

DRAFT

Original Proffer: 10/12/2005

Amended Proffer:

8/20/2018 3/4/2019

(Amendment# _____ #1)

PROFFER FORM

Date of Proffer Signature _____, 2019

ZMA # 2018-_____-00007

Tax Map 61, Parcels 154E, 158, 160

Tax Map 62, Parcels 2A1, 2B and 2C

Tax Map 62A3 Parcel 1

Tax Map 62G, Parcels 5A, 5A1, 7A, 7157, 7165, 7171, 7172, 7174, 7179, 7180, 9A

**172.145 Acres to be rezoned from Neighborhood Model District (NMD) to
Neighborhood Model District (NMD)**

This Proffer Statement shall supersede and replace that certain Proffer Statement dated October 12, 2005, related to ZMA-2004-00007, for the applicable property listed below.

With respect to the property described in rezoning application #ZMA-2018-_____-00007 (the "ZMA"), New Belvedere, Inc. is the fee simple owner of the following parcels:

- TMP 06100-00-00-154E0
- TMP 06100-00-00-15800
- TMP 06100-00-00-16000
- TMP 06200-00-00-002A1
- TMP 06200-00-00-002C0
- TMP 062G0-00-05-000A0
- TMP 062G0-00-05-000A1
- TMP 062G0-00-07-000A0
- TMP 062G0-00-07-15700
- TMP 062G0-00-07-16500
- TMP 062G0-00-07-17100
- TMP 062G0-00-07-17200
- TMP 062G0-00-07-17400
- TMP 062G0-00-07-17900
- TMP 062G0-00-07-18000
- TMP 062G0-00-09-000A0

Belvedere Land Holdings, LLC is the fee simple owners of the following parcels

- TMP 06200-00-00-002B0
- TMP 062A3-00-00-00100

The foregoing parties are collectively referred to herein as the "Owner," which term shall include any successors in interest. All of the parcels listed above are referred to collectively as the "Property."

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance (the "Ordinance"), Owner hereby voluntarily proffers the conditions listed in this Proffer Statement, which shall be applied to the Property if the ZMA is approved by Albemarle County. These conditions are proffered as part of the 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.

1. Plan Exhibits.

1.1 **Exhibits not in the Code of Development.** The following exhibits which are not part of the General Development Plans or the Code of Development are proffered as a part of this rezoning:

- Exhibit 14 Archaeological Survey Summary
- Exhibit 15 Architectural Reconnaissance Survey

2. Affordable Housing.

2.1 **Cash Contribution.** Owner shall contribute to Albemarle County a minimum of one thousand dollars (\$1,000) per single family detached dwelling unit, seven hundred fifty dollars (\$750) per single family attached or townhouse unit, and five hundred dollars (\$500) per multi-family condominium unit. The cash contribution shall be due and payable with each application for a building permit. This cash proffer shall not apply to Carriage House units or multi-family rental housing. This cash contribution shall be used for the purpose of funding affordable housing programs including those provided by nonprofit housing agencies within Albemarle County. If this cash contribution has not been exhausted by the County for the stated purpose within ten (10) years from the date of the last payment of the contribution, all the unexpended funds shall be refunded to the Owner.

2.2 **Carriage House Units and Accessory Apartments.** The Owner shall provide a minimum of 103 units within the Property that are either Carriage House Units or Accessory Units, as provided in this paragraph 2.2. ~~As of August 20, 2018, approximately 75 Carriage House Units have been constructed within the Property.~~ Any Carriage House Units or Accessory Units that are constructed within the Property after August 20, 2018 that comply with the requirements of this paragraph 2.2 shall be counted toward the required total of 103 units required by this paragraph 2.2, even if they were constructed prior to the date of approval of ZMA-2018-00007.

2.2.1. **Carriage House Units.** Carriage House Units shall meet the requirements for a single family or two family dwelling as defined in the Virginia Uniform

Statewide Building Code. Each Carriage House Unit shall conform to the Code of Development, Appendix A, Carriage House Units, General Standards (as Modified August 20, by ZMA 2018-00007). Each Carriage House Unit shall be on the same parcel as the primary dwelling unit to which it is accessory. Carriage House Units may not be subdivided from the primary residence. The subdivision restrictions shall be described on the plat creating such parcels and be incorporated into each deed conveying title to such parcels.

2.2.2. Accessory Units. "Accessory Units" shall mean Accessory Apartments as defined in the Albemarle County Code, Chapter 18, Section 3.1, and a regulated by the Albemarle County Code, Chapter 18, Section 5.1.34, and a unit within a two family dwelling as defined in the Virginia Uniform Statewide Building Code. Accessory Units may also be located in single family attached units.

