

**Town of Blacksburg, Virginia**

**Zoning Administrator Determination of Vested Rights**

**June 18, 2007**

**First and Main, Blacksburg, Phase II, site plan**

**Introduction**

On May 4, 2007, Fairmount University Realty Trust, LLC, submitted site development plans for land on South Main Street. The area in question is zoned General Commercial. Blacksburg Zoning Ordinance §§ 5120 (b) and (f), require, as part of the review of site plans, that the Zoning Administrator determine whether proposed construction and site improvements conform with the Zoning Ordinance and the Town Code. One of the site plans, "Phase II," included a proposed retail facility with a gross floor area of 176,411 feet. While these site plans were being reviewed, the Blacksburg Town Council adopted Ordinance 1450, which established a special use permit requirement for large format retail stores (retail sales uses, in excess of 80,000 square feet gross floor area, located in one structure) in the General Commercial district.

To determine whether a special use permit is required for the proposed 176,411 square feet retail facility, a vested rights determination, as authorized by Zoning Ordinance § 1200 (b) (9), is necessary. Therefore, Blacksburg Zoning Administrator Steve M. Hundley hereby makes the following (i) findings of fact, (ii) with the concurrence of the Town Attorney, conclusions of law, and (iii) determinations.

## **Findings of Fact**

1. This determination of vested rights relates to the following parcels of land located in the Town of Blacksburg, Virginia (“Town”) referenced hereafter as the “subject property”: (1) Tax Map # 317-A 7; (2) Tax Map # 287-A-28A; (3) Tax Map # 287-A-28; (4) Tax Map # 287-A-27; (5) Tax Map # 287-A-41A; (6) Tax Map # 287-A-27A.
2. The subject property is located in the Town near South Main Street and Country Club Drive; the subject property consists of approximately 26.53 acres.
3. As of January 1, 2006, five parcels of the subject property were zoned Office: Tax Map # 287-A-28; Tax Map # 287-A-28A; Tax Map # 287-A-27; and Tax Map # 287-A-27A. One parcel, Tax Map # 287-A-41A, was zoned R-4, Low Density Residential.
4. On January 17, 2006, a rezoning application (“Application”) was submitted to the Town’s Planning & Engineering Department requesting the conditional rezoning of the subject property from Office and R-4 zoning to General Commercial zoning. The Application was submitted by Llamas, L.L.C., (“Llamas”), the owner of the subject property, and the Application contained proffered conditions, as authorized by Virginia Code § 15.2-2298 and Zoning Ordinance § 1160. A copy of the Application is attached as Exhibit “A.”
5. As the Application made its way through the process of being considered by the Planning Commission and Town Council, Llamas revised the proposed proffered conditions several times. The last statement of proffered conditions was dated May 3,

2006 (the "Proffer Statement"). A copy of this Proffer Statement is attached as Exhibit "B."

6. Llamas' rezoning Application did not identify particular uses that would be engaged in on the subject property. The Application spoke generally about how the subject property could possibly be developed; while it contained a concept plan demonstrating one possible use, this plan was marked as being "for illustrative purposes only."

7. The Town Council adopted Ordinance 1412 on May 9, 2006. This ordinance approved the requested rezoning and accepted the conditions set forth in the Proffer Statement.

8. The Proffer Statement, at paragraph 1, sets out conditions relating to the rear of the subject property near Kennedy Avenue, including a perimeter fence, a landscaped buffer area, the location of a multi-use path, restrictions on vehicular traffic, additional building setbacks, and limitations on building height.

9. Paragraph 2 of the Proffer Statement contains conditions for development of the subject property along Country Club Drive, such as increasing the building setbacks along Country Club Drive, limiting building heights, and providing additional landscape buffers.

10. Paragraph 3 of the Proffer Statement sets out conditions for the boundary between the subject property and Margaret Beeks Elementary School, with a requirement for construction of a perimeter fence along the boundary, as well as preserving (or creating where necessary) a vegetative buffer along this boundary.

11. The Proffer Statement contains, at Paragraph 4, a provision for a “continuous multi-use path from Hubbard Street to Country Club Drive so as to provide pedestrian and bikeway interconnectivity throughout the neighborhood and access from the development to the Huckleberry Trail.” The precise location of the path is not set forth in the Proffer Statement. The language of the proffer does not state that this path will be publicly owned or dedicated to the Town of Blacksburg or whether the proposed path will conform to Town trail standards.

12. In the Proffer Statement, at paragraph 5, the following eight uses are prohibited on the subject property: “adult entertainment establishments; adult stores; automobile repair services; car washes; gasoline stations; funeral homes; commercial kennel; and pawn shops.” Two of the uses, “adult entertainment establishments” and “adult stores,” were already prohibited at this site by Zoning Ordinance §§ 4501 and 4501.5.

13. In the General Commercial district, 61 uses are permitted by right. The limitations on uses contained in paragraph 5 of the Proffer Statement left 55 by right uses available for the subject property.

14. Paragraph 6 of the Proffer Statement contains the condition that all site plans will conform with elements of “Traditional Neighborhood” design, such as having buildings connected by the multi-use path or sidewalks, varying building facades, establishing a discernible center for the development, streets in the development forming a connected network, parking areas broken up into landscaped sub-lots, and limitations on entrances/exits from the subject property.

15. Paragraph 9 (a) of the Proffer Statement has conditions for the submission of a final traffic study with each site plan for development of the subject property. At 9 (b), a condition provides for a contribution “to the Town of Blacksburg [of] \$25,000.00 towards the cost of any improvements to the intersection of Country Club Drive and Airport Road that are approved by the Town following consultation with the surrounding neighborhood to provide a roundabout or other traffic calming measures or other intersection improvements to improve traffic flow at this location.”

