the process for adopting the regional legislative program. He said the goal would be to prioritize the positions as a region. John Martin urged the Board to request that Mr. Tucker be appointed to the Executive Committee on the Thomas Jefferson Partnership for Economic Development. 	<p><u>Chair:</u> Contact Robert DeMauri of TJPED.</p>
<p>9. Recognitions.</p> <ul style="list-style-type: none"> Proclamation – Women’s Equality Day – August 26, 2006. Received by Kobby Hoffman and Grace Zisk. Chairman recognized Jessica Kitchin, of the Daily Progress, for her outstanding coverage of County News. 	<p>(Attachment 1)</p>
<p>10.2 Request to set public hearing to amend the Albemarle County Service Authority Jurisdictional Area Limited Service designation to provide sewer service to new structure on Tax Map 46, Parcel 26C1 located within the SOCA</p>	<p><u>Clerk:</u> Advertise for public hearing on September 6.</p>

<p>sports facility located within the SOCA sports facility on Polo Grounds Road.</p> <ul style="list-style-type: none"> • Ordered a public hearing be scheduled for September 6th. 	
<p>10.3 Requested FY 2006 Appropriations in the amount of \$129,660.70.</p> <ul style="list-style-type: none"> • Approved appropriations #2006091 and #2006092 by a vote of 6:0. 	<p><u>Clerk:</u> Forward signed appropriation forms to Finance, OMB, and copy appropriate individuals.</p>
<p>10.4 Requested FY 2007 Appropriations in the amount of \$21,347.00.</p> <ul style="list-style-type: none"> • Approved appropriations #2007003, #2007004, #2007005, #2007006, #2007007 by a vote of 6:0. 	<p><u>Clerk:</u> Forward signed appropriation forms to Finance, OMB, and copy appropriate individuals.</p>
<p>10.5 Resolution: Amendment to HOME Consortium Cooperation Agreement.</p> <ul style="list-style-type: none"> • ADOPTED Resolution of Support for Cooperation Agreement Amendment for the Thomas Jefferson Home Consortium under the Home Investment Partnership Program by a vote of 6:0. 	<p><u>Clerk:</u> Forward copy of signed resolution to Billy Campbell at TJPDC. (Attachment 2)</p>
<p>10.6 Resolution of Intent to establish a Regional Transit Authority in the Charlottesville-Albemarle Metropolitan Area.</p> <ul style="list-style-type: none"> • ADOPTED Resolution of Intent by a vote of 6:0. 	<p><u>Clerk:</u> Forward signed copy of Resolution to the MPO. (Attachment 3)</p>
<p>11a. Resolution to Governor Timothy Kaine and the General Assembly of Virginia Urging an Increase in State Transportation Funding.</p> <ul style="list-style-type: none"> • ADOPTED Resolution by a vote of 6:0. 	<p><u>Clerk:</u> Resolution to be sent to Governor and all the County's legislative members. (Attachment 4) As soon as the City has signed resolution, Chairman to send letter to UVA expressing appreciation for their participation toward this effort.</p>
<p>11b. VDoT Monthly Report for July 2006.</p> <ul style="list-style-type: none"> • RECEIVED 	
<p>11c. Transportation Matters not listed on the Agenda. <u>Jim Utterback:</u></p> <ul style="list-style-type: none"> • Route 250 signals at two locations - both locations warrant signals. • Miller School Road - Will check on sign placement and the 45 mph speed limit. • Buck Mountain Road drainage culvert has been addressed by VDoT. • Whippoorwill Road trimming was done on July 21st, and Mr. Utterback will look at it again. • Gillums Ridge Road - Dust control has been applied. • I-64/Ivy Interchange - VDoT will continue to monitor the area for loitering and nighttime parking. • Rt 250 at Owensville Road - Roundabout Study was completed in May. Funding is needed for additional analysis. • Route 713-Dust control has been applied several times. 	

- Maxfield Road qualifies as a rural rustic road project.
- Construction on Hacktown Road, a rural rustic road project, will begin after completion of Woods Edge Road.
- Hillsdale/Northfields. Sign saying “Left turn must yield” to be installed by mid-August.
- Route 29/Hydraulic Road. Mr. Slutzky to meet with VDoT staff to discuss signage at this intersection.
- Advance Mills Bridge – Re-opened, and monitoring efforts will continue to ensure that vehicle tonnage does not exceed the three (3) ton limit.
- Tall grass at key intersections has been cut.
- Mr. Rooker asked who was responsible for maintaining/mowing vacant lots and mowing along sidewalks.
- Mr. Slutzky mentioned the debris on the sides of Old Brook Road, and Jim Utterback advised VDoT should remove the debris.

David Wyant:

- Reported broken edges of pavement in the curves of roads in Claymont Subdivision in Earlysville.
- Asked about the meeting between VDOT and the Crozet Methodist Church. Mr. Utterback said VDoT intends to move forward using existing plans for Jarman’s Gap Road.

Sally Thomas

- Requested VDoT’s monthly reports include road names in addition to route numbers.
- Requested better signage when the closure of I-64 requires detours around Charlottesville, Mr. Utterback said VDoT is working with the State Police to decide when and if traffic should be detoured during an incident on I-64.

Lindsay Dorrier

- Requested speed limit be reduced from 55 mph to 45 mph on Route 20 coming into Scottsville. Mr. Utterback will initiate a study.

Ken Boyd

- Requested that the Meadow Creek Parkway be shown on the monthly report (appears as Route 631 McIntire Road, in this report). He asked if this project was still scheduled for June, 2008.

David Slutzky

- Asked if Meadow Creek Parkway would have a continuous flow bike path, Mr. Utterback will check and follow up. Mr. Slutzky does not want the bike plan to affect the process.

Dennis Rooker

- Requested update on right-of-way process for

<p>Meadow Creek Parkway and timeframe for completion of that process.</p> <ul style="list-style-type: none"> • Reported that Roslyn Ridge Road was pulling apart, Mr. Utterback will report back on situation. • Asked about the County's maintenance funds, Mr. Utterback said funds have been reduced by \$5 million over the past two years. 	
<p>12. ZMA-2006-001. Westhall Phase V (Signs #49,59,64)</p> <ul style="list-style-type: none"> • Deferred to September 6th 2006. The petition may need to be advertised for another public hearing. 	<p><u>Clerk</u>: advertise for a new public hearing on September 6 only if the applicant makes changes to the proffers.</p>
<p>13. SP-2006-011. Mosby Mountain Stream Crossing (Signs #14,22)</p> <ul style="list-style-type: none"> • Approved, by a vote of 6:0, subject to the six conditions recommended by the Planning Commission. 	<p>(Attachment 5)</p>
<p>The Board recessed at 5:03 p.m. and reconvened at 6:04 p.m.</p>	
<p>15. ZMA-2000-09 North Pointe.</p> <ul style="list-style-type: none"> • Approved, by a vote of 4:2, subject to the proffers dated July 20, 2006. <p>SP 2002-72 North Pointe.</p> <ul style="list-style-type: none"> • Approved, subject to conditions of approval recommended by the Planning Commission by a vote of 6:0, as amended. • Approved by a vote of 6:0 the following two waivers in conjunction with this rezoning: Section 21.7, minimum yard requirement waiver and Section 4.2 of the Zoning Ordinance related to critical slopes. 	<p>Proffers (Attachment 6) <u>Clerk</u>: Forward conditions of approval to Planning Staff (Attachment 7)</p>
<p>16. ZMA 2002-004. Cascadia (Signs #30, 91).</p> <ul style="list-style-type: none"> • Approved, by a vote of 5:1 with the proffers signed August 1st and August 2nd. • Approved Summary of waivers (Exhibit F) approved by the Planning Commission with the addition of the following language: The Erosion and Sediment Control Plan shall, to the "maximum extent practicable", provide such additional appropriate erosion and sediment control measures that exceed State and Local minimum standards. 	<p>(Attachment 8 Proffer) (Attachment 9, Exhibit F, Waivers)</p>

<p>14. From the Board: Committee Reports and Matters Not Listed on the Agenda.</p> <ul style="list-style-type: none"> • Mr. Cilimberg recommended that the Board review again the proffer policy submitted by staff several months ago. It was agreed that this policy be directed to the Fiscal Impact Committee for its consideration and recommendation. 	<p>Clerk: Forward request to Steve Allshouse.</p>
<p>17. At 11:20 p.m., adjourned to August 3, 2006, 6:00 p.m., Burley Middle School Auditorium</p>	

/mrh

- Attachment 1 - Women's Equality Day Proclamation
- Attachment 2 - Resolution: Home Investment Partnership Program
- Attachment 3 – Resolution of Intent: Regional Transit Authority
- Attachment 4 – Resolution to Governor Urging Increase in State Transportation Funding
- Attachment 5 – Conditions of Approval: SP 2006-011 Mosby Mountain Stream Crossing
- Attachment 6 - Proffer Statement North Pointe Charlottesville, LLC
- Attachment 7 – Special Use Permit Conditions: North Pointe SP 2007-72
- Attachment 8 – Cascadia Proffers
- Attachment 9 – Exhibit F ZMA-2002-004, Cascadia

WOMEN'S EQUALITY DAY

WHEREAS, many decades of efforts by women and men were required to give women the right to vote; and

WHEREAS, citizens must always be willing to work to assure that the laws and policies in the Commonwealth of Virginia, the United States of America, and this County do not unjustly discriminate against females, and any other group; and

WHEREAS, unjust treatment based on views of inequality is often subtle; and

WHEREAS, it is appropriate for this County to recognize a day that commemorates the passage of the 19th Amendment to the Constitution of the United States, the amendment that gave the right of suffrage to American women;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Albemarle County, Virginia, does hereby proclaim

August 26, 2006

as

WOMEN'S EQUALITY DAY

in remembrance of all those women and men who have worked to develop a more equitable community that acknowledges both the real similarities and the important differences between women and men.

**RESOLUTION OF SUPPORT
FOR
COOPERATION AGREEMENT AMENDMENT
THOMAS JEFFERSON HOME CONSORTIUM
UNDER THE HOME INVESTMENT PARTNERSHIP PROGRAM**

Whereas, there exists a continuing need to provide affordable housing opportunities for low and moderate income citizens; and

Whereas, the HOME Investment Partnership Program provides financial assistance to the members of the Thomas Jefferson HOME Consortium in support of these affordable housing opportunities; and

Whereas, the Thomas Jefferson HOME Consortium has successfully provided affordable housing opportunities for low and moderate income citizens since its inception in 1992; and

Whereas, HUD Notice CPD 06-04 issued April 11, 2006 requires that the Thomas Jefferson HOME Consortium amend its Cooperation Agreement to add the incorporated towns by name into the agreement; and

Whereas, continued participation in the Thomas Jefferson HOME Consortium will increase affordable housing opportunities for low- and moderate-income citizens;

Therefore be it Resolved, the Albemarle County Board of Supervisors does support the amendment to the Cooperation Agreement and authorizes Mr. Robert Tucker, County Executive, to sign the Cooperation Agreement Amendment to add incorporated towns in the Thomas Jefferson Planning District as Units of General Local Government in the HOME Consortium.