3. Open Space and Greenways.

3.1 Open Space. The Owner shall restrict from development all open space areas which are areas not shown as development parcels on the General Development Plan. In no event shall the total area of open space areas, which include the preservation areas, conservation areas, greenway (defined in 3.2 below), buffer and park areas shown on Exhibits 5A, 5B and 5C of the General Development Plan, be less than twenty-five percent (25%) of the total land within the Property. These areas shall be for the use and enjoyment of the residents of the Property, subject to the restrictions that may be imposed by any declaration recorded as part of a conveyance of these areas to a homeowner's association.

3.2 Greenway: The Owner shall dedicate and convey to Albemarle County, upon demand by the County, a strip of land no less than one hundred (100) feet in width and adequate in width to accommodate the construction, maintenance and use of a ten (10) foot wide pedestrian trail along the Rivanna River from the Property's boundary with Dunlora Farm (Tax Map 62 Parcel 16-A) to the Property's boundary with the Southern Railway right-of-way (as it exists on November 19, 2004) (the "Greenway"). The precise location of the greenway shall be mutually agreed upon by the Owner and the County, and such agreement shall not be unreasonably withheld. The Greenway will be conveyed in the form of a general warranty deed and the Owner shall bear the cost of a survey and preparing the deed. Upon request by the County, the Owner shall also contribute ten thousand dollars (\$10,000) cash for application toward the cost of constructing the Greenway according to the County's current standards for a class B trail. Such contribution shall be made by Owner within 30 days of receipt of a written request by the County. If the request is not made within seven (7) years from the date of submission of the first final site plan for Phase I, this cash proffer shall become null and void. If such cash contribution is not fully expended for the stated purpose within two (2) years from the date the funds are contributed to the County, all unexpended funds shall be refunded to the Owner. If the greenway is not used for the purpose for which it is dedicated within ten (10) years from the date of dedication, the County shall transfer the land back to and for the use of the Owner to be used as open space. The Owner will provide a pedestrian connection to the Greenway through the Belvedere Community's internal trail system, as illustrated in Exhibit 5A, 5B, and 5C.

3.3 Greenway bridge: Within thirty (30) days following request by the County, Owner shall contribute ten thousand dollars (\$10,000) cash for application toward the cost of constructing a pedestrian bridge linking the Rivanna River Greenway in Dunlora (Tax Map Parcel 62F-A3) to RiverRun (Tax Map Parcel 62-D1-1A), thereby allowing neighborhood residents access to facilities in Pen Park and other portions of the Greenway system. If the request is not made within seven (7) years from the date of submission of the first final site plan for Phase I, this proffer shall become null and void. If such cash contribution is not expended for the stated purpose within two (2) years from the date the funds were contributed to the County, all unexpended funds shall be refunded to the Owner.

4. Road Construction and Reservation of Right-of-way.

4.1 North Free State Connector Road. The Owners shall dedicate upon demand by the County a one hundred (100) foot wide right-of-way to public use as shown on Exhibit 2B of the General Development Plan and labeled "Reserved Road ROW". Where less than one hundred (100) feet of right-of-way is available on the Owner's Property (Approximately the first 800 feet from Rio Road), the Owner shall dedicate the available right-of-way. Fee simple interest shall be dedicated by the Owner within six (6) months following receipt by the Owner of written notice of demand by the County. The Owner shall pay for the costs of surveying and preparing deeds necessary to complete such dedication. The County must accept the dedication within twelve (12) months following its demand for dedication.


4.2 Future North Free State Connector Extension Road. The Owner shall dedicate a one hundred (100) foot strip of land along the Property boundary with the Norfolk Southern Railroad as shown on Exhibit 2C of the General Development Plan and labeled "100' Reserved Road ROW" for dedication upon demand by the County for the purpose of constructing a road that extends the North Free State Connector Road northward across the Rivanna River. The Owner shall dedicate right-of-way within six (6) months following written notice of demand by the County. Such reservation shall remain in place through December 31, 2025. The County must accept the dedication within twelve (12) months following its demand for dedication. Should this road be removed from the Albemarle County Comprehensive Plan, said reservation shall become null and void, and the Owner or Successors shall retain fee simple ownership of the parcel.

4.2.1 North Free State Connector Extension Road Design. The Owner shall demonstrate to the satisfaction of the County Engineer and VDOT that the North Free State Connector Extension Road can be accommodated by the Block 2 Development Plan. Approval by VDOT and the County Engineer must be secured prior to final platting and road plan approval in Block 2.

