

ACTIONS
Board of Supervisors Meeting of March 12, 2008

March 14, 2008

<u>AGENDA ITEM/ACTION</u>	<u>ASSIGNMENT</u>
<p>1. Call to Order.</p> <ul style="list-style-type: none"> • Meeting was called to order at 12:00 noon by the Chairman, Mr. Boyd. All BOS members were present (Mr. Dorrier arrived at 12:20 p.m.). Also present were Bob Tucker, Larry Davis, Wayne Cilimberg, Ella Jordan and Meagan Hoy. • At this time, the Board held an informal luncheon with School Board members and staff. 	
<p>2. <u>Work Session: FY 2008-09 County Budget:</u></p> <p>a. School Division.</p> <ul style="list-style-type: none"> • HELD <p>b. Capital Improvements Program Amendments.</p> <ul style="list-style-type: none"> • HELD 	
<p>3. <u>Work Session:</u> Water Protection Ordinance-Stream Crossing.</p> <ul style="list-style-type: none"> • HELD. • Based on its discussion, the Board DIRECTED staff to bring a revised ordinance to consider taking to public hearing. 	<p><u>Mark Graham:</u> Proceed as directed.</p> <p><u>Clerk:</u> Schedule on future agenda when ready to come back.</p>
<p>4. Recess.</p> <ul style="list-style-type: none"> • At 5:40 p.m., the Board recessed. 	
<p>5. Call to Order.</p> <ul style="list-style-type: none"> • Meeting was called back to order at 6:04 p.m., by the Chairman, Mr. Boyd. 	
<p>8. From the Board: Matters Not Listed on the Agenda.</p> <ul style="list-style-type: none"> • There were none. 	
<p>9. From the Public: Matters not Listed on the Agenda.</p> <ul style="list-style-type: none"> • There were none. 	
<p>10.2 Resolution allowing the County to participate in VDOT's Revenue Sharing Program for Fiscal Year 2009. (Remove from agenda.)</p>	
<p>10.3 Resolution of the Industrial Development Authority of Albemarle County, Virginia, authorizing the issuance of up to \$17,250,000 revenue bonds for the purpose of The Covenant School, Inc.</p> <ul style="list-style-type: none"> • ADOPTED Resolution by a vote of 5:1 (Thomas). 	<p><u>Clerk:</u> Forward signed resolution to Renee Fain of McGuireWoods. (Attachment 1)</p>
<p>11. <u>2008/09-2013/14 Six Year Secondary Road Plan.</u></p> <ul style="list-style-type: none"> • APPROVED, by a vote of 6:0, the County Priority List of Secondary Road Improvements, as presented, and AUTHORIZED the County Executive to sign the VDOT Secondary System Construction Program for Albemarle County consistent with the County's Priority List, as presented. 	<p><u>Juan Wade:</u> Proceed as approved and notify VDOT appropriately.</p>
<p>12. <u>PROJECT: ZMA-2007-016. Watkins Route 250 Rezoning (Sign #95).</u></p> <ul style="list-style-type: none"> • APPROVED ZMA-2007-016, by a vote of 6:0, subject to the proffers dated March 12, 2008 and signed February 14, 2008 including the proffered concept plan dated January 2008. 	<p><u>Clerk:</u> Set out proffers. (Attachment 2)</p>
<p>13. <u>PROJECT: SP-2007-060. Outdoor Storage of plant materials (concurrent with ZMA 07-16 Watkins</u></p>	<p><u>Clerk:</u> Set out conditions of approval. (Attachment 3)</p>

<p><u>Route 250 Rezoning) (Sign #95).</u></p> <ul style="list-style-type: none"> • APPROVED SP-2007-050, by a vote of 6:0 subject to five conditions. 	
<p>14. <u>PROJECT: ZMA-2006-009. 5th Street-Avon Center (Signs #48&67&68).</u></p> <ul style="list-style-type: none"> • APPROVED ZMA-2006-009, by a vote of 6:0, inclusive of proffers dated March 10, 2008 and signed March 12, 2008 along with the application plan dated February 19, 2008 and the Development Framework. 	<p><u>Clerk:</u> Set out proffers. (Attachment 4)</p>
<p>15. <u>PROJECT: SP-2007-004. 5th Street-Avon Center (Signs #78&81&91).</u></p> <ul style="list-style-type: none"> • APPROVED SP-2007-004, by a vote of 6:0. 	
<p>16. <u>PROJECT: ZMA 2007-021 Cavalier Mini Storage (Sign #102).</u></p> <ul style="list-style-type: none"> • At the applicant's request, DEFERRED ZMA-2007-021, by a vote of 6:0, to April 9, 2008. 	<p><u>Clerk:</u> Advertise and schedule on April 9th agenda.</p>
<p>17. From the Board: Matters Not Listed on the Agenda.</p> <ul style="list-style-type: none"> • There were none. 	
<p>18. Adjourn to March 17, 2008, 1:00 p.m., Room 241.</p> <ul style="list-style-type: none"> • The meeting was adjourned at 8:34 p.m. 	