Resolution of Intent
To Establish a Regional Transit Authority
in the Charlottesville-Albemarle Area

WHEREAS, transportation planning and systems are regional in scope; and

WHEREAS, transportation planning includes both transit planning and transit operations; and

WHEREAS, limited transit facilities currently serve the overall Charlottesville-Albemarle Area; and

WHEREAS, the City and County intend to continue to serve existing ridership; and

WHEREAS, the City and County are interested in extended transit service to developing areas and providing faster, more frequent service to the existing system; and

WHEREAS, a Regional Transit Authority would coordinate regional transit planning and operations; and

WHEREAS, a Regional Transit Authority does not currently exist in the Charlottesville-Albemarle Area; and

WHEREAS, the establishment of a Regional Transit Authority in the Charlottesville-Albemarle Area requires that the City of Charlottesville and County of Albemarle utilize available funding and legal authority while considering additional funding sources.

THEREFORE BE IT RESOLVED THAT the City of Charlottesville and County of Albemarle intend to establish a Regional Transit Authority to serve the Charlottesville-Albemarle Area.

RESOLUTION TO GOVERNOR TIMOTHY Kaine
AND THE GENERAL ASSEMBLY OF VIRGINIA
URGING AN INCREASE IN STATE TRANSPORTATION FUNDING

WHEREAS, the Commonwealth of Virginia needs an additional \$7.0 billion in funding to complete the interstate, primary, urban and secondary projects in the State Six Year Improvement Program; and

WHEREAS, Virginia counties are receiving almost \$60 million less in current state Secondary Road funding than in 1996; and

WHEREAS, in addition to the 37 percent cut in the Secondary Road construction program, the new State Six Year Improvement Program includes drastic cuts to the Primary construction program; and

WHEREAS, VDOT and Albemarle County have identified a number of priority road projects that are critical to the effective movement of traffic in the community which are now seriously threatened by the lack of state funding; and

WHEREAS, there are \$185 million in candidate primary and interstate projects in Albemarle County; and

WHEREAS, the cost to complete existing interstate, primary and secondary projects in Albemarle County is almost \$134 million; and

WHEREAS, Albemarle County is receiving approximately \$1.1 million less in state Secondary Road funding than in 1996 and approximately \$0.8 million less in total Secondary Road funding than in 1996.

NOW, THEREFORE, BE IT RESOLVED that the Albemarle County Board of Supervisors hereby express the urgent need for more transportation funding for current and future transportation projects in the County of Albemarle.

SP-2006-011 Mosby Mountain Stream Crossing (Signs #14,22)

Tax Map 90E, Parcel A0

Approved with the following conditions:

1. Albemarle County Community Development Department approval and VDOT approval of final grading plans and box culvert and road plans and computations;
2. Albemarle County Community Development Department approval of an Erosion and Sediment Control Plan to include stabilization of fill;
3. Albemarle County Community Development Department approval of mitigation plans for disturbance of the stream buffer;
4. If a box culvert is utilized it must be cast in place or otherwise constructed to provide for countersinking of one barrel of the culvert to provide for normal and low flows in a manner satisfactory to the approved U.S. Army Corps of Engineers water quality permit. The applicant must provide computations showing no rise in the one hundred-year floodplain; and
5. In an effort to minimize environmental degradation, no soil shall be removed from the stream to compensate for any fill.

**PROFFER STATEMENT
NORTH POINTE CHARLOTTESVILLE, LLC
REZONING APPLICATION: #ZMA-2000-009, SP -2002-72**

July 20, 2006

With respect to the property described in rezoning application #ZMA-2000-09 and SP-2002-72 (the "ZMA"), CWH Properties Limited Partnership is the fee simple owner and North Pointe Charlottesville, LLC is the contract purchaser of Tax Map 32, Parcels 20, 20A, 20A1, 20A2, 20A3 and 29I (the "North Pointe Property"), Violet Hill Associates, L.L.C. is the fee simple owner of Tax Map 32, Parcels 23, 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23H and 23J (the "Violet Hill Property"), Virginia Land Trust is the fee simple owner of Tax Map 32, Parcel 22K (the "Virginia Land Trust Property") and the Edward R. Jackson Trust is the fee simple owner of Tax Map 32, Parcel 22H (the "Jackson Trust Property"). The respective parties are collectively referred to herein as the "Owner", which term shall include any successors in interest. The North Pointe Property, the Violet Hill Property, the Virginia Land Trust Property and the Jackson Trust Property are referred to collectively as the "Property".

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, Owner hereby voluntarily proffers the conditions listed in this Proffer Statement, which shall be applied to the North Pointe Property if the ZMA is approved by Albemarle County. These conditions are proffered as part of the ZMA and it is agreed that: (1) the ZMA itself gives rise to the need for the conditions, and (2) such conditions have a reasonable relation to the rezoning requested.

This Proffer Statement shall relate to the multi-page application plan entitled "North Pointe Community", prepared by Keeney & Co., Architects, as revised through June 13, 2006 and attached hereto as Exhibit A (the "Application Plan"), and the Albemarle County Code in effect as of the date of this Proffer Statement (the "County Code"). The North Pointe Community shall be referred to as the "Project".

I. THIS SECTION INTENTIONALLY DELETED

II. ENTRANCE CORRIDOR

2.1 Creation of a 50-Foot Buffer along the Entrance Corridor. Within six (6) months after the acceptance by the Virginia Department of Transportation ("VDOT") of the Road Improvements as defined in Section 5.3 that are along the northbound lanes of U.S. Route 29, Owner shall plant and thereafter maintain at all times a landscaped buffer, including hedgerows, along the Entrance Corridor frontage parcels owned by Owner. The buffer will consist of a minimum 50-foot wide continuous visual landscape area that shall be subject to Albemarle County Architectural Review Board ("ARB") review and approval (the "Buffer"). In the event VDOT at any time in the future reduces any portion of the Buffer located on VDOT property, the Owner shall compensate for such reduction by extending the Buffer on Owner's property in order to maintain a minimum 40-foot Buffer, even if such compensation shall require the removal of parking adjacent to such Buffer.

2.2 Appearance of Storm Water Management ("SWM") Facilities. The SWM facilities visible from the Entrance Corridor identified on the Application Plan (stormwater management facilities 1, 2, and 10) shall be shown on a plan and be subject to ARB review and approval. SWM 1 shall be designed such that its shape, placement, and land form (grading) transition between the adjacent conservation area and the adjacent hard edge of the parking lot and buildings. The plan for SWM 1 shall be submitted to the ARB with the first ARB submission for Building 14 or 19 identified on Sheet B to the Application Plan ("Sheet B"), or any such building that is proposed to be located where Building 14 is located on Sheet B pursuant to the terms of Section 3.2. SWM 2 shall have a more structured appearance than SWM 10 (see below) and shall be designed such that its shape, placement, and land form (grading) transition between the adjacent conservation area and the adjacent hard edge of the parking lot and buildings. The

plan for SWM 2 shall be submitted to the ARB with the first ARB submission for any of Buildings 26 through 31. SWM 10 shall be designed such that its shape, placement, and land form (grading) are integral with the adjacent conservation area. The plan for SWM 10 shall be submitted to the ARB at the time road plans are submitted to the County and VDOT for Northwest Passage.

III. DENSITIES

3.1 Total Buildout. The total number of dwelling units within the Project shall not exceed eight hundred ninety-three (893). Subject to Section 3.2, the building footprints and gross floor areas of commercial, office, and other uses, and the building footprints of hotels shall not exceed those set forth in the Land Use Breakdown Table on Sheet A to the Application Plan ("Sheet A").

3.2 Limited Adjustments to the Elements of the Application Plan. The gross floor area of the buildings used for commercial, office, other uses, and hotels shown on Sheet A may be adjusted within a range of up to ten percent (10%), provided that the maximum gross floor area for each category of uses shown on Sheet A is not exceeded. The footprints of Buildings 6, 14 and 36 as shown on Sheet A can be interchanged. Notwithstanding the terms of this Section 3.2 to the contrary, Building 14 shall not initially exceed 88,500 square feet, provided, however, that after two years following the issuance of the certificate of occupancy for Building 14, Building 14 may be adjusted within a range of up to ten percent (10%), and if Building 14 is located in the location shown on Sheet B, any such expansion shall be located to the east so that the additional space is located along North Pointe Boulevard. Notwithstanding the terms of this Section 3.2 to the contrary, but subject to the provisions of Section 8.1, the County may authorize Building 21 as shown on Sheet A to be adjusted by more than ten percent (10%).

IV. STORMWATER MANAGEMENT AND STREAM BED CONSERVATION

4.1 Flood Plain. The area of the 100-year flood plain within the Project shall remain undisturbed except for road crossings, public utility facilities and their crossings, and pedestrian and biking trails, and only to the extent such exceptions are permitted by County ordinances and regulations. Upon the request of the County, Owner shall provide a survey and prepare the necessary documentation and dedicate the land within such flood plain to the County.

4.2 Stormwater Management Plan. The stormwater/best management practices ("BMP") plan for the Project shall be prepared, and all stormwater management facilities for the Project shall be designed and constructed, to accommodate all current stormwater discharge from Tax Map Parcel 032A0-02-00-00400 (Northwoods Mobile Home Park Development) and from the existing developments on the northeast and northwest corners of Proffit Road and U.S. Route 29, specifically the following parcels shown on the current Albemarle County tax maps: tax map 32, parcels 38, 38A, 39, and 39A; tax map 32A, parcels 2-1, 2-1A, 2-1A1, 2-1B, 2-1C and 2-1D. The stormwater management facilities shall mitigate the stormwater quality and quantity impacts, for the stormwater generated both within the Project and for such existing offsite conditions as described herein, as though the entire preexisting condition of the drainage area is an undeveloped wooded site and is being developed to the existing off-site conditions and the proposed on-site conditions. In addition, biofilters shall comprise a minimum of thirty-three and one-third percent (33 1/3%) of the total required parking lot landscaped areas within the "Commercial Area" of the Project, as such Commercial Area is delineated on Sheet G of the Application Plan ("Sheet G").

