

ACTIONS
Board of Supervisors Meeting of September 12, 2007

September 13, 2007

<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 6:02 p.m. by the Chairman, Mr. Boyd. All BOS members were present. Also present were Larry Davis, Bob Tucker, Mark Graham, Wayne Cilimberg, and Ella Jordan. 	
<p>4a. Recognition: Charlottesville Cardinals Wheelchair Basketball Team.</p> <ul style="list-style-type: none"> Chairman read and presented recognition to Brandon Rush and Penny Dotson, members of the basketball team. 	(Attachment 1)
<p>5. From the Board: Matters Not Listed on the Agenda.</p> <p><u>David Slutzky:</u></p> <ul style="list-style-type: none"> Mentioned Item 7.2.1 (Passenger Rail Resolution) and said since funding is expected to be in the range of no more than \$5,000 - \$10,000, he is willing to support the original resolution that was presented last week. Other Board members also expressed support. <p><u>Dennis Rooker:</u></p> <ul style="list-style-type: none"> Discussed water usage in the community. Provided statistical information on housing types and prices in the community. <p><u>David Wyant:</u></p> <ul style="list-style-type: none"> Followed up on comments regarding water usage in the community. <p><u>Sally Thomas:</u></p> <ul style="list-style-type: none"> Provided an update on the quarterly meeting of the Environmental Study Committee. They found that street lights are a major source of pollution. Offered to provide Board members with access to the website to find out additional information. 	
<p>6. From the Public: Matters Not Listed on the Agenda.</p> <ul style="list-style-type: none"> Peter Wurzer provided a slide presentation on a look at growth in the County and offered suggestions on how the County can address some of its financial challenges. Paul Grady asked the Board to reopen the 29H250 Study and look at the further development of Option C. Meredith Richards, representing CvilleRail asked the Board to adopt the original resolution. 	
<p>7.2 Resolution of the Industrial Development Authority authorizing the issuance of revenue bonds, pursuant to the Industrial Development and Revenue Bond Act, in an amount not to exceed \$21,000,000 for the Jefferson Scholars Foundation.</p> <ul style="list-style-type: none"> ADOPTED. 	<p><u>Clerk:</u> Forward signed resolution to Hunton & Williams. (Attachment 2)</p>

<ul style="list-style-type: none"> Board members asked for information from the City on the historical value of the structure on the property. 	<u>David Benish:</u> Contact City and request information.
7.2.1 Resolution of Support for Market Study of Enhanced Passenger Rail in the U. S. 29 "Piedmont" Corridor. <ul style="list-style-type: none"> ADOPTED. 	<u>Clerk:</u> Forward signed resolution to Meredith Richards, Chairman, CvilleRail. (Attachment 3)
8. PUBLIC HEARING to proposed issuance of general obligation school bonds of Albemarle County in the estimated maximum principal amount of \$11,930,000. The purpose of the proposed bonds is to finance capital projects for public schools. <ul style="list-style-type: none"> ADOPTED the attached resolution. Mr. Boyd asked that in the future staff include in the Executive Summary the impact of the bonds on operating costs. 	<u>Clerk:</u> Forward signed resolution to Tammy Critzer, Finance Department. (Attachment 4)
9. <u>PROJECT: CPA-2004-002. Pantops Master Plan.</u> <ul style="list-style-type: none"> DEFERRED. Requested the following from staff: <ul style="list-style-type: none"> An evaluation of including the Vermillion and Wheeler property within the development areas and the impacts of same; Provide additional information on the condition and value of the adjacent stream areas to the Vermillion and Wheeler properties; Provide alternate language that would incorporate the SELC recommendations into the implementation section of the Plan; Eliminate specific reference to 30 minute headways for the transit recommendation. Criteria used by the Commission in its recommendation regarding Hanson Mountain Road. 	<u>David Benish:</u> Notify Clerk when ready to reschedule for Board agenda.
10. <u>PROJECT: ZMA-2005-015. Hollymead Town Center Area A-1 (Signs #15,51,53,73).</u> <ul style="list-style-type: none"> APPROVED, by a vote of 6:0, subject to acceptance of the applicant's proffers dated September 11, 2007 and Application Plan dated May 23, 2007. 	<u>Clerk:</u> Set out proffers in Attachment 5.
11. <u>PROJECT: SP-2005-027. Hollymead Town Center Area A - Drive Up Window for Bank (Signs #15,51,53,73).</u> <ul style="list-style-type: none"> APPROVED, by a vote of 6:0, subject to the one condition recommended by the Planning Commission. 	<u>Clerk:</u> Set out condition of approval. (Attachment 6)
12. <u>PROJECT: ZMA-2007-001. Hollymead Town Center Area A-2 (Signs #93,94).</u> <ul style="list-style-type: none"> APPROVED, by a vote of 6:0, subject to acceptance of the applicant's Proffers dated September 10, 2007, the Code of Development dated September 12, 2007, General Development Plan dated August 31, 2007, and APPROVED the Waiver Requests as recommended by the Planning Commission. 	<u>Clerk:</u> Set out proffers in Attachment 7. Set out waivers in Attachment 8.
13. <u>PROJECT: ZMA-2005-0017. Biscuit Run.</u>	<u>Clerk:</u> Set out conditions of approval.

<ul style="list-style-type: none"> • APPROVED, by a vote of 6:0, subject to acceptance of the applicant's proffers dated September 10, 2007 and signed September 11, 2007, Application Plan dated August 31, 2007, Code of Development dated August 31 2007. • APPROVED the following two waivers and modifications to Zoning Ordinance requirements: <ul style="list-style-type: none"> ▪ Waiver for parking and loading study, and ▪ Waiver for lot layout 	
14. <u>PROJECT: ZMA-2006-009. 5th Street Avon Center (Signs #48,67&68).</u> <ul style="list-style-type: none"> • DEFERRED to November 7, 2007 for work session. 	<u>Clerk:</u> Schedule on November 7, 2007 agenda.
15. <u>PROJECT: SP-2007-004. 5th Street Avon Center Parking Structure (Signs #78,81,91).</u> <ul style="list-style-type: none"> • DEFERRED to November 7, 2007 for work session. 	<u>Clerk:</u> Schedule on November 7, 2007 agenda.
16. <u>PROJECT: AFD-2007-002. Hardware renewal.</u> <ul style="list-style-type: none"> • ADOPTED, by a vote of 5:0, (Ms. Thomas absent), the attached ordinance. 	<u>Clerk:</u> Forward signed copy of adopted ordinance to County Attorney's office and Community Development. Prepare letter to new additions in the District. (Attachment 10)
17. <u>PROJECT: AFD-2007-003. Nortonville renewal.</u> <ul style="list-style-type: none"> • ADOPTED by a vote of 5:0 (Ms. Thomas absent) the attached ordinance. 	<u>Clerk:</u> Forward signed copy of adopted ordinance to County Attorney's office and Community Development. Prepare letter to new additions in the District. (Attachment 11)
12. From the Board: From the Board: Committee Reports. <ul style="list-style-type: none"> • APPOINTED David Slutzky to serve as the Board of Supervisors representative on the Joint City/County Task Force on Affordable Housing. 	<u>Clerk:</u> Notify Ron White of nomination.
13. Adjourn to September 28, 2007, Zehmer Hall. <ul style="list-style-type: none"> • The meeting was adjourned at 1:10 p.m. to September 28, 2007, 9:00 a.m., at Zehmer Hall. 	

/ewc

- Attachment 1 – Recognition – Charlottesville Cardinals Wheelchair Basketball Team
- Attachment 2 – IDA Resolution
- Attachment 3 – CvilleRail Resolution
- Attachment 4 – VPSA Bonds Resolution
- Attachment 5 – Proffers – ZMA-2005-015 Hollymead Town Center Area A-1
- Attachment 6 – Conditions of Approval
- Attachment 7 – Proffers - ZMA-2007-001. Hollymead Town Center Area A-2
- Attachment 8 – Waivers - ZMA-2007-001. Hollymead Town Center Area A-2
- Attachment 9 – Proffers – ZMA-2005-017. Biscuit Run
- Attachment 10 – Ordinance - AFD-2007-002. Hardware renewal
- Attachment 11 – Ordinance - AFD-2007-003. Nortonville renewal

On behalf of the Albemarle County Board of Supervisors and local government, we would like to honor and recognize

The Charlottesville Cardinals Wheelchair Basketball Teams

Whereas the Charlottesville Cardinals Wheelchair Basketball team was formed in the early 1980's by six local athletes to provide athletes with disabilities an opportunity for exercise and competitive recreation; and

Whereas since its formation, over 250 area athletes have participated with the Cardinals and have performed in front of over 25,000 people across the U. S. and Canada; and

Whereas the Cardinals field three highly competitive teams, with their Division II squad being ranked as high as second in the nation this past season and making it to the Final Four of the National Championships before losing in overtime; and the Division III team finished the season ranked ninth in the country; and

Whereas the Cardinals lineup includes men and women, young and old, who are committed to the mission of "eliminating attitudinal barriers towards people with disabilities by energetically demonstrating their abilities rather than their disabilities";

Now, Therefore, Be, It Resolved, that the Board of Supervisors of Albemarle County, Virginia, hereby recognizes the Charlottesville Cardinals Wheelchair Basketball teams for being a championship organization but, also, in bringing to the forefront and educating the community on the abilities of people with disabilities.

Signed and sealed this 12th day of September 2007.

**RESOLUTION OF THE
BOARD OF SUPERVISORS OF ALBEMARLE COUNTY, VIRGINIA**

WHEREAS, Jefferson Scholars Foundation (the "Foundation"), a Virginia not-for-profit corporation, has requested the Industrial Development Authority of Albemarle County, Virginia (the "Authority"), to issue its revenue bonds (the "Bonds"), pursuant to the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the "Act"), to finance the acquisition, construction and equipping of a new administrative office for the Foundation and its Jefferson Fellows Center (the "Project") to be located in the City of Charlottesville, Virginia (the "City"); and

WHEREAS, on June 12, 2007, in accordance with the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and Section 15.2-4906 of the Act, the Authority held a public hearing and adopted an inducement resolution approving the issuance of the Bonds; and

WHEREAS, the Foundation has requested that the Authority increase the amount of Bonds from \$18,000,000 to \$21,000,000, and by resolution dated September 11, 2007 (the "Second Authority Resolution"), the Authority has agreed to do so; and

WHEREAS, Section 147(f) of the Internal Revenue Code, as amended (the "Code"), and Section 15.2-4906 of the Act require that the governmental unit on behalf of which the Authority will issue the Bonds approve the issuance of such Bonds and by resolution dated July 11, 2007, the Board of Supervisors (the "Board") of Albemarle County, Virginia, has done so; and

WHEREAS, the Foundation has requested the Board to approve the increase of the amount of Bonds to comply with Section 15.2-4906 of the Act and Section 147(f) of the Code; and

WHEREAS, a copy of the Authority's resolution of September 11, 2007, approving increase of the amount of Bonds, a record of the public hearing and a fiscal impact statement with respect to the issuance of the Bonds have been filed with the Board; and

WHEREAS, the Authority has recommended that the Board approve the increase of the amount of Bonds to comply with Section 147(f) of the Code and Section 15.2-4906 of the Act.

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

1. The Board hereby approves the increase of the amount of Bonds from \$18,000,000 to \$21,000,000, as required by Section 147(f) of the Code and Section 15.2-4906 of the Act.

2. The approval of the issuance of the Bonds does not constitute an endorsement of the Bonds or the creditworthiness of the Foundation. The Bonds shall provide that neither Albemarle County, Virginia, nor the Authority shall be obligated to pay the Bonds or the interest thereon or other costs incident thereto except from revenues and moneys pledged therefor, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia, Albemarle County, Virginia, or the Authority shall be pledged thereto.

3. All acts and doings of the officers and members of the Board that are in conformity with the purposes and intent of this resolution shall be, and the same hereby are, in all respects approved and confirmed.

4. This resolution shall take effect immediately upon its adoption.

**RESOLUTION OF SUPPORT FOR A MARKET STUDY OF
ENHANCED PASSENGER RAIL IN THE U.S. 29 "PIEDMONT" CORRIDOR**

WHEREAS a growing population and a burgeoning commercial explosion have helped to expand Virginia's prosperous economy, but they have also helped to create steadily worsening problems of congestion and accessibility in its major transportation corridors; and

WHEREAS among Virginia's major transportation corridors, U. S. 29 North, or the "Piedmont Corridor," represents a vital and heavily used north-south travel route between Washington, DC and Danville that serves many counties and cities in the Piedmont region of the Commonwealth; and

WHEREAS the counties of Albemarle, Greene, Madison, Orange, Culpeper, Nelson, Amherst, Campbell, Pittsylvania, Fauquier and Prince William and the cities of Danville, Lynchburg and Charlottesville have a vital interest in providing their citizens with an efficient and affordable transportation alternative to access the population and commercial centers of Northern Virginia, the District of Columbia and the Northeast; and

WHEREAS enhanced passenger rail service in the Piedmont Corridor could be an important part of the solution to the problems of congestion, safety and environmental stresses caused by the fast increasing population in the areas adjacent to U.S. 29, I-66 and I-95; and

WHEREAS the economies of the cities and counties of the Piedmont Corridor would greatly benefit from greater accessibility by rail that could accommodate tourists, students, business persons and others who travel on U.S. 29 to and from Northern Virginia and the District of Columbia; and

WHEREAS communities along the corridor between Danville and Washington, DC make heavy use of the services provided by Amtrak, and the limited frequency and capacity of these trains do not adequately meet the needs of most travelers who could use this passenger rail alternative. With 20 weekly Amtrak trains, ridership is higher per scheduled train at Charlottesville's Main Street Station than that at either the Richmond or Newport News stations; and

WHEREAS with expanded passenger rail services we believe that substantial numbers of travelers would use these services, reducing the demands placed on overcrowded highways and fuel consumption, while helping to reduce the emissions that contribute to global warming; and

WHEREAS the potential ridership and the accompanying economic and environmental benefits of enhanced passenger rail service in the Piedmont Corridor between Danville, Lynchburg, Charlottesville and Washington, DC has not yet received the attention of the Virginia Rail Advisory Board and the Commonwealth Transportation Board that we believe is merited; and

WHEREAS sound market research will provide a basis for determining the potential use, costs and benefits that will accrue to the citizens of Albemarle, Greene, Madison, Orange, Culpeper, Nelson, Amherst, Campbell, Pittsylvania, Fauquier and Prince William counties and the cities of Danville, Lynchburg and Charlottesville from enhanced passenger rail service;

NOW, THEREFORE, BE IT RESOLVED THAT the Albemarle County Board of Supervisors joins the Piedmont Rail Coalition in requesting that a market study of the nature and demand for passenger rail service in the aforementioned corridor be conducted; and

BE IT FURTHER RESOLVED THAT the Albemarle County Board of Supervisors strongly supports the application to the Commonwealth of Virginia to fund a valid and comprehensive survey of citizens throughout this corridor, and understands that such funding may require a local match by participating jurisdictions; and

FURTHER RESOLVED THAT, upon approval of such funding by the Commonwealth of Virginia, or at such time as it becomes necessary, the Albemarle County Board of Supervisors will entertain a request to financially participate in any required local match.

