

PROFFER STATEMENT
OAKLEIGH AMENDMENT

Date: January 30, 2017
ZMA#: 2016-00015 Oakleigh Amendment #1
Tax Map Parcel #: 04500-00-00-026A0

**8.8 acres to be rezoned from Neighborhood Model Development (“NMD”)
to NMD to amend proffers**

Oakleigh Albemarle LLC, a Virginia limited liability company, is the fee simple owner (the “Owner”) of Tax Map 45, Parcel 26A (the “Property”) which is the subject of the zoning map amendment application #ZMA-2016-00015 known as “Oakleigh.” The Applicant for Oakleigh is Oakleigh Albemarle LLC, a Virginia limited liability company. The Oakleigh community is herein referred to as the “Project.”

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, 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 agreed that the conditions are reasonable. This proffer statement shall supersede and replace in all respects the proffer statement approved by the Board of Supervisors in connection with ZMA-2007-00004.

1. Affordable Housing.

A. 15% Affordable Requirement. The Owner shall provide Affordable Dwelling Units (as defined herein) equal to fifteen percent (15%) of the total residential dwelling units within the Project that is in excess of the number of units that were allowed by right under the zoning that was in existence prior to the approval of ZMA 2007-0004, an equivalent cash in lieu payment, or a combination thereof (the “15% Affordable Housing Requirement”), as more particularly described in paragraphs 1B and 1C below. Prior to the approval of ZMA 2007-00004, the property was zoned R-6 Residential, and thus had by-right development yield of 52 dwelling units. Therefore, the cash contribution for compliance with the 15% Affordable Housing Requirement shall begin after a certificate of occupancy for the 52nd dwelling unit within the Project is issued and prior to the Owner obtaining a certificate of occupancy for the 53rd dwelling unit within the Project.

B. Construction of Affordable Dwelling Units. If there are more than 52 dwelling units within the Project such that the 15% Affordable Housing Requirement is applicable, the Owner or its successors in interest reserves the right to meet the affordable housing objective through a variety of housing types, including but not limited to, for-sale units, rental units, and accessory units (“Affordable Dwelling Units” or “Affordable Units”).

i. For-Sale Affordable Dwelling Units. All purchasers of the For-Sale Affordable Dwelling Units (as defined below), shall be approved by the Albemarle County Housing Office or its designee. "For-Sale Affordable Dwelling 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, and shall not exceed sixty-five percent (65%) of VHDA's Maximum Sales Price for first-time homebuyers. The Owners shall provide the County or its designee a period of one hundred twenty (120) days to identify and prequalify eligible purchaser(s) of For-Sale Affordable Dwelling Units. The one hundred and 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 Dwelling Units; the County or its designee may then have thirty (30) days within which to provide qualified purchaser(s) for such For-Sale Affordable Housing Units. If the County or its designee does not provide qualified purchaser(s) 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).

ii. For-Rent Affordable Dwelling Units.

- (1) Rental Rates. The initial net rent for each rental housing unit for which Owner seeks qualification for the purposes of this Proffer 1, ("For-Rent Affordable Dwelling 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 Dwelling Unit may be increased up to three percent (3%). For purposes of this Proffer 1B, the term "net rent" means that the rent does not include tenant-paid utilities. The requirement that the rents for such For-Rent Affordable Dwelling Units may not exceed the maximum rents established in this paragraph 1B shall apply for a period of ten (10) years following the date the certificate of occupancy is issued by the County for each For-Rent Affordable Dwelling 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 Dwelling Units during the Affordable Term shall contain language reciting that such unit is subject to the terms of paragraph 1B. In addition, all contracts pertaining to a conveyance of any For-Rent Affordable Dwelling 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 1B. At least thirty (30) days prior to the conveyance of any interest in any For-Rent Affordable Dwelling 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 1B(ii)(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 Dwelling 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 Proffer For Affordable Housing Requirement. If there are more than 52 dwelling units within the Project such that the 15% Affordable Housing Requirement is applicable, then the Owner may elect to make a cash contribution to Albemarle County for all or a portion of the 15% Affordable Housing Requirement in the amount of Twenty-three Thousand, Eight Hundred and Five Dollars and 30/Cents (\$23,805.30) for each such unit(s) (the “Affordable Housing Cash Proffer”) in lieu of constructing Affordable Dwelling Units as detailed in paragraph 1B. Any unit for which the Affordable Housing Cash Proffer is contributed as provided herein shall count as an Affordable Dwelling Unit for purposes of this Paragraph 1 and 2 below.