4.3 Erosion and Sediment Control.

(a) The Owner shall, to the "maximum extent practicable", provide such additional appropriate erosion and sediment control measures that exceed State and Local minimum standards. If there is a disagreement regarding whether the standard of "maximum extent practicable" is satisfied, the Virginia Department of Conservation and Recreation will be provided an opportunity to review and advise on such question.

(b) Post-Construction Stormwater Management: The Owner shall, to the maximum extent practicable, provide post-construction stormwater BMPs that are designed to achieve an average annual sediment removal rate of 80% as published by the Center for Watershed Protection in Article 64 of The Practice of Watershed Protection (2000 edition). These will include, but are not limited to, bioretention, bioretention filters and wet retention basins.

4.4 Stream Buffer and Restoration. Upon the commencement of the applicable comment period, the Owner shall notify the County and provide the County with a copy of any application(s) to the U.S. Army Corps of Engineers and/or DEQ for any stream disturbance. In addition, if necessary, after first looking on-site for mitigation opportunities available to satisfy the permitting process, the Owner shall contact the County for a list of off-site opportunities within Albemarle County for such mitigation, and shall look for such mitigation opportunities off-site.

V. TRANSPORTATION

5.1 Internal Street Construction Standards. Public streets, which in any event shall include at least Leake Road, North Pointe Boulevard, Northside Drive East and Northwest Passage, shall be (i) constructed in accord with the illustrative urban design cross sections shown on Sheet D-1 to the Application Plan ("Sheet D-1") and also in accordance with VDOT design standards pursuant to detailed plans agreed to between Owner and VDOT, and (ii) dedicated for public use and offered for acceptance into the state highway system. Trees (with a maximum spacing of fifty (50) feet), landscaping and sidewalks as shown on Sheet D-1 shall be installed and maintained by the Owner in accordance with County or VDOT standards, unless VDOT or the County agrees in writing to assume this responsibility.

5.2 Timing of Completion for Internal Streets. Before issuance of certificates of occupancy, Owner shall complete that segment of an internal street as shown on Sheet D-1 within the Project which serves the building or residence for which a certificate of occupancy is sought with at least the stone base and all but the final layer of plant-mix asphalt. The final layer of plant-mix asphalt shall be installed within one (1) year following the issuance of the first certificate of occupancy for a building or residence served by the affected street segment.

5.3 Road Improvements. Owner shall design and construct all of the road improvements referenced in Sections 5.3.1(a), 5.3.1(b) and 5.3.1(c) below, which are also shown on Sheet D-1 to the Application Plan and on Sheet E to the Application Plan entitled "External Road Improvement Plan" ("Sheet E") (collectively, the "Road Improvements"), unless such Road Improvements are first constructed or bonded by others. The various phases of the Road Improvements are also shown for illustrative purposes on a color-coded copy of Sheet B that is attached hereto as Exhibit B. Owner shall dedicate to public use any required right-of-way that it now or hereafter owns in fee simple. For purposes of this Section 5.3, the use of the term "road" as it applies to internal streets shall also have the same meaning as the word "street" in the Albemarle County Subdivision Ordinance (Chapter 14 of the Albemarle County Code) where applicable.

5.3.1 Design and Phasing. All Road Improvements shall be designed and phased as follows:

Design. The Road Improvements shall be shown on detailed road plans satisfying VDOT design standards which shall be submitted by the Owner for review and, when satisfactory, approved by VDOT and the County (except for the Road Improvements to U.S. Route 29, which shall be subject only to VDOT approval) (hereinafter, the "Approved Road Plans"). The Approved Road Plans shall show the width and length (except as specified in Sections 5.3.1(a)(1)(ii) and (v) and Section 5.3.1(b)(1)(i)), location, type of section, and geometrics of all lane improvements as required by VDOT design standards. All of the Road Improvements shall be constructed in compliance with the Approved Road Plans. The Road Improvements to U.S. Route 29 shall be based on the then-current VDOT design speed and cross-slope requirements. Notwithstanding the provisions of this paragraph to the contrary, in the event that the internal residential street designs as shown on Sheet D-1 are not accepted by VDOT, the Owner shall submit detailed road construction plans for such streets to the County for review and, when

satisfactory, approval, subject also to the County's approval of private streets under the Subdivision Ordinance (Ch. 14 of the Albemarle County Code).

Phasing. The Road Improvements shall be constructed and completed in three phases as set forth below:

(a) Phase I Road Improvements. Prior to approval of the first commercial subdivision plat or site plan within the Project, Owner shall obtain all associated permits and post all associated bonds required for the construction of the following (collectively, the "Phase I Road Improvements"):

(1) Southernmost Entrance on U.S. Route 29:

(i) U.S. Route 29 Southbound – correction of the vertical curvature in the roadway just north of the entrance.

(ii) U.S. Route 29 Southbound – construction of a continuous 12 foot wide through lane (with shoulders or guard rail as required by VDOT) starting at a point that is 1000 feet north of the southernmost entrance and extending south to Airport Road.

(iii) U.S. Route 29 Southbound – construction of dual left turn lanes with taper at the crossover.

(iv) U.S. Route 29 Southbound – construction of right turn lane with taper to serve northernmost entrance to SR 1515.

(v) U.S. Route 29 Northbound – construction of a continuous 12 foot wide through lane (with shoulders or guard rail as may be required by VDOT) extending from Proffit (Airport) Road (Route 649) to the Northwest Passage entrance.

(vi) U.S. Route 29 Northbound – construction of a right hand turn lane at the Southernmost entrance, the geometrics of which will be subject to VDOT approval.

(vii) U.S. Route 29 Northbound – construction of left turn lane with taper into SR 1515.

(viii) SR 1515 Eastbound – construction and/or restriping to provide left turn lane with taper.

(ix) Installation of a traffic signal with 8 phase timing, video detection and associated intersection improvements at the intersection with U.S. Route 29.

(x) Close existing crossover at U.S. Route 29 and Southernmost Entrance to SR 1515.

(xi) Proposed Entrance Road between North Pointe Boulevard and U.S. Route 29.

(2) North Pointe Boulevard, Leake Road and Proffit Road:

(i) Leake Road and North Pointe Boulevard, in accordance with the design cross-sections shown on Sheet D-1, from Proffit Road to either Northside Drive East or, if Northside Drive East has not yet been constructed to the roundabout at North Pointe Boulevard, North Pointe Boulevard shall be extended to Northwest Passage. The Owner shall provide a fifty (50) foot public right-of-way along Leake Road and shall construct a two-lane public street to be accepted by

VDOT and as much of the other improvements shown on the cross-sections as possible within the available right-of-way as reasonably determined by the County Engineer.

(ii) The roundabout, or such other improvements as may be approved by VDOT and the County, at the intersection of Leake Road and Proffit Road shown on Sheet B and an additional westbound right turn lane on Proffit Road from Leake Road to U.S. Route 29 as shown on Sheet E. In addition, for property acquisition that is required for the off-site public right-of-way for construction of the improvements required by this Section 5.3.1(a)(2)(ii), the Owner shall make a cash contribution or provide a letter of credit in a form approved by the County Attorney for such purpose in the amount as deemed necessary for the property acquisition by the County Attorney, provided that such amount shall not exceed one hundred fifty percent (150%) of the County's fair market value appraisal prepared for acquisition and condemnation purposes. The cash contribution or letter of credit described in this Section 5.3.1(a)(2)(ii) shall be used to pay for the total cost of the right of way acquisition. The total cost of the right of way acquisition for the off-site property necessary to construct the improvements required by this Section 5.3.1(a)(2)(ii) shall include the normal costs associated with acquiring land, buildings, structures, easements and other authorized interests by condemnation or by purchase including, but not limited to, land acquisition, engineering, surveying, and reasonable attorneys fees. The cash contribution or the letter of credit shall be provided by the Owner within thirty (30) days upon request by the County. If the property is acquired by purchase, the contribution for the purchase price shall not exceed one hundred fifty percent (150%) of the County's fair market value appraisal prepared for condemnation purposes without the consent of the Owner. If the cost of the right of way acquisition exceeds the amount previously contributed, then the Owner shall reimburse the County all such excess costs within thirty (30) days upon request by the County. The County shall refund to the Owner all excess contributions upon completion of the land acquisition.

(iii) Intentionally Omitted

(iv) An additional through lane eastbound on Proffit Road from U.S. Route 29 to the roundabout at the intersection of Leake Road and Proffit Road. In addition, for property acquisition that is required for the off-site public right-of-way for construction of the improvements required by this Section 5.3.1(a)(2)(iv), the Owner shall make a cash contribution or provide a letter of credit in a form approved by the County Attorney for such purpose in the amount as deemed necessary for the property acquisition by the County Attorney, provided that such amount shall not exceed one hundred fifty percent (150%) of the County's fair market value appraisal prepared for acquisition and condemnation purposes. The cash contribution or letter of credit described in this Section 5.3.1(a)(2)(iv) shall be used to pay for the total cost of the right of way acquisition. The total cost of the right of way acquisition for the off-site property necessary to construct the improvements required by this Section 5.3.1(a)(2)(iv) shall include the normal costs associated with acquiring land, buildings, structures, easements and other authorized interests by condemnation or by purchase including, but not limited to, land acquisition, engineering, surveying, and reasonable attorneys fees. The cash contribution or the letter of credit shall be provided by the Owner within thirty (30) days upon request by the County. If the property is acquired by purchase, the contribution for the purchase price shall not exceed one hundred fifty percent (150%) of the County's fair market value appraisal prepared for condemnation purposes without the consent of the Owner. If the cost of the right of way acquisition exceeds the amount previously contributed, then the Owner shall reimburse the County all such excess costs within thirty (30) days upon request by the County. The County shall refund to the Owner all excess contributions upon completion of the land acquisition.

Completion of the Phase I Road Improvements. Within fifteen (15) months after the issuance of the first building permit for a commercial building within the lands subject to the first commercial subdivision plat or site plan within the Project, or prior to the issuance of a certificate of occupancy for such building, whichever is earlier, all of the Phase I Road Improvements shall be accepted by VDOT for public use or bonded for VDOT's acceptance if such Road Improvements are a primary highway, or accepted by VDOT for public use or bonded to the County for VDOT's acceptance if such Road Improvements are a secondary highway.