**RESOLUTION AUTHORIZING THE ISSUANCE OF
GENERAL OBLIGATION SCHOOL BONDS, SERIES 2007A,
OF THE COUNTY OF ALBEMARLE, VIRGINIA,
IN A PRINCIPAL AMOUNT NOT TO EXCEED \$11,930,000
TO BE SOLD TO THE VIRGINIA PUBLIC SCHOOL AUTHORITY
AND PROVIDING FOR THE FORM AND DETAILS THEREOF**

WHEREAS, the Board of Supervisors (the "Board") of the County of Albemarle, Virginia (the "County"), has determined that it is necessary and expedient to borrow a principal amount not to exceed \$11,930,000 and to issue its general obligation school bonds for the purpose of financing certain capital projects for school purposes; and

WHEREAS, the County has held a public hearing, duly noticed, on September 12, 2007, on the issuance of the Bonds (as hereinafter defined) in accordance with the requirements of Section 15.2-2606, Code of Virginia 1950, as amended (the "Virginia Code"); and

WHEREAS, the School Board of the County has, by resolution adopted on August 9, 2007, requested the Board to authorize the issuance of the Bonds and consented to the issuance of the Bonds; and

WHEREAS, the Bond Sale Agreement (as hereinafter defined) shall indicate that \$11,930,000 is the amount of proceeds requested (the "Proceeds Requested") from the Virginia Public School Authority (the "VPSA") in connection with the sale of the Bonds; and

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

WHEREAS, such factors may result in the Bonds having a purchase price other than par and consequently (i) the County may have to issue a principal amount of Bonds that is less than the Proceeds Requested in order to receive an amount of proceeds that is substantially equal to the Proceeds Requested, or (ii) if the maximum authorized principal amount of the Bonds set forth in Section 1 below does not exceed the Proceeds Requested by at least the amount of any discount, the purchase price to be paid to the County, given the VPSA Purchase Price Objective and market conditions, will be less than the Proceeds Requested.

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

1. Authorization of Bonds and Use of Proceeds. The Board hereby determines that it is advisable to contract a debt and issue and sell its general obligation school bonds in an aggregate principal amount not to exceed \$11,930,000 (the "Bonds") for the purpose of financing certain capital projects for school purposes as described in Exhibit B. The Board hereby authorizes the issuance and sale of the Bonds in the form and upon the terms established pursuant to this Resolution.

2. Sale of the Bonds. It is determined to be in the best interest of the County to accept the offer of VPSA to purchase from the County, and to sell to VPSA, the Bonds at a price, determined by VPSA to be fair and accepted by the Chairman of the Board and the County Executive, either of whom may act that is substantially equal to the Proceeds Requested, except that the Bonds may be sold for a purchase price not lower than 95% of the Proceeds Requested if issuing the Bonds in the maximum principal amount authorized by Section 1 of this Resolution is insufficient, given the VPSA Purchase Price Objective and market conditions, to generate an amount of proceeds substantially equal to the Proceeds Requested. The Chairman of the Board and the County Executive, either of whom may act, and such other officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed

to enter into a Bond Sale Agreement dated September 28, 2007 (the "Bond Sale Agreement"), with VPSA providing for the sale of the Bonds to VPSA. The Bond Sale Agreement shall be in substantially the form submitted to the Board at this meeting, which form is hereby approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the officer executing the Bond Sale Agreement, his execution to constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes.

3. Details of the Bonds. The Bonds shall be dated the date of issuance and delivery of the Bonds; shall be designated "General Obligation School Bonds, Series 2007A"; shall bear interest from the date of delivery thereof payable semi-annually on each January 15 and July 15 beginning July 15, 2008 (each an "Interest Payment Date"), at the rates established in accordance with Section 4 of this Resolution; and shall mature on July 15 in the years (each a "Principal Payment Date") and in the amounts set forth on Schedule I attached hereto (the "Principal Installments"), subject to the provisions of Section 4 of this Resolution.

4. Interest Rates and Principal Installments. The County Executive is hereby authorized and directed to accept the interest rates on the Bonds established by VPSA, provided that each interest rate shall be ten one-hundredths of one percent (0.10%) over the interest rate to be paid by VPSA for the corresponding principal payment date of the bonds to be issued by VPSA (the "VPSA Bonds"), a portion of the proceeds of which will be used to purchase the Bonds, and provided further that the true interest cost of the Bonds does not exceed five and fifty one-hundredths percent (5.50 %) per annum. The Interest Payment Dates and the Principal Installments are subject to change at the request of VPSA. The County Executive is hereby authorized and directed to accept changes in the Interest Payment Dates and the Principal Installments at the request of VPSA, provided that the aggregate principal amount of the Bonds shall not exceed the amount authorized by this Resolution and provided further that the final maturity of the Bonds occurs no later than December 31, 2027. The execution and delivery of the Bonds as described in Section 8 hereof shall conclusively evidence such interest rates established by VPSA and Interest Payment Dates and the Principal Installments requested by VPSA as having been accepted by the County Executive as authorized by this Resolution.

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

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

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

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

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

7. Prepayment or Redemption. The Principal Installments of the Bonds held by VPSA coming due on or before July 15, 2017, and the definitive Bonds for which the Bonds held by VPSA may be exchanged that mature on or before July 15, 2017, are not subject to prepayment or redemption prior to their stated maturities. The Principal Installments of the Bonds held by VPSA coming due after July 15, 2017, and the definitive bonds for which the Bonds held by VPSA may be exchanged that mature after July 15, 2017, are subject to prepayment or redemption at the option of the County prior to their stated maturities in whole or in part, on any date on or after July 15, 2017, upon payment of the prepayment or redemption prices (expressed as percentages of Principal Installments to be prepaid or the principal

amount of the Bonds to be redeemed) set forth below plus accrued interest to the date set for prepayment or redemption:

<u>Dates</u>	<u>Prices</u>
July 15, 2017, through July 14, 2018	101%
July 15, 2018, through July 14, 2019	100½
July 15, 2019, and thereafter	100

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

8. Execution of the Bonds. The Chairman or Vice Chairman of the Board, either of whom may act, and the Clerk of the Board or any Deputy Clerk, either of whom may act, are authorized and directed to execute and deliver the Bonds and to affix the seal of the County thereto.

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

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

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

12. Continuing Disclosure Agreement. The Chairman of the Board, the County Executive and such other officer or officers of the County as either may designate, any of whom may act, are hereby authorized and directed to execute a Continuing Disclosure Agreement, substantially in the form attached as Appendix F to the Bond Sale Agreement, setting forth the reports and notices to be filed by the County and containing such covenants as may be necessary in order to show compliance with the provisions of

the Securities and Exchange Commission Rule 15c2-12, under the Securities Exchange Act of 1934, as amended, and directed to make all filings required by Section 3 of the Bond Sale Agreement should the County be determined by VPSA to be a MOP (as defined in the Continuing Disclosure Agreement).

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

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

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

PROFFER FORM

Date: September 11, 2007

ZMA #: ZMA 2005-015 Hollymead Town Center Area A-1

Tax Map Parcel Numbers: 32-42A, 32-42C, 32-44 (portion), 46-5, and 32-45 (portion)

31 Acres to be rezoned from RA to PD-MC

Tax Map Parcel Numbers: 32-42A, 32-42C, 32-44 (portion), 46-5, and 32-45 (portion), comprising approximately 31 acres are subject to rezoning application ZMA 2005-015 and to this Proffer Statement (the "Property"). The Property is described with more particularity on a plan entitled "ZMA Application Plan for PD-MC Portion of Hollymead Town Center – Service Area A- Block A1" hereafter referred to as "the Project", prepared by Dominion Development Resources LLC, dated March 13, 2006 (revised May 23, 2007), and attached hereto as **Exhibit A** (the "Application Plan"). The Owner of the Property is HM Acquisition Group, LLC; a Virginia limited liability company (the "Owner").

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to rezone the Property to Planned Development Mixed Commercial (PD-MC) as requested, the Owner shall develop the Property in accord with the following proffers pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.3 of the Albemarle County Zoning Ordinance. These conditions are voluntarily proffered as part of the requested rezoning, and the Owner acknowledges that the conditions are reasonable. If rezoning application ZMA 2005-015 is denied, these proffers shall immediately be null and void and of no further force and effect.

1. **Road Improvements** - To the extent not currently completed, the Owner shall design, construct and dedicate to public use for acceptance by VDOT, the following:

The road improvements listed herein shall be constructed in accordance with road plans submitted by the Owner and approved by the Virginia Department of Transportation ("VDOT"). All of the foregoing improvements shall be constructed to VDOT design standards pursuant to detailed plans agreed to between the Owner, the County and VDOT. Except for Meeting Street and Town Center Drive as indicated in D. below, the road plans will be submitted to VDOT and the County with the first site plan or subdivision plat, and will be constructed and accepted by VDOT within two years from the date of approval of the first site plan or subdivision plat, except as described in paragraph D. below:

A. A continuous right turn lane on Route 29 southbound from the intersection of Town Center Drive to the southern boundary of Area A.

B. Meeting Street from the intersection of Town Center Drive to the southern boundary of the Property.

C. An entrance to Route 29 southbound (right in / right out only) in the area to the south of building B, as shown on the Application Plan.

D. Within one (1) year after the date of approval of this rezoning, the following streets shall be completed:

- Meeting Street from the intersection of Town Center Drive to the northern boundary of Area A. Meeting Street will have two northbound and two southbound travel lanes, one northbound and one southbound bicycle lane. Initially, one lane in each direction may be utilized as on-street parking.
- Town Center Drive (previously Access Road A) from the eastern edge of the NMD zoning boundary at the intersection of Meeting Street to its intersection with State Route 606, also known as Dickerson Road. This section of Town Center Drive shall be constructed to accommodate two travel lanes, with a cross section approved by the County and VDOT in a minimum 60-foot wide right-of-way.

For purposes of this Proffer D., construction of each street shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the owner has obtained from the County Engineer a written determination that the street is safe and convenient for traffic.

2. **Regional Transportation Study** - The Owner shall contribute \$59,000.00 cash to the County or VDOT for the purposes of funding a regional transportation study for the Route 29 corridor. The \$59,000.00 cash contribution shall be made, prior to the first site plan approval for Area A-1.

3. **Public Transit Stop Construction** - The Owner shall construct one public transit stop within Hollymead Town Center Area A-1. The location of the public transit stop shall be identified on the approved Application Plan and retained in the County files. The location shall be approved by the Director of Planning, prior to approval of the first subdivision plat or site plan for Hollymead Town Center Area A-1. Construction of the public transit stop shall occur in conjunction with improvements for the first site plan or the public street plans which include the area for the transportation stop. The design of the public transit stop shall be subject to approval by VDOT and the County Engineer, and shall include no less than 200 square feet of paved surface and two benches.

4. **Public Transit Operating Expenses** - Within thirty days after demand by the County after public transportation service is provided to the Project, the Owner shall contribute \$50,000 cash to the County to be used for operating expenses relating to such service, and shall contribute \$50,000 cash to the County each year thereafter for a period of nine (9) additional years, such that the cash contributed to the County pursuant to this Proffer 4, shall total Five Hundred Thousand Dollars (\$500,000). The cash contribution in years two through ten shall be paid by the anniversary date of the first contribution.

5. **Intersection Analysis** - The Owner shall submit an analysis of the Conner Drive and Town Center Drive intersection with the first site plan for the Project. The analysis shall be prepared by a qualified traffic engineer for the purpose of determining when the intersection would need to be signalized. The analysis should take a five (5) year projection to determine, based on the submitted site plan, when the intersection would require a signal. The analysis shall be submitted for review and approval by the County Engineer. If that analysis concludes the need for the intersection to be signalized within the five (5) year projection period, the Owner shall pay for the cost of the signal and synchronization when VDOT determines the signal is needed.

6. **Community Development Authority** - Upon the request of the County, the Owner shall petition for and consent to a Community Development Authority ("CDA") established pursuant to Section 15.2-5152, et seq. of the Code of Virginia ("Code") to be created for the purpose of financing, funding, planning, establishing, constructing, reconstructing, enlarging, extending, or maintaining (except to the extent VDOT maintains any public improvements) Route 29, and roads and other improvements associated therewith.

