

**PROFFER STATEMENT
OLD TRAIL VILLAGE**

Date: September 9, 2005
ZMA #: ZMA 2004-024 Old Trail Village
Tax Map Parcel Number: 55E-1-A1 (portion)

An approximately 237 acre portion of tax map parcel 055E0-01-00-000A1 is subject to rezoning application ZMA 2004-024 and thus to this Proffer Statement (the "Property"). The Property is described with more particularity on sheet 6 of 9 of the Application Plan entitled "Old Trail Village Rezoning ZMA-04-024 General Development Plan" prepared by Timmons Group, containing nine (9) sheets, dated June 24, 2005, last revised August 26, 2005, and attached hereto as **Exhibit A** (the "Application Plan"). The Owner of the Property is March Mountain Properties, L.L.C., a Virginia limited liability company (the "Owner").

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

This Proffer Statement shall relate to the Application Plan and to the Code of Development dated September 6, 2005, and attached hereto as **Exhibit B** (the "Code of Development"). Subject always to the requirements, terms and provisions of the Code of Development, the Owner reserves the right to reconfigure the internal block improvements and street network as shown on the Application Plan to (i) ensure compliance with requirements of the Albemarle County Architectural Review Board; (ii) provide all necessary storm water management and BMP facilities; (iii) achieve the goals of the Neighborhood Model and Crozet Master Plan; and (iv) comply with all other applicable Albemarle County requirements and regulations.

1. **Green Space; Park Land and Greenway Dedication.** The Owner shall devote a minimum of twenty percent (20%) of the land within the Property to green space as shown on sheet 5 of 9 of the Application Plan. Of this green space land, within five (5) years after the date that ZMA 2004-024 is approved by the County, or within thirty (30) days after the request of the County, whichever is sooner, the Owner shall dedicate to the County for public use for parks and open space resources and for a greenway, a 25-acre park and a 10.8-acre greenway area, each as further shown on sheet 5 of 9 of the Application Plan (collectively, the "Park and Greenway Area"). After it is dedicated to public use, the Park and Greenway Area shall continue to be included in the total area of green space and amenities within the Property. At the time of the

conveyance and dedication, the Park and Greenway Area land will be subject to the Architectural and Landscape Standards for Old Trail Village, as provided in the Code of Development. The remaining green space land within the Property that will not be dedicated to the County for public use shall be maintained by the Old Trail Owner's Association. The dedication of the Park and Greenway Area land shall be a fee simple interest in such land. If the Park and Greenway Area land is not dedicated as part of a site plan or subdivision plat, the Owner shall pay the costs of surveying the land and preparing the deed of dedication.

2. **Affordable Housing.** The Owner shall provide affordable housing equal to fifteen percent (15%) of the total residential units constructed on the Property, in the form of for-sale condominiums and townhouses, and for-rent condominiums, townhouses, apartments and accessory units. The affordable housing dwelling units shall be reasonably interspersed throughout the Property as provided in this paragraph 2, subject to the requirements of the Application Plan and the Code of Development. If the Owner elects at its option to provide for-sale single family detached units at affordable rates (as defined herein), such units shall be applied toward the 15% requirement. Each subdivision plat and site plan for land within the Property shall designate the lots or units, as applicable, that will, subject to the terms and conditions of this proffer, incorporate affordable units as described herein, and the aggregate number of such lots or units designated for affordable units within each subdivision plat and site plan shall constitute a minimum of fifteen percent (15%) of the lots in such subdivision plat or site plan. Notwithstanding the foregoing, however, the Owner may "carry-over" or "bank" credits for affordable units in the event an individual subdivision plat or site plan designates affordable units that in the aggregate exceed the fifteen percent (15%) minimum for such application, and such additional affordable units may be allocated toward the fifteen percent (15%) minimum on any future subdivision plat or site plan, provided however, that the maximum number of affordable units that may be carried over or banked shall not exceed fifteen percent (15%) of the total units on any subdivision plat or site plan.

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

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

B. For-Rent Affordable Units.

(1). **Rental Rates.** The initial net rent for each for rent affordable unit shall be consistent with the then-current and applicable maximum net rent rate approved by the County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent affordable unit may be increased up to three percent (3%). For purposes of this proffer statement, the term “net rent” means that the rent does not include tenant-paid utilities. The requirement that the rents for such for-rent affordable units may not exceed the maximum rents established in his paragraph 2B shall apply for a period of five (5) years following the date the certificate of occupancy is issued by the County for each for-rent affordable unit, or until the units are sold as low or moderate cost units within the meaning of Section 18.4.3 of Chapter 18, Zoning, of the Albemarle County Code, whichever comes first (the “Affordable Term”).