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 (a “Market Rate Unit”), and that is in excess of the number of units that were allowed by right under the zoning that was in existence prior to the approval of ZMA 2007-0004. Prior to the approval of ZMA 2007-00004, the property was zoned R-6 Residential, and thus had by-right development yield of 52 dwelling units. Therefore, the cash contribution for Market Rate Units shall begin after a certificate of occupancy for the 52nd dwelling unit within the Project is issued and prior to the Owner obtaining a certificate of occupancy for the 53rd dwelling unit within the Project. The cash contributions 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 in the following amounts:

- (i). Seven Thousand Three Hundred and Thirty-Three and 18/100s Dollars (\$7,333.18) for each single-family detached dwelling unit that is not an Affordable Dwelling Unit.
- (ii). Five Thousand Four Hundred and Forty-Seven and 57/100s Dollars (\$5,447.57) for each single family attached dwelling unit that is not an Affordable Dwelling Unit.
- (iii). Seven Thousand Four Hundred and Nineteen and 91/100s Dollars (\$7,419.91) for each multifamily dwelling unit that is not an Affordable Dwelling Unit.
- (iv). Zero Dollars (\$0.00) for each Affordable Dwelling Unit.

B. Annual Adjustment of Cash Proffers. Beginning January 1 of each year following the approval of this rezoning, the amount of each cash contribution required herein shall be adjusted annually until paid, to reflect any increase or decrease for the preceding calendar year in the Comparative Cost Multiplier, Regional City Average, Southeast Average, Category C: Masonry Bearing Walls issued by Marshall Valuation Service (a/k/a Marshall & Swift) (the “Index”) or the most applicable Marshall & Swift index determined by the County if publication of the specific index referenced herein is discontinued. In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by these proffers. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the preceding calendar year, and the denominator of which shall be the Index as of December 1 in the year preceding the calendar year most recently ended (the “Annual Percentage Change”).

3. Tree Preservation.

A. If the Project is to be developed as per Scenario A of the Application Plan, as part of the final site plan for the Project, the Owner will submit a tree preservation plan (the “Scenario A Tree Plan”) for thirteen (13) trees within the Project, as shown on the Application Plan, which specifies tree protection methods and procedures, including fertilizing, tree protection fencing, mulching, and site construction activities which shall be complied with during and after development of the Project. Prior to the final site plan approval, the Owner shall submit a bond or other form of surety in the total amount of Thirteen Thousand Dollars and No/Cents (\$13,000.00). The bond or surety shall be submitted to guaranty the replacement of those trees which are numbered 1, 1A, 2, 3, 4, 4A, 5, 7, 8, 9, 30, 31, and 32 on the Application Plan (the “Scenario A Bonded Trees”) in the event that any of the Scenario A Bonded Trees die within a period of five (5) years after issuance of the last Certificate of Occupancy within the Project. The bond or other surety shall be in a form acceptable to the County Attorney.

B. If the Project is to be developed as per Scenario B of the Application Plan, the Owner will submit as part of the Code of Development for Oakleigh Farm a tree protection plan (the “Scenario B Tree Plan”) for thirty-nine (39) trees within the Project, as shown on the Application Plan, which specifies tree protection methods and procedures, including fertilizing, tree protection fencing and mulching which shall be complied with during and after development of the Project. Prior to the final site plan approval, the Owner shall submit a bond or other form of surety in the total amount of Twenty-Nine Thousand Dollars (\$29,000). The bond or surety shall be submitted to guaranty the replacement of those trees which are numbered 1, 1A, 2, 3, 4, 4A, 5, 6, 7, 8, 9, 10, 14, 16, 17, 19, 20, 21, 22, 24, 25, 27A, 30, 31, 32, 35, 38, 38A, and 44D on the Application Plan (the “Scenario B Bonded Trees”) in the event that any of the Scenario B Bonded Trees die within a period of five (5) years after issuance of the last residential Certificate of Occupancy within the Project. The bond or other surety shall be in a form acceptable to the County Engineer and the County Attorney.

4. Pedestrian Easement. The Declaration of Covenants and Restrictions for the Project shall contain a provision which grants a public right of pedestrian access over all sidewalks within the Project. This right shall be in perpetuity and the Declaration shall name the County of Albemarle, Virginia as a third-party beneficiary with the express right to enforce the provisions

of such public right of access.

5. **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.)

[SIGNATURE PAGE FOLLOWS]

WITNESS the following duly authorized signature:

Owner:

OAKLEIGH ALBEMARLE LLC,
a Virginia Limited Liability Company

By: _____

Printed Name: _____

Title: _____