/ewj

Attachment 1 – IDA Resolution

Attachment 2 – Proffers - ZMA-2007-016. Watkins Route 250 Rezoning

Attachment 3 – Conditions of Approval

Attachment 4 – Proffers – ZMA-2006-009. 45th Street-Avon Center

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

WHEREAS, the Industrial Development Authority of Albemarle County, Virginia (the "Authority"), has considered the application of The Covenant School, Inc. (the "School") located at 175 Hickory Street, in Albemarle County, Virginia, requesting the issuance of the Authority's revenue bonds in an amount not to exceed \$17,250,000 (the "Bonds") to assist in (1) refunding all or a portion of the outstanding principal amount of the Authority's Educational Facilities Revenue Bonds (The Covenant School, Inc.), Series 2001, (2) financing or refinancing routine capital expenditures to be located at one or both of the School's campuses, the lower campus located at 1000 Birdwood Road, Charlottesville, Virginia 22901, and the upper campus located at 175 Hickory Street, Charlottesville, Virginia 22902, and (3) paying financing and issuance costs related thereto, through the issuance by the Authority of its Bonds (collectively, the "Project"), and has held a public hearing on March 11, 2008;

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), provides that the governmental unit having jurisdiction over the issuer of private activity bonds and over the area in which any facility financed with the proceeds of private activity bonds is located must approve the issuance of the bonds;

WHEREAS, the Authority issues its bonds on behalf of the County of Albemarle, Virginia (the "County"); the Project to be located in the County and the Board of Supervisors of the County of Albemarle, Virginia (the "Board") constitutes the highest elected governmental unit of the County;

WHEREAS, the Authority has recommended that the Board approve the issuance of the Bonds; and

WHEREAS, a copy of the Authority's resolution approving the issuance of the Bonds, subject to the terms to be agreed upon, a certificate of the public hearing and a Fiscal Impact Statement have been filed with the Board.

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

1. The Board approves the issuance of the Bonds by the Authority for the benefit of the School as required by Section 147(f) of the Code and Section 15.2-4906 of the Code of Virginia of 1950, as amended ("Virginia Code") to permit the Authority to assist in the financing of the Project.
2. The approval of the issuance of the Bonds does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Project or the School.
3. This resolution shall take effect immediately upon its adoption.

PROFFER STATEMENT

Date: March 12, 2008

ZMA#: 2007-00016

Tax Map and Parcel Numbers: Map 56, parcels 107C and 98D

3.0 Acres to be rezoned from R-1 (Residential – 1) to Highway Commercial (HC)

Scott Watkins and Caroline Watkins are the fee simple owners (collectively, the "Owner") of Tax Map 56, Parcels 107C and 98D (the "Property") which is the subject of the zoning map amendment application number ZMA 2007-00016, known as "Watkins 250 Rezoning."

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntary proffers the conditions listed in this Proffer Statement, which shall be applied to the Property if the rezoning is approved by Albemarle County. These conditions are proffered as part of the rezoning and it is acknowledged that the conditions are reasonable.

1. The use of the Property shall be limited to those uses allowed by right under Section 24.2.1(17) (as modified in Proffer 1A below), (35), (36), 41 (as modified in Proffer 1B below) (44) and (45), and the uses allowed by special use permit under Sections 24.2.2(17) and 30.6.3.2(b), of the Zoning Ordinance of Albemarle County, Virginia as Section 24.2, Section 30.6.3.2 and, by cross reference in Section 24.2.1(41), Section 22.2.1 are in effect on March 12, 2008, copies of which are attached hereto as Exhibit A.

A. The uses permitted under Section 24.2.1(17) shall be limited to grounds care and landscaping services and repair and maintenance services related to those grounds care and landscaping services.

B. The uses permitted under Section 24.2.1(41) shall be limited to dwellings as authorized in Section 22.2.1(20).

2. The development of the Property shall be in general accord with the plan entitled "Watkins & Company Concept Plan," prepared by Rieley & Associates Landscape Architects, dated January 2008.

