

ATTACHMENT 2

Original Proffer: _____
 Amended Proffer: X

PROFFER FORM

Date: November 4, 2010
 ZMA #: ZMA 2010-006, Hollymead Town Center Area A-2
 Tax Map Parcel Numbers: 32-45 and 32-50

44.5 Acres to be rezoned from RA to NMD

In conjunction with the Application Plan entitled "ZMA Application Plan for NMD Portion of Hollymead Town Center A-2," dated March 13, 2006, revised August 31, 2007 (the "Application Plan" and the Amendment to the Application Plan entitled, "Amendment to the General Development Plan for ZMA 2007-001," dated November 1, 2010 (the "Amended Application Plan for Blocks B1, B2 and B4") and Hollymead Town Center Area A-2 ZMA 2010-006 Rezoning Application and the revised Code of Development approved in conjunction with ZMA 2010-006.

Tax Map Parcel Numbers: 32-45 and 32-50, comprising 44.5 acres and also identified as Hollymead Town Center Area A-2, are subject to rezoning application ZMA 2010-006 and to this Proffer Statement (the "Property"). The Property is described with more particularity on the Application Plan, which applies to all portions of the Property except for Blocks B1, B2 and B4, and the Amended Application Plan for Blocks B1, B2 and B4. The Application Plan and the Amended Application Plan for Blocks B1, B2 and B4 are attached hereto as Exhibits A and B, respectively.

The Owner of the Property is Route 29 LLC, 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 (NMD) as requested, the Owner shall develop the Property in accord with the following proffers pursuant to Section 15.2-2303 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 the conditions are reasonable. These proffers supersede the proffers accepted in conjunction with ZMA 2007-001. If rezoning application ZMA 2010-006 is denied, these proffers shall immediately be null and void and of no further force and effect, and the proffers accepted in conjunction with ZMA 2007-001, as well as the Application Plan and the Code of Development approved in conjunction with ZMA 2007-001, shall continue to apply to Hollymead Town Center Area A-2.

1. **Affordable Housing.** The Owner shall provide affordable housing equal to twenty percent (20%) 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. At least 40% of the affordable units will be in the form of for sale condominiums and townhouses. 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 twenty percent (20%) of the lots in such subdivision plat or site plan.

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 twenty percent (20%) minimum for such subdivision plat or site plan, and such additional affordable units may be allocated toward the twenty percent (20%) 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 twenty percent (20%) of the total units on any subdivision plat or site plan. The Owner shall convey the responsibility of initially constructing the affordable units to the subsequent owners of lots within the Property. With the written approval of the County's Subdivision Agent, the Owner or its successors may revise which lots and unit-types are designated on the subdivision plat or site plan that will contain affordable units as provided under this proffer; provided that the number of the lots so designated shall not be reduced. The actual owner at the proposed time of construction shall offer units affordable to households with incomes less than eighty percent (80%) of the area median income such that housing costs consisting of principal, interest, real estate taxes and homeowners insurance (PITI) do not exceed thirty percent (30%) of the gross household income.

A. **For-Sale Affordable Units.** Affordable units shall be affordable to households with incomes less than eighty percent (80%) of the area median family income (the "Affordable Unit Qualifying Income"), such that the housing costs consisting of principal, interest, real estate taxes, and homeowner's insurance (PITI) do not exceed thirty percent (30%) of the Affordable Unit Qualifying Income, provided, however, that in no event shall the selling price of such affordable units be required to be less than the greater of One Hundred Ninety Thousand Four Hundred Dollars (\$190,400) or sixty-five percent (65%) of the applicable Virginia Housing Development Authority (VHDA) maximum mortgage for first-time home buyers at the beginning of the 90-day identification and qualification period referenced below. The Owner or its successors in interest may at its option provide down payment assistance or soft seconds (silent second mortgages) to reduce the costs to the homebuyer, so that the resultant first mortgage and housing costs remain at, or below, the parameters described above. All financial programs or instruments described above must be acceptable to the primary mortgage lender. Any soft second (silent second mortgage) executed as part of the affordable housing proffer shall be donated to the County of Albemarle (the "County") or its designee to be used to address affordable housing. Each dwelling unit qualifying under these parameters counts as one (1) affordable unit.