4.3 Free State Road Right-of-way. The Owner shall dedicate, upon demand by the County, a fifty (50) foot wide right-of-way along portions of the existing Free State Road that are on the Owner's Property from its proposed intersection with Belvedere Blvd between Road C and Road K to its intersection with Loring Run Road. Where the road is only partially on the Property, the Owner shall dedicate sufficient right-of-way width to ensure a total right-of-way of

not less than fifty (50) feet inclusive of the existing prescriptive right-of-way. The right-of-way shall be conveyed within six (6) months following receipt of written notice by the County, in the form of a general warranty deed and the Owner shall bear the cost of a survey and preparation of the deed. If the dedicated land is not used for the purpose for which it was dedicated within two (2) years from the date of dedication, the County shall transfer the land back to, and for the use of, the Owner.

4.4 Connection to Dunlora Farm. The Owner shall dedicate upon demand by the County, a fifty (50) foot wide right-of-way extending from Road D to the property line at the eastern terminus of Road J, as shown on Exhibit 2C of the General Development Plan. The right-of-way shall be conveyed within six (6) months following receipt of written notice by the County, fee simple, in the form of a general warranty deed and Owner shall bear the cost of a survey and preparation of the deed. The County must accept the dedication within twelve (12) months following its demand for dedication. If the dedicated land is not used for the purpose for which it was dedicated within ten (10) years from the date of dedication, the County shall transfer the land back to, and for the use of, the Owner.

4.5 Fairview Access. The Owner agrees to provide to Fairview Swim Club ~~owner of a~~ fifty (50) foot wide access easement from Belvedere Drive to the edge of the Fairview Swim Club Property, (Tax Map Parcel 61-160B and 61-160C) to facilitate vehicular access to the existing Fairview entrance or in other such location that is mutually agreeable to the parties and in conformance with applicable County and VDOT regulations. The Owner shall grant easement within sixty (60) days following approval of final road plan for Belvedere Boulevard in Phase 1. 

5. Overlot Grading Plan

5.1. Subdivision Plans. The Owner shall submit an overlot grading plan meeting the requirement of this section (hereinafter, the "plan") with the application for each subdivision of Property into single family detached lots and single family attached dwelling units shown on the General Development Plan. The plan shall show existing and proposed topographic features to be considered in the development of the proposed subdivision. The plan shall be approved by the County Engineer prior to final approval of the subdivision plat. The Property within the subdivision shall be graded as shown on the approved plan. No certificate of occupancy shall be issued for any dwelling on a lot where the County Engineer has determined the lot grading is not consistent with the approved grading plan. The plan shall satisfy the following:

(a) The 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.

(b) The plan shall be drawn to a scale not greater 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 stain). 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.

6. Preservation of Historic Structures, Sites and Archaeological Sites.

6.1 **Archaeological Survey.** A Phase I Archaeological Study for the Property shall be submitted by the Owner to the Director of Planning for his review and approval prior to issuance of a grading permit. An archaeological resource treatment plan shall be submitted by the Owner to, and approved by, the Director of Planning for all sites in the Phase I study that are recommended for Phase II evaluation, and/or identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion the National Register of Historic Places and/or those sites that require a Phase III study. If, in a Phase II study, a site is determined to be eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study area. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standard and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards.

All approved treatment plans shall be incorporated into the plan of development for the site and shall be adhered to during the clearing, grading, and construction activities thereon.

6.2 Potential Artifacts. Should Phases I or II or III studies yield objects or artifacts of archaeological significance, these objects shall be conveyed to the Virginia Department of Historic Resources (VDHR) for long term preservation. Should Phase III fieldwork yield subsurface architectural features and artifacts related to 18th- or early 19th-century domestic occupations at Free State, and should these sites be deemed archaeologically significant by archaeologists with the Digital Archaeological Archive of Comparative Slavery (DAACS) based at the Thomas Jefferson Foundation, these artifacts will be submitted to the archaeologists at the Thomas Jefferson Foundation for analysis and entry into DAACS prior to being conveyed to the VDHR. The Owner will be solely responsible for conveying all artifacts analyzed by DAACS to the VDHR within thirty (30) days of receipt of such artifacts.

6.3 Roadside Markers. Upon request by the County, the Owner shall contribute up to five thousand dollars (\$5,000) cash to fund the cost of creating and installing two roadside historical markers as described in section 5 of the Code of Development. If the request is not made within one (1) year from the date of approval of the first final site plan for Phase I, this proffer shall become null and void. If such cash contribution is not expended for the stated purpose within two (2) years from the date the funds were contributed to the County, all unexpended funds shall be refunded to the Owner.

7. Phasing and Mitigation of Impact.

7.1 Phasing. Phases of Belvedere infrastructure will be constructed sequentially beginning with Phase 1, then 2, etc. This proffer shall not restrict the Owner's ability to develop multiple phases concurrently nor shall it require the completion of all buildings and other improvements in one phase before beginning construction on the next.