WITNESS the following duly authorized signatures:

Owners:
(Signed) _____ 2/14/2008
Scott Watkins Date

(Signed) _____ 2/14/2008
Caroline Watkins Date

CONDITIONS OF APPROVAL

PROJECT: ZMA-2007-016. Watkins Route 250 Rezoning (Sign #95).

1. Products shall be stored only in the areas indicated for storage on the Watkins & Company Concept Plan sheet L-1 dated January 2008;
2. All nursery stock shall be stored on the ground without use of racks, display stands or other similar items;
3. Any structure required for separating the mulch, topsoil and compost shall not exceed six (6) feet in height. The design of such structure is subject to review/approval by the ARB during the site plan review;
4. The site shall be landscaped according to the following criteria and ARB approval of landscape plan to include:
 - A mixed planting of trees and shrubs, both evergreen and deciduous, shall be provided in the thirty (30)-foot planting strip along the south side of the site and along the west side of the site from the shed to the EC. The planting shall be continued westward to the retaining wall in all areas disturbed by grading; and
 - A mixed planting shall be provided along the east side of the site to provide screening for the storage areas and to blend with the surroundings.
5. The parking of trucks for the business beyond the nine (9)-space parking lot shown on the Concept Plan shall be limited as follows: A maximum of five (5) trucks may be parked between the mulch/top soil storage area and the five thousand nine hundred fifty (5950) square feet nursery stock storage area during the night hours.

PROFFER FORM

Date: March 10, 2008

ZMA # 2006-09

Tax Map and Parcel Number(s): 76-M1-2A; 76-M1-2B; 76-M1-4A; and 77-11E

81.94 Acres ("Property") to be rezoned from L1 and Rural Area to PD-SC

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the owners, or their duly authorized agent, hereby voluntarily proffer the conditions listed below which shall be applied to the property, if rezoned. These conditions are proffered as a part of the requested rezoning and it is acknowledged that the conditions are reasonable.

1. Road Improvements. The Owner shall cause completion of the following road improvements:

A. Bent Creek Road and 5th Street Intersection. Pursuant to road plans approved by the Virginia Department of Transportation ("VDOT"), the City of Charlottesville, and the County of Albemarle (the "County"), the Owner shall construct signal and lane improvements for the westbound lanes of Bent Creek Road and the southbound lanes of 5th Street at the Bent Creek Road and 5th Street intersection as a condition of approval of the initial site plan for the Property. If required by the City of Charlottesville, such improvements shall include: (i) dual left turn lanes southbound on 5th Street; (ii) dual right turn lanes northbound on 5th Street; and (iii) an extended single left turn lane northbound on 5th Street. An example of the improvements that the City may require of the Owner is attached as Schedule I.

B. Bent Creek Road Bridge. Pursuant to road and bridge plans approved by VDOT, the Owner shall widen, or replace the existing bridge spanning Moore's Creek supporting Bent Creek Road as a condition of approval of the initial site plan for the Property. The bridge expansion shall be sufficient to accommodate at least two (2) through lanes for Bent Creek Road.

C. Bent Creek Parkway From Bent Creek Road to Avon Street (Excluding the Landfill Segment). The Owner shall cause to be constructed a two lane (with right-of-way sufficient for future expansion to four lanes) limited access road from the bridge at Bent Creek Road through to Avon Street ("Bent Creek Parkway," also referred to herein as the "Parkway") in the general location shown on the Application Plan entitled "5th Street –Avon Center, ZMA Application Plan, Conceptual Master Plan", (Sheets ADD 2.0- ADD 5.0), prepared by The Cox Company, last revised February 19, 2008(the "Application Plan"). If approved by VDOT, and subject to a waiver being obtained by Owner pursuant to Sections 32.7.2.8 and 4.12.15(g) of the Zoning Ordinance, the Parkway may be a 'rural section' in design, without curb and gutter. If the Owner subdivides, the Parkway shall be constructed as an urban cross section unless a waiver is granted pursuant to Section 14-410 (1) of the Subdivision Ordinance. The Parkway shall be constructed, bonded and ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the public system, and the County Engineer shall have determined that the roadway is safe and convenient for traffic (hereinafter, "completed") as a condition of the issuance of a certificate of occupancy for the first building within the Property. That portion of the Bent Creek Parkway that excludes the Landfill Segment (defined below) shall be dedicated as a public road with the approval of the initial, final site plan for the Property. The Board of Supervisors' acceptance of this proffer shall not confer any approval of special use permits for any construction of the Parkway or other improvements within the floodplain, if necessary; the approval of such permits shall be reserved by the Board of Supervisors.