7. **Critical Slopes, Erosion and Sediment Control and Stormwater Management**

- A. Critical Slopes. The Owner shall apply for critical slope waivers for any roads located in critical slopes governed by § 18-4.2 *et seq.* of the Albemarle County Code.
- B. Erosion and Sediment Control. The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional erosion and sediment controls to achieve a sediment removal rate of eighty percent (80%) for the Property. (As a reference, current regulatory structural measures achieve a 60% optimal removal rate.)
- C. Revegetation. Within nine (9) months after the start of grading under any erosion and sediment control permit, permanent vegetation shall be installed on all the denuded areas, except for areas the Program Authority determines are otherwise permanently stabilized or are under construction with an approved building permit. A three (3) month extension for the installation of permanent vegetation may be granted by the Program Authority due to special circumstances including but not limited to weather conditions.

D. **Stormwater.** The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional stormwater management to achieve a removal rate 20% better than would otherwise be required by the Water Protection Ordinance (Albemarle County Code § 17-100 *et seq.*) up to a maximum of an eighty percent (80%) removal rate for each phase.

8. **Greenway Dedication** - The Owner shall dedicate in fee simple a minimum 4.5 acre "Greenway" to Albemarle County. The land to be dedicated as the Greenway is identified on the Application Plan as "*Greenway Area dedication to Albemarle County*", and shall include all flood plain area along Powell Creek. The Owner shall complete the improvements shown on the Application Plan and shall dedicate the Greenway to the County at the time of the first site plan or subdivision plat approval. The Owner shall be responsible for the cost of a survey and preparing the deed to convey the Greenway to the County.

9. **Greenway Connection** - Upon the request of the County, the Owner shall contribute \$50,000 cash to the County to provide pedestrian access to and costs for a signalized, at-grade pedestrian crossing across Route 29 to connect Hollymead Town Center with Hollymead Drive. The final location and construction elements for the trail shall be determined by the Director of Parks and Recreation in consultation with the County Engineer. The location for the at-grade crossing and signal shall be determined by the County Engineer in consultation with the Director of Parks and Recreation and VDOT.

10. **LEED Standards for Core and Shell Development** - The Owner shall cause the commercial buildings in the Project to be designed and constructed to meet minimum standards for certification (twenty-three (23) credit points) under LEED Green Building Rating System for Core and Shell Development as set forth in the U.S. Green Building Rating System, Version 2.0, July 2006. Prior to the issuance of a building permit, the Owner shall submit a certification from a LEED certified architect to the Director of Community Development that the buildings meet LEED standards. Before the Owner requests that a certificate of occupancy for any building for which a licensed architect rendered such a certificate, the Owner shall submit to the County's Director of Community Development a written statement from the architect that the building was built to the plans on which the certificate was based.

11. **Additional Public Space** - The Owner shall construct a plaza area, as identified as "Plaza Amenity" on the Application Plan, within the Project of no less than 5,000 square feet for the purpose of public gathering and passive outdoor recreation. The plaza shall contain areas of permanent outdoor seating, a water feature, and landscaping, the design and construction which shall be subject to final site plan review and subject to the satisfaction of the Director of Planning.

WITNESS the following signature:

HM ACQUISITION GROUP, LLC

By: HM Capital Group, LLC, Manager

By: Octagon Partners, LLC, Authorized Agent

By: (Signed) J. P. Williamson

Manager

CONDITION OF APPROVAL

SP-2005-027. Hollymead Town Center Area A - Drive Up Window for Bank (Signs #15,51,53,73).

1. There shall be no more than three (3) drive-in windows (lanes) including any to be used for an ATM.

PROFFER FORM

Date: September 10, 2007

ZMA #: ZMA 2007-001 Hollymead Town Center Area A-2

Tax Map Parcel Numbers: 32-50, 32-45, 32-46 and 32-44 (portion)

44.5 Acres to be rezoned from RA to NMD

In conjunction with the General Development Plan entitled, "ZMA Application Plan for NMD Portion of Hollymead Town Center Area A-2 dated March 13, 2006 (revised August 31, 2007) and Hollymead Town Center Area A-2 MA 2007-001 Rezoning Application Neighborhood Model District and Code of Development dated September 12, 2007

Tax Map Parcel Numbers: 32-50, 32-45, 32-46 and 32-44 (portion), comprising 44.5 acres are subject to rezoning application ZMA 2007-0001 and to this Proffer Statement (the "Property"). The Property is described with more particularity on a plan entitled, ZMA Application plan for NMD Portion of Hollymead Town Center – Area A-2, dated March 13, 2006 (revised August 31, 2007), and attached hereto as **Exhibit A** (the "General Development Plan"). The Owner of the Property is HM Acquisition Group, LLC, a Virginia limited liability company (the "Owner").

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to rezone the Property to Neighborhood Model District (NMD) as requested, the Owner shall develop the Property in accord with the following proffers pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.3 of the Albemarle County Zoning Ordinance. These conditions are voluntarily proffered as part of the requested rezoning, and the Owner acknowledges that the conditions are reasonable. If rezoning application ZMA 2007-001 is denied, these proffers shall immediately be null and void and of no further force and effect.

1. **Affordable Housing.** The Owner shall provide affordable housing equal to twenty percent (20%) of the total residential units constructed on the Property, in the form of for-sale condominiums and townhouses, and for-rent condominiums, townhouses, apartments and accessory units. At least 40% of the affordable units will be in the form of for sale condominiums and townhouses. Each subdivision plat and site plan for land within the Property shall designate the lots or units, as applicable, that will, subject to the terms and conditions of this proffer, incorporate affordable units as described herein, and the aggregate number of such lots or units designated for affordable units within each subdivision plat and site plan shall constitute a minimum of twenty percent (20%) of the lots in such subdivision plat or site plan.

The Owner may "carry-over" or "bank" credits for affordable units in the event an individual subdivision plat or site plan designates affordable units that in the aggregate exceed the twenty percent (20%) minimum for such subdivision plat or site plan, and such additional affordable units may be allocated toward the twenty percent (20%) minimum on any future subdivision plat or site plan, provided however, that the maximum number of affordable units that may be carried over or banked shall not exceed twenty percent (20%) of the total units on any subdivision plat or site plan.

The Owner shall convey the responsibility of initially constructing the affordable units to the subsequent owners of lots within the Property. With the written approval of the County's Subdivision Agent, the Owner or its successors may revise which lots and unit-types are designated on the subdivision plat or site plan that will contain affordable units as provided under this proffer; provided that the number of the lots so designated shall not be reduced. The actual owner at the proposed time of construction shall offer units affordable to households with incomes less than eighty percent (80%) of the area median income such that housing costs consisting of principal, interest, real estate taxes and homeowners insurance (PITI) do not exceed thirty percent (30%) of the gross household income.

A. **For-Sale Affordable Units.** 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 homeowner's

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 required to 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 below. The Owner or his successors in interest may at its option provide down payment assistance or soft seconds (silent second mortgages) to reduce the costs to the homebuyer, so that the resultant first mortgage and housing costs remain at, or below, the parameters described above. All financial programs or instruments described above must be acceptable to the primary mortgage lender. Any soft second (silent second mortgage) executed as part of the affordable housing proffer shall be donated to the County of Albemarle (the "County") or its designee to be used to address affordable housing. Each dwelling unit qualifying under these parameters counts as one (1) affordable unit.

B. For-Rent Affordable Units.

(1). **Rental Rates.** The initial net rent for each for-rent affordable unit shall not exceed the then-current and applicable maximum net rent rate as published by the County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent affordable unit may be increased up to three percent (3%). For purposes of this proffer statement, the term "net rent" means that the rent does not include tenant-paid utilities. The requirement that the rents for such for-rent affordable units may not exceed the maximum rents established in this Proffer 1B shall apply for a period of ten (10) years following the date the certificate of occupancy is issued by the County for each for-rent affordable unit, or until the units are sold as low or moderate cost units qualifying as such under either the Virginia Housing Development Authority, Farmers Home Administration, or Housing and Urban Development, Section 8, whichever comes first (the "Affordable Term").

(2). **Conveyance of Interest.** All deeds conveying any interest in the for-rent affordable units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this Proffer 2. In addition, all contracts pertaining to a conveyance of any for-rent affordable unit, or any part thereof, during the Affordable Term shall contain a complete and full disclosure of the restrictions and controls established by this Proffer 1B. At least thirty (30) days prior to the conveyance of any interest (other than for the securing of a mortgage or deed of trust) 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 Proffer 1B(2) have been satisfied.

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

2. **Road Improvements.** Within one (1) year after approval of this rezoning, the following streets shall be completed:

A. Meeting Street from the intersection of Town Center Drive to the northern boundary of Area A. Meeting Street will have two northbound and two southbound travel lanes, one northbound and one southbound bicycle lane. Initially, one lane in each direction may be utilized as on-street parking

B. Town Center Drive (Previously Access Road A) from the Eastern edge of the NMD zoning boundary at the intersection of Meeting Street to its intersection with State Route 606, also known as Dickerson Road. This section of Town Center Drive shall be constructed to accommodate two travel lanes, with a cross section approved by the county and VDOT in a minimum 60-foot wide right-of-way.

For purposes of this Proffer 2., construction of each street shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained

system, and the owner has obtained from the County Engineer a written determination that the street is safe and convenient for traffic.

The road improvements listed herein shall be constructed in accordance with the NMD Code of Development as approved as part of ZMA-07-0001, and with road plans submitted by the Owner and approved by the Virginia Department of Transportation (“VDOT”).

3. **Public Transit Stop Construction.** The Owner shall construct two public transit stops within Hollymead Town Center Area A-2. The location of the public transit stops shall be identified on the approved General Development Plan and retained in the County files. The locations shall be approved by the Director of Planning prior to approval of the first subdivision plat or site plan for Hollymead Town Center Area A-2. Construction of the public transit stops shall occur in conjunction with improvements for the subdivision plat or site plan or the public street plans which include the area for the transit stops. The design of each public transit stop shall be subject to approval by VDOT and the County Engineer, and shall include no less than 200 square feet of paved surface and two benches.

4. **Cash Proffer.** Beginning with the 151st Market Rate unit, the Owner shall contribute cash on a per dwelling unit basis for the purposes of funding Berkmar Drive Extended, other County infrastructure, transportation, public safety, school, parks and library improvements. The cash contributions shall be: \$12,400 cash for each attached/townhouse/condominium dwelling unit, other than an affordable dwelling unit (“Market Rate Unit”), and \$11,900 cash for each multifamily/apartment dwelling unit other than an affordable dwelling unit (“Market Rate Unit”). Such cash contribution shall be paid at the time of the issuance of the building permit for each new unit.

Beginning January 1, 2008, the amount of each cash contribution required herein shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Comparative Cost Multiplier, Regional City Average, Southeast Average, Category C: Masonry Bearing Walls issued by Marshall Valuation Service (a/k/a Marshall and Swift) (the “Index”) or the most applicable Marshall & Swift index determined by the County if Marshall & Swift cease publication of the Index identified herein. In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the year preceding the calendar year most recently ended, and the denominator of which shall be the Index as of December 1 in the preceding calendar year. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

5. **Greenway.** The Owner shall dedicate in fee simple a minimum 7.6 acre “greenway” to Albemarle County for public use. The dedication is identified on the Application Plan as “*Greenway Area dedication to Albemarle County*”, and shall include a strip of land that runs along Powell Creek with a minimum width of 50 feet on the each side of Powell Creek, subject to the limitations of the Property boundary. The dedicated area will also include all flood plain area along Powell Creek within the Property boundary. The Owner shall complete the improvements shown on the General Development Plan and shall dedicate the Powell Creek Greenway to the County at the time of the first site plan or subdivision plat approval. After it is dedicated to public use, the Greenway Area shall continue to be included in the total area of open space and amenities within the Property. If the Greenway is not dedicated by subdivision plat, the Owner shall be responsible for the cost of a survey and preparing the deed to convey the Greenway to the County

6. **Pocket Park.** In conjunction with the subdivision plat or site plan that includes the land described in this Proffer 6, the Owner shall establish an approximately 10,000 square foot pocket park (the “Pocket Park”), located on the northern edge of Block B-1 fronting Town Center Drive as shown on the General Development Plan, and shall include all such improvements, landscaping and other features identified in the Code of Development. The Pocket Park shall be included in the total area of open space and amenities within the Property. The subdivision plat or site plan shall include a note stating that the Pocket Park is reserved for future dedication to the County of Albemarle and, upon the request of the County, the Owner shall dedicate in fee simple the Pocket Park to the County. If the Pocket Park is not dedicated by subdivision plat, the Owner shall pay the costs of surveying the Pocket Park, preparing one or more plats thereof and preparing and recording one or more deeds of dedication.

7. **Recycling Center or Other Community Facility.** Upon the request of the County, the Owner shall dedicate in fee simple a two (2) acre parcel of land for use by the County or its designee as a Recycling Center, or other community facility identified in the CIP, to be located in an area most appropriate for such use as agreed by the County and the Owner. If the land for the Recycling Center or Community Facility is not dedicated by subdivision plat, the Owner shall pay the costs of surveying the land, preparing one or more plats thereof and preparing and recording one or more deeds of dedication.

8. **Recreational Facilities.** The Owner shall contribute \$500.00 cash per residential unit, to be paid at the time of issuance of each building permit, for the purpose of funding the expansion or new development of regional outdoor recreational facilities as determined by the County Parks and Recreation Department.

9. Critical Slopes, Erosion and Sediment Control and Stormwater Management.

E. Critical Slopes. The Owner shall apply for critical slope waivers for any roads located in critical slopes governed by § 18-4.2 *et seq.* of the Albemarle County Code.

F. Erosion and Sediment Control. The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional erosion and sediment controls to achieve a sediment removal rate of eighty percent (80%) for the Property. (As a reference, current regulatory structural measures achieve a 60% optimal removal rate.)