(b) Phase II Road Improvements. Prior to approval of the first site plan that would authorize the aggregate commercial, office and hotel gross floor area as shown on Sheet A within the Project to exceed two hundred ninety thousand (290,000) square feet, Owner shall obtain all associated permits and post all associated bonds required for the construction of the following (collectively, the "Phase II Road Improvements"):

(1) Middle Entrance on U.S. Route 29 (Northside Drive East/SR 1570):

(i) U.S. Route 29 Southbound – construction of a continuous 12 foot wide through lane (with shoulders or guard rail as may be required by VDOT) starting at a point that is 1000 feet north of the Middle entrance and extending to the point where it connects with the portion of the lane constructed pursuant to Section 5.3.1(a)(1)(ii).

(ii) U.S. Route 29 Southbound - construction of dual left turn lanes with taper.

(iii) U.S. Route 29 Southbound – construction of a right turn lane with taper.

(iv) U.S. Route 29 Northbound – construction of a right hand turn lane at the Middle Entrance, the geometrics of which will be subject to VDOT approval.

(v) U.S. Route 29 Northbound – construction of left turn lane with taper.

(vi) SR 1570 Eastbound – construction of or restriping of lanes to result in separate left, through and right turn movements.

(vii) Entrance road Westbound – installation of a traffic signal with 8 phase timing, video detection and associated intersection improvements on U.S. Route 29.

(viii) Existing crossover at Cypress Drive – construction to close the crossover.

(ix) Frontage road from Cypress Drive to SR 1570 – construction of a public street to serve properties currently accessing U.S. Route 29 through Cypress Drive.

(2) Northside Drive East between U.S. Route 29 and North Pointe Boulevard as shown on Sheet D-1.

Completion of the Phase II Road Improvements. Within fifteen (15) months after the issuance of the first building permit for a building within the lands subject to the first subdivision plat or site plan that would authorize the aggregate commercial, office and hotel gross floor area as shown on Sheet A within the Project to exceed two hundred ninety thousand (290,000) square feet, or prior to the issuance of a certificate of occupancy for any building that causes such gross floor area to exceed two hundred ninety thousand (290,000) square feet, whichever is earlier, all of the Phase II Road Improvements shall be accepted by VDOT for public use or bonded for VDOT's acceptance if such Road Improvements are a primary highway, or accepted by VDOT for public use or bonded to the County for VDOT's acceptance if such Road Improvements are a secondary highway.

(c) Phase III Road Improvements. Prior to the earliest of: (i) the approval of the first subdivision plat or site plan that would authorize the aggregate number of dwelling units within the Project to exceed five hundred thirty-three (533); (ii) the approval of a subdivision plat or site plan for any development of either the Virginia Land Trust Property (Tax Map 32, Parcel 22K) or the Jackson Trust

Property (Tax Map 32, Parcel 22H) or any portion thereof; or (iii) the five (5) year anniversary of the date of issuance of the first certificate of occupancy for a building or premises within the Project, Owner shall obtain all associated permits and post all associated bonds required for the construction of the following road improvements to the extent any such road improvements have not already been completed:

- (1) Northernmost Entrance (opposite Lewis & Clark Drive) on U.S. Route 29:
 - (i) U.S. Route 29 Southbound – construction of left turn lane with taper.
 - (ii) Northwest Passage from U.S. Route 29 to North Pointe Boulevard.
 - (iii) U.S. Route 29 Northbound – construction of a right hand turn lane, the geometrics of which will be subject to VDOT approval.
 - (iv) If not already constructed, North Pointe Boulevard between Northside Drive East and Northwest Passage.
 - (v) If the traffic signal to be constructed by others is in place prior to Owner commencing work on this Northernmost Entrance, and such traffic signal only includes three legs, Owner shall add the fourth leg to the signal, which shall include additional mast arms, signal heads and ancillary equipment necessary to support Northwest Passage’s use of the intersection, as determined by VDOT. If such traffic signal is not in place and the vehicular traffic generated by the Project causes the VDOT signal warrants to be met, and VDOT requires that a traffic signal be installed as a condition of the entrance permit, Owner shall install such traffic signal.

(2) Notwithstanding any other provision contained in this Proffer Statement, within one hundred eighty (180) days after written notice from the County that it intends to build an elementary school on the School Lot (as “School Lot” is defined in Section 9.1), the Owner shall submit road plans for the construction of Northwest Passage from North Pointe Boulevard to U.S. Route 29 to VDOT and to the County for review, and when satisfactory, approval. Furthermore, within twelve (12) months after issuance of the building permit for construction of the elementary school, and if not already completed, Owner will complete (i) Northwest Passage from North Pointe Boulevard to U.S. Route 29, (ii) the improvements set forth in Section 5.3.1(c)(1) above, and (iii) North Pointe Boulevard from Northside Drive East to Northwest Passage. To allow the development of the School Lot, the Owner shall grant all temporary easements as necessary to allow ingress and egress for vehicles and construction equipment, grading, the installation and maintenance of erosion and sediment control structures or measures, and any other associated construction easements, as such temporary easements are shown on the subdivision plat or site plan for the School Lot and mutually agreed to by the Owner and the developer of the School Lot.

Completion of the Phase III Road Improvements. Within twelve (12) months after the occurrence of the applicable event in Section 5.3.1(c) which required the Owner to obtain all associated permits and post all associated bonds required for the construction of the Phase III Road Improvements, all of the Phase III road improvements shall be accepted by VDOT for public use or bonded for VDOT’s acceptance if such Road Improvements are a primary highway, or accepted by VDOT for public use or bonded to the County for VDOT’s acceptance if such Road Improvements are a secondary highway.

5.3.2 Upon request by the County, Owner shall make a cash contribution to the County or VDOT for the cost of a cable or wireless radio system that will link one or more of the signals between Lewis and Clark Drive and Airport Road; provided, however, that the total cash contribution shall not exceed thirty-five thousand dollars (\$35,000). Subject to matters of force majeure, if the County does not request the funds, or does request the funds but the construction of the system does not begin by the

later of December 31, 2010 or three (3) years after completion of all of the Road Improvements, said funds shall be refunded to the Owner.

5.3.3 Prior to the approval of plans for improvements at any U.S. Route 29 intersection, Owner shall provide VDOT traffic signal network timing plans that VDOT finds acceptably address the impacts of the proposed traffic signals for peak traffic periods.

5.3.4 Regional Transportation Study; Cash Contribution. Upon request by the County, Owner shall make a cash contribution of one hundred thousand dollars (\$100,000) to the County for the purposes of funding a regional transportation study for the Route 29 corridor, which includes the South Fork and North Fork of the Rivanna River and the Hollymead Growth Area of which North Pointe is a part. The contribution shall be made within thirty (30) days after requested by the County anytime after the rezoning is approved. If the request is not made within one (1) year after the date of approval of the first final site plan for the first commercial building within the Project, this proffer shall become null and void. If such cash contribution is not expended for the stated purpose within three (3) years from the date the funds were contributed to the County, all unexpended funds shall be refunded to the Owner.

VI. OPEN SPACE AREAS AND GREENWAY

6.1 Pedestrian Pathways. All pedestrian pathways shall be classified as shown on the Pedestrian Pathway Key on Sheet G and, except for the pathways to be constructed by the County, shall be shown on the subdivision plat or site plan for the underlying or adjacent lands within the Project. The pathways shall be constructed by Owner as Class A or Class B trails as identified on Sheet G, and in accordance with the applicable design and construction standards in the County's Design Standards Manual. Such construction shall be in conjunction with the improvements for the subdivision plat or site plan, as the case may be, and bonded with the streets if the pathways are a subdivision improvement, or with a performance bond if the pathways are a site plan improvement. The pathway shown on Sheet G along Flat Branch north and south of Northside Drive East shall not continue through a culvert if a culvert is used for the stream crossing. The pathway intended for the culvert between Park E and Park F under North Pointe Boulevard shall conform to the applicable standards in VDOT's "Subdivision Street Guidance" and Owner shall maintain the pathway if it is not accepted by VDOT for maintenance.

6.2 Lake. Upon request by the County, Owner shall dedicate to the County the lake shown on the Application Plan for public use, provided that such lake will be available for use by Owner for stormwater management as described in Sheet C to the Application Plan entitled "Stormwater Management and Stream Conservation Plan" ("Sheet C").

VII. THIS SECTION INTENTIONALLY DELETED

VIII. PUBLIC INFRASTRUCTURE AND FACILITIES PROFFERS

8.1 Branch Library.

(a) Upon request by the County, Owner shall dedicate to the County the fee simple interest in the land shown on Sheet B as a library, consisting of a 15,000 square foot fully graded pad site, with utilities, to accommodate a 12,500 square foot building footprint, a five foot perimeter strip and up to a 25,000 square foot building, together with a nonexclusive easement to the adjacent common area for ingress, egress, construction staging and sufficient County Code required parking, stormwater detention and water quality facilities for the location of a freestanding Jefferson-Madison Regional Library and such other uses that are compatible with the proposed surrounding uses, as determined by the County (the "Library Lot"). Notwithstanding the terms of the prior sentence to the contrary, if the requirements for the library building require a larger building footprint, the County may authorize the library building footprint to be larger than as stated in the prior sentence, provided, however, that the size of the area shown as "Park H" on Sheet B ("Park H") and/or the size of the adjacent parking area immediately north of the Library Lot on Sheet B (the "Library Parking Lot") shall be adjusted accordingly

to accommodate such larger building footprint. The Owner shall not be responsible for any utility tap fees, but Owner shall complete construction of the Library Parking Lot and other parking areas serving the Library Lot. The Owner shall permit the County to use the Library Parking Lot and/or, if not already constructed, Park H, for purposes of construction staging. Within twelve (12) months after written notice from the County that it intends to begin construction of the library, the Owner shall make the access roads and the area of the Library Parking Lot available with at least a four inch compacted stone base for use as access and construction staging. Such street access serving the Library Lot and the Library Parking Lot shall be completed and available for use no later than ten (10) months after issuance of the building permit for the library, provided, however, that asphalt pavement in areas used for construction staging by the County shall not be required to be installed until thirty (30) days (or such longer reasonable time as may be necessary due to weather conditions) after the County has removed its construction-related materials and equipment. Upon the request of the County, Park H shall also be dedicated to public use, but the Owner shall not be responsible for maintaining such park. Owner shall be responsible for maintenance of the Library Parking Lot and other parking spaces serving the Library Lot and the County shall have no obligation to be a member of any owner's association. The County's request for dedication of the land for the Library Lot and Park H shall be made within three (3) years following the latter to occur of (i) issuance of the first residential building permit within the Project, (ii) Owner's completion of the infrastructure (including but not limited to streets, water, sewer, electric, gas) required for the use of the Library Lot, or (iii) December 31, 2010. If a request for such dedication is not made within three (3) years following the later of these dates, this proffer will be null and void.