B. **For-Rent Affordable Units.**

(1). **Rental Rates.** The initial net rent for each for-rent affordable unit shall not exceed the then-current and applicable maximum net rent rate 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 Proffer 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 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 units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this Proffer 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 Proffer 1B. At least thirty (30) days prior to the conveyance of any interest (other than for the securing of a mortgage or deed of trust) 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 Proffer 1B(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 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.

2. **Road Improvements.** Within one (1) year after approval of ZMA 2007-001, the following streets shall be completed:

- A. Meeting Street from the intersection of Town Center Drive to the northern boundary of Area A. Meeting Street will have two northbound and two southbound travel lanes, one northbound and one southbound bicycle lane. Initially, one lane in each direction may be utilized as on-street parking
- B. Town Center Drive (Previously Access Road A) from the Eastern edge of the NMD zoning boundary at the intersection of Meeting Street to its intersection with State Route 606, also known as Dickerson Road. This section of Town Center Drive shall be constructed to accommodate two travel lanes, with a cross section approved by the county and VDOT in a minimum 60-foot wide right-of-way.

For purposes of this Proffer 2, construction of each street shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the Owner has obtained from the County Engineer a written determination that the street is safe and convenient for traffic.

The road improvements listed herein shall be constructed in accordance with the NMD Code of Development as approved as part of ZMA 2010-006 (which with respect to the road improvements are the same as those contained in the Code of Development approved in conjunction with ZMA 2007-001), and with road plans submitted by the Owner and approved by the Virginia Department of Transportation ("VDOT").

3. **Public Transit Stop Construction.** The Owner shall construct two public transit stops within Hollymead Town Center Area A-2. The location of the public transit stops shall be identified on the Application Plan and retained in the County files. The locations shall be approved by the Director of Planning prior to approval of the first subdivision plat or site plan for Hollymead Town Center Area A-2. Construction of the public transit stops shall occur in conjunction with improvements for the subdivision plat or site plan or the public street plans which include the area for the transit stops. The design of each public transit stop shall be subject to approval by VDOT and the County Engineer, and shall include no less than 200 square feet of paved surface and two benches.

4. **Cash Proffer.** Beginning with the 151st Market Rate unit, the Owner shall contribute cash on a per dwelling unit basis for the purposes of funding Berkmar Drive Extended, other County infrastructure, transportation, public safety, school, parks and library improvements. The cash contributions shall be: \$12,400 cash for each attached/townhouse/condominium dwelling unit, other than an affordable dwelling unit ("Market Rate Unit"), and \$11,900 cash for each multifamily/apartment dwelling unit other than an affordable dwelling unit ("Market Rate Unit"). Such cash contribution shall be paid at the time of the issuance of the building permit for each new unit, unless the timing of the payment is otherwise specified by state law.

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 Comparative Cost Multiplier, Regional City Average, Southeast Average, Category C: Masonry Bearing Walls issued by Marshall Valuation Service (a/lc/a Marshall and Swift) (the "Index") or the most applicable Marshall & Swift index determined by the County if Marshall & Swift cease publication of the Index identified herein. 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 calendar year most recently ended, 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.

5. **Greenway.** The Owner shall dedicate in fee simple a minimum 7.6 acre "greenway" to Albemarle County for public use. The dedication is identified on the Application Plan as "Greenway Area dedication to Albemarle County," and shall include a strip of land that runs along Powell Creek with a minimum width of 50 feet on the each side of Powell Creek, subject to the limitations of the Property boundary. The dedicated area will also include all flood plain area along Powell Creek within the Property boundary. The Owner shall complete the improvements shown on the Application Plan and shall dedicate the Powell Creek Greenway to the County at the time of the first site plan or subdivision plat approval. After it is dedicated to public use, the Greenway Area shall continue to be included in the total area of open space and amenities within the Property. If the Greenway is not dedicated by subdivision plat, the Owner shall be responsible for the cost of a survey and preparing the deed to convey the Greenway to the County.

6. **Pocket Park.** In conjunction with the subdivision plat or site plan that includes the land described in this Proffer 6, the Owner shall establish an approximately 10,000 square foot pocket park (the "Pocket Park") located on the northern edge of Block B1 fronting Town Center Drive as shown on the Amended Application Plan for Blocks B1, B2 and B4, and shall include all such improvements, landscaping and other features identified in the Code of Development. The Pocket Park shall be included in the total area of open space and amenities within the Property. The subdivision plat or site plan shall include a note stating that the Pocket Park is reserved for future dedication to the County of Albemarle and, upon the request of the County, the Owner shall dedicate in fee simple the Pocket Park to the County. If the Pocket Park is not dedicated by subdivision plat, the Owner shall pay the costs of surveying the Pocket Park, preparing one or more plats thereof and preparing and recording one or more deeds of dedication.