G. Revegetation. Within nine (9) months after the start of grading under any erosion and sediment control permit, permanent vegetation shall be installed on all the denuded areas, except for areas the Program Authority determines are otherwise permanently stabilized or are under construction with an approved building permit. A three (3) month extension for the installation of permanent vegetation may be granted by the Program Authority due to special circumstances including but not limited to weather conditions.

H. Stormwater. The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional stormwater management to achieve a removal rate 20% better than would otherwise be required by the Water Protection Ordinance (Albemarle County Code § 17-100 *et seq.*) up to a maximum of an eighty percent (80%) removal rate for each phase.

10. **LEED Standards for Core and Shell Development.** The Owner shall cause the commercial and mixed-use buildings in the Project to be designed and constructed to meet minimum standards for certification (twenty-three (23) credit points) under LEED Green Building Rating System for Core and Shell Development as set forth in the U.S. Green Building Rating System, Version 2.0, July 2006. Prior to the issuance of a building permit the Owner shall submit a certification from the LEED certified architect to the Director of Community Development that the building plan meets LEED standards. Before the Owner requests that a certificate of occupancy for any building for which a licensed architect rendered such a certificate, the Owner shall submit to the County's Director of Community Development a written statement from the architect that the building was built to the plans on which the certificate was based.

11. **Phasing Plan.** Prior to the issuance by the County of a building permit that would authorize the construction of any square feet of gross floor area (aggregate) of commercial and office gross floor area within the Property, building permits shall have been issued by the County for at least 100 dwelling units. Prior to issuance by the County of a building permit that would authorize the construction of more than 200,000 square feet of gross floor area (aggregate) of commercial and office gross floor area within the Property, building permits shall have been issued by the County for at least 600 dwelling units.

12. **Willow Glen Connection.** Upon the request of the County, the Owner shall dedicate for public use a public right-of-way determined to be appropriate by VDOT and the County Engineer, extending from Town Center Drive to the Property's boundary with the proposed Willow Glen development, as shown on the General Development Plan and within Block C6 as shown on the Block Plan (the "Willow Glen Connection"). Upon the request of the County, the Owner shall grant all necessary drainage easements required for the Willow Glen Connection and all temporary construction easements to appropriate parties,

including the developer of the proposed Willow Glen development, to allow the construction of the Willow Glen Connection. Approval of the County Engineer and the Owner for the location of the connection to Willow Glen may be shifted from the area shown in the General Development Plan to a more suitable location to both the Owner and the County which still provides access from Willow Glen to Town Center Drive.

13. **Community Development Authority.** Upon the request of the County, Owner shall petition for and consent to a Community Development Authority (“CDA”) established pursuant to Section 15.2-5152, et seq. of the Code of Virginia (“Code”) to be created, excluding residential property within the Property, for the purpose of financing, funding, planning, establishing, constructing, reconstructing, enlarging, extending, or maintaining (except to the extent VDOT maintains any public improvements) Route 29, and roads and other improvements associated therewith.

WITNESS the following signature:

HM ACQUISITION GROUP, LLC

By: HM Capital Group, LLC, Manager

By: Octagon Partners, LLC, Authorized Agent

By: (Signed) J. P. Williamson
Manager

Waiver Requests

HM Acquisition Group LLC, (“Applicant”), owners of Hollymead Town Center – Area A (ZMA-05-0015) submits this request for 16 waivers or modifications of the Zoning Ordinance. Sections of the ordinance have been copied into the report for the Commissioner’s reference. The language from the Zoning Ordinance will be found in italics, with the Applicants request with reference to the Code of Development in bold.

1. SECTION 4.11.1 COVERED PORCHES, BALCONIES, CHIMNEYS AND LIKE FEATURES

4.11.1 Covered porches, balconies, chimneys, eaves and like architectural features may project not more than four (4) feet into any required yard; provided that no such feature shall be located closer than six (6) feet to any lot line. (Amended 9-9-92)

The request is to allow for the following features to extend beyond the build-to line in the front of houses up to five (5) feet with a one (1) foot minimum distance setback from the right-of-way: porches, porch stairs, decks, balconies, bay windows, entrance stoops, planters, chimneys, and other similar structures. Alternate standards are contained in The Code of Development (*Built Form Standards – Lot and Building Height Regulations, Section 3, page 20*).

2. SECTION 4.12.6 MINIMUM NUMBER OF REQUIRED PARKING SPACES FOR SCHEDULED USES

4.12.6 Except when alternative parking is approved as provided in section 4.12.8, the following schedule shall apply to determine the number of required off-street parking spaces to be provided in a particular situation. If a particular use is not scheduled, then section 4.12.7 shall apply.

The request is to allow the application of the parking schedule for shopping centers (200,000 – 600,000 sq. ft.), 4.5 spaces per 1,000 square feet gross leasable floor area, to be the standard schedule for all non-residential square footage in the NMD as per Table H in the Code of Development.

3. SECTION 4.12.9 STREET AND ALLEY PARKING

4.12.9 Street and alley parking may be provided as follows:

- a. *Street parking consists of parking spaces located in a public or private right-of way. Each parking space that is in a public or private right-of-way abutting the lot shall count as a parking space for the purpose of meeting the minimum parking space requirements in sections 4.12.6 and 4.12.7. Each parking space shall be on a paved area abutting the travelway, and if the parking space is in a public right-of-way it shall not be prohibited by the Virginia Department of Transportation.*

This section mandates that required on-street parking must abut the property it serves. The waiver request of Section 4.12.9 in accordance with Section 8.2 is to allow the use of on-street parking and alley parking to support the more compact Neighborhood Model format. Waiving this section would allow for parking that may not abut the lot toward which on-street parking counts. In a “pedestrian friendly” community this would allow for a more compact arrangement of buildings in any given area. The Code of Development (Parking Standards, Section 4, page 32) illustrates an alternative standard.

4. SECTION 4.12.13 LOADING AREAS (a, c, & e)

- a. *Loading spaces shall be provided on the same lot with the use to which it is appurtenant and shall be adjacent to the structure it serves.*
- c. *Loading spaces shall be provided in addition to and exclusive of any parking requirement on the basis of: (1) one (1) space for the first eight thousand (8,000) square feet of retail gross leasable area, plus one (1) space for each additional twenty-thousand (20,000) square feet of retail gross leasable area; (2) one (1) space for the first eight thousand (8,000) square feet of office space*

plus one (1) space for each additional twenty thousand (20,000) square feet of office space; or (3) one (1) space for the first ten thousand (10,000) square feet of industrial floor area plus one (1) space for each additional twenty thousand (20,000) square feet of industrial floor area.

- e. Each site plan that depicts a commercial or industrial building of four thousand (4,000) gross square feet or more shall provide a dumpster pad that does not impede any required parking or loading spaces, nor any pedestrian or vehicular circulation aisles.

A waiver of this section would provide non-residential uses in a more traditional or new urbanist development form. In the Code of Development (Section 4, page 34) illustrates an alternative standard.

5. SECTION 4.15.5.A.1: OFF-SITE SIGNS

A.1 Off-site signs may be authorized by special use permit within any zoning district

The applicant would like to allow for directory signs containing two or more businesses off-site from the lot where the business is located but within Hollymead Town Center. All other regulations for off-site signs shall apply to the district. The maximum size of off-site signs shall not exceed 24 square feet and such freestanding signage shall not exceed 12 feet in height without a special use permit. The Code of Development (Section 5, page 35) establishes an alternative standard.

6. SECTION 4.15.5.A.3: SIGNS IN PUBLIC RIGHTS-OF-WAY.

A.3 Signs in public rights-of-way; provided: (1) the subdivision or planned development to which the sign pertains abuts the public right-of-way; (2) the sign is either a subdivision sign or a sign identifying a planned development authorized by sections 19.0, 20.0, 25.0, 25A, and 29.0; (3) the freestanding sign regulations, other than setback regulations, applicable to the lot with the use to which the sign pertains shall apply; and (4) if the sign is located within an entrance corridor overlay district, a certificate of appropriateness is issued by the architectural review board.

The Code of Development (Section 5, page 35) establishes an alternative standard for signs to be permitted in public right of ways per County Engineer and VDOT approval

7. SECTION 4.15.11 – SIGNAGE SETBACKS

The following regulations pertaining to the number of signs permitted per lot or establishment, the sign area, sign height, and setback requirements shall apply to each sign for which a sign permit is required within the Planned Unit Development (PUD) and Neighborhood Model (NMD) zoning districts:

Sign Type	Number of Signs Allowed	Sign Area (Maximum)	Sign Height (Maximum)	Sign Setback (Minimum)
Directory	1 or more per establishment, as authorized by zoning administrator	24 square feet, aggregated	6 feet	5 feet
Freestanding	1 per street frontage, or 2 per entrance, per lot with 100 or more feet of continuous street frontage plus 1 per lot if the lot is greater than 4 acres and has more than 1 approved entrance on its frontage	24 square feet, aggregated: if more than 1 sign, no single sign shall exceed 12 square feet	12 feet	5 feet
Projecting	1 per street frontage	24 square feet	30 feet, but not to exceed the top of the fascia or mansard	Not applicable

Temporary	1 per street frontage per establishment	24 square feet	12 feet, if freestanding sign; 20 feet, if wall sign, but not to exceed the top of the fascia or mansard	5 feet
Wall	as calculated pursuant to section 4.15.20	1 sf per 1 linear foot of establishment structure frontage, not to exceed 32 sf if residential wall sign, or 100 sf if non residential wall sign	20 feet, but not to exceed the top of the fascia or mansard	Same as that applicable to structure

This section applies a five-foot setback from the right of way for signs. Such restrictions may conflict with the Neighborhood Model streetscape design. In addition, all right of ways in Area A will have a six-foot planting strip and five-foot sidewalk and will extend at least one foot beyond the sidewalk. Therefore signage would be at least 12 feet from any curb. As per The Code of Development (Section 5, page 35) we request that the setbacks established for signs from the right-of-way be reduced so long as the location is approved by VDOT and the County Engineer.

RECREATION REGULATIONS (SECTION 4.16.2 AND 4.16.3.3)

8. SECTION 4.16.2

This section applies standard regulations for recreational amenities for various development forms and density. Due to its length, this section has not copied it into the body of this report.

The Code of Development (Section 2, pages 15) is specific as to where, how large, and what fixtures will be included in the amenity and open space areas. This includes a central plaza, a linear park, a greenway, series of pocket parks, trails, and a clubhouse with a pool. Waiving 4.16.2 eliminates any potential and unforeseen conflicts between the minimum recreational facilities established in this section and the standards established in the Code of Development.

9. SECTION 4.17.4.B.1 (LIGHTING) STANDARDS

4.17.4.B.1 Each parcel, except those containing only one or more single-family detached dwellings, shall comply with the following: (Added 10-17-01)

1. *The spillover of lighting from luminaries onto public roads and property in residential or rural areas zoning districts shall not exceed one-half (1/2) foot candle. A spillover shall be measured horizontally and vertically at the property line or edge of right-of-way or easement, whichever is closer to the light source. (Amended 10-17-01).*

The Code of Development (Section 5, page 35) establishes street lighting standards, as well as modifications where deemed necessary. We request that this section be waived because it does not support a more compact development form required by the Neighborhood Model within the Hollymead Town Center.

10. SECTION 5.1.16 SWIMMING, GOLF, TENNIS CLUBS

5.1.16 Each swimming, golf or tennis club shall be subject to the following:

- a. *The swimming pool, including the apron, filtering and pumping equipment, and any buildings, shall be at least seventy-five (75) feet from the nearest property line and at least one hundred twenty-five (125) feet from any existing dwelling on an adjoining property, except that, where the lot upon which it is located abuts land in a commercial or industrial district, the pool may be constructed no less than twenty-five (25) feet from the nearest property line of such land in a commercial or industrial district; b. When the lot on which any such pool is located abuts the rear*

or side line of, or is across the street from, any residential district, a substantial, sightly wall, fence, or shrubbery shall be erected or planted, so as to screen effectively said pool from view from the nearest property in such residential district;

- c. *(Repealed 6-14-00)*
- d. *The board of supervisors may, for the protection of the health, safety, morals and general welfare of the community, require such additional conditions as it deems necessary, including but not limited to provisions for additional fencing and/or planting or other landscaping, additional setback from property lines, additional parking space, location and arrangement of lighting, and other reasonable requirements;*
- e. *Provision for concessions for the serving of food, refreshments or entertainment for club members and guests may be permitted under special use permit procedures.*

The required distance identified in this section for the location of neighboring lots (75 feet) would dictate a more suburban development for the club. We request that this section be waived because it does not support a more compact development form required by the Neighborhood Model. The club will be located close to neighboring residential lots as an integral neighborhood feature, however will not be located within 125 feet of any existing property line not associated with Area A2. Further, we would like to allow for concessions to be allowed without a special use permit.

11. SECTION 8.5.1.D.6 APPLICATIONS AND DOCUMENTS TO BE SUBMITTED (TRIP GENERATION FIGURES)

The applicant requests to waive this requirement. A traffic impact analysis has been conducted as part of the Hollymead Town Center Master Plan and Places 29 traffic modeling.

12. SECTION 21.7.2 & 3 MINIMUM YARD REQUIREMENTS

21.7.2 Adjacent to residential and rural areas districts: No portion of any structure, excluding signs, shall be located closer than fifty (50) feet to any residential or rural areas district. (Amended 7-10-85: 7-9-92)

21.7.3 Buffer Zone adjacent to residential and rural areas districts: No construction activity including grading or clearing of vegetation shall occur closer than twenty (20) feet to any residential or rural areas district. Screening shall be provided as required in section 32.7.9 (Amended 9-9-92)

A waiver of these sections is requested to address the presence of a small parcel of land zoned RA which is part of Area B located on the west side, and abutting Block D of Area A-2 Neighborhood Model District. It is also requested where Blocks A-1 and B-3 abut TMP 32-51 and TMP 46-4.

