

**PROFFER FORM**

Date of Proffer Signature: November, 2007  
ZMA # 2007-00005 Avon Park II  
Tax Map 90 Parcel Number 31

5.17 Acres to be rezoned from R-1 to R-6  
in accordance with the Application Plan of Terra Concepts, P.C.  
dated April 30, 2007, last revised October 19, 2007)

Weather Hill Development, L.L.C., a Virginia limited liability company, is the owner (the "Owner") of Tax Map 90, Parcel 31 (the "Property") which is the subject of rezoning application ZMA 2007-00005 known as "Avon Park II" (the "Project").

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property, if rezoned with the offered plans approved for development. These conditions are proffered as a part of the requested rezoning and it is agreed that the conditions are reasonable.

**1. AFFORDABLE HOUSING**

The Owner shall provide affordable housing equal to fifteen percent (15%) of the total residential dwelling units within the Project in the form of for lease or for sale affordable dwelling units (the "Affordable Dwelling Units" or "Affordable Units"). 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. .

In the event that the number of Affordable Dwelling Units to achieve 15% results in a fractional unit, the Owner shall contribute cash to the County in a proportionate amount based on the amount of \$19,100. For example, if 15% equates to 4.5 Affordable Units, the Owner shall provide 4 Affordable Units pursuant to the terms described herein, and shall contribute cash to the County in the amount of \$9,550 be paid prior to issuance of a building permit for the first Affordable Dwelling Unit.

A. The Affordable Dwelling Units shall be comprised of one or more of the following unit types: single-family attached housing (townhouses), condominiums or apartments/flats. The Owner or his successor in interest reserves the right to achieve the 15% Affordable Dwelling Units in a variety of ways, utilizing the above mentioned unit types alone or in combination as outlined below. The Owner shall convey the responsibility of constructing the affordable units to any subsequent purchaser of the Property. The current Owner or subsequent Owner shall create units affordable to households with incomes less than 80% of the area median family income (the "Affordable Unit Qualifying Income"), such that housing costs consisting of principal, interest, real estate taxes and homeowner's insurance (PITI) do not exceed 30% of

the Affordable Unit Qualifying Income; provided, however, that in no event shall the selling price of such Affordable Units be more than sixty-five percent (65%) of the applicable Virginia Housing Development Authority (VHDA) sales price/loan limits for VHDA's first-time homebuyer programs **provided** that the selling price shall not be required to be less than One Hundred Ninety Thousand Four Hundred Dollars (\$190,400) at the beginning of the 90-day identification and qualification period referenced below. The Owner or his successor in interest may at its option facilitate the provision of down payment assistance loans to reduce the out-of-pocket cash requirement costs to the homebuyer, such as, but not limited to a "silent" second lien Deed of Trust, so that the resultant first mortgage and housing costs remain at or below the parameters described herein. All financial programs or instruments described herein must be acceptable to the primary mortgage lender. Any "silent" second lien Deed of Trust executed as part of this paragraph shall be donated to the County of Albemarle or its designee to be used to address affordable housing. For purposes of calculating the price of the Affordable Dwelling Units, the value of Seller-paid closing costs shall be excluded from the selling price of such Affordable Dwelling Units.

i. For-Sale Affordable Units - All purchasers of for-sale Affordable Units shall be approved by the Albemarle County Office of Housing or its designee. The Owner shall provide the County or its designee a period of ninety (90) days to identify and pre-qualify an eligible purchaser for the Affordable Units. The 90-day period shall commence upon written notice from the Owner that the units will be available for sale. This notice shall not be given more than 120 days prior to the anticipated receipt of the certificate of occupancy. If the County or its designee does not provide a qualified purchaser during this ninety (90) day period, the Owner shall have the right to sell the Unit(s) without any restriction on sales price or income of purchaser(s); provided, however, that any Units(s) sold or leased without such restriction shall nevertheless be counted toward the number of Affordable Units required to be provided pursuant to the terms of this proffer. If these Units are sold, this proffer shall apply only to the first sale of each unit. Nothing herein shall preclude the then-current Owner/builder from working with the County Housing Department prior to the start of the notification periods described herein in an effort to identify qualifying purchasers for Affordable Units.

ii. For-Rent Affordable Units

1. Rental Rates For-Lease Affordable Units The initial net rent for each for-rent Affordable Unit when the Unit(s) is available for occupancy shall not exceed the then-current and applicable maximum net rent 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 paragraph 1A(ii)(1) 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 affordable units as defined by the County's Affordable Housing Policy, whichever comes first (the "Affordable Term").

2. 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 paragraph 1A. 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 1A(ii). 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 1A(ii) have been satisfied.

3. Reporting of 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.

B. County Option for Cash In Lieu of Affordable Units. If at any time prior to the County’s approval of any preliminary site plan or subdivision plat for the subject property which includes one or more for-sale Affordable Dwelling Units, the County’s Housing Office informs the then-current owner/builder in writing that it may not have a qualified purchaser for one or more of the for-sale Affordable Dwelling Units at the time that the then-current owner/builder expects the units to be completed, and that the County will instead accept a cash contribution to the County to support affordable housing programs in the amount of Nineteen Thousand One Hundred Dollars (\$19,100) in lieu of each Affordable Unit(s), then the then-current owner/builder shall pay such cash contribution to the County prior to obtaining a certificate of occupancy for the Unit(s) that were originally planned to be Affordable Dwelling Units, and 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). For the purposes of this proffer, such Affordable Dwelling Units shall be deemed to have been provided when the subsequent owner/builder provides written notice to the Albemarle County Office of Housing or its designee that the Affordable Units(s) will be available for sale.

## 2. CASH PROFFER

A. The Owner shall contribute cash to the County in the following amounts for each dwelling unit constructed within the Property that is not an Affordable Dwelling Unit. The cash contribution shall be used to address the fiscal impacts of development on the County’s public facilities and infrastructure (i.e., schools, public safety, libraries, parks and transportation) identified in the County’s Capital Improvements Program. The cash contributions shall be paid prior to issuance of a building permit for the category of units described in this paragraph 2 in the following amounts:

- i. Eleven Thousand Nine Hundred Dollars (\$11,900) for each attached town home/condominium unit that is not an Affordable Dwelling Unit
- ii. Seventeen Thousand Five Hundred Dollars (\$17,500) for each single family detached dwelling unit.
- iii. Zero Dollars (\$0.00) for each Affordable Dwelling Unit

B. Annual Adjustment of Cash Proffers. 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 Marshall and Swift Building Cost Index (the “MSI”). In no event shall any cash contribution 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 MSI as of December 1 in the year preceding the

calendar year most recently ended, and the denominator of which shall be the MSI 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.

**3. EROSION AND SEDIMENT CONTROL**

A. 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).

*[Signature Page Follows]*

Weather Hill Development, L.L.C.

By: \_\_\_\_\_  
Marc C. Powell, Manager

1518091v3