7.2 Mitigation of Construction Traffic Impact. The Owner shall neither establish, nor allow to be established, ingress or egress for any vehicle, heavy equipment, or farm machinery or farm equipment to and from the Property except at the intersection of the alignment of Belvedere Boulevard and East Rio Road, as shown on Exhibit 2B, and from the northern segment of Free State Road that crosses Free State Bridge, as shown on Exhibit 1, of the General Development Plan, or on any public street shown on a final subdivision plat that has been constructed and accepted by VDOT or bonded for acceptance by VDOT. For purposes of this proffer, the term "vehicle" means every device on or by which any person or property is or may be transported or drawn on a highway, except devices moved by human power or used exclusively on stationary rails or tracks, that are used in the construction on or below the Property, including all improvements placed on the property by the Owner, its contractors, subcontractors or agents. The term "heavy equipment" means self-propelled, self-powered or pull-type equipment and machinery, including engines, weighing five thousand (5,000) pounds or more, primarily employed for construction, industrial, maritime, mining and forestry uses.

8 Code Enforcement.

8.1 Architectural Standards. The Owner shall prepare and record a declaration of covenants, conditions and restrictions that, among other things, establishes architectural standards equal to or more stringent than the architectural standards in the Code of Development, and establishes an Architectural Standards Committee ("ASC"). The declaration shall include among the powers and duties of the ASC the authority and responsibility to determine that each structure within the Property complies with all applicable architectural standards before submitting the proposal to the County to conduct its review for compliance with the architectural standards established in the Code of Development.

Signatures of All Owners:

Printed Names of All Owners:

Date:

New Belvedere, Inc.

Belvedere Land Holdings, LLC

BELVEDERE MAXIMUM RESIDENTIAL DENSITIES							
BLOCK GROUP	AREA (AC)	TABLE 1 MAXIMUM RESIDENTIAL DENSITIES					
		SFD	SFA/TH	APARTMENTS/MF	CARRIAGE HOUSE UNITS *	TOTAL	DENSITY
1	15.08			12	0	12	0.80
2	26.83	0	20	302	0	322	12.00
3	12.48	25			14	39	3.13
4	16.68	34	11		26	71	4.26
5	6.86	34	0		24	58	8.45
6	9.32	28	9		14	51	5.47
7	8.72	36			32	68	7.80
8	7.9	27	16		26	69	8.73
9	9.41	23				23	2.44
10	93.4	52			10	62	0.66
TOTAL	206.68	259	56	314	146 *	775	3.75

BELVEDERE MINIMUM RESIDENTIAL DENSITIES							
BLOCK GROUP	AREA (AC)	TABLE 2 MINIUMUM RESIDENTIAL DENSITIES					
		SFD	SFA/TH	APARTMENTS/MF	CARRIAGE HOUSE UNITS *	TOTAL	DENSITY
1	15.08					0	0
2	26.83		19	218		237	8.83
3	12.48	25			14	39	3.13
4	16.68	28	11		19	58	3.48
5	6.86	29			16	45	6.56
6	9.32	28			11	39	4.18
7	8.72	30			23	53	6.08
8	7.9	22			20	42	5.32
9	9.41	23				23	2.44
10	93.4	50				50	0.54
TOTAL	206.68	235	30	218	103 *	586	2.84

* Once ZMA 2018-00007 is approved, all references to "Carriage House Units" in the Proffers, the Code of Development, the Tables and the Architectural Code will be deemed to include Carriage House Units as defined in the amended approved Proffer 2.2 and Code of Development, which includes Accessory Dwelling Units. Accessory units/apartments as defined in the County Zoning Ordinance do not count toward density calculations.

Appendix A– Carriage House Units General Standards

Modified by ZMA 2018-00007

All Carriage House Units must be constructed in the same architectural style as the primary residence and must employ the same exterior color selections as the primary residence. Setback regulations for Carriage House Units shall be the same as those for garages.

Carriage House Units are separate, detached independent living units which are included with a single family detached unit or a single family attached unit, and are clearly subordinate to the primary residence. These units are typically located above a garage (which garage may be either attached to, or detached from the primary residence), and are restricted to a maximum finished area of 800 ft². While these units may have a distinct street address and may be provided with separate utility meters if utilized as a rental unit, they may not be subdivided from the primary residence. Carriage House Units must meet all architectural standards applicable to the primary residence. Setbacks shall be the same as those applicable to a traditional detached or attached garage, as applicable.

Carriage house units play an important role in providing for affordable housing. As an inexpensive rental unit, they help provide affordable rental housing that is integrated into the larger community. An additional benefit is that the units are “Cash flow positive” helping to make the primary residence more affordable by providing the owner with additional cash flow to pay the mortgage. These units have been widely utilized in other TND neighborhoods with tremendous success.