13. SECTION 32.7.9.8 SCREENING

32.7.9.8 The following requirements shall apply to screening:

- a. *When required, screening shall consist of a planting strip, existing vegetation, a slightly opaque wall or fence, or combination thereof, to the reasonable satisfaction of the agent. Where only vegetative screening is provided, such screening strip shall not be less than twenty (20) feet in depth. Vegetative screening shall consist of a double staggered row of evergreen trees planted fifteen (15) feet on center, or a double staggered row of evergreen shrubs planted ten (10) feet on center. Alternate methods of vegetative screening may be approved by the agent. Where a fence or wall is provided, it shall be a minimum of six (6) feet in height and plantings may be required at intervals along such fence or wall. (32.8.6.1, 7-10-85; Amended 5-1-87)*
- b. *Screening of parking lots shall not be counted toward the interior landscaping requirement. When screening is required along the frontage of public streets, the agent shall determine if the street tree requirement has been met. (32.8.6.2, 7-10-85)*
- c. *Screening shall be required in the following instances:*
 - 1. *Commercial and industrial uses shall be screened from adjacent residential and rural areas districts. (32.8.6.3.a, 7-10-85)*
 - 2. *Parking lots consisting of four (4) spaces or more shall be screened from adjacent residential and rural areas districts. (32.8.6.3.b, 7-10-85; Amended 5-1-87)*
 - 3. *Objectionable features including, but not limited to, the following uses shall be screened from adjacent residential and rural areas districts and public streets:*

- *loading areas, refuse areas, storage yards, detention ponds, recreational facilities determined to be of objectionable character by the agent other than children's play areas where visibility is necessary or passive recreation areas where visibility is desirable. (32.8.6.3.c.5, 7-10-85; Amended 5-1-87)*
- 4. *Double frontage residential lots shall be screened between the rear of the residences and the public right-of-way when deemed appropriate by the agent. (32.8.6.3.d, 7-10-85; Amended 5-1-87)*
- 5. *The agent may require screening of any use, or portion thereof, upon determination that the use would otherwise have a negative visual impact on a property listed on the Virginia Historic Landmarks Register. (32.8.6.3.f, 7-10- 85; Amended 5-1-87)*

We request that screening requirements be replaced with the standards in the Code of Development (Section 5, page 36). For all other objectionable features internal to the site, screening will be dictated by standards established by the developer, but not included in the Code of Development.

**PROFFER STATEMENT
BISCUIT RUN**

Date: January 3, 2006 (last revised September 10, 2007)

ZMA #: ZMA-2005-017 Biscuit Run (formerly known as Fox Ridge)

Tax Map Parcel Numbers: 90-5, 90-6D (portion), 90-17D, 90A-3, 90A1-1, 90A1-1E, 90A-1A and 90A-1B

The Property described with more particularity on plat of Thomas B. Lincoln Land Surveyor, Inc., dated April 17, 2007, Revised May 29, 2007, entitled, "Map Showing Area to be Rezoned Tax Map 90 Parcels 5 and 17D Tax Map 90A Parcels 1A, 1B and 3 Tax Map 90A1 Parcels 1 and 1E and a Portion of Tax Map 90 Parcel 6D Property Belonging to Forest Lodge LLC Lying Between State Routes 20 and 631 Scottsville District Albemarle County, Virginia," comprising approximately 827.5 acres and also described in the records of the County of Albemarle as Tax Map Parcel Numbers 90-5, 90-6D (portion), 90-17D, 90A-3, 90A1-1, 90A1-1E, 90A-1A and 90A-1B (the "Property") is subject to rezoning application ZMA-2005-017 and to this Proffer Statement. The Owners of the Property are Forest Lodge, LLC, a Virginia limited liability company, Yancey-Hardtimes, LLC, a Virginia limited liability company, and Muffin Trodding, LLC, a Virginia limited liability company, their successors and assigns (collectively, the "Owner").

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to rezone the Property from the R1 and R2 Districts to the Neighborhood Model District as requested, the Owner shall develop the Property in accord with the following proffered development conditions (each, a "Proffer," and collectively, the "Proffers"), which the Owner acknowledges are reasonable, pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.3 of the Albemarle County Zoning Ordinance. If rezoning application ZMA 2005-017 is denied, these proffers shall immediately be null and void and of no force and effect.

This Proffer Statement shall relate to the General Development Plan entitled "Biscuit Run Neighborhood Model District General Development Plan for a Zoning Map Amendment ZMA-2005-017" prepared by Collins Engineering, containing 10 sheets, dated September 26, 2005, last revised August 31, 2007 (the "GDP") and to the Biscuit Run Neighborhood Model District Code of Development dated August 31, 2007 (the "COD").

As used throughout these Proffers, the following capitalized terms shall have the following meanings:

"Design Standards Manual" shall refer to the Albemarle County Design Standards Manual, as amended from time to time.

"Owners' Association" shall refer collectively to one or more responsible property owners' associations to be created by the Owner for the purpose of, *inter alia*, maintaining common areas within Biscuit Run.

"Neighborhoods 4 and 5" shall refer to Neighborhoods 4 and 5 as depicted on the Albemarle County – Virginia, Land Use Plan, Map O, 2015 Land Use Plan, Adopted June 1996, Amended October 2001.

"Phase of Development" or "Phase" shall have the meaning set forth on p. 47 of the COD. Under no circumstances shall the recordation of subdivision plats creating an approximately five-acre parcel containing the existing Breeden residence and an approximately 31-acre parcel containing the curtilage of the Breeden residence and the immediately-adjacent acreage in Block 11 (the "Breeden Land"), be deemed to commence a Phase or to trigger the obligations of any Proffer hereunder. Any further subdivision of the Breeden Land shall be subject to compliance with these Proffers.

“First Residential Building Permit” shall mean the building permit issued for the first residential dwelling unit within the Property; excluding, however, any building permit for a dwelling located within the Breeden Land.

1. **Greenway Dedication and Parks.** The Owner shall provide the following greenway, trails, parks, green space and district park:

A. **Greenway Trail.** Upon the request of Albemarle County (the “County”), but not earlier than the County’s approval of a master plan for the Greenway, the Owner shall dedicate to the County for public use, either in fee simple or, at the County’s option, as one or more easements, no less than One Hundred Twenty (120) acres in greenway area as shown on Sheet 5 of the GDP (the “Greenway”), subject to necessary easements for completion of the Owner’s construction and maintenance obligations under this Proffer 1A. Before the date of issuance of the First Residential Building Permit, the Owner shall prepare (at the Owner’s sole expense) and submit for approval a master plan for the Greenway to the County’s Parks and Recreation Department identifying the improvements to be constructed by the Owner within the Greenway, which shall include, at minimum, a path constructed in accordance with the Detail for Trailway Design and the notes on Sheet 5 of the GDP and reasonable and necessary foot bridges, boardwalks, signage, benches and pet waste disposal stations (the “Greenway Master Plan”).

Before the building permit for the first dwelling in any Phase containing any portion of the Greenway is issued, the Owner shall design, construct and install a trail and associated improvements on the portion of the Greenway located within such Phase in substantial accordance with the Greenway Master Plan, all at the Owner’s sole expense. The Owner may, with the express written consent of the County’s Parks and Recreation Department, maintain in accordance with the standards set forth in the Greenway Master Plan any portion of the Greenway that has been previously dedicated to public use. If the Greenway is dedicated by one or more subdivision plats, each such subdivision plat shall depict the Greenway and bear a notation that the Greenway is dedicated for public use. If, at the time the County requests dedication of the Greenway, any part of the Greenway has not been dedicated by subdivision plat, the Owner shall pay the costs of surveying the Greenway, preparing one or more plats thereof and preparing and recording one or more deeds of dedication.

B. **Off-Site Extension of Greenway Trail.** Upon the County’s approval of construction drawings for the improvements described in this Proffer 1B, but not earlier than the date of issuance of the First Residential Building Permit, the Owner shall construct an extension of the trail described in Proffer 1A from the northern boundary of the Property along Biscuit Run Creek to Interstate 64 in the general location shown on Sheet 4A of the GDP as “Off-Site Trailways” (the “Extension Trail”). The Extension Trail shall be constructed to the same standards described in the Greenway Master Plan. The Owner’s obligations under this Proffer 1B shall be contingent on the provision, without cost to the Owner, of adequate right-of-way and easements as necessary for the Extension Trail to be constructed and maintained; provided, however, that the Owner shall cooperate with the County to obtain, without cost to the Owner, such right-of-way and easements. Notwithstanding the foregoing, the Owner may, at its sole option exercised at any time, satisfy this Proffer 1B by paying to the County the cost of construction of the Extension Trail, up to a maximum of One Hundred Thousand Dollars (\$100,000.00), in lieu of constructing the Extension Trail. In the event the Owner has not previously elected to provide cash in lieu of construction, and right-of-way and easements for the Extension Trail have not been provided within ten (10) years after the date of issuance of the First Residential Building Permit, then at such time the Owner shall provide a cash contribution to the County in the amount of One Hundred Thousand Dollars (\$100,000.00) for use toward funding parks and recreation improvements located within the boundaries of Neighborhoods 4 and 5, which contribution shall fully satisfy this Proffer 1B.

C. **Perimeter Trail.** The Owner shall construct a perimeter trail throughout the Property in general accord with the location depicted on Sheet 5 of the GDP as “Trailway” (the “Perimeter Trail”) in accordance with the terms of this Proffer 1C. Before the building permit for the first dwelling in any Phase containing any portion of the Perimeter Trail is issued, the Owner shall design, construct, install and convey to the Owners’ Association the portion of the Perimeter Trail located within such Phase, including any portion of the Perimeter Trail located immediately outside such Phase and connecting to another Phase, in substantial accordance with the minimum standards provided for a Class B – type 1 primitive nature trail in Section 7H of the Design Standards Manual. The Perimeter Trail shall be maintained by the Owners’ Association.

D. Parks. The Owner shall provide not less than forty-three (43) acres in parks open to the public throughout the Property in general accord with the locations shown on Sheet 5 of the GDP as Parks (each a “Park,” and collectively the “Parks”). Each Park shall be designed and constructed in conjunction with the approval of any final subdivision plat or site plan for lots that are adjacent to such Park. For the purposes of this Proffer 1D, the term “adjacent” shall refer to land located within the Property abutting or immediately across the street or road from a Park, as shown on the final subdivision plat or site plan of such land. The construction of each Park shall be substantially completed, as conclusively evidenced by the installation of all landscaping and amenities or the posting of a bond or other surety for the installation of such landscaping and amenities in an amount determined to be appropriate by the County’s Subdivision Agent and in a form determined to be acceptable by the County Attorney. Parks shall be conveyed to and maintained by the Owners’ Association. The Owner shall pay the costs of subdividing and conveying the Parks to the Owners’ Association.

E. Other Green Space. The Owner shall provide other green space on the Property in the locations shown on Sheet 5 of the GDP as “Buffers” and “Passive Recreation Areas.” Each portion of the Buffers and Passive Recreation Areas shall be conveyed to the Owners’ Association in conjunction with the approval of any final subdivision plat or site plan for lots that are adjacent to such Buffers or Passive Recreation Areas. For the purposes of this Proffer 1E, the term “adjacent” shall refer to land located within the Property abutting or immediately across the street or road from any Buffers or Passive Recreation Areas, as shown on the final subdivision plat of such land. The conveyance of each portion of the Buffers or Passive Recreation Areas shall be completed prior to the issuance of building permits for eighty percent (80%) of the adjacent residential lots. Buffers and Passive Recreation Areas shall be conveyed to and maintained by the Owners’ Association. The Owner shall pay the costs of subdividing and conveying the Buffers and Passive Recreation Areas to the Owners’ Association.

F. District Park. The Owner shall provide a district park (the “District Park”) adjacent to the Property as follows:

(1) Dedication of Land. Upon the request of the County, but in no event earlier than five (5) years after issuance of the First Residential Building Permit, the Owner shall dedicate to the County or its designee, by General Warranty Deed without consideration, fee simple marketable title to land for a public park of not less than Four Hundred Two (402) acres identified on Sheet 3 of the GDP as “Proposed District Park 402.6 AC.” The Owner shall concurrently dedicate such right-of-way for road and utility service to the District Park as reasonably determined to be appropriate by the County Engineer. The Owner shall also be responsible for constructing roads to the District Park boundary in accordance with Proffer 1F(3). The Owner shall pay the costs of subdividing and dedicating the District Park to the County.

(2) Cash Contribution. Upon the request of the County, but in no event earlier than five (5) years after issuance of the First Residential Building Permit, the Owner shall make a cash contribution to the County in the amount of Two Hundred Thousand Dollars (\$200,000.00) for the purpose of funding a master plan for the District Park (the “Park Master Plan”). If the Park Master Plan is completed for less than Two Hundred Thousand Dollars (\$200,000.00), any remaining funds may be retained by the County and used to fund parks and recreation projects, facilities and improvements within the District Park. If such cash contribution is not expended for the Park Master Plan within ten (10) years after the date of the contribution, then all unexpended funds may be used toward funding parks and recreation improvements located within the boundaries of Neighborhoods 4 and 5.

(3) Road/Trail Link. The Owner shall design and construct a link between the Mill Creek South neighborhood and the District Park consisting of (i) a trail over the right-of-way described in Proffer 6D built to the standard set forth on Sheet 5 of the GDP, (ii) a trail that continues southward from the trail described in subsection (i) to the northern boundary of the District Park built to the standard of a Class B – type 1 primitive nature trail as set forth in Section 7H of the Design Standards Manual (the trails described in (i) and (ii) hereof collectively referred to as the “Linking Trail”), and (iii) a road segment or segments within the Property linking the southern end of the Mill Creek South Connection Road (as such term is defined in Proffer 6D) to the District Park, including construction of a stream crossing permitting access to the District Park, in the locations and to the standards (including pedestrian and bicycle accommodations) shown on Sheet 4 of the GDP (the “Linking Road”). The Linking Trail shall be

constructed by the Owner prior to issuance of the building permit for the first dwelling within Phase A, but not later than five (5) years after issuance of the First Residential Building Permit. Within five (5) years after issuance of the First Residential Building Permit, the Owner shall design, complete construction, bond and dedicate to public use the Linking Road. For purposes of this Proffer 1F(3), construction of the Linking Road shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the Owner has obtained from the County Engineer a written determination that the Linking Road is safe and convenient for traffic.