(b) Green Roof. In the event that the requirements for the library building require a larger building footprint, and the County elects to authorize the library building footprint to be larger than 12,500 square feet pursuant to section 8.1(a) above, and in the further event that the building is developed as a condominium and the County requests the Owner to assume ownership for a portion of the larger building, Owner shall accept such ownership at a reasonable price upon which the parties may mutually agree, and shall contribute to the County, on a pro rata basis based on the proportional size of the portion of the library building owned by the Owner relative to the size of the library building as a whole, the cost of designing and constructing such building. These costs may include, if desired by the County, installation of a "green roof," and any additional expenses associated with structurally reinforcing the roof as necessary to support the green roof. Within ten (10) days after receipt of a request for payment by the County that is accompanied by documentation to support the progress payment amount as provided in the construction contract, the Owner shall submit such payments to the County. Alternatively, in the event the County elects to design the library building as a Leadership in Energy and Environmental Design ("LEED") building, the Owner shall contribute to the County, on a pro rata basis based on the proportional size of the portion of the library building owned by the Owner relative to the size of the library building as a whole, the additional costs of constructing the library building to obtain LEED certification for the building. Within ten (10) days after receipt of a request for payment by the County that is accompanied by documentation to support the progress payment amount as provided in the construction contract, the Owner shall submit such payments to the County. The design of the green roof, or the criteria utilized to obtain the LEED certification, as applicable, shall be in the County's discretion.

8.2 Affordable Housing. Subject to the terms and conditions of this Section 8.2, the Owner shall provide a minimum of forty (40) "for-sale" residential dwelling units as affordable dwelling units, a minimum of sixty-six (66) "for-rent" residential dwelling units as affordable dwelling units, and a minimum of four (4) Carriage House Units (as Carriage House Units are defined in Section 8.2(d)). The forty (40) "for-sale" residential dwelling units shall be comprised of the following types of dwelling units: twelve (12) from multi-family; twelve (12) from "other" (consisting of townhouses, duplexes, attached housing, condominiums in the commercial areas and other unidentified housing types); and sixteen (16) from single family detached, each at the sale prices and under the terms and conditions set forth in this Section 8.2. The Owner shall convey the responsibility of constructing the affordable units to the subsequent owners of lots within the Property.

(a) Multi-Family and "Other" For-Sale Affordable Units. For multi-family and "other" for-sale affordable dwelling units within the Property, such affordable units shall be affordable to households with incomes less than eighty percent (80%) of the area median family income (the "Affordable Unit Qualifying Income"), such that the housing costs consisting of principal, interest, real estate taxes and homeowners insurance (PITI) do not exceed thirty percent (30%) of the Affordable Unit Qualifying Income, provided, however, that in no event shall the selling price of such affordable units be less than the greater of One Hundred Ninety Thousand Four Hundred Dollars (\$190,400) or sixty-five percent (65%) of the applicable Virginia Housing Development Authority ("VHDA") maximum mortgage for first-time home buyers at the beginning of the 90-day identification and qualification period referenced in Section 8.2(f).

(b) Single Family Detached For-Sale Affordable Units ("Moderately-Priced Units"). For single family detached for-sale affordable units within the Property ("Moderately-Priced Units"), such Moderately-Priced Units shall be affordable to households with incomes less than one hundred twenty percent (120%) of the area median family income (the "Moderately-Priced Unit Qualifying Income"), such that the housing costs consisting of PITI do not exceed thirty percent (30%) of the Moderately-Priced Unit Qualifying Income, provided, however, that in no event shall the selling price of such Moderately-Priced Units be required to be less than the greater of Two Hundred Thirty Eight Thousand Dollars (\$238,000) or eighty percent (80%) of the applicable VHDA maximum mortgage for first-time home buyers at the beginning of the 90-day identification and qualification period referenced in Section 8.2(f).

(c) For-Rent Affordable Units. 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"), such units shall be rented to households with incomes less than the Affordable Unit Qualifying Income. No for-rent affordable unit may be counted more than once towards the number of for-rent affordable dwelling units required by this Section 8.2.

(i) 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 Section 8.2(c). 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 Section 8.2(c). 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 Section 8.2(c)(i) have been satisfied.

(ii) Annual Reporting. During the Affordable Term and within ninety (90) days following the end of each calendar year, the then-current owner shall provide to the Albemarle County Housing Office a certified annual report of all for-rent affordable units for the immediately preceding year in a form and substance reasonably acceptable to the County Housing Office. Subject to all federal, state and local housing laws, and upon reasonable notice during the Affordable Term, the then-current Owner shall make available to the County at the then-current Owner's premises, if requested, any reports, copies of rental or lease agreements, or other data pertaining to rental rates as the County may reasonably require.

(d) Carriage House Units. Carriage House Units shall meet the requirements for a single family dwelling as defined in the Virginia Uniform Statewide Building Code, shall be on the same parcel as the primary dwelling unit to which it is accessory, and shall not be subdivided from the primary residence ("Carriage House Units"). The subdivision restriction shall be included on the plat creating such parcels and be incorporated into each deed conveying title to such parcels.

(e) Each subdivision plat and site plan for land within the Property which includes affordable units (which, for this Section 8.2(e) shall include Moderately-Priced Units) 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. The first such subdivision plat or site plan shall include a minimum of three (3) such affordable units. Thereafter, and until the total number of affordable dwelling units proffered hereunder shall have been fulfilled, the Owner shall provide a minimum of three (3) such affordable dwelling units per year. Each final subdivision plat and final site plan also shall include a running total of the number and percentage of affordable units previously provided and proposed to be provided by the subdivision plat or site plan. For purposes of this Section 8.2(e), such units shall be deemed to have been provided when the subsequent owner/builder provides written notice to the County Housing Office or its designee that the unit(s) will be available for sale, as required by Section 8.2(f) below. In the event that the Owner provides more than three (3) affordable dwelling units in a single year, the Owner may “carry over” or “bank” credits for such affordable units, such that the additional affordable units which exceed the minimum annual requirement may be allocated toward the minimum number of affordable units required to be provided for any future year. The maximum number of affordable units that may be carried over or banked shall not exceed twelve (12) per year. Notwithstanding the terms of this Section 8.2(e) to the contrary, upon the written request of the Owner, the County may authorize an alternative process and/or schedule for the provision and/or delivery of such affordable units upon a determination that the request is in general accord with the purpose and intent of Section 8.2 and/or otherwise furthers the goals of providing affordable housing in the County.

(f) 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 unit. 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 who executes a contract of purchase 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), provided, however, that any unit(s) sold without such restriction shall nevertheless be counted toward the number of affordable units required to be provided pursuant to this terms of this Section 8.2. The requirements of this Section 8.2 shall apply only to the first sale of each of the affordable units.

(g) The County shall have the right, from time to time, on reasonable notice and subject to all applicable privacy laws, to inspect the records of Owner or any successors in interest for the purposes of assuring compliance with this proffer.

(h) Cash Proffer. Within sixty (60) days after the Board of Supervisors approval of ZMA 2000-009, the Owner shall cause to be contributed three hundred thousand dollars (\$300,000) cash to the County of Albemarle for the Albemarle Housing Initiative Fund or such other similar fund as may be established or authorized by the County. The contribution shall be to fund affordable home ownership loan programs within the Project and other areas of Albemarle County, including those provided by non-profit housing agencies such as the Piedmont Housing Alliance, Habitat for Humanity, and the Albemarle Housing Improvement Program. If such cash contribution is not expended for the stated purpose within five (5) years from the date the funds were contributed to the County, all unexpended funds shall be refunded to the Owner.

IX. EDUCATIONAL AND OTHER PUBLIC FACILITIES

9.1 Elementary School Site. Within two hundred seventy (270) days following request by the County, Owner shall dedicate to the County the land shown on the Application Plan as “Elementary School 12.85 Acres Schematic Layout”, consisting of approximately 12.85 acres (or a smaller portion of such land in the County’s sole discretion) (the “School Lot”). Prior to dedication, the School Lot shall be graded and compacted by Owner to a minimum of 95% compaction as measured by a standard Proctor test with suitable material for building construction as certified by a professional engineer or as otherwise approved by the County Engineer to establish a fully graded pad site to accommodate an elementary school. The recreational field improvements shown on the Application Plan shall be fine graded and have

top soil and soil amendments added, and the mains for an underground irrigation system serving the recreational fields shall be installed. Such improvements shall be reasonably equivalent to those existing at the recreational fields at Baker-Butler Elementary School, exclusive of any above ground improvements. The pedestrian pathways as shown on the perimeter of the School Lot on the Application Plan shall be reflected on the subdivision plat prepared by Owner creating the School Lot and the pathways shall be installed when the site is graded for the recreation fields. The Owner shall provide all utilities to the School Lot. The dedication shall include easements across Owner's land for access to and use of Storm Water Basins 5 and 10 shown on the Application Plan, together with all temporary construction easements to allow Stormwater Basin 10 to be redesigned and enlarged, if necessary, to accommodate the School Lot stormwater. The School Lot shall be used as an elementary school site, but if the County determines that the School Lot will not be used as an elementary school site, it shall be used by the County for park and recreational purposes serving both the North Pointe community and the region. If the County does not request by December 31, 2010 that the School Lot be dedicated, the Owner shall be under no further obligation to dedicate the School Lot for the purpose described herein, but shall, by January 30, 2011, contribute five hundred thousand dollars (\$500,000) cash to the County to be used by the County for projects identified in the County's CIP reasonably related to the needs of the North Pointe community, and in such event the School Lot may be used for other residential purposes as approved by the County after request by Owner for an amendment to the Application Plan. After dedication and before the County uses the School Lot for a school or for park and recreational purposes, and if requested by the County, Owner shall maintain the School Lot until requested by the County to no longer do so, subject to the Owner's right to exclusive use of the School Lot for park and recreational purposes. Such park and recreational purposes shall be only those uses shown on an approved final site plan or subdivision plat for the area that includes the School Lot. Upon being requested by the County, Owner shall cease all use and maintenance of the School Lot and remove all improvements established by Owner that the County requests be removed. The County shall not be obligated to pay Owner for any improvements established by Owner that the County retains. The deed of dedication for the School Lot shall provide that if the County accepts title to the School Lot and then does not construct either a park or a school within twenty (20) years following the date the Board of Supervisors approves ZMA 2000-009, then upon Owner's request title to the School Lot shall be transferred to Owner at no expense to Owner.

