

**PROFFER STATEMENT**  
**FOOTHILLS CROSSING**

**Date:** July 18, 2016

**ZMA #:** 2016-05

**Tax Map Parcel #:** 056A2-01-00-06200, and portions of 05600-00-00-05700, 05600-00-00-057B0, 056A2-01-00-06100, and 056K0-00-00-000A1 (the "Property")

**Owner(s) of Record:** Edmund J. Daily, Christopher Daily & Cynthia Daily DiCanio; Route 240 Holdings, LLC; Route 240, LLC; and Foothills Crossing, INC.

Date of Proffer Signature: \_\_\_\_\_, 2016

Rezone one parcel totaling approximately 2.13 acres from R2 Residential (R2) to R6 Residential (R6), and rezone portions of four parcels totaling approximately 35.77 acres from R1 Residential (R1) and Light Industrial (LI) to R6.

Total Land Area: 37.91 acres

Pursuant to Sections 33.4 and 33.7 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed herein below which shall be applied to Foothills Crossing (hereinafter the "Property") if the Zoning Map Amendment (hereinafter the "ZMA") is approved by the County of Albemarle (the "County"). These conditions are proffered as a part of the requested ZMA and it is agreed that: (1) the ZMA itself gives rise to the need for the conditions, and (2) such conditions have a reasonable relation to the rezoning requested.

The term "Owner" as referenced herein shall mean the owner(s) of record and successors in interest of parcels 056A2-01-00-06200, and portions of 05600-00-00-05700, 05600-00-00-057B0, 056A2-01-00-06100, and 056K0-00-00-000A1.

The Application Plan shall refer to that certain Application Plan prepared by Collins Engineering February 16, 2016 last revised July 18, 2016 (the "Application Plan"). Future development of the Property shall be in general accord with the Application Plan.

The headings of the proffers and conditions set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provisions of the proffers.

**1. Park Ridge Street Road Construction and Dedication.**

The Owner shall cause to be constructed a two lane road in the general location of the road identified as Park Ridge Street ("Park Ridge") on the Application Plan. Park Ridge will be an "avenue section" in design, with bike lanes, parking, sidewalks, street trees, and curb and gutter. Park Ridge 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") prior to issuance of the tenth (10<sup>th</sup>) certificate of occupancy within the Property. Once the Owner completes Park Ridge and within sixty (60) days after the written request of the County, the Owner shall dedicate Park Ridge as a public road.

## **2. Eastern Avenue Connector Road Construction and Dedication.**

The Owner shall cause to be constructed a two lane road in the general location of the road identified as Eastern Avenue Connector Roadway ("Eastern Avenue") on the Application Plan. Eastern Avenue will be an "avenue section" in design, with bike lanes, parking, sidewalks, street trees, and curb and gutter. Eastern Avenue 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") prior to issuance of the fiftieth (50<sup>th</sup>) certificate of occupancy within the Property. Once the Owner completes Eastern Avenue and within sixty (60) days after the written request of the County, the Owner shall dedicate Eastern Avenue as a public road.

## **3. Greenway Trails.**

### **A. Construction and Dedication of Greenway Trails.**

A primitive trail network, consistent with the County's design standards for a Class B-type 1 primitive nature trail, shall be established within the Greenway. The installation of the trail shall not preclude the future conversion, by others, of the trail to Class A-paved trail standards. The general location of the trail network is shown on the Application Plan, however exact trail locations shall be determined based on site conditions. Installation of the trail network shall be completed prior to issuance of approval of the tenth (10<sup>th</sup>) CO for a single family dwelling within the Project.

Upon the request of the County, but not prior to the issuance of the tenth (10<sup>th</sup>) CO within the Project, the Owner shall dedicate to the County an easement for public use over the Greenway area, as shown on the Application Plan. Prior to the County's request to dedicate such easement, the Owner may dedicate portions of the Greenway by easement concurrently with one or more subdivision plats for areas lying adjacent to the Greenway; provided however, that Owner may reserve in such easements, rights of access for utilities and maintenance. Each subdivision plat shall depict the Greenway area to be dedicated and shall bear a notation that the Greenway area is dedicated for public use. If, at the time the County requests dedication of the Greenway, any part of the Greenway that has not been dedicated by subdivision plat, shall be (within six (6) months of such request) at Owner's cost, surveyed, platted and recorded with one or more deeds of easement dedication.

### **B. Bike and Pedestrian Tunnel**

Pursuant to approval by VDOT and the County, the Owner shall construct a bike and pedestrian tunnel (the "Tunnel") along the trail network as it passes underneath Eastern Avenue. The Tunnel design shall be submitted for review with the roadway plans for Eastern Avenue. Installation of the Tunnel shall be completed prior to issuance of approval of the tenth (10<sup>th</sup>) CO for a single family dwelling within the Project.