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

(3). **Reporting Rental Rates.** During the Affordable Term, within thirty (30) days of each rental or lease term for each for-rent affordable unit, the then-current owner shall provide to the County 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.

3. **Cash Proffer for School Projects.** For each dwelling unit constructed on the Property, the Owner shall contribute cash to Albemarle County for funding school projects within the Community of Crozet and shown on the County’s Capital Improvements Program, as follows: \$1,000 for each single family detached unit, \$500 for each townhouse unit, and \$250 for each multifamily unit. The cash contribution for each dwelling unit shall be paid at the time of the issuance of the building permit for such dwelling unit. If the cash contribution has not been exhausted by the County for the stated purpose within ten (10) years from the date of the issuance of the last residential building permit within the Property, all unexpended funds shall be refunded to the Owner.

4. **Cash Proffer for Park Master Plan.** Within one (1) year after the date that ZMA 2004-024 is approved, or within thirty (30) days after the request by the County, whichever is sooner, the Owner shall make a cash contribution to the County in the amount of fifty thousand dollars (\$50,000.00) for the purpose of funding a master plan for the 25-acre park land shown on sheet 5 of 9 of the Application Plan. If such cash contribution is not expended for the stated purpose

within two (2) years from the date of the contribution, all unexpended funds shall be refunded to the Owner.

5. **Cash Proffer for Park Projects.** For each dwelling unit constructed on the Property, the Owner shall contribute cash to Albemarle County for funding parks and recreation projects and improvements identified on the County’s Capital Improvements Program within the Property and, only if such projects and improvements cannot be accommodated within the Property, then within the Community of Crozet, as follows: \$1,000 for each single family detached unit, \$500 for each townhouse unit, and \$250 for each multifamily unit. Notwithstanding the terms of this paragraph 5 to the contrary, however, the Owner shall receive a “credit” against the first fifty thousand dollars (\$50,000.00) that would otherwise be owed to the County pursuant to this paragraph 5, in recognition of the cash proffer referenced in paragraph 4. The cash contribution for each dwelling unit shall be paid at the time of the issuance of the building permit for such dwelling unit. If the cash contribution has not been exhausted by the County for the stated purpose within ten (10) years from the date of the issuance of the last residential building permit within the Property, all unexpended funds shall be refunded to the Owner.

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

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

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

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

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

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

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

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

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

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

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

J. Any requirement of this condition may be waived by the County Engineer by submitting a waiver request with the preliminary plat. If such a request is made, it shall include: (i) a justification for the request contained in a certified engineer's report; (ii) a vicinity map showing a larger street network at a scale no smaller than one (1) inch equals six hundred (600) feet; (iii) a conceptual plan at a scale no smaller than one (1) inch equals two hundred (200) feet showing surveyed boundaries of the property; (iv) topography of the property at five (5) foot intervals for the property being subdivided and on abutting lands to a distance of five hundred (500) feet from the boundary line or a lesser distance determined to be sufficient by the agent; (v) the locations of streams, stream buffers, steep slopes, floodplains, known wetlands; and (vi) the proposed layout of streets and lots, unit types, uses, and location of parking, as applicable. In reviewing a waiver request, the County Engineer shall consider whether the alternative proposed by the Owner satisfies the purpose of the requirement to be waived to at least an equivalent degree. In approving a waiver, the County Engineer shall find that requiring compliance with

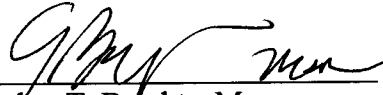
the requirement of this condition would not forward the purposes of the County's Subdivision and Water Protection Ordinances or otherwise serve the public interest; and granting the waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the Project, and to the land adjacent thereto.

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

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

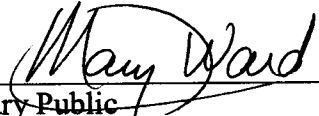
WITNESS the following signature:

MARCH MOUNTAIN PROPERTIES, L.L.C.

By: 
Gaylon T. Beights, Manager

COMMONWEALTH OF VIRGINIA
~~CITY~~COUNTY OF Albemarle, to wit:

The foregoing instrument was acknowledged before me this 9th day of September, 2005 by Gaylon T. Beights, Manager of March Mountain Properties, L.L.C., a Virginia limited liability company.

My Commission expires: November 30, 2007 
Notary Public