G. Championship Field. Upon the request of the County, but not earlier than five (5) years after the date of issuance of the First Residential Building Permit, the Owner shall dedicate to the County or its designee, by General Warranty Deed without consideration, fee simple marketable title to land for public playing fields consisting of no less than three (3) acres substantially in the location shown on Sheet 5 of the GDP as "Championship Field." The Owner shall pay the costs of subdividing and dedicating the Championship Field to the County.

H. Cash Proffer for Stream Monitoring Station. Upon the request of Albemarle County, but not earlier than the date of issuance of the First Residential Building Permit, the Owner shall contribute to the County or its designee cash in the amount of Thirty Thousand Dollars (\$30,000.00) for the purpose of defraying the cost of installing and maintaining a long-term flow and sediment monitoring station within the Greenway, as such term is defined in Proffer 1A. If such cash contribution is not expended for the purpose provided in this Proffer 1H within ten (10) years after the date of the contribution, then all unexpended funds may be used toward funding parks and recreation improvements located within the boundaries of Neighborhoods 4 and 5.

2. Affordable Housing. The Owner shall provide affordable housing, as defined in this Proffer 2, equal to fifteen percent (15%) of the total residential units constructed on the Property, in the form of for-sale condominiums and townhouses, and/or for-rent condominiums, townhouses, apartments and accessory units. If the Owner elects at its sole option to provide affordable for-sale single family detached units, such units shall be applied toward the 15% requirement. The Owner shall convey the responsibility of initially constructing and selling the affordable units to any subsequent owner or developer of the Property (or any portion thereof), and such subsequent owner(s) and/or developer(s) shall succeed to the duties of the Owner under this Proffer 2, and the term "Owner" shall refer to such subsequent owner(s) and/or developer(s), as applicable.

A. For-Sale Units. At least forty percent (40%) of the total affordable housing dwelling units provided to satisfy this Proffer 2 shall be for-sale units; provided that such forty percent (40%) requirement shall apply to the Project as a whole and not to individual site plans and subdivision plats.

(1) Affordability; Credit Thresholds. For the purposes of this Proffer 2A, "affordable housing" shall mean units affordable to households with incomes less than eighty percent (80%) of the area median income (as determined from time to time by the Albemarle County Office of Housing) such that housing costs consisting of principal, interest, real estate taxes and homeowners insurance (PITI) do not exceed thirty percent (30%) of the gross household income; provided, however, that in no event shall the selling price for such affordable units be more than sixty-five percent (65%) of the applicable Virginia Housing Development Authority (VHDA) maximum sales price/loan limit for first-time homebuyer programs at the beginning of the 180-day period referenced in Proffer 2A(2) hereof (the "VHDA Limit").

(2) Sale of Affordable Units. All purchasers of the for-sale affordable units shall be approved by the Albemarle County Housing Office or its designee (the "Housing Office"). At the proposed time of construction of any affordable unit, the Owner shall provide the Housing Office a period of one hundred eighty (180) days to identify and approve an eligible purchaser for such affordable unit. The 180-day qualification period shall commence upon written notice from the Owner to the Housing Office of the approximate date the unit is expected to receive a certificate of occupancy from the County (the "Notice"). Such Notice shall be given no more than ninety (90) days prior to the expected issuance of the certificate of occupancy, and the 180-day approval period shall extend no less than ninety (90) days after the issuance of the certificate of occupancy. Nothing in this Proffer 2(A)(2) shall prohibit the Housing Office from providing the Owner with information on income eligibility sufficient for the Owner to identify eligible purchasers of affordable units for approval by the Housing Office. If, prior to the end of the 180-day qualification period, (i) the Housing Office fails to approve a qualified purchaser, or (ii) a qualified

purchaser fails to execute a purchase contract for an affordable unit, then, in either case, the Owner shall have the right to sell the unit without any restriction on sales price or income of the purchaser(s), and such unit shall be counted toward the satisfaction of this Proffer 2A. This Proffer 2A shall apply only to the first sale of each of the for-sale affordable units.

B. For-Rent Units. No more than thirty percent (30%) of the total affordable housing dwelling units provided to satisfy this Proffer 2 may be for-rent apartments, and no more than thirty percent (30%) of the affordable housing dwelling units provided to satisfy this Proffer 2 may be accessory units; provided, in any case, that such thirty percent (30%) limits shall apply to the Project as a whole and not to individual site plans and subdivision plats. For purposes of this Proffer 2B, "accessory units" shall include, without limitation, Accessory Apartments as defined in Albemarle County Code § 18-3.1, as regulated by the Albemarle County Code § 18-5.1.34, and any unit within a two-family dwelling as a two-family dwelling is defined in the Virginia Uniform Statewide Building Code.

(1) Affordability; Rental Rates. For the purposes of this Proffer 2B, "affordable housing" shall mean rental units for which the initial net rent does not exceed the then-current and applicable maximum net rent rate for an affordable housing unit as published by the Housing Office; provided that, in each subsequent calendar year, the monthly net rent for each for-rent affordable unit may be increased up to three percent (3%). For purposes of this Proffer 2B, the term "net rent" means that the rent does not include tenant-paid utility costs.

(2) Term. The requirement that the rents for such for-rent affordable units may not exceed the maximum rents established in this Proffer 2B shall apply for a period of ten (10) years following the date the certificate of occupancy is issued by Albemarle 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").

(3) Conveyance of Interest. All instruments 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 Proffer 2B. 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 disclosure of the restrictions and controls established by this Proffer 2B. At least thirty (30) days prior to the conveyance of any interest (other than for the securing of a mortgage or deed of trust) in any for-rent affordable unit during the Affordable Term, the then-current owner shall notify the Albemarle County Chief of Housing in writing of the conveyance and provide the name, address and telephone number of the potential grantee, and state that the requirements of this Proffer 2B(3) have been satisfied.

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

C. Verification on Site Plans and Subdivision Plats. Each subdivision plat and site plan for land within the Property (except for subdivisions that either (i) do not create lots or units for individual residential occupancy but rather divide the Property into large tracts to be further subdivided and developed by another party, or (ii) contain only for-sale single family detached units, unless the Owner elects to provide affordable single family detached units in such subdivision) shall identify the lots and/or units that will constitute affordable housing. The total number of such lots or units designated for affordable units within each subdivision plat and site plan shall constitute a minimum of fifteen percent (15%) of the lots and units in such subdivision plat or site plan. Notwithstanding the foregoing, however, up to an additional fifteen percent (15%) affordable units on any site plan or subdivision plat which are in excess of the fifteen percent (15%) minimum required may be "banked," or carried forward for credit on future site plans and subdivision plats.

D. Phasing of Affordable Housing Units. Before the Owner applies for a building permit for the 501st, 1,001st, 1,501st, 2,001st, 2,501st and 3,001st dwelling units on the Property (each, a "Milestone"),

the Owner shall, in each case, have offered for sale or rent as provided in Proffers 2A and 2B, respectively, a minimum of fifty (50) affordable housing units since the immediately previous Milestone (if any) was reached. Building permits issued for dwellings within the Breeden Land shall not be included in the calculation of any Milestone.

3. **Learning Center Site.** Within twenty-four (24) months after request by the County, but in no event earlier than five (5) years after the date of issuance of the First Residential Building Permit, the Owner shall dedicate to the County or its designee, by General Warranty Deed without consideration, fee simple marketable title to a parcel of land for a public learning center or elementary school site of not less than twelve (12) acres abutting a publicly-dedicated right-of-way, as shown on Sheet 2 of the GDP and labeled "Learning Center", together with appropriate right-of-way for utility service to the Learning Center (the "Learning Center Site"). The Owner shall cause the Learning Center Site to be graded and compacted 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 and as approved by the County Engineer to establish a fully graded pad site to accommodate an elementary school. The grading shall also comply with all other applicable County grading requirements and specifications so that it may be used as a public school site (i.e., so that it is a "pad ready" school site), as determined by the County Engineer. The Owner may grade the Learning Center Site either in conjunction with construction of the Connector Road described in Proffer 6C below or at such later time as may be specified by the County. The Owner shall prepare a subdivision plat or site plan for the Learning Center Site that shall reflect sidewalks at the perimeter of the Learning Center Site which shall be installed by the Owner within six (6) months after the County's request therefor, but in no event earlier than five (5) years after the date of issuance of the First Residential Building Permit. The Owner shall provide all utilities, including, without limitation, water, sewer, natural gas, electricity, cable, telephone and other communications, to the boundary of the Learning Center Site, and establish storm water management facilities on the Property for use by the Learning Center Site so that no permanent storm water management facilities will be required on the Learning Center Site. The storm water management facilities shall be appropriately sized, as reasonably determined by the County's program authority, to accommodate storm water from the Learning Center Site at its full buildout. Dedication of the Learning Center Site shall include easements across the Owner's land for access to and use of such storm water management facilities, temporary easements as necessary for constructing the Learning Center and temporary easements necessary to allow storm water management facilities to be redesigned and enlarged, if necessary, to accommodate storm water from the Learning Center Site. The Learning Center Site may be used as an elementary school site, but if the County determines that the Learning Center Site will not be used as an elementary school site, it shall be used by the County for educational or recreational purposes serving both the Biscuit Run community and the region, which may include but is not limited to use as a community park (in which case the Owner shall not be obligated to grade the site).

4. **Overlot Grading Plan.** The Owner shall submit with the application for each subdivision plat of lots for use as single family detached or single family attached dwellings on the Property an overlot grading plan meeting the requirements of this Proffer 4 (hereinafter, the "Grading Plan"). The Grading Plan shall show existing topographic features to be considered in the development of the proposed subdivision and proposed final grades. The Grading Plan shall be approved by the County Engineer prior to final approval of the associated subdivision plat. The subdivision lots shall be graded as shown on the approved Grading 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. Each Grading Plan shall satisfy the following:

A. The Grading 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 Grading Plan satisfies the requirements of this Proffer 4.

B. The Grading 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 designed to assure that surface drainage can provide adequate protection 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 Program Authority, as such term is defined in § 17-104(37) of the Albemarle County Code (the "Program Authority") in its approval of an erosion and sediment control plan for the land disturbing activity. These steeper slopes shall not exceed a gradient of two (2) feet of horizontal distance for each one (1) foot of vertical rise or fall (2:1), unless the County Engineer finds that the grading recommendations for steeper slopes have adequately addressed the impacts.

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

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

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

H. The Grading 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, where no garage is proposed, an area for vehicle parking, that is not less than eighteen (18) feet in length that will be graded no steeper than eight (8) percent.

I. The Grading Plan shall demonstrate that, for any dwelling not served by a front stair, an area at least ten (10) feet in width (or to the lot line if it is less than (10) feet) abutting the façade of the proposed structure that faces the street and provides pedestrian access to adjacent public sidewalks, has grades no steeper than ten percent (10%). This graded area also shall extend from the entrance of the dwelling to the driveways or walkways connecting the dwelling to the street.

J. Any requirement of this Proffer 4 may be waived by the County Engineer by submitting a waiver request with the preliminary subdivision 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 County Engineer; (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 compliance with the requirement of this Proffer 4 for which a waiver is requested 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 Property, and to the land adjacent thereto.

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

5. **Critical Slopes, Erosion and Sediment Control and Stormwater Management.**

A. Critical Slopes. The Owner shall apply for critical slope waivers for any roads located in critical slopes governed by § 18-4.2 *et seq.* of the Albemarle County Code.

B. Erosion and Sediment Control. The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional erosion and sediment controls to achieve a sediment removal rate of eighty percent (80%) for the Property. (As a reference, current regulatory structural measures achieve a 60% optimal removal rate.)

C. Revegetation. Within nine (9) months after the start of grading under any erosion and sediment control permit, permanent vegetation shall be installed on all denuded areas, except for areas the Program Authority determines are otherwise permanently stabilized or are under construction with an approved building permit. A three (3) month extension for installation of permanent vegetation may be granted by the Program Authority due to special circumstances including but not limited to weather conditions.

D. Stormwater Management. The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional stormwater management to achieve a removal rate 20% better than would otherwise be required by the Water Protection Ordinance (Albemarle County Code § 17-100 *et seq.*), up to a maximum of eighty percent (80%) removal rate for each Phase.

6. Transportation Improvements.

A. Off-Site Traffic Signals. Upon determination by the Virginia Department of Transportation ("VDOT"), based on one or more traffic signal warrant analyses, that the following traffic signals are warranted, the Owner shall proceed to design and install the warranted traffic signals (including necessary and related improvements to the intersection) at each of the following two (2) intersections in Albemarle County in accordance with the terms of this Proffer 6A: (i) 5th Street Extended and Sunset Avenue, shown as (4) on Exhibit A attached hereto, and (ii) Scottsville Road (Rt. 20) and Avon Street Extended, shown as (5) on Exhibit B attached hereto. Within ninety (90) days after receipt of the warrant analyses supporting the signal improvements, the Owner shall submit proposed traffic signal designs for the warranted traffic signals to VDOT. The Owner shall then install the traffic signals within six (6) months after approval by VDOT of the designs for the traffic signals. In the event all contingencies to this Proffer 6A have not been satisfied within twenty (20) years after the date of the issuance of the first residential building permit within the Property then this Proffer 6A shall expire and Owner shall have no further obligation to make this Proffer 6A.