## **4. Community Civic Space.**

The Owner shall provide not less than 20,000 square feet of land within the Project for a Civic Space in the general location identified on the Application Plan. The Civic Space shall be substantially completed prior to the issuance of approval of the tenth (10<sup>th</sup>) CO within the Project. Parks and Civic Spaces shall be conveyed to, and maintained by the Owner's Association. The Owner shall pay the cost of subdividing and conveying the Parks and Civic Spaces to the Owner's Association.

**5. Cash Proffer for Capital Improvements Projects.**

The Owner shall contribute cash on a per "market-rate" dwelling unit basis in excess of the number of units that are allowed by right under the zoning in existence at the time of this zoning amendment for the purposes of addressing the fiscal impacts of development on the County's public facilities and infrastructure, i.e., schools, public safety, libraries, parks and transportation. For the purposes of this Proffer 5, the number of units allowed by right under the R-1 Residential zoning is thirty five (35) single-family detached units. A "market rate" unit is any single-family detached unit in the Project that is not either a For-Sale Affordable Housing Unit or For -Rent Affordable Unit as described in Proffer 6. The cash contributions shall be Four Thousand Nine Hundred and Eighteen Dollars (\$4,918.00) for each single family detached dwelling unit, other than a constructed For-Sale Affordable Dwelling Unit within the Project qualifying as such under Proffer 6. In other words, the cash contribution for market rate single family units shall begin after a building permit for the 35th market rate single family unit is issued and prior to the Owner obtaining a building permit for the 36th market rate single family unit. The cash contributions shall be Three Thousand Eight Hundred and Forty Five Dollars (\$3,845.00) for each single family attached dwelling unit, other than a constructed For-Sale Affordable Housing Unit or a For Rent Affordable Housing Unit within the Project qualifying as such under Proffer 6. The cash contributions shall be Five Thousand Two Hundred and Sixty Two Dollars (\$5,262.00) for each multifamily dwelling unit, other than a constructed For Sale Affordable Housing Unit or For Rent Affordable Housing Unit within the Project qualifying as such under Proffer 6.

Except for the first thirty five (35) single family units, (which shall be exempt from this cash proffer) the cash contribution shall be paid after completion of the final inspection and prior to the time of the issuance of any CO for each new unit; provided however that the cash contributions shall not be made until the number of units have been completed that results in what would otherwise have been a cash contribution of \$\_\_\_\_\_ (the "In-kind Contribution). The In-kind Contribution reflects the value of the Eastern Avenue improvements referenced in Proffer 2 that the Owner has committed to make for the benefit of the public. In other words, the Owner shall not be required to pay the per unit cash contributions described herein until the time of the issuance of the building permit for a new unit completed after applying a credit for the In-kind Contribution of \$\_\_\_\_\_. In the event that the Project is completed prior to the balance of the In-kind Contributions being exhausted, any remaining balance of the In-kind Contribution may not be applied for any other project or development.

**6. Affordable Housing.**

The Owner shall provide affordable housing equal to fifteen percent (15%) of the total number residential units constructed on the Property. For example, if one hundred (100) total units are constructed in the Project, fifteen (15) units, or their equivalent, are required to satisfy this Proffer 6. The Owner or its successors in interest reserve the right to meet the affordable housing objective through a variety of housing types, or through cash contributions, as more particularly described in sections 6A, 6B and 4C below.

- A. For-Sale Affordable Housing Units. All purchasers of the For-Sale Affordable Housing Units,(defined below) shall be approved by the Albemarle County Housing Office or its

designee. "For-Sale Affordable Housing Units" shall be dwelling units offered for sale at prices for which households with incomes less than eighty percent (80%) of the area median income may qualify. The Owner shall provide the County or its designee a period of one hundred twenty (120) days to identify and prequalify an eligible purchaser For-Sale Affordable housing Units. The one hundred twenty (120) day period shall commence upon written notice from the Owner that the unit(s) shall be available for sale. This notice shall not be given more than ninety (90) days prior to receipt of the Certificate of Occupancy for the applicable For-Sale Affordable Housing Unit; the County or its designee may then have thirty (30) days within which to provide a qualified purchaser for such For-Sale Affordable Housing Unit. If the County or its designee does not provide a qualified purchaser during the one hundred twenty (120) day period, the Owner shall have the right to sell the unit(s) without any restriction on sales price or income of the purchaser(s).