D. Bent Creek Parkway; Landfill Segment. That portion of the Parkway that transects the former City of Charlottesville Landfill (the "Landfill Segment") shall be designed, constructed and maintained as follows:

1. Status of Landfill Segment: The precise length of the Landfill Segment shall be determined by the parameters submitted as part of the Landfill Work Plan described in proffer 8 below. The Landfill Segment shall be a private street that is privately maintained, but shall be subject to a "public access easement" creating a perpetual right-of-passage over the Landfill Segment for the benefit of the public. The first final site plan for the Property shall reserve the

Landfill Segment, including pedestrian and bicycle accommodations and the dedication of related drainage, slope and utility easements, for future dedication to the County at the County's request and in the County's sole discretion. If the County requests dedication and the public right-of-way is not dedicated by subdivision plat, the Owner shall be responsible for the cost of a survey and preparing the deed to convey the public right-of-way to the County.

2. Design: The Landfill Segment shall have the same design as that approved by VDOT for the segment of Bent Creek Parkway from 5th Street Extended to the Landfill segment), subject to any additional design requirements of the Virginia Department of Environmental Quality ("DEQ") as set forth in the Landfill Work Plan, defined below. The Owner shall submit the road plans for the Landfill Segment to the County Engineer for review and approval, along with copies of all design requirements and imposed by DEQ in its approval of the Landfill Work Plan.

3. Construction and method of construction: The Landfill Segment shall be constructed in accordance with the road plans submitted by the Owner and approved by the County Engineer. The Owner shall obtain approval of the method of construction of the Landfill Segment from DEQ as an element of the approved Landfill Work Plan prior to approval of the first final site plan for the Property.

4. Maintenance. The Owner shall obtain approval from the Director of Community Development, and the County Attorney of a recordable instrument providing for the perpetual maintenance by the Owner of the Landfill Segment, subject to dedication and acceptance of the Landfill Segment as a public right-of-way. The maintenance instrument shall be in a form and be of a substance that is approved by the Director of Community Development and by the County Attorney.

5. Completion. The Landfill Segment shall be constructed and bonded, and the County Engineer shall have determined that the roadway is safe and convenient for traffic (hereinafter, "completed") as a condition of the issuance of a certificate of occupancy for the first building within the Property.

6. Remediation and reopening in the event of closure. If DEQ, or any other public entity having jurisdiction over such matters orders that the Landfill Segment be closed to pedestrian and vehicular traffic because of an environmental hazard or risk arising from the former landfill, the Owner shall remediate the hazard or risk and take all other steps necessary, including the reconstruction, repair, or relocation and construction of the Landfill Segment to allow it to reopen. If the Landfill Segment is closed as provided herein, the Owner shall obtain approval of the reopening from DEQ or other public entity, and reopen the Landfill Segment for pedestrian and vehicular traffic within sixty (60) days of completed remediation associated with the closure. The County Board of Supervisors may authorize that deadline be extended for reopening the Landfill Segment if the Owner demonstrates to the satisfaction of the Board that it is necessary for the purpose of rebuilding the road.

7. County's Acceptance. The County's acceptance of this proffer shall not confer any approval of special use permits for any construction of the Parkway or other improvements within the floodplain, if necessary; the approval of such permits shall be reserved by the Board of Supervisors

E. Avon Street Improvements. The Owner shall dedicate public right-of-way, as shown on final site plans, and construct a right turn lane on Avon Street southbound from the northern boundary of the Property to the intersection of Avon Street and the Parkway. If warranted, the Owner shall construct a left turn lane and signal improvements at the intersection of Avon Street and the Bent Creek Parkway. If the public right-of-way is not dedicated by subdivision plat, the Owner shall be responsible for the cost of a survey and preparing the deed to convey the public right-of-way to the County. Unless sooner required by VDOT as a condition of site plan approval, the Avon Street Improvements shall be constructed, bonded and ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the public system, and the County Engineer shall have determined that the roadway is safe and convenient for traffic as a condition of issuance of the first certificate of occupancy within the Property.

F. Transportation Proffers Compliance.

1. The road improvements listed in 1B, 1C, and 1E above shall be constructed in accordance with road plans submitted by the Owner and approved by VDOT. All of the foregoing improvements listed in 1B, 1C, and 1E shall be (i) constructed to VDOT design standards pursuant to detailed plans approved by VDOT, and (ii) offered to be accepted by VDOT for public use or bonded for VDOT's acceptance. The width, (except as specified in 1C above) length, location, (inside median or outside existing pavement), type of section (e.g., urban vs. rural), and geometrics of all lane improvements shall be as required by VDOT design standards and detailed plans submitted by the Owner and approved by VDOT.

