

Original Proffers: 11/21/13  
Amendment: 3/27/17

## PROFFER STATEMENT

ZMA No. 2014-00006 Avon Park II

Tax Map and Parcel Number: 09000-00-00-03100 (D.B. 3786 P.G. 060)

Owner of Record: **BELLEVUE REAL ESTATE, LLC**

Date of Proffer Signature: March 27, 2017

**Proffer Statement** for 5.262 acres to be rezoned from Planned Residential District (PRD) to Planned Residential District (PRD)

Bellevue Real Estate LLC, a Maryland Limited Liability Company, is the owner (the "Owner") of Tax Map and Parcel Number 09000-00-00-03100 (the "Property") which is zoned as Planned Residential Development (PRD) subject to rezoning application ZMA No. 2014-00006, a project known as "Avon Park II" (the "Project") and the application plan (the "Plan") entitled, "Avon Park II Zoning Map Amendment Plan, created by Roudabush, Gale, and Associates February 10, 2015, last revised May 24, 2016. This current proffer statement (the "Proffer Statement") supersedes the proffer statement dated November 21, 2013 pertaining to ZMA-2012-00004 and the application plan entitled, Avon Park II Zoning Map Amendment Application Plan prepared by Pohl Engineering, LLC, dated August 20, 2012, last revised 10/25/13.

Pursuant to Section 33 of the Albemarle County Zoning Ordinance (Chapter 18 of the Albemarle County Code), the Owner hereby voluntarily proffers the conditions listed below which shall be applied to the Property. These conditions are proffered as a part of the PRD zoning applicable to the Property and the Owner acknowledges that the conditions are reasonable. Each signatory below signing on behalf of the Owner covenants and warrants that it is an authorized signatory of the Owner for this Proffer Statement.

### 1) AFFORDABLE HOUSING

The Owner will provide six (6) affordable housing 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 condition, 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 be referenced in such subdivision plat or site plan.

a) There shall be a maximum of 32 dwelling units on 30 lots in the development. The Affordable Dwelling Units shall be comprised of one or more of the following unit types:

1. Single family townhomes OR
2. Units that will be constructed and maintained as two-family dwellings as defined in the Virginia Uniform Statewide Building Code.

The Owner or his successor in interest reserves the right to achieve six (6) Affordable Dwelling Units 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 will be equal to or less than the Albemarle County affordable housing home price. This home price will increase or decrease per year based on Albemarle County's designated affordable home pricing. All financial programs or instruments described herein must be acceptable to the primary mortgage lender. 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 (the "Housing Office") or its designee. The Owner shall provide the County or its designee a period of one hundred twenty (120) days to identify and pre-qualify an eligible purchaser for the Affordable Units. The 120-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 90 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 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 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 Housing Office prior to the start of the notification periods described herein in an effort to identify qualifying purchasers for Affordable Units.
- 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 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 Twenty Four Thousand Three Hundred Seventy Five Dollars (\$24,375.00) 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 condition, 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 only for capital improvements in the form of public facilities (i.e., schools, public safety, libraries, parks or transportation) located within the Scottsville magisterial district of the County and no funds shall be used for capital improvements to any public facility existing as of the date of this Proffer Statement, such as a renovation or technology upgrade, that does not expand the capacity of such facility. The cash contribution shall not be used for any operating expense of any existing or new facility such as ordinary maintenance or repair. The cash contribution for each individual dwelling unit shall be paid to the County after completion of the final building inspection and prior to issuance of a certificate of occupancy for the

individual unit. The cash contribution for each dwelling unit shall be based upon the type of the dwelling unit and in the amount set forth for each type of dwelling unit as follows:

- i) Three Thousand Six Hundred Forty Five Dollars and 99/100 (\$3,645.99) for each attached town home/condominium unit that is not an Affordable Dwelling Unit.
- ii) Seventeen Thousand One Twenty-Three Dollars and 12/100 (\$17,123.12) 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, 2017, 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 Costs Index (the "MSI"). 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. For each cash contribution that is being paid in increments, the unpaid incremental payments shall be correspondingly adjusted each year.

c) The applicant will receive a cash proffer credit from Albemarle county for the number of dwelling units permitted under the prior by-right zoning of the Property (Tax Map and Parcel Number 09000-00-00-03100), which would yield five (5) single family detached homes.