B. Off-Site Turn Lanes. At the northern intersection of 5th Street and the Interstate 64 ramps in Albemarle County shown as (1) on Exhibit A attached hereto, the Owner shall construct one southbound right turn lane (turning from southbound 5th Street onto the westbound I-64 entrance ramp) and one westbound right turn lane (turning from the westbound I-64 exit ramp onto northbound 5th Street), in accordance with the terms of this Proffer 6B. In addition, at the southern intersection of 5th Street and the Interstate 64 ramps shown as (2) on Exhibit A, the Owner shall construct one northbound right turn lane (turning from northbound 5th Street onto the eastbound I-64 entrance ramp) and one eastbound right turn lane (turning from the eastbound I-64 exit ramp onto 5th Street southbound), in accordance with the terms of this Proffer 6B. The locations of the proffered lanes are shown on Exhibit A for reference. The Owner's obligations to construct the turn lanes provided in this Proffer 6B shall be contingent on provision by VDOT of appropriate right-of-way for such lanes. The design of all turn lanes shall be subject to prior approval by VDOT. In the event all contingencies to this Proffer 6B have not been satisfied within twenty (20) years after the date of the issuance of the first residential building permit within the Property then this Proffer 6B shall expire and Owner shall have no further obligation to make this Proffer 6B.

C. Connector Road; Southwood Contribution. Within ten (10) years after approval of ZMA 2005-017 or before issuance of the 500th residential building permit within the Property, whichever first occurs, the Owner shall design, complete construction, bond and dedicate to public use a connecting road between Scottsville Road (Rt. 20) and Old Lynchburg Road, including one (1) stream crossing, in the location and to the standards (including pedestrian and bicycle accommodations) shown on Sheet 4 of the GDP and described in the COD (the "Connector Road"), including the dedication of related drainage, slope and utility easements. For purposes of this Proffer 6C, construction of the Connector Road shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the Owner has obtained from the County Engineer a written determination that the Connector Road is safe and convenient for traffic. Street and parking lane widths for the Connector Road may be reduced if allowed by VDOT and approved by

the County Director of Community Development. As part of its obligations under this Proffer 6C, the Owner shall be responsible for acquisition of necessary right-of-way between the Property and Old Lynchburg Road through the Southwood Mobile Home Park (the "Southwood Section"). The design of the Southwood Section shall be coordinated with the County and the owner of the Southwood Mobile Home Park and subject to prior approval by VDOT.

D. Mill Creek South Connection. Upon demand of the County, but no earlier than the issuance of the First Residential Building Permit, the Owner shall dedicate right-of-way sufficient for one (1) future vehicular connection from the pedestrian and street network within the Property to the common boundary with the Mill Creek South neighborhood, generally in the location and dimensions depicted on Sheet 4 of the GDP and p. 26 of the COD as Road K and Section Type IX, respectively (the "Mill Creek South Connection"). At the time such right-of-way is dedicated to the County (and notwithstanding the schedule provided in Proffer 1F(3) for construction of the remainder of the Linking Trail), the Owner shall also grade the area of the Mill Creek South Connection consistent with a future 30' curb-to-curb roadway with sidewalks and planting strips and construct that portion of the Linking Trail located within the area of the Mill Creek South Connection. Such right-of-way may be used for bicycle, pedestrian and emergency access to the Property until such time as the Albemarle County Board of Supervisors determines vehicular connection is required. Contingent on the provision, without cost to the Owner, of adequate off-site right-of-way and easements as necessary for construction and maintenance of a vehicular connection extending from the Property's common boundary with the Mill Creek South neighborhood generally northward to Stoney Creek Drive, and upon the request of the Albemarle County Board of Supervisors, but in no event earlier than the issuance of the First Residential Building Permit, the Owner shall construct a vehicular connection from the Property's internal street network over the Mill Creek South Connection and extending to Stoney Creek Drive, to the standards and on a schedule approved by the Albemarle County Board of Supervisors; provided, however, that such vehicular connection shall be posted as open only to passenger vehicles and not to construction traffic. In the event all contingencies to this Proffer 6D have not been satisfied within twenty-five (25) years after the issuance of the First Residential Building Permit, then this Proffer 6D shall expire and Owner shall have no further obligation to make this Proffer 6D.

E. ITS Improvements. The Owner shall contribute cash in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) to an escrow agent approved by the County to be held by the escrow agent for the purpose of funding communication and signal timing improvements at locations to be agreed upon by the County and the City of Charlottesville. The cash contribution shall be made within twelve (12) months after recordation of the first subdivision plat creating lots or units for individual residential occupancy within the Property. Funds held in escrow in accordance with this Proffer 6E shall be released from time to time upon instruction by the Albemarle County Board of Supervisors either (i) to the City or its designee for the purposes provided herein or (ii) to the County or its designee for such purposes as the Albemarle County Board of Supervisors may set forth in its instruction. If the cash contribution provided in this Proffer 6E has not been exhausted by the County for the stated purpose within ten (10) years after the date of the issuance of the first residential building permit within the Property, then all unexpended funds may be used towards funding any improvements listed on the County's adopted capital improvement program or other adopted County plan or priority list and located within the boundaries of Neighborhoods 4 and 5.

F. Frontage Improvements. Contemporaneously with, and as part of, frontage improvements along Scottsville Road (Rt. 20) and Old Lynchburg Road required in connection with any subdivision plat or site plan for the Property, the Owner shall construct such turn lanes and improvements to the horizontal alignment, vertical alignment and cross-section of Scottsville Road (Rt. 20) and Old Lynchburg Road as reasonably necessary to provide safe and convenient access to Biscuit Run; provided, however, that the Owner's responsibility under this Proffer 6E shall be limited to the extent of the Property's frontage only. Improvements constructed in accordance with this Proffer 6F shall be designed and constructed to applicable VDOT standards, including, without limitation, VDOT's Geometric Design Standard for a Rural Collector road (GS-3) and VDOT's Geometric Design Standard for a Rural Minor Arterial road (GS-2), as such standards may be amended from time to time. Within ten (10) years after approval of ZMA 2005-017, before issuance of the 500th residential building permit within the Property, or by the date of completion of construction of the Connector Road as described in Proffer 6C, whichever first occurs, the Owner shall design, complete construction, bond and dedicate to public use Street AA, which runs generally parallel to Scottsville Road (Rt. 20), as described on Sheet 4 of the GDP and p. 27 of the COD.

For purposes of this Proffer 6F, construction of Street AA shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the Owner has obtained from the County Engineer a written determination that the Street AA is safe and convenient for traffic.

G. Stream Crossings. The Owner shall construct three (3) stream crossings in the locations shown on Sheet 4 of the GDP (the "Stream Crossings"). The Stream Crossings shall be designed and constructed to span the stream and adjacent floodway. The stream crossing located on the east-west connector road shall be constructed within the time provided in Proffer 6C for completion of construction of the Connector Road. The stream crossing providing access to the District Park shall be constructed within the time provided in Proffer 1F(3) for completion of construction of the Linking Road. The remaining stream crossing shall be constructed at the time the adjacent roadway is constructed but in no case later than the time provided in Proffer 6C for completion of the Connector Road.

7. Transit.

A. Cash Contribution. The Owner shall contribute cash in the amount of One Million Dollars (\$1,000,000.00) to the County or its designee (which may include a regional transit authority) to be used for capital and/or operating expenses related to the extension of public transit service to the Property and its surrounding area. Such cash contribution may also be used towards the formation, capitalization and operation of a regional transit authority whose service area includes the Property. The cash contribution shall be made to the County or its designee within twelve (12) months after recordation of the first subdivision plat creating lots or units for individual residential occupancy within the Property. If the cash contribution provided in this Proffer 7A has not been exhausted by the County for the stated purposes within eighteen (18) months after the date of the issuance of the first residential building permit within the Property, then all unexpended funds may be retained by the County for any public purpose.

B. Transit Stops. The Owner shall construct six (6) public transit stops, including design, construction and dedication of related improvements such as turnoffs, benches, shelters and lighting, all substantially in accordance with Sheet 4A of the GDP and the COD, modified as determined to be necessary by the County Department of Community Development to facilitate efficient transit service to the Property. One of the transit stops may, at the County's option, include a "kiss and ride" facility consisting of no less than eight (8) temporary parking spaces for the discharge and retrieval of transit passengers by private vehicles together with a sheltered passenger waiting area and bus pull-off. Construction and dedication to public use of each transit stop shall occur in conjunction with the construction and dedication of the road section on which such stop is located, and the construction of all transit stops located along the Connector Road shall be completed within the time provided in Proffer 6C for completion of construction of the Connector Road.

C. Park and Ride Lot. The Owner shall provide a paved parking area on the Property consisting of no less than twenty (20) spaces within Block 2 (as shown on Sheet 2 of the GDP) for temporary use by commuters accessing transit, trails or carpools (the "Park and Ride Lot"). Construction of the Park and Ride Lot shall occur in conjunction with the construction and dedication of the adjacent road section or, if the Park and Ride Lot is constructed within a parking area for another use (e.g., a grocery store), then the Park and Ride Lot shall be constructed in conjunction with such use; provided, however, that the Park and Ride Lot shall be constructed no later than the date of completion of the Connector Road, as described in Proffer 6C.

D. Car Sharing Service. The Owner shall provide three (3) parking spaces on the Property for location of car sharing vehicles (e.g., Zipcar vehicles), the locations of which shall be determined in cooperation with the County Department of Community Development and provided in conjunction with the construction and dedication of the adjacent road section; provided, however, that such parking spaces shall be constructed no later than the date of completion of the Connector Road, as described in Proffer 6C.

E. Permanent Transit Service. The Owner shall provide transit service between the Property, the University of Virginia and the City of Charlottesville Downtown Transit Station at 615 East Water Street, and such other locations as may be determined by the Owners' Association in accordance with this Proffer 7E. The transit service shall commence as a private transit service no later than the date

of issuance of the building permit for the five hundredth (500th) dwelling on the Property, shall run during weekday morning and evening commuting hours (at a minimum), and shall continue for ten (10) years or until the earlier provision of public transit service (by a regional transit authority or otherwise) to the Property. Routes and timing of the transit service provided hereunder, as well as any proposed use of the City of Charlottesville Downtown Transit Station, shall be coordinated with Charlottesville Transit Service. Funding for the transit service described in this Proffer 7E shall be provided through assessments administered by the Owners' Association of Five Dollars (\$5.00) per residential unit per month and Twenty Cents (\$0.20) per square foot of commercial space per year, each increased whenever, and at the same rate as, the Owners' Association's regular assessment is increased (the "Transit Assessment"). At any time, at the County's option, all Transit Assessments, along with any unused Transit Assessment funds accumulated by the Association, shall be directed to a regional transit authority or other governmental authority operating public transit service with service to the Property, at which time the Owners' Association's responsibility hereunder to operate any private transit service shall cease. In such event, and for so long as public transit service is provided to the Property, the Owner's Association shall semi-annually pay over the aggregate amount of the Transit Assessment assessed to the operator of such public transit service for use toward capital and/or operating expenses of such transit system, but not for maintenance expenses except as permitted by Va. Code § 15.2-2303A, as amended. Within sixty (60) days after the close of the second and fourth quarters of each calendar year throughout the period the Owners' Association collects the Transit Assessment, the Owners' Association shall provide to the County Director of Community Development a written report listing the current Transit Assessment amount, the number of residential units and amount of commercial square footage assessed, and the amount of the Transit Assessment actually collected. The terms of this Proffer 7E shall be incorporated into the governing documents of the Owners Association, which documents shall further authorize the County Director of Community Development to file, perfect and enforce the lien provided in Va. Code § 55-516 against the owner of any lot or parcel within the Property who fails to pay the Transit Assessment. The remedy provided in this Proffer 7E shall be in addition to, and not in lieu of, the County's rights and remedies at law or in equity for noncompliance with the terms of these Proffers.

8. **Phasing of Retail Development.** Prior to the issuance of a building permit for the five hundredth (500th) dwelling within the Property, the aggregate gross retail space within the Property shall not exceed seventy-five thousand (75,000) square feet. Prior to the issuance of a building permit for the one thousandth (1,000th) dwelling within the Property, the aggregate retail space within the Property shall not exceed one hundred twenty-five thousand (125,000) square feet. "Retail space" as used in this Proffer 8 shall not be deemed to include any office space or health, wellness and fitness facilities.

9. **Library Contribution.** No later than the issuance of the five hundredth (500th) building permit within the Property, the Owner shall contribute cash in the amount of Five Hundred Thousand Dollars (\$500,000.00) to the County to be used toward construction of a new regional library branch serving the Property, or toward improvements to one or more existing regional library facilities serving the Property. If the cash contribution provided in this Proffer 9 has not been exhausted by the County for the stated purposes within ten (10) years after the date of the issuance of the first residential building permit within the Property, the County may use the funds towards funding any improvements listed on the County's adopted capital improvement program and located within the boundaries of Neighborhoods 4 and 5.

10. **Historic Preservation.** Prior to commencing land disturbance within any area depicted in red on Exhibit C hereto (collectively, the "Potential Resource Sites"), the following investigations shall be made as indicated: (a) for Potential Resource Sites labeled as "Phase I Survey" on Exhibit C, systematic shovel testing of low relief landforms with archeological potential that will be impacted by the proposed development, and (b) for Potential Resource Sites labeled as "Archeological Reconnaissance" on Exhibit C, pedestrian survey and visual inspection of various crossings and shovel testing when determined necessary by the archeologists conducting the investigation. Each such investigation shall comply with the standards and procedures set forth in Exhibit D hereto. In addition, in the event that any human remains are encountered in the course of conducting any investigation in accordance with this Proffer 10, no land disturbance shall proceed in the affected area until delivery of evidence to the County that all applicable regulations regarding the disturbance or removal of such remains have been complied with, or that avoidance can be achieved. The Owner shall provide evidence to the County's Director of Planning that the individual supervising the investigations required by this Proffer 10 is a qualified archeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. The Owner shall provide all reports generated by investigations conducted in accordance with this Proffer 10

to the County's Director of Planning, and the Owner shall obtain from the Director written confirmation that the investigations were made in conformance with Exhibits C and D hereto, and shall incorporate any approved treatment plans into the development plans for the Property and adhere to such treatment plans during all clearing, grading and construction activities on the Property.