2. Any signal improvements proffered herein shall be coordinated with, and approved by the City of Charlottesville and VDOT to address signal timing.

3. The Owner shall submit to the City of Charlottesville engineering drawings, plans, and construction documents ("City Transportation Plans") for all road, signal and other transportation improvements contemplated in these Proffers or shown on the Application Plan that are located within the limits of the City of Charlottesville. The City Transportation Plans shall be submitted within sixty (60) days after the first site plan for the Property is submitted to the County. The Owner shall diligently pursue approval of the City Transportation Plans with the City. If the City does not provide a list of conditions for approval of all the City Transportation Plans within six (6) months after the first final site plan for the Property is approved by the County, or if the City does not approve City Transportation Plans that meet all of the City's conditions of approval within six (6) months after submittal by Owner of City Transportation Plans that meet all such conditions, then the Owner shall not be required by these Proffers to construct any improvements for which approvals have not been obtained. The Owner also shall not be required by these Proffers to acquire right-of-way or otherwise pay for right-of-way in the City for such improvements.

G. Transit Stop; Park and Ride Lot. The Owner shall provide a paved parking area on the Property consisting of no less than twelve (12) spaces either: i) within the area labeled "Future Development Area 1" (as shown on Sheet ADD-3.0 of the Application Plan) or ii) in conjunction with the construction of a parking area for another use, (e.g. a grocery store), for temporary use by commuters accessing transit, trails or carpools (the "Park and Ride Lot"). The Park and Ride Lot shall include a transit stop. Construction of the Park and Ride Lot by the Owner shall occur in conjunction with the construction and dedication of the adjacent Bent Creek Parkway 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. The transit stop and Park and Ride Lot shall be designed and constructed in coordination with, and approval by the County Transportation Planner and Charlottesville Transit Service, ("CTS") or Regional Transit Authority (if in place) and shall incorporate a shelter, including rest bench, pedestrian access and signage consistent with other similar CTS facilities.

2. Greenway Dedication. The Owner shall dedicate in fee simple to the County, or at the County's option, an easement to the County, and construct a link to the section of trail through the Property in the location shown on the Application Plan. The Greenway shall be dedicated and the section of trail shall be installed within six (6) months after the issuance of the first certificate of occupancy within the Property. This section of trail shall be constructed to meet the Class A trail definition as contained in the County's Greenway Plan. The existing, dilapidated bridge over Moore's Creek shall be restored or replaced (for pedestrian or bicycle use only) as part of the trail section at the time of the completion of the trail, and to sufficient design to support a Class A trail. In the event that sufficient right-of-way exists or can be obtained by others, the Owner shall construct within nine (9) months after the availability of such right-of-way, an extension of the link for the County Greenway System beyond the Property line to Interstate 64, along Biscuit Run, in the area shown on the Application Plan. 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.

3. Greenway Park and Bike/Ped Master Plan. Within the area depicted on the Application Plan as Park/Open Space, the Owner shall dedicate in fee simple to the County, or at the County's option, an easement to the County, a Greenway Park, to include the stream valley areas along Moore's Creek, for

use by the public for hiking, bicycling, picnicking and other passive recreational use. At least five (5) parking spaces in the adjacent parking lot on the Application Plan shall be reserved for a trail head use.

The Owner shall submit a master plan for, and construct a Greenway Park and Bike/Ped system as a condition of approval for the first site plan for the Property. Subject to County approval as part of the first site plan for the Property, the Greenway Park and Bike/Ped master plan shall incorporate the following elements:

- i. Greenway Park and Trailhead Park routing plan, including trail standards;
- ii. The Master Plan shall provide for a pedestrian and bicycle trail;
- iii. 5th Street/Avon Connector Road preliminary engineering plan;
- iv. Preliminary landscape plan for impact area;
- v. Critical slope impact evaluation and option assessment; and
- vi. Tree survey within the Stream Buffer area;

The Greenway Park and Bike/Ped master plan shall be coordinated with the County's Director of Parks and Recreation. The Greenway Park and Bike/Ped master plan shall be submitted with the first final site plan for the Property and shall identify, design and incorporate the items cited in i-vi above. This Proffer 3 shall be satisfied upon (a) approval of all relevant elements of the Greenway Park and Bike/Ped master plan by the requisite federal, state, and local approval agencies; (b) posting of a bond satisfactory to the Director of Parks and Recreation for construction of any improvements as depicted on the approved Greenway Park and Bike/Ped master plan; and (c) the Board of Supervisor's acceptance of the deed of dedication of the fee simple (or easement) interest. This Proffer 3 shall be satisfied prior to or at the time of the County's approval of the first final site plan for the Property. If the Greenway Park 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 Park to the Board of Supervisors.