9.2 Bus Stop Turnoffs, Bus Stop Improvements, and Bus Service.

(a) Owner shall construct ten (10) public bus stop turnoffs as shown on the Application Plan, or otherwise two (2) in the southernmost residential area, four (4) in the commercial areas and four (4) in the other residential areas, each in a location mutually acceptable to Owner and the County. The bus stop turnoffs shall be approved with street construction plans for the Project and bonded and constructed with the streets.

(b) Upon the request by the County, Owner shall contribute the total sum of twenty five thousand dollars (\$25,000) cash towards the design and construction of the above ground bus stop improvements such as benches and shelters meeting standards established by the County at each bus stop. If the County does not request the funds, or requests the funds but does not construct the bus stop improvements by the later of December 31, 2015 or three (3) years after completion of the road network that includes the bus stop turnoffs, then subject to matters of force majeure, the unexpended funds shall, in the discretion of the County, either be returned to Owner or applied to a project identified in the County's capital improvements program within or adjacent to the Project that benefits the Project.

(c) Within thirty (30) days after the introduction of public transportation to the Project, Owner shall contribute twenty-five thousand dollars (\$25,000) cash to the County to be used for operating expenses related to such service, and shall thereafter annually contribute Twenty-Five Thousand Dollars (\$25,000) cash to the County to be used for operating expenses related to such service for a period of nine (9) additional years, such that the total funds contributed to the County pursuant to this Section 9.2(c) shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000). If the introduction of public transportation to the Project does not commence by the later of ten (10) years after the Board of Supervisors approves ZMA 2000-009, or seven (7) years after the date of the issuance of the first

certificate of occupancy for the first commercial building within the Project, this Section 9.2(c) shall become null and void.

X. ACCESS TO ADJACENT PROPERTIES

10.1 Dedication of Right-of-Way-Extension to Parcel 22E. Unless the dedication of public right-of-way and the construction of such street are required in conjunction with the approval of a subdivision plat under Albemarle County Code § 14-409 and related sections, or their successors:

Owner shall reserve the fifty (50) foot wide right-of-way located within the area shown on Sheet B and identified as a "50' R.O.W. Reserved for Future Dedication" connecting a right-of-way from the proposed middle entrance road into North Pointe to the southern property line of Tax Map 32, Parcel 22E ("TMP 32-22E"). Prior to the issuance of a building permit for Building 32 as shown on the Application Plan, Owner shall record in the Clerk's Office of the Circuit Court of Albemarle County, a current, irrevocable deed of dedication dedicating to public use for road purposes, the area labeled "50' R.O.W. Reserved for Future Dedication." Owner acknowledges that if it is not part of a subdivision plat approved by the County, such offer of dedication must be first reviewed and approved by the Board of Supervisors and accepted by the Board. Such deed of dedication shall include the following conditions: (i) that TMP 32-22E shall have been upzoned; and (ii) that prior to its use for road purposes, there shall have been constructed on the land so dedicated a road approved by the County and accepted by VDOT for public use or bonded for VDOT's acceptance. At the time of the construction of the access road serving Building 32, the Owner shall construct the intersection curb radii or the road serving TMP 32-22E and extend construction of such road for at least a minimum of one hundred (100) feet from Northside Drive East. The Owner shall also place at the end of such extended road, a sign, approved by the County, advising and notifying the public that such right-of-way is the location of a future road extension. Owner shall grant temporary construction easements as determined necessary by the County Engineer to allow for the road to be extended to TMP 32-22E, which construction easements shall be on Owner's property and outside of the dedicated right-of-way, and shall be established by the applicable site plan. No improvements shall be located within the temporary construction easements until construction of such road has been completed.

10.2 Access to Tax Map 32A, Section 2, Parcel 4 (current Northwoods Mobile Home Park Property). Unless the dedication of public right-of-way and the construction of such street are required in conjunction with the approval of a subdivision plat under Albemarle County Code § 14-409 and related sections, or their successors:

Owner shall reserve an area in the location labeled "50' R.O.W. Reserved for Future Dedication" at the eastern end of the main commercial access road from U.S. Route 29 on Sheet B for access to Tax Map 32A, Section 2, Parcel 4 ("TMP 32A-2-4"). Prior to the issuance of a building permit for Building 6 or Buildings V1 through V6, each as shown on the Application Plan, whichever is earlier, Owner shall record in the Clerk's Office of the Circuit Court of Albemarle County, a current, irrevocable deed of dedication dedicating to public use for road purposes, the area labeled "50' R.O.W. Reserved for Future Dedication." Owner acknowledges that if it is not part of a subdivision plat approved by the County, such offer of dedication must be first reviewed and approved by the Board of Supervisors and accepted by the Board. Such deed of dedication shall include the following conditions: (i) that TMP 32A-2-4 shall have been upzoned; and (ii) that prior to its use for road purposes, there shall have been constructed on the land so dedicated a road approved by the County and accepted by VDOT for public use or bonded for VDOT's acceptance. At the time of the construction of the roundabout serving Building 6 and Buildings V1 through V6 the Owner shall construct the intersection curb radii and extend construction of the road for a distance of at least thirty feet beyond the roundabout. The Owner shall also place at the end of such extended road, a sign, approved by the County, advising and notifying the public that such right-of-way is the location of a future road extension. After dedication and before the conditions of the dedication have been satisfied, and if requested by the County, Owner shall maintain the dedicated land until requested by the County to no longer do so, subject to the Owner's right to exclusive use of the dedicated land for park, recreational, and/or greenspace purposes. Upon being requested by the County, Owner shall

cease all use and maintenance of the dedicated land and remove all improvements established by Owner (if any) that the County requests be removed. Owner shall grant temporary construction easements as determined necessary by the County Engineer to allow for the road to be extended to TMP 32A-2-4, which construction easements shall be on Owner's property and outside of the dedicated right-of-way, and shall be established by the applicable site plan. No improvements shall be located within the temporary construction easements until construction of such road has been completed.

XI. SIGNATORY

12.1 Certificate. The undersigned certify that they are the only owners of the Property, which is the subject of ZMA-2000-09 and SP 2002-72.

12.2 The Owner. These proffers shall run with the Property and each reference to Owner within these proffers shall include within its meaning, and shall be binding upon, Owner's successor(s) in interest and/or the developer(s) of the Property or any portion of the Property.

(Signature Pages Immediately Follow)

**North Pointe PD-MC Residential Use
Special Use Permit Conditions (SP 2002-72)**

1. Residential mix. The dwelling units within the Project shall consist of the following three types: (a) single-family detached, including carriage house units; (b) multi-family; and (c) other (consisting of townhouses, duplexes, attached housing, condominiums in the commercial areas and any other unidentified housing types). The minimum number of each of the three dwelling unit types shall be 205 of the 893 total permitted dwelling units.
2. Phasing of residential units. Beginning from the date of approval of the first commercial building permit, the owner shall record subdivision plats creating a minimum of forty (40) lots for single family detached residential units each year thereafter until plats have been recorded creating lots for a minimum of two hundred (200) single family detached residential units. If the owner records subdivision plats creating lots for more than forty (40) single family detached residential units in any year (including any year prior to the date of approval of the first commercial building permit), the excess lots shall be credited to the lots required in subsequent years.
3. Conservation areas. The conservation areas shown on the Application Plan shall remain undisturbed and shall be protected from development impacts to the satisfaction of the County's program authority for the Water Protection Ordinance (Chapter 17 of the Albemarle County Code) (the "Program Authority"); except that the pedestrian paths shown on the Application Plan may be placed in a conservation area where shown on the Application Plan. Storm drainage outfalls and other pedestrian paths may only be placed in conservation areas if the Program Authority finds that no other location is reasonably available and that the disturbance is necessary for such a proposed use. Notwithstanding the terms of this Condition 3 to the contrary, the Program Authority may approve a utility main within a conservation area, even if it is not shown on the Application Plan, and the Program Authority may approve other disturbances and/or measures as may be appropriate in the Program Authority's discretion to further protect a conservation area.
4. Conservation areas with utilities. The conservation areas with utilities shown on the Application Plan shall remain undisturbed and shall be protected from development impacts to the satisfaction of the Program Authority; except that:
 - A. The streets and pedestrian paths shown on the Application Plan may be placed in a conservation area with utilities where shown on the Application Plan. Other pedestrian paths, other streets, and sanitary sewers, storm drainage outfalls, and/or stream mitigation measures may only be placed in a conservation area with utilities if the Program Authority finds that no other location is reasonably available and the disturbance is necessary for such a proposed use. In any event, the construction, maintenance and use of the improvements shall have the minimum environmental impact on the conservation area with utilities necessary for the improvements to be established and maintained, and the long-term impacts shall be adequately mitigated. Nothing in this condition shall be construed to obviate the requirements established for stream buffers under Chapter 17 of the Albemarle County Code or shall constitute a waiver of such requirements.
 - B. Erosion and sediment control structures and measures shall be permitted within a conservation area with utilities solely to address impacts from authorized land disturbing activity within such area, unless otherwise requested by the Owner and approved by the Program Authority.
 - C. The Program Authority may approve other disturbances and/or measures as may be appropriate in the Program Authority's discretion to further protect a conservation area with utilities.
5. Open space. The Owner shall restrict from development all open space areas designated as greenway, buffer areas and park areas shown on the Application Plan. This condition shall not apply to

development parcels, conservation areas, and conservation areas with utilities shown on the Application Plan.

A. Open space areas not dedicated to public use shall be for the use and enjoyment of the residents of the Project, subject to the restrictions that may be imposed by any declaration recorded as part of a conveyance of these areas to a homeowner's association. Open space areas dedicated to public use shall be for the use and enjoyment of the public, including the residents of the Project.

B. No structural improvements other than utilities, pedestrian and biking trails, and common area amenities such as playgrounds, picnic areas, hardscapes, and PAR exercise equipment shall be established and maintained in the open space areas.

6. Aggregate set aside for open-space related areas. In no event shall the total area of open-space related areas comprised of the conservation areas (Condition 3), conservation areas with utilities (Condition 4), open space (Condition 5), greenway (Conditions 5 and 7), and landscaped buffer areas (Conditions 5 and 8) shown on the Application Plan, be less than a total of thirty-five percent (35%) of the total land within the Project to be developed for residential uses, as shown on Sheet G to the Application Plan entitled "Open Space and Green Way Plan," dated March 6, 2006 ("Sheet G").