B. For-Rent Affordable Housing Units.

- (1) Rental Rates. The initial net rent for each rental housing unit for which Owner seeks qualification for the purposes of this proffer 4, ("For-Rent Affordable Housing Unit") shall not exceed the then-current and applicable maximum net rent rate approved by the Albemarle County Housing Office. In each subsequent calendar year, the monthly net rent for each For-Rent Affordable Housing Unit may be increased up to three percent (3%). For purpose of this proffer 4B, the term "net rent" means that the rent does not include tenant-paid utilities. The requirement that the rents for such for-rents for such For-Rent Affordable Housing Units may not exceed the maximum rents established in this paragraph 4B 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 Housing 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 Housing Units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this subparagraph (2). In addition, all contracts pertaining to a conveyance of any For-Rent Affordable Housing 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 4B. At least thirty (30) days prior to the conveyance of any interest in any For-Rent Affordable Housing 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 4B(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 Housing 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.

C. Cash in lieu of Constructing Affordable Dwelling Units. In lieu of constructing For-Sale, or For-Rent Affordable Dwelling Units for fifteen percent (15%) of the total number of Units, the Owner has the option to make a cash contribution to Albemarle County for the affordable housing program in the amount of Twenty-Four Thousand and Three Hundred Seventy Five Dollars (\$24,375.00) (the "Affordable Housing Cash Proffer") for each such unit. The total cash contribution due to Albemarle County as noted above shall be based on the total number of affordable units built in the Project.

**7. Cost Index.**

Beginning January 1 of each year following the approval of this rezoning, the amount of each cash contribution required by Proffers 5 and 6 shall be adjusted annually until paid, to reflect any increase or decrease for the proceeding calendar year in the Marshall and Swift Building Cost Index ("MSI"). The annual adjustment shall be made by multiplying the proffered cash contribution amount due for the preceding year by a fraction, the numerator of which shall be the MSI as of December 1 in the preceding calendar year, the denominator of which shall be the MSI as of December 1 in the year preceding the calendar year most recently ended (the "Annual Percentage Change"). By way of example, the first annual adjustment shall be Four Thousand Nine Hundred and Eighteen Dollars (\$4,918.00) x 2017 MSI/2016 MSI. Each annual adjustment shall be based on the amount of the proffered cash contribution due for the immediately preceding year based on the formula contained in this Proffer 7 (the amount derived from such formula shall be referred to hereinafter as the "Cash Contribution Due"), provided, however, in no event shall the cash contribution amount paid by the Owner be less than Four Thousand Nine Hundred and Eighteen Dollars (\$4,918.00) per single family detached dwelling unit and Three Thousand Eight Hundred and Forty Five Dollars (\$3,845.00) per single family attached dwelling unit and Five Thousand Two Hundred and Sixty Two Dollars (\$5,262.00) per multifamily dwelling unit under Proffer 5 or Twenty-Four Thousand and Three Hundred Seventy Five Dollars (\$24,375.00) per affordable dwelling unit under Proffer 6 (the "Minimum Cash Contribution"). The Annual Percentage Change shall be calculated each year using the Cash Contribution Due, even though it may be less than the Minimum Cash Contribution, HOWEVER, the amount paid by the Owner shall not be less than the Minimum Cash Contribution. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

The undersigned Owner hereby proffers that the use and development of the Property shall be in conformance with the proffers and conditions herein above, and these proffers shall supersede all other proffers and conditions made prior hereto. This Proffer Statement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

WITNESS the following signature:

**OWNERS of Tax Map Parcel 05600-00-00-057B0:**

By: \_\_\_\_\_  
**CHRISTOPHER DAILY**

By: \_\_\_\_\_  
**EDMUND J. DAILY**

By: \_\_\_\_\_  
**CYNTHIA L. DAILY DICANIO**

Date: \_\_\_\_\_

**OWNER of Tax Map Parcel 05600-00-00-05700 & 056A2-01-00-06200:  
ROUTE 240 HOLDINGS, a Virginia limited liability company**

By: \_\_\_\_\_  
**ALAN TAYLOR, MANAGER**

Date: \_\_\_\_\_

**OWNER of Tax Map Parcel 056A2-01-00-06100:  
ROUTE 240, a Virginia limited liability company**

By: \_\_\_\_\_  
**ALAN TAYLOR, MANAGER**

Date: \_\_\_\_\_

**OWNER of Tax Map Parcel 056K0-00-00-0000A1:**  
**FOOTHILLS CROSSING, a Virginia corporation**

By: \_\_\_\_\_  
**ALAN TAYLOR, MANAGER**

Date: \_\_\_\_\_