4. Pedestrian Link to Willoughby Subdivision. In the event that sufficient right-of-way exists or can be obtained by others for the Willoughby portion of land needed, the Owner shall construct within nine (9) months after the availability of such right-of-way, a pedestrian path or trail connecting the Property to the Willoughby Subdivision (the "Willoughby Link"). The Willoughby Link shall include a pedestrian bridge over Moore's Creek, and reasonable access to at least one neighborhood street within Willoughby. For the purposes of this proffer, reasonable access shall mean a pedestrian access that is topographically feasible, but sensitive to terrain features, as determined by the County Engineer. If sufficient right-of-way is not obtained, or access to at least one street is not approved by the Willoughby neighborhood within five (5) years of the issuance of the first occupancy permit within the Property, then Owner shall contribute the sum of \$25,000.00 to the County of Albemarle for trails maintenance and benefit and the Owner shall be relieved of all obligation to construct a Willoughby Link.

5. Tree Conservation Areas. Within the areas depicted on the Application Plan as Conservation Areas, no land disturbing activities shall occur except in accordance with Best Management Practices, as defined by the Virginia Department of Forestry. On the Application Plan, Conservation Areas are generally depicted, and incorporate approximately 14 total acres, with approximately 8 acres lying outside the Landfill Area and approximately 6 acres lying within the area of the Landfill Area. In order to provide an allowance for areas necessary for constructing stream mitigation and other environmental and conservation measures, compliance with this proffer requires the Owner to design, set aside and allocate not less than 12.5 acres for Conservation Areas, including not less than 7 acres on the portion of the Property lying outside the Landfill Area, and not less than 5.5 acres within the area of the Landfill Area. For the purposes of this proffer, the Landfill Area is considered to constitute Tax Map 77, Parcel 11E, which contains 21.165 total acres. Management of Conservation Areas on the Property for any other purpose not involving land disturbing activities, including wildlife habitat improvement, shall be in accord with a forest stewardship plan approved by the County's Director of Community Development. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality during any forest activity. The primary objectives of the forest stewardship plan shall be to (a) maintain the health of the Conservation Areas, (b) maintain a scenic, urban forest and (c) conserve soil and water.

In addition to providing a forest stewardship plan, the Owner shall replace trees that must be removed in the areas denoted as "Conservation Areas" on the Application Plan that lie within the

Greenway Park. Replacement shall be two (2) trees of similar species or quality for each removed, or destroyed tree. All tree replacement shall be in accord with the final landscape plan for the first final site plan for the Property. The Owner's obligation to replace trees within the Conservation Areas shall apply only to existing trees within the final, approved Greenway Park pursuant to the Greenway Park and Pedestrian Master Plan, described above. Trees to be replaced within the following planting season, must be in excess of 12" dbh and shall be replaced with trees of the same or a similar species or quality of not less than 2.5" dbh, as determined by the County's Director of Community Development. The County's Director of Community Development may authorize minor variations in the specific location and extent of the "Conservation Areas" as depicted by the Application Plan provided that such variations (a) are supported by final engineering, geotechnical, and environmental analysis; (b) have been mitigated to the satisfaction of the Director of Community Development; and (c) meet any other requirements for a minor variation under County Code § 18-8.5.5.3(a)(2).

The Owner shall employ a licensed arborist until all land disturbance within the Conservation Areas is complete in order to assure compliance with the standards contained in this Proffer 5.

6. LEED Standards for Core & Shell Development. The Owner shall cause commercial buildings within the shopping center portion of the Property to be rated a minimum of "Certified" under the LEED Green Building Rating System for Core & Shell Development, as set forth in the U. S. Green Building Rating System, Version 2.0, July 2006 (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's Director of Community Development a certification from a LEED certified architect that such space, if constructed in accordance with the building plans, is designed to achieve the minimum "Certified" rating provided in this Proffer 6. Before the Owner requests a certificate of occupancy for any building for which a LEED certified 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 opinion was based. For each commercial building containing LEED Compliant Commercial Space, the Owner shall provide a copy of the LEED certification to the County's Director of Community Development within one (1) year after the date the certificate of occupancy was issued for that building.