7. Rivanna greenway/access. The Owner shall reserve for dedication to public use a greenway along the boundary of the Project and adjacent to the Rivanna River, between the flood plain line and a preservation area (hereinafter, the "greenway") as shown on Sheet G.

A. The Owner may grant such utility easements across the greenway as are required for a forced main utility and for the proposed uses shown on the Application Plan, each with the prior written consent of the County. Erosion and sediment control structures and measures shall be permitted within a greenway solely to address impacts from authorized land disturbing activity within the greenway, except as otherwise requested by the Owner and approved by the Program Authority.

B. The Owner shall dedicate to public use the greenway and all pathways shown through land depicted on Sheet G as "Greenway"; provided, however, that the property owners within the Project shall have access to and over such pathways at all times the pathways are open to the public. The greenway and pathways shall be dedicated either upon the request of the County, or in conjunction with the platting of the residential lots adjacent to the section of the greenway to be dedicated. If the greenway and pathways are dedicated by platting, the greenway and pathways shall be set apart on the plat for public use with a notation that the greenway and pathways are dedicated for public use. If the County accepts dedication of the lake referenced in section VI of the Proffer Statement for the Project (ZMA 2000-009), upon request by the County, the Owner shall dedicate to public use the access pathway east of the middle entrance and leading to Flat Branch as shown on Sheet G.

C. Access easements to the Rivanna River shall be provided as shown on the Application Plan for the benefit and use by property owners within the Project.

D. The Owner shall be responsible for the costs of drafting the deeds of dedication, having required surveys conducted and plats prepared, and recordation costs.

8. Landscaped buffer between residential areas and rural areas. Before the County issues a certificate of occupancy for the first dwelling unit constructed on any of the lots shown on the Application Plan abutting the areas shown on the Application Plan as "Open Space Buffer (30')" along Pritchett Lane (Lots A1-6, H8-20, L15-34 and N2-5), the Owner shall establish and thereafter maintain a heavily vegetated buffer in the open space buffer common areas. The buffer, where one does not already exist, shall be planted in accordance with a landscaping plan approved by the County. The landscaping plan shall include the following: (i) an informal mix of screening trees, loosely staggered, fifteen (15) feet on-center; (ii) the same species of screening trees shall be clustered in groups and alternate groups of screening trees shall be provided to create a naturalistic rural landscape; (iii) large and medium shade

trees shall be interspersed among the screening trees; (iv) clusters of ornamental trees shall be provided in groups of 3's and 5's; and (v) tall shrubs shall be massed to help integrate the proposed plantings into a naturalistic rural landscape. The features described in (i) through (v) herein define a "naturalistic rural landscape." Approved plant species shall be obtained from the Albemarle County Recommended Plants List and the buffer design shall be subject to the review and approval of the Director of the Department of Community Development. The Owner shall maintain the buffer.

9. Extensions. Unless the dedication of public right-of-way and the construction of such streets or accessways, as applicable, are required in conjunction with the approval of a subdivision plat under Albemarle County Code § 14-409 and related sections, or their successors, the following streets or accessways, as applicable, shall be constructed and rights-of-way shall be reserved for dedication to public use as provided herein:

A. Extensions to Pritchett Lane. The Owner shall design and construct as emergency access ways extensions to Pritchett Lane within the fifty (50) foot wide rights-of-way located between Lots H-9 and H-10 and Lots L-16 and L-17, respectively, as shown on the Application Plan, subject to the following:

1. The emergency accessways shall be designed and graded to accommodate a minimum Virginia Department of Transportation standard for a public street as determined by the County Engineer, and constructed using pervious parking pavers or other materials sufficient to support fire and other emergency vehicles, but that support grass or other ground cover, in conjunction with the construction of the streets serving Lots H-7 and L-14, respectively.

2. The fifty (50) foot wide rights-of-way shall be dedicated to public use upon request by the County, together with all necessary right-of-way for the fifty (50) foot wide rights-of-way to be geometrically connected to adjoining streets as approved by the County Engineer.

3. If requested by the County within ten (10) years after the first certificate of occupancy is issued for a dwelling unit within the H or L sections shown on the Application Plan, and after the property on the east side of Pritchett Lane opposite the respective emergency access ways has been upzoned, the Owner shall convert and upgrade the emergency access ways to the applicable Virginia Department of Transportation public street standards for acceptance into the state highway system. Subject to weather delays or force majeure, the construction of the upgrades shall be completed for such acceptance within one hundred eighty (180) days after the request by the County.

(b)

B. Extension to Tax Map 32, Parcel 23HI. In the event that any of the residential units within the Project adjacent to Tax Map 32, Parcel 23HI are developed under a site plan, the Owner shall design and construct extensions to Tax Map 32, Parcel 23HI by way of two streets within the fifty (50) foot wide rights-of-way located as shown on the Application Plan and identified by the notation "R.O.W. Reserved for Future Dedication," adjacent to the church property identified as Tax Map 32, Parcel 23HI that fronts on Pritchett Lane. The exact location of the rights-of-way shall be fixed by the applicable final site plan.

1. The streets shall be designed and constructed to applicable Virginia Department of Transportation public street standards. The streets shall be constructed in conjunction with the applicable final site plan, or at such other time authorized by the County Engineer under such terms and conditions the County Engineer determines to be appropriate, including the requirement that the Owner provide adequate surety or other guarantee that the streets will be constructed and maintained until accepted into the state highway system.

2. The streets shall be constructed as close to the property line between the Project and Tax Map 32, Parcel 23HI as determined by the County Engineer to be feasible without obtaining offsite construction easements. The rights-of-way shall be graded as close as possible to the Project property line.

3. To allow the completion of street improvements to and beyond the Project property line, temporary construction easements on the Owner's property and outside of the rights-of-way to be dedicated shall be reserved on the applicable final site plan. The site plan also shall include a note stating that no improvements shall be established within the reserved area. Within ninety (90) days after request by the County, the easements shall be granted. No improvements shall be located within the temporary construction easements until the construction of the street improvements onto Tax Map 32, Parcel 23HI has been completed so that the need for the temporary construction easements no longer exists.

4. Within ninety (90) days after request by the County after Tax Map 32, Parcel 23HI has been upzoned, the Owner shall dedicate to public use the streets and rights-of-way and offer the street for acceptance into the state highway system.

10. Overlot grading plan. For all subdivisions with lots less than 15,000 square feet in size and not otherwise requiring a site plan, a lot grading plan ("Overlot Grading Plan") must be approved by the County Engineer prior to the issuance of a building permit for a new residence on any such lot(s). The Overlot Grading Plan must satisfactorily demonstrate compliance with all Erosion and Sediment Control requirements for drainage conveyed across such lot(s). An "Agreement in Lieu of a Plan" will be allowed for building permits, provided the general drainage patterns and grading matches that shown on the Overlot Grading Plan. The Overlot Grading Plan may be revised at any time by the subdivision developer or individual lot owners, provided all work can be accomplished within their property lines or within available easements. All amendments shall be subject to the review and approval by the County Engineer.

The Overlot Grading Plan shall be drawn to scale not greater than one (1) inch equals fifty (50) feet, with all proposed grading shown at contour intervals not greater than two (2) feet interpolated and shall demonstrate to the satisfaction of the County Engineer that:

All concentrated runoff is conveyed across lots using vegetated swales or underground drainage structures in a manner that does not result in flooding of buildings or erosion as a result of the grading. For the purposes of this requirement, flows from roof downspouts will be considered concentrated flows if not adequately dispersed before reaching the property line.

2. Overland relief is assured in the event that drainage structures do not function. Overland relief will be considered satisfied if buildings are designed to have finished floors at least one (1) foot above low points for any drainage area which includes the house. With dams and similar impoundments, this should be measured from the top of the dam.

The County Engineer may allow other drainage structures (e.g., riprap ditches) where it has been determined this change will not significantly impact usable yards (e.g., cobblestone swale next to a driveway), where slopes are too steep for vegetated swales (e.g., steeper than 33% grades), or where the change would better mitigate impacts on adjoining properties (e.g., matches offsite drainage structure).

C. Public drainage across lots shall be in storm sewers except open drainage ways may be allowed if the plat restricts construction of a building within fifty (50) feet of a proposed open drainageway. If a storm sewer is used across lots, easement widths must be sufficient to allow excavation with 1:1 side slopes on the trench, sufficient room on one side of the trench to stockpile excavated materials, sufficient room on the opposite side of the trench to allow for movement of materials, and adequate room for a backhoe boom to swing. Fences, walls, driveways, and other uses are not allowed within the easements, except where a "hold harmless" clause is included in the easement agreement.

D. No surface drainage may flow across more than three (3) lots or one-half (1/2) acre, whichever is greater, before being collected in a storm sewer or directed to a drainage way outside of the lots.

E. Retaining walls higher than four (4) feet (measured from the top of the face to the ground on the downhill side) shall be designed by a professional engineer to assure long-term stability. Retaining walls building using a VDOT standard or a pre-engineered product that includes certification are not required to provide a separate professional engineer's certification provided the building contractor provides an affidavit that the wall was constructed consistent with the standard. Retaining walls higher than four (4) feet in useable yards or places where the public might walk must include a railing similar in design to what is required for elevated decks. In circumstances where it is questionable whether a railing is required, the County Engineer will make the determination. The builder must provide evidence of the ability to maintain any retaining wall which could not be maintained without the use of adjoining property.

F. The Plan shall demonstrate that an area at least five (5) feet in width, or to the lot line if the distance is less than five (5) feet, from any possible doorways to dwellings as shown on the Plan or from the edges of any grade level patios as shown on the Plan that will not be served by a stairway, has grades no steeper than ten percent (10%) perpendicular to the exterior wall.

G. In lieu of the foregoing provisions, the grading plan for the residential units located in the southeastern portion of the Project as shown on the Application Plan shall be included as part of the site development plan application for the appurtenant commercial area as shown on the Application Plan.

H. 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.

I. 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.

Sanitary sewers. All residential uses shall be served by gravity sanitary sewers; however, basements may be served by grinder pumps.

Original Proffer _____
Amended Proffer _____
(Amendment # _____)

CASCADIA
PROFFER FORM

Date: July 20, 2006

ZMA # 2002-004

Tax Map and Parcel Number(s) Tax Map Parcel 62-25; Tax Map 78 Parcels 59 and 59A; and Tax Map Parcel 78E-H1

60.8 Acres to be rezoned from RA/R6 to NMD in accordance with the **Cascadia** Code of Development prepared by Cline Design and dated July 12, 2006

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. 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) **Affordable Housing:** The Owner shall provide a number of affordable dwellings that is equal to or greater than fifteen percent (15%) of the total residential units constructed in Cascadia. The affordable dwellings shall be in the form of “for-sale” townhouses and condominiums and “for rent” townhouses, condominiums, apartments, accessory units, and Special Single-Family Dwelling and Duplex Units as defined by the Cascadia Code of Development. The affordable dwellings shall be reasonably dispersed throughout the property, subject to the requirements of the General Development Plan and the Code of Development.