11. **Green Building.**

A. **Residential.** Not less than ten percent (10%) of the dwellings constructed on the Property shall be rated a minimum of "Certified" under the U.S. Green Building Council's *LEED for Homes Pilot Rating System*, Version 1.11a (January 2007) or the *LEED-NC Green Building Rating System for New Construction and Major Renovations*, Version 2.2 (October 2005), as applicable (collectively, the "LEED Compliant Dwellings"). Prior to issuance of building permits for the 1001st, 1501st, 2001st, 2501st and 3001st dwellings on the Property, the Owner shall, in each case, provide copies of LEED certificates to the County's Director of Community Development evidencing that a minimum of ten percent (10%) of dwellings constructed on the Property to date are certified as LEED Compliant Dwellings.

B. **Commercial.** Not less than fifty thousand (50,000) square feet of the commercial square footage located within Block 2 as shown on Sheet 2 of the GDP ("Block 2") shall be rated a minimum of "Certified" (or demonstrated to the County's Director of Community Development's satisfaction to be eligible to receive such certification) under the *LEED-NC Green Building Rating System for New Construction and Major Renovations*, Version 2.2 (October 2005) or the *LEED Green Building Rating System for Core & Shell Development*, Version 2.0 (July 2006), as applicable (collectively, the "LEED Compliant Commercial Space"). Prior to issuance of the building permit for any proposed LEED Compliant Commercial Space, the Owner shall provide to the County Director of Community Development the opinion of a licensed architect that such space, if constructed in accordance with the building plans, is designed to achieve the minimum "Certified" rating provided in this Proffer 11B. Before the Owner requests that a certificate of occupancy for any building for which a licensed architect rendered such an opinion, the Owner shall submit to the County's Director of Community Development a written statement from the architect that the building was built to the plans on which the opinion was based.

12. **Fire and Rescue.** No later than the date of issuance of the building permit for the five hundredth (500th) dwelling within the Property, the Owner shall contribute to the County cash in the amount of Eight Hundred Seventy-Five Thousand Dollars (\$875,000.00) to be used toward the purchase of one or more fire engines, ambulances or other needed fire or rescue equipment serving the Property and its surrounding area. If the cash contribution provided in this Proffer 12 has not been exhausted by the County for the stated purposes within ten (10) years after the date of the issuance of the three thousandth (3,000th) certificate of occupancy within the Property, then all unexpended funds may be used towards funding any improvements listed on the County's adopted capital improvement program and located within the boundaries of Neighborhoods 4 and 5.

13. **Annual Adjustment of Cash Proffers.** Beginning January 1, 2008, the amount of each cash contribution required herein, including any aggregate maximum contribution, shall be adjusted annually until paid to reflect the increase, if any, in the Comparative Cost Multiplier, Regional City Average, Southeast Average, Category C: Masonry Bearing Walls issued by Marshall Valuation Service (a/k/a Marshall & Swift) (the "Index") or the most applicable Marshall & Swift index determined by the County if publication of the specific index referenced herein is discontinued. The adjusted cash contribution in any year shall equal the sum of (x) the cash contribution for the preceding year and (y) the product of the cash contribution for the preceding year and the difference between the Index for the first quarter of the current year and the Index for the first quarter of the immediately-preceding year. For each cash contribution that is paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year. In no event shall adjustment of any cash amount in accordance with this Proffer 13 decrease such amount below the dollar amount originally proffered herein.

14. **Landscape Plan for Entrance Corridor Buffers.** Prior to approval of the first final site plan within Block 2 or Block 3 as depicted on Sheet 2 of the GDP (the "Eastern Blocks"), a landscape plan meeting the requirements of County Code §§ 18-32.7.9.4 and 18-30.6.4 and reflecting the general intent of the Buffers set out on page 40 of the COD (the "Landscape Plan") shall be submitted for review and approval to the County Architectural Review Board (the "ARB") for the portions of the Buffers shown on Sheet 5 of the GDP that abut Scottsville Road (Rt. 20). Prior to approval of the first final site plan within

Block 10, Block 15 or Block 16 as depicted on Sheet 2 of the GDP (the "Western Blocks"), a Landscape Plan shall be submitted for review and approval to the ARB for the portions of the Buffers shown on Sheet 5 of the GDP that abut Old Lynchburg Road. Receipt of a certificate of appropriateness from the ARB shall be a condition of final site plan approval for the first site plan within the Eastern Blocks and the Western Blocks, respectively. The Owner shall install landscaping in accordance with the approved Landscaping Plans within one (1) year after issuance of the certificate of appropriateness for the applicable Landscape Plan. The Owner shall be responsible for maintaining the landscaping provided in the approved Landscaping Plans until such time as the Buffers are conveyed to the Owners' Association, whereupon the Owners' Association shall be responsible for all maintenance of the landscaping.

15. **Cash Fund Contribution for Capital Improvements.** For each dwelling constructed on the Property, the Owner shall contribute to the County, as a condition of building permit issuance, cash in the amount of Five Thousand Four and 88/100 Dollars (\$5,004.88), up to an aggregate maximum contribution of Thirteen Million One Hundred Eighty-Seven Thousand Eight Hundred Fifty-Eight and 80/100 Dollars (\$13,187,858.80) (the "Cash Fund Contribution"), which may be used toward funding of any capital improvements as determined by the County, including, without limitation: (i) widening of Scottsville Road (Rt. 20); (ii) signal improvements at Avon Street and Southern Parkway; (iii) signal improvements on Old Lynchburg Road at State Route 631 and 5th Street; (iv) installation of signals at Scottsville Road (Rt. 20) and I-64; (v) lane addition on Old Lynchburg Road at the intersection of Old Lynchburg Road and Country Green Road; (vi) lane addition on Old Lynchburg Road at the intersection of Old Lynchburg Road and Mountainwood Road; (vii) lane addition on Scottsville Road (Rt. 20) at the intersection of Scottsville Road (Rt. 20) and PVCC; (viii) lane addition and bridge expansion on 5th Street at the intersection of I-64 and 5th Street; (ix) bicycle lanes on Old Lynchburg Road (2-lane section), and/or on Scottsville Road (Rt. 20) and Avon Street; (x) spot improvements for Scottsville Road (Rt. 20) and Old Lynchburg Road; (xi) construction of a Fontaine/Sunset Connector as contemplated in the "Southern Urban Area B Study Final Report" dated September 10, 2004; (xii) design and construction of one or more soccer, lacrosse or other playing fields at the Championship Field, as defined in Proffer 1G; or (xiii) construction of District Park facilities. Any portion of the cash contribution provided in this Proffer 15 received after an improvement to which such funds may be directed hereunder is complete may be used toward repayment of any borrowed funds used to pay for such improvement or, if none, then toward funding any improvements listed on the County's adopted capital improvement program and located within the boundaries of Neighborhoods 4 and 5. The cash contributions provided in this Proffer 15 shall not be made on units of affordable housing, as such term is defined in Proffer 2.

16. **Cash Proffer for Improvements to Old Lynchburg Road (City Section).** For each dwelling constructed on the Property, the Owner shall contribute to an escrow agent approved by the County, as a condition of building permit issuance, cash in the amount of Five Hundred Eighty-Eight and 24/100 Dollars (\$588.24), up to an aggregate maximum contribution of One Million Five Hundred Fifty Thousand Dollars (\$1,550,000.00), to be held by the escrow agent in escrow for the purpose of funding construction of improvements to Old Lynchburg Road within the City of Charlottesville. Funds held in escrow in accordance with this Proffer 16 shall be released from time to time upon instruction by the Albemarle County Board of Supervisors either (i) to the City or its designee for the purposes provided herein or (ii) to the County or its designee for such purposes as the Albemarle County Board of Supervisors may set forth in its instruction. If the cash contribution provided in this Proffer 16 is not expended within ten (10) years after the date of the issuance of the three thousandth (3,000th) certificate of occupancy within the Property, then all unexpended funds may be used toward funding any improvements listed on the County's adopted capital improvement program and located within the boundaries of Neighborhoods 4 and 5. Any portion of the cash contribution provided in this Proffer 16 received after an improvement to which such funds may be directed hereunder is complete may be used toward repayment of any borrowed funds used to pay for such improvement or, if none, then toward funding any improvements listed on the County's adopted capital improvements program and located within the boundaries of Neighborhoods 4 and 5. The cash contributions provided in this Proffer 16 shall not be made on units of affordable housing, as such term is defined in Proffer 2.

17. **Cash Proffer for Additional Single-Family Detached Dwellings.** As a condition of the issuance of each building permit for a single family detached dwelling unit ("SFD Unit") requested after the issuance of the building permit for the six hundred fiftieth (650th) SFD Unit on the Property, the Owner shall contribute cash in the amount of Five Thousand Three Hundred Fifty Dollars (\$5,350.00) to the County for use towards funding any improvements listed on the County's adopted capital improvements

program and located within the boundaries of Neighborhoods 4 and 5. Likewise, upon the issuance of each building permit for a single family attached, townhouse or multifamily dwelling unit ("SFA/TH/MF Unit") requested after the issuance of the two thousand four hundred fiftieth (2,450th) SFA/TH/MF Unit on the Property, the County shall credit the Owner the amount of Five Thousand Three Hundred Fifty Dollars (\$5,350.00) against the cash proffers for such unit otherwise owed in accordance with these Proffers. Notwithstanding the foregoing, in no event shall the County be required to refund any cash proffer payment to the Owner in the event that a credit under this Proffer 17 is due. Credits hereinafter may be carried forward for future units governed by these Proffers. The cash contributions and credits provided in this Proffer 17 shall not be made on units of affordable housing, as such term is defined in Proffer 2.

18. **Cash Proffer for Boys & Girls Club Facility at Southwood.** Upon demand of the County, but no earlier than the date of recordation of the second subdivision plat creating lots or units for individual residential occupancy within the Property, the Owner shall contribute to the County or its designee cash in the amount of Fifty Thousand Dollars (\$50,000.00) to be used toward the expansion of the Boys & Girls Club's Southwood Unit facility (and/or the hours, programming and services of such facility) within the Southwood Mobile Home Park community. If the cash contribution provided in this Proffer 18 has not been exhausted by the County for the stated purposes within ten (10) years after the date of the issuance of the three thousandth (3,000th) certificate of occupancy within the Property, then all unexpended funds may be used towards funding any improvements listed on the County's adopted capital improvement program and located within the boundaries of Neighborhoods 4 and 5.

Attachments:

- Exhibit A – Diagram showing proffered signals and turn lanes on OLR/64 and Sunset
- Exhibit B – Diagram showing proffered signal at Avon/Rt. 20
- Exhibit C – Dutton Associates historic resource map
- Exhibit D – Dutton Associates proposal

ORDINANCE NO. 07-03(2)

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 3, AGRICULTURAL AND FORESTAL DISTRICTS, ARTICLE II, DISTRICTS OF STATEWIDE SIGNIFICANCE, DIVISION 2, DISTRICTS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA.

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 3, Agricultural and Forestal Districts, Article II, Districts of Statewide Significance, Division 2, Districts, of the Code of the County of Albemarle, Virginia, is hereby amended and reordained as follows:

By Amending:

Sec. 3-214 Hardware Agricultural and Forestal District.

Chapter 3. Agricultural and Forestal Districts

Article II. Districts of Statewide Significance

Division 2. Districts

Sec. 3-214 Hardware Agricultural and Forestal District.

The district known as the "Hardware Agricultural and Forestal District" consists of the following described properties: Tax map 73, parcels 38, 39C, 41A, 41B1, 41B2, 42, 42A, 43, 44; tax map 74, parcels 26, 28; tax map 86, parcels 14, 16A, 16C, 16D, 16E, 16F, 27; tax map 87, parcels 10, 13A, 13E (part consisting of 89.186 acres); tax map 88, parcels 2A, 3V, 6A, 20A, 20B, 20C, 20D, 20F, 23, 23E, 23F, 24, 24A, 26B, 29, 40, 42; tax map 99, parcels 29, 52. This district, created on November 4, 1987 for not more than ten years and last reviewed on September 12, 2007, shall next be reviewed prior to September 12, 2017.

(Code 1988, § 2.1-4(h); Ord. No. 98-A(1), 8-5-98; Ord. 00-3(2), 7-12-00; Ord. 07-3(2), 9-12-07)

ORDINANCE NO. 07-03(3)

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 3, AGRICULTURAL AND FORESTAL DISTRICTS, ARTICLE III, DISTRICTS OF LOCAL SIGNIFICANCE, DIVISION 2, DISTRICTS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA.

BE IT ORDAINED by the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 3, Agricultural and Forestal Districts, Article III, Districts of Local Significance, Division 2, Districts, of the Code of the County of Albemarle, Virginia, is hereby amended and reordained as follows:

By Amending:

Sec. 3-307 Nortonville Local Agricultural and Forestal District.

Chapter 3. Agricultural and Forestal Districts

Article III. Districts of Local Significance

Division 2. Districts

Sec. 3-307 Nortonville Local Agricultural and Forestal District.

The district known as the "Nortonville Local Agricultural and Forestal District" consists of the following described properties: Tax map 8, parcels 26, 26B and 28 (part consisting of 2 acres). This district, created on October 6, 1999 for a period of 8 years, since amended to continue for not more than 10 years and last reviewed on September 12, 2007, shall next be reviewed prior to September 12, 2017.

(Ord. 99-3(5); 10-6-99; Ord. 07-3(3), 9-12-07)