7. Moore's Creek Erosion and Buffer Projects. The Owner shall complete the erosion and buffer projects for Moore's Creek, above Biscuit Run in the areas depicted on the map attached ("Erosion and Buffer Projects"). The Erosion and Buffer Projects shall improve those stretches of Moore's Creek above Biscuit Run identified on the attached **Exhibit A** from the County's Stormwater Action Lists Report for Stormwater Master Plan, prepared by CH2MHill, dated January, 2004. The Erosion and Buffer Projects shall include but not be limited to streambank restoration and stream channel stabilization in general conformity with *The Virginia Stream Restoration and Stabilization Best Management Practices Guide* published by the Virginia Department of Conservation and Recreation in 2004 or any subsequent updates or revisions. The Erosion and Buffer Projects also shall include but not be limited to the installation of new riparian plantings in general conformity with the *Riparian Buffers Modification and Mitigation Guidance Manual* prepared by the Virginia Chesapeake Bay Local Assistance Department in September 2003 or any subsequent updates or revisions. The Erosion and Buffer Projects scope shall be subject to all applicable federal and state and local approvals, including the requirements set forth in the final DEQ Landfill Work Plan, defined below. The schedule and scope of the Erosion and Buffer Projects shall be submitted and approved with the first final site plan within the Property and shall be completed within three (3) years from the date of the approval of the first final site plan within the Property.

8. Former Landfill Site; Work Plan; Department of Environmental Quality. Prior to preliminary site plan approval the Owner shall have obtained DEQ approval of a work plan ("Landfill Work Plan") addressing the implications of the Owner's constructing any portion of the Bent Creek Parkway, and any proposed project improvements on the Property implicating the former City of Charlottesville Landfill site. The Landfill Work Plan shall be prepared by an environmental consulting firm and shall contain the following:

A. A discussion of the geology, site history, and generalized subsurface stratigraphy of the landfill site, based upon a systematic study to include field observations, and if necessary, electromagnetic induction (EM) survey to determine the lateral extent of waste deposits on the Property.

B. A plan to stabilize, cover or otherwise address to DEQ's satisfaction any areas of exposed waste on the Property discovered during the systematic study referenced in A. above.

C. A plan that addresses the construction techniques to be employed to allow construction of Bent Creek Parkway and any related improvements over the waste deposits within the landfill site. For example, to the extent dynamic compaction of the waste deposits will be required to construct the roadway, the plan will describe where and how dynamic compaction will be performed.

D. The Owner shall diligently pursue DEQ's approval of the Landfill Work Plan. Unless DEQ requires otherwise, the components of the Landfill Work Plan referenced above may be submitted to DEQ separately or within the same document. The County shall be provided with a copy of the Landfill Work Plan, together with all back-up data submitted in DEQ's approval of the Landfill Work Plan as a condition of approval of the first preliminary site plan. The work described within the Landfill Work Plan shall be substantially completed by the Owner prior to the issuance of any permits for constructing building improvements on the Property, as confirmed by the County Engineer. In addition, the Owner shall provide a certification from a licensed geo-technical engineer that the work under the Landfill Work Plan is complete. [Preliminary site plan approval and grading permits may be issued pending completion of the work described within the Landfill Work Plan.]

9. Cultural Resources. Prior to commencing land disturbance of any of the area included in the former Willoughby Mansion Site, as depicted on the attached **Exhibit B**, prepared by Dutton Associates, (the "Phase I Scope Area"), the Owner shall cause to be completed and supplied to the County, a Phase I Historic Resources Survey ("Phase I Survey") for any areas within the Phase I Scope Area to be disturbed. The Phase I Survey shall be conducted pursuant to the National Historic Preservation Act of 1966, as amended, the Archaeological and Historic Preservation Act of 1974, and Executive Order 11593. The consultant conducting the Phase I Survey shall meet the professional qualification standards of the Department of the Interior (48 Fed. Reg. 44,738 - 44,739). The archaeological fieldwork component of the Phase I Survey shall conform to the qualifications specified by the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 Fed. Reg. 44,716 - 44,742 (1983)), and by the Virginia Department of Historic Resources in its publication entitled *Guidelines For Conducting Cultural Resource Survey In Virginia: Additional Guidance for the Implementation of the Federal Standards Entitled Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44742, September 29, 1983), 1999, rev. 2000. In the event that any human remains are encountered in the course of conducting any Phase I Survey, no land disturbance shall proceed prior to 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 Phase I Survey consultant shall follow federal and state guidelines and legislation in conducting the Phase I Survey in making recommendations regarding any Potential Resource Site's eligibility for nomination to the National Register of Historic Places (NRHP). All artifacts generated in the course of survey and associated records will be curated according to the requirements specified in *Curation of Federally Owned and Administered Archaeological Collections* (36 C.F.R. § 79) and *Virginia Department of Historic Resources State Curation Standards*.