A. Designation of Affordable Dwellings

- 1. The Owner shall designate individual affordable dwelling lots, units, and/or unit(s) within a townhouse block during final design. Where final design is pursued through the site plan process, the lot or unit shall be designated on the final site plan. All affordable dwellings designated on the final site plan shall be platted such that the responsibility for this proffer and sale/ rental of the designated affordable dwelling is consistent with the approved final site plan. Where final design is pursued through the subdivision platting process to create separate building lots, the affordable dwellings shall be designated on the preliminary plat. The responsibility for this proffer and the sale/ rental of any affordable dwelling shall be clearly designated with the final plat.
- 2. When required by paragraph A1, the Owner shall designate a minimum of fifteen percent (15%) of the aggregate number of lots or units on that site plan or subdivision plat as affordable dwellings. Notwithstanding the foregoing, the Owner may “carry-over” or “bank” credits for affordable dwellings in the event an individual site plan or subdivision plat designates affordable dwellings that in the aggregate exceed the fifteen percent (15%) minimum for such site plan or subdivision plat, and such additional affordable dwelling may be allocated toward the fifteen percent (15%) minimum on any future site plan or subdivision plat, provided however, that the maximum number of affordable dwellings that may be carried over or banked shall not exceed fifteen percent (15%) of the total units on the site plan or subdivision plat.

3. After a lot, unit, or unit(s) within a townhouse block has been designated as containing an affordable dwelling, the requirement to provide the affordable unit shall run with that parcel and the responsibility for constructing and selling/ renting the affordable dwelling shall be with the then-current owner of the individual lot or unit.

B. Mixture of Types of Affordable Dwelling Units

1. At least thirty-three percent (33%) of the required affordable dwellings shall be for-sale units.
2. For purposes of this proffer, no more than thirty-three percent (33%) of the required affordable dwelling units may be Special Single-Family Dwelling and Duplex Units; however, nothing, except the maximum number of dwellings established in the Cascadia Code of Development, shall prohibit the Owner or its assigns from creating additional Special Single-Family Dwelling and Duplex Units.
3. The remainder of the required affordable dwellings shall be “for rent” townhouses, condominiums, apartments as defined in paragraph 1D.

C. For Sale Affordable Dwellings

For purposes of this proffer, a “for-sale affordable dwelling” shall be defined as a dwelling affordable to households with incomes less than eighty percent (80%) of the area median income such that housing costs consisting of principle, interest, real estate taxes, and homeowners insurance (PITI) do not exceed thirty percent (30%) of the gross household income.

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 for financing an eligible purchaser for the affordable unit. 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 who executes a contract of purchase 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), provided, however, that any unit(s) sold without such restriction shall nevertheless be counted toward the number of affordable units required to be provided pursuant to this terms of this paragraph 1C. The requirements of this paragraph 1C shall apply only to the first sale of each of the affordable units.

The Owner reserves the right to meet the for-sale affordable dwelling criteria on the market rate for-sale units by retaining a no interest, junior deed of trust that is acceptable to the primary mortgage lender. This junior deed of trust cannot exceed the difference between the sale price and the appraised value of the unit. This junior mortgage may be assigned to a third party.

D. For Rent Affordable Dwellings

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 Albemarle County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent affordable dwelling 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.
2. Affordable Term. Rents for such for-rent affordable dwellings shall not exceed the maximum rents established in paragraph 1D1 for a period of five (5) years from the date of issuance of a certificate of occupancy for that for-rent affordable dwelling, unless the dwelling is made available for-sale under the terms outlined in paragraph C.
3. Conveyance of Interest. All deeds conveying any interest in the for-rent affordable dwellings during the Affordable Term shall contain language reciting that such dwelling is subject to the terms of this proffer. In addition, all contracts pertaining to a conveyance of any for-rent affordable dwelling, or any part thereof, during the Affordable Term shall contain a complete

and full disclosure of the restrictions and controls established by this proffer. At least thirty (30) days prior to the conveyance of any interest in any for-rent affordable dwelling 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 the proffer have been satisfied.

4. **Reporting Rental Rates.** During the Affordable Term, within thirty (30) day of each rental or lease term for each for-rent affordable dwelling, the then-current owner shall provide to the Albemarle County Housing Office a copy of the rental or lease agreement for each such dwelling rented that shows the rental rate for such dwelling 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.
- 2) **Route 20 Improvements:** In order to address the future potential improvements to Route 20, Stony Point Road, the Owner shall dedicate twenty (20) feet of public right of way along the edge of the existing Route 20 right of way with the first subdivision plat.
- 3) **Secondary Road Interconnections to Broadus Baptist Church:** The Owner shall provide for two (2) interconnections to Broadus Baptist Church (TMP 62-25C and 25C1).

For the first interconnection, the Owner shall provide Broadus Baptist Church with a thirty (30) foot wide easement that will allow the Church to construct a driveway within this easement. The easement shall start at the Cascadia property line shared with Broadus Baptist Church and run generally along the centerline of a Class A trail to the intersection of Cascadia Drive and Delphi Lane, as generally shown on the General Development Plan. The Owner shall reserve this easement for a period ten (10) years from the recordation date of the first plat for this area and provide the easement free of charge to the Church. If the Church does not exercise its right to construct a private drive within this 10 year time period, the Owner's obligation to provide this easement shall be void.

For the second interconnection, the Owner shall provide Broadus Baptist Church with a first right of refusal to a lot within Cascadia that will provide reasonable access to the upper portions of TMP 62-25C and 25C1. The lot shall be wide enough to accommodate a public road. If any grading or drainage easements outside the lot are required to construct the second interconnection, the Owner shall grant these easements free of charge. If the Church does not exercise its first right of refusal at the time of sale of this lot, the Owner's obligation to provide for this interconnection shall be void.

- 4) **Cash Proffer for Capital Projects:** For each dwelling unit constructed with Cascadia, the Owner shall contribute cash to Albemarle County for the stated purpose of either funding school projects at Stony Point Elementary School, Sutherland Middle School, and Albemarle High School as identified in the County School's Capital Improvements Program or funding Capital Improvement Projects within or immediately adjacent to Neighborhood 3 as identified in the County's Capital Improvements Program. The cash contributions shall be at the following rates: \$3,000 for each single family detached unit, \$2,500 for each townhouse unit and \$2,000 for each multifamily unit. Dwellings defined as Special Single-Family Dwelling or Duplex Unit in the Code of Development and/ or designated as affordable dwellings under paragraph 1A shall be exempted from this proffer. 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 purposes within ten (10) years from the date of the issuance of the last residential building permit within Cascadia, all unexpended funds shall be applied to fund for any public project or program within Neighborhood 3.
- 5) **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 proffer.
- 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 from one-half (1/2) acre of land or from three (3) lots or more lots, whichever is greater in area, shall be collected in a storm sewer or directed to a drainage way outside of the lots.
- f) All drainage from streets shall be carried across lots in a storm sewer to a point beyond the rear of the building site.
- g) 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.
- h) The Plan shall demonstrate that an area at least ten (10) feet in width, or to the lot line if it is less than ten (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.
- i) Any requirement of this proffer 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 of 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 proffer 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 the land adjacent thereto.

- j) 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.
- k) In the event that the County adopts overlol grading regulations after the date ZMA 2002-004 is approved, any requirement of those regulations that is less restrictive than any requirement in this proffer shall supersede the corresponding requirement of this proffer, subject to the approval of the Director of the Department of Community Development.

EXHIBIT F
ZMA-2002-004, CASCADIA
Summary of Waivers Approved by Planning Commission

	Albemarle County Code Section	Section Title	Conditions
1	4.2	Critical Slopes	A commitment to an Overlot Grading plan and Current Development Planner approval to include: Landscape plan to include a tree protection plan for land disturbing activity in the "Conservation Area". Current Development Engineer approval to include: Erosion and Sediment Control Plan, Stormwater Management Plan. Reconstructed slopes will be no greater than 3:1 unless landscaped. Landscaped slopes can be no greater than 2:1. A minimum height and length for retaining walls be adopted into the Code of Development.
2	4.2.3	Location of Structures and Improvements:	(Conditions for 4.2 apply to 4.2.3)
3	4.7.3	Open Space Design Requirements:	Waived in substitution for standards established in the Code of Development
4	4.11.1	Covered porches, balconies, chimneys, and like features:	Waived in substitution for standards established in the Code of Development
5	4.11.2	Structures in Required Yards	Waived in substitution for standards established in the Code of Development
6	4.11.2.1	Accessory Structures	Waived in substitution for standards established in the Code of Development
7	4.12.9	Street and Alley Parking	Waived in substitution for standards established in the Code of Development
8	4.12.13	Loading Areas (a,c,e)	At least one Loading Space will be provided in Block One
9	4.15.5.A.1	Off-Site Signs	Directory signs are allowed to be located off-site, but within Cascadia.
10	4.15.5.A.3	Signs in the Public Right of Way	Signs in the public R.O.W. shall be approved by the County Engineer and VDOT.
11	4.15.11	Setback for Signs outside of Right of Way	Signs less than 5' from public R.O.W. shall be approved by the County Engineer and VDOT.
12	4.16.2	Minimum Recreation Facilities	Waived in substitution for standards established in the Code of Development
13	4.16.3.3	Additional Requirements for Recreational Facilities	Waived in substitution for standards established in the Code of Development
14	4.17.4.B.1	(Lighting) Standards	Only 4.17.4.b.1 is waived for Code alternative
15	5.1.16	Swimming, Golf Tennis Clubs:	The pool and clubhouse will not be located within 125 feet of any existing property line not associated with Cascadia.
16	32.4.1.1	Preliminary Conference with staff (site plan)	
17	32.7.9.6	Street Trees	Waived in substitution for standards established in the Code of Development
18	32.7.9.8	Screening:	Waived in substitution for standards established in the Code of Development

The Board approved the waivers shown on Exhibit F on August 2, 2006, adding the following condition to waiver 1 and waiver 2: "The Erosion and Sediment Control Plan shall, to the 'maximum extent practicable', provide such additional appropriate erosion and sediment control measures that exceed State and Local minimum standards."