### 3) LANDSCAPE EASEMENTS

- a) The Owner shall obtain a variable width landscape easement behind lots 1-7 on Tax Map and Parcel Number 090F0-00-00-000A1 (owned by the Avon Park Community Association) as shown on the Plan. The owner shall install plants within the proposed easement as per the final approved landscape plan during the first fall planting season after the adjacent retaining wall is installed but prior to the issuance of the certificate of occupancy for the seventh completed dwelling unit located on lots 1 through 7. There shall be no obligation on the Owner to install landscaping on the adjoining property if permission from the impacted property owner is not obtained.
- b) The Owner shall install plants within the proposed 10' landscape easement shown on page 5 of the Plan at the rear of lots 8-10 prior to the issuance of the certificate of occupancy for the 3rd completed dwelling unit located on lots 8-10.
- c) The Owner shall install plants within the proposed 10' landscape easement shown on page 5 of the Plan at the rear of lots 13-15 prior to the issuance of the certificate of occupancy for the 3rd completed dwelling unit located on lots 13-15.
- d) The Owner shall install plants within the proposed 10' landscape easement shown on page 5 of the Plan at the rear of lots 16-22 prior to the issuance of the certificate of occupancy for the 7th completed dwelling unit located on lots 16-22.
- e) The Owner shall install plants within the proposed 10' landscape easement shown on page 5 of the Plan at the rear of lots 23-26 prior to the issuance of the certificate of occupancy for the 3rd completed dwelling unit located on lots 23-26.

- f) The Owner shall install plants as shown on Page 9 of the Plan within the proposed 20' private drainage and landscape easement shown on page 5 of the Plan at the rear of lots 28-30 prior to the issuance of the certificate of occupancy for the 3rd completed dwelling unit located on lots 28-30.
- g) The Owner shall install the off-site plants along Hathaway Street at the entrance to the Avon Park 2, as shown on page 9 of the Plan, development during the first fall planting season after the base coat of asphalt is installed on the road.

#### **4) EROSION AND SEDIMENT CONTROL**

The Owner shall provide additional erosion and sediment control measures beyond the standard regulatory requirements stated in the Virginia Erosion and Sediment Control Handbook (VESCH) applicable on the date of approval of this Proffer Statement. These additional measures shall consist of the following:

- a) Silt Fencing (VESCH Standard 3.05):
  - i) Contributing drainage area to non-wire reinforced silt fence shall be reduced from one quarter (0.25) acre per 100 feet of silt fence length to two-tenths (.20) per 100 feet of silt fence. Contributing drainage area to wire reinforced silt fence shall not exceed one quarter acre per 100 feet of silt fence; and
  - ii) Maximum contributing drainage area to non-wire reinforced silt fence from minor swales or ditch lines shall be reduced from 1 acre and no greater than 1 cfs to 0.8 acre and no greater than .08 cfs. Maximum contributing drainage area to wire reinforced silt fence from minor swales or ditch lines shall be 1 acre and no greater than 1 cfs; and
  - iii) The height of any silt fence shall be a minimum of 24 inches above the original ground surface and shall not exceed 34 inches above ground elevation; and
  - iv) Post spacing for non-wire-reinforced silt fence shall be reduced from a maximum 6 feet apart to a maximum 5 feet apart. Post spacing for wire reinforced silt fence shall be reduced from a maximum 10 feet apart to a maximum 8 feet apart.
- b) Temporary Diversion Dike (VESCH Standard 3.09):
  - i) The maximum allowable drainage area to a temporary diversion dike shall be reduced from five (5) acres to three (3) acres.
- c) Temporary Sediment Trap (VESCH Standard 3.13):
  - i) Maximum total contributing drainage area shall be reduced from three (3) acres to two (2) acres; and
  - ii) The storage volume requirement shall be increased by a factor of 1.2.
- d) Temporary Sediment Basin (VESCH Standard 3.14):
  - i) A temporary sediment basin shall be provided where the total contributing drainage area exceeds two (2) acres; and
  - ii) The permanent pool and dry storage volumes shall be increased by a factor of 1.2.