10. Erosion and Sediment Control and Stormwater Quality Management.

A. 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.)

B. Best Management Practices; Stormwater Quality Management. The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide Best Management Practices and other measures for water quality to achieve a pollutant 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 the entire Property.

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 County's 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. Rainfall Harvesting, Including Extensive Roof Design and Other Measures. Owner shall incorporate rainfall harvesting measures ("Rainfall Harvesting") into the overall Property. Rainfall Harvesting measures may include but need not be limited to impervious surface alternatives for parking and drive isles, cisterns, and extensive, ("green") roof technologies. Not less than twenty-five percent (25%) of the roof area of the buildings within the North and South Sectors shall employ green, or extensive roof design. Rainfall Harvesting shall be submitted as part of, and must be compatible with the Best Management Practices reviewed and approved by the County's Program Authority in satisfying Proffer 10.B above. Owner's proposed use of Rainfall Harvesting shall be submitted as part of the first preliminary site plan for the Property. Final Rainfall Harvesting design and engineering documentation shall be submitted with the first final site plan and building plans for the Property.

11. Architectural Guidelines.

A. Portions of the Property Subject to ARB Review. The Property shall be designed and constructed in conformance with the Albemarle County Architectural Review Board Guidelines, a copy of which is attached as **Exhibit C**. Traditional "back of building" materials shall not be used for the home improvement and or major retail spaces contemplated within the Property. Translucent roofing materials shall not be visible from the Entrance Corridor. Roofs or parapet walls shall be used to eliminate visibility of rooftop equipment from the Entrance Corridor. Trees shall be provided along both sides of Bent Creek Parkway at forty feet (40') on center, a minimum 2.5" dbh at planting. (Visibility shall be determined by the Architectural Review Board. Final site plan approval is subject to ARB approval of the architectural and site design issues that are the subject of this Proffer 11.A.

B. Portions of the Property Not Subject to ARB Review. To the extent this Property, or any portion thereof, is not subject to review by the County's Architectural Review Board: (i) the Property nevertheless shall be designed and constructed in conformance with the Albemarle County Architectural Review Board Guidelines, a copy of which is attached as **Exhibit C**, as determined by the County's Director of Community Development; (ii) traditional "back of building" materials shall not be used for the home improvement and or major retail spaces contemplated within the Property; (iii) translucent roofing materials shall not be visible from within the project area (visibility shall be determined by the County's Director of Community Development); (iv) roofs or parapet walls shall be used to eliminate visibility of rooftop equipment from within the project area; and (v) the architectural elements are consistent with the goals of the Comprehensive Plan for this area.

12. Transit Funding.

A. The Owner shall contribute cash to the County or to 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. 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 six (6) months after the provision of public transit service to the Property. Funding for the transit service described in this Proffer 12 shall be provided through assessments administered by the Owner and shall be Twenty Cents (\$0.20) per square foot of net rentable commercial space (excluding however rentable space attributed to retail warehouse or garden area space) per year (the "Transit Assessment"), in 2009, adjusted annually to the nearest one one-hundredth of a cent by the over-the-year percent increase or decrease in the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics.

B. At any time, at the County's option, all Transit Assessments, along with any unused Transit Assessment funds accumulated by the Owner, shall be directed to a regional transit authority or other governmental authority operating public transit service with service to the Property. In such event, and for so long as public transit service is provided to the Property, the Owner 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 Owner collects the Transit Assessment, the Owner shall provide to the County Director of Community Development a written report listing the current Transit Assessment amount, amount of commercial square footage assessed, and the amount of the Transit Assessment actually collected.

C. The terms of this Proffer 12 shall be incorporated into the governing documents or leases of the Property, 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 12 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.

13. **Phasing of Development.** Except for the Outparcel labeled "Future Development Area 1" on the Application Plan, the Property shall be developed under a single, final site plan.

Submitted as of the 12th day March, 2008, by:

NEW ERA PROPERTIES, LLC
a Virginia limited liability company
By: River Bend Management, Inc.
Its Manager
By: (Signed) Coran Capshaw
Its: President
Date: March 12, 2008

AVON HOLDINGS, LLC
a Virginia limited liability company
By: River Bend Management, Inc.
Its Manager
By: (Signed) Coran Capshaw
Its: President
Date: March 12, 2008