7. **Recycling Center or Other Community Facility.** Upon the request of the County, the Owner shall dedicate in fee simple a two (2) acre parcel of land for use by the County or its designee as a Recycling Center, or other community facility identified in the CIP, to be located in an area most appropriate for such use as agreed by the County and the Owner. If the land for the Recycling Center or Community Facility is not dedicated by subdivision plat, the Owner shall pay the costs of surveying the land, preparing one or more plats thereof and preparing and recording one or more deeds of dedication.

8. **Recreational Facilities.** The Owner shall contribute \$500.00 cash per residential unit, to be paid at the time of issuance of each building permit unless the timing of the payment is otherwise specified by state law, for the purpose of funding the expansion or new development of regional outdoor recreational facilities as determined by the County Parks and Recreation Department.

9. **Critical Slopes, Erosion and Sediment Control and Stormwater Management.**

- A. **Critical Slopes.** The Owner shall apply for critical slope waivers for any roads located in critical slopes governed by § 18-4.2 *et seq.* of the Albemarle County Code.
- B. **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.)
- C. **Revegetation.** Within nine (9) months after the start of grading under any erosion and sediment control permit, permanent vegetation shall be installed on all the denuded areas, except for areas the Program Authority determines are otherwise permanently stabilized or are under construction with an approved building permit. A three (3) month extension for the installation of permanent vegetation may be granted by the Program Authority due to special circumstances including but not limited to weather conditions.
- D. **Stormwater.** The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional stormwater management to achieve a removal rate 20% better than would otherwise be required by the Water Protection Ordinance (Albemarle County Code § 17-100 *et seq.*) up to a maximum of an eighty

percent (80%) removal rate for each phase.

10. **LEED Standards for Core and Shell Development.** The Owner shall cause the commercial and mixed-use buildings in the Project to be designed and constructed to meet minimum standards for certification (twenty-three (23) credit points) under LEED Green Building Rating System for Core and Shell Development as set forth in the U.S. Green Building Rating System, Version 2.0, July 2006. Prior to the issuance of a building permit the Owner shall submit a certification from the LEED certified architect to the Director of Community Development that the building plan meets LEED standards. Before the Owner requests that a certificate of occupancy for any building for which a licensed architect rendered such a certificate, the Owner shall submit to the County's Director of Community Development a written statement from the architect that the building was built to the plans on which the certificate was based.

11. **Phasing Plan.** Prior to the issuance by the County of a building permit that would authorize the construction of any square feet of gross floor area (aggregate) of commercial and office gross floor area within the Property, building permits shall have been issued by the County for at least 100 dwelling units. Prior to issuance by the County of a building permit that would authorize the construction of more than 200,000 square feet of gross floor area (aggregate) of commercial and office gross floor area within the Property, building permits shall have been issued by the County for at least 600 dwelling units.

12. **Willow Glen Connection.** Upon the request of the County, the Owners shall dedicate for public use a public right-of-way determined to be appropriate by VDOT and the County Engineer, extending from Town Center Drive to the Property's boundary with the proposed Willow Glen development, as shown on the Application Plan and within Block C6 as shown on the Block Plan (the "Willow Glen Connection"). Upon the request of the County, the Owner shall grant all necessary drainage easements required for the Willow Glen Connection and all temporary construction easements to appropriate parties, including the developer of the proposed Willow Glen development, to allow the construction of the Willow Glen Connection. Approval of the County Engineer and the Owner for the location of the connection to Willow Glen may be shifted from the area shown in the Application Plan to a more suitable location to both the Owner and the County which still provides access from Willow Glen to Town Center Drive.

13. **Community Development Authority.** Upon the request of the County, Owner shall petition for and consent to a Community Development Authority ("CDA") established pursuant to Section 15.2-5152, et seq. of the Code of Virginia ("Code") to be created, excluding residential property within the Property, for the purpose of financing, funding, planning, establishing, constructing, reconstructing, enlarging, extending, or maintaining (except to the extent VDOT maintains any public improvements) Route 29, and roads and other improvements associated therewith.

WITNESS the following signature:

ROUTE 29 LLC,
a Virginia limited liability company
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