## **6) ADDITIONAL TREE REMOVAL**

The owner shall identify the location of the trees located at the rear of tax map parcels identified as 090F0-00-00-000A2, 090F0-00-0F-04200, 090F0-00-0F-04300, and 090F0-00-0F-04400. If trees are located within 5' or less of the property line the owner will remove the trees on those adjoining existing properties. Tree removal will be subject to the existing property owner's written approval permitting the Owner, the owner's subcontractors, and/or employees, of Avon Park II property to come onto the property and remove the trees.

## **7) ALLOWED USES**

The use of the Property shall be limited to those uses allowed by right under section 19.3.1; and the use allowed by special use permit under section 19.3.2(7) of chapter 18, Zoning, of the Albemarle County Code, Zoning Supplement #91 dated 6-3-15 and in effect on the date of approval of this Proffer, copies of which are attached hereto and incorporated herein as Attachment A.

## **8) RECREATIONAL AMENITIES**

The Owner shall provide and install the following recreational amenities in the existing "park" on Tax Map and Parcel Number 090F0-00-00-000A1 (owned by the Avon Park Community Association). These amenities are at the request of the Avon Park Community Association Board and will be installed upon issuance of the 24th Certificate of Occupancy.

- a) A 40' x 50' fenced dog park area with two small benches.
- b) Two (2) additional play structures for older children in the existing tot lot area.

## **9) OVERLOT GRADING**

The Owner shall submit an overlot grading plan (hereinafter the "Grading Plan") meeting the requirements of this proffer condition with the application for each subdivision of the Property. The Plan shall show existing and proposed topographic features. The Grading Plan shall be approved by the County Engineer prior to approval of an erosion and sediment control plan related to said subdivision. The land area within the subdivision shall be graded as shown on the approved Plan. No building permit shall be issued for any dwelling on a lot where the County Engineer has determined the lot grading is not in general conformance with the approved Plan. The Grading Plan shall satisfy the following:

- a) The Grading Plan shall show all proposed streets, building sites, setbacks, surface drainage, driveways, trails, and other features the County Engineer determines are needed to verify that the Plan satisfies the requirements of this proffer condition.
- b) The Grading Plan shall be drawn to a scale not smaller 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 designed 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 Grading Plan shall demonstrate that for each dwelling unit, an area at least ten (10) feet in width abutting the primary dwelling entrance facing the street not be served by a stairway, has grades no steeper than ten percent (10%) should the primary dwelling entrance facing the street be less than ten (10) feet from the Lot's property line, then this grade requirement shall only extend to the area between the entrance and the lot line. This graded area also shall extend from the primary entrance to the driveway or walkway connecting the dwelling to the street.
- i) Any requirement of this proffer condition may be waived by submitting a request for special exception with the Plan. If such a request is made, it shall include a justification for the request containing a valid professional seal from a PE, LA or LS type B. 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.
- j) In the event the County adopts overlot grading regulations after the date this Proffer Statement is approved, any requirement of those regulations that is less restrictive than any requirement of this proffer condition shall supersede the corresponding requirement of this proffer condition.

## 9) SCRIM FENCE

A Scrim Fence shall be installed along the Avon Park 1 property line at the rear lots 1-9 shown on the Plan on the owner's property or, if granted permission by the owner of lot 090F0-00-00-000A1 to protect the plantings and provide existing residents an additional visual screen during construction. The height of the screening material shall not exceed 6 feet and will be installed immediately following the grading of lots 1-9.

### OWNER

Bellevue Real Estate, L.L.C.

Name: Beau Dickison Title: Managing member of DB31  
Tax Map and Parcel Number: 09000-00-00-03100