16. The Proffer Statement does not require or provide that the subject property will be developed for any specific use.

17. By letter of January 11, 2007, James K. Cowan, on behalf of Fairmount Properties, submitted to the Zoning Administrator a single-sheet plan, labeled “Proposed Merchandising Plan” and dated January 10, 2007, along with several elevation drawings of a carport structure.<sup>1</sup> Mr. Cowan’s letter requested interpretation of the line drawings regarding “two proffered design issues that affect the layout of the site plan for this property.” The design issues concerned elements of Paragraphs 1 and 6. Mr. Cowan’s letter concluded by expressing appreciation for the Zoning Administrator’s attention to this matter, “as we work to finalize a site plan for your review.”

18. In response to this request, the Zoning Administrator provided a letter, dated January 22, 2007, that commented on the two specific proffer issues. This letter also noted that the submitted plan did not comply with several requirements of the Proffer Statement (improper location of proposed carport; missing “Type C” buffer; encroachment by the multi-use path encroaches on the 50’ buffer zone; failure of

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<sup>1</sup> This plan did not comply with the site development plan review requirements of the Zoning Ordinance, Article V, Division 1, Site Development Plans.

northwest buffer to comply with 100' radius dimensional requirement; failure to preserve existing trees), and it did not approve any of the documents submitted by Mr. Cowan.

19. Subsequently, Anderson & Associates, acting on behalf of Fairmount Properties, requested that the Zoning Administrator perform a courtesy review of a single-sheet plan, labeled "Proffer Plan," that was dated January 26, 2007. This plan was intended to demonstrate compliance with various aspects of the design requirements established in the Proffer Statement.<sup>2</sup>

20. By letter of February 9, 2007 to Rick Howard of Anderson & Associates, the Zoning Administrator noted certain features on the plan that did not comply with Proffer Statement requirements (failure to preserve existing trees; problem with vehicle entrance alignment; insufficient parking spaces; inadequate parking lot tree islands). This letter did not approve the "Proffer Plan."

21. Anderson & Associates then requested a courtesy review of a single-sheet plan labeled "Ordinance Compliance Plan" that was dated February 23, 2007.<sup>3</sup> The "Ordinance Compliance Plan" was accompanied by a letter from Rick Howard, which noted that "[w]e understand that a full site plan review is required" and concluded by stating that "we welcome any other input or suggestions you may have regarding these matters as we work to finalize a site plan."

22. In response to this request, the Zoning Administrator provided a letter on March 6, 2007, that noted several deficiencies in the "Ordinance Compliance Plan" document (failure to preserve existing trees; missing 50' buffer; encroachment by buffer

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<sup>2</sup> This plan did not comply with the site development plan review requirements of the Zoning Ordinance, Article V, Division 1, Site Development Plans.

<sup>3</sup> This plan also did not comply with the site development plan review requirements of the Zoning Ordinance, Article V, Division 1, Site Development Plans.

on the multi-use path; vehicle entrance not properly aligned; shortage of approximately 100 tree islands; insufficient parking spaces) and made several suggestions. This letter did not approve the "Ordinance Compliance Plan."

23. In a Complaint filed in Montgomery County Circuit Court on May 10, 2007, Diversified Investors XIII, LLC, Fairmount Properties, LLC, and Llamas, LLC, ("Plaintiffs") alleged that they had vested rights, under Virginia Code §§ 15.2-2298 (B) and 15.2-2307, to develop the subject property regardless of amendments to the Zoning Ordinance, such as pending Ordinance 1450.

24. In preparing this vested rights determination, I have reviewed the Plaintiffs' vested rights claims set forth in the Complaint.

25. Relying on § 15.2-2298 (B), the Plaintiffs alleged that the Proffer Statement included requirements for "the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements," the need for which was not generated solely by the rezoning itself. Complaint ¶ 10. Specifically, the Plaintiffs alleged that the \$25,000 cash proffer described in Paragraph 9 (b) of the Proffer Statement was a substantial cash payment for a public improvement. Complaint ¶ 10

26. The Plaintiffs further alleged that the Proffer Statement provision, at Paragraph 4, for a "continuous multi-use trail from Hubbard Street to Country Club Drive," constituted a requirement for the "construction of a substantial public improvement" as referenced in § 15.2-2298 (B). Complaint ¶ 10, 31.

27. Relying on § 15.2-2307, the Plaintiffs alleged in the Complaint that they were the beneficiary of a significant affirmative governmental act which remains in effect

allowing development of a specific project. Complaint ¶¶ 18-20 Specifically, the Plaintiffs stated that the adoption of Ordinance 1412, including the Town Council's acceptance of the conditions in the Proffer Statement, satisfied this description of a significant governmental act described in § 15.2-2307: "(i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment." Complaint ¶ 18.

28. The Plaintiffs argue that the Proffer Statement specifies uses related to the zoning amendment, arguing that it imposes "restrictions on, among other things, the height and location of buildings to be constructed on the Property, and prohibit certain development and uses of the Property which otherwise would be permitted in a General Commercial District." Complaint ¶ 9.

29. The Plaintiffs further alleged that the correspondence from the Zoning Administrator described in preceding paragraphs 18, 20 and 22 constituted another type of significant governmental act described in § 15.2-2307: "(v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances." Complaint ¶¶ 11-17, 19.

30. Finally, the Plaintiffs alleged that they have relied in good faith on these alleged significant affirmative governmental acts, and that they had incurred "extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act." Complaint ¶ 20.

31. In response to the Zoning Administrator's letter of June 4, 2007, requesting information for this determination, counsel for Fairmount Properties, LLC, represented that the total build costs to develop the subject property, as depicted in the site plans submitted on May 4, 2007, is \$45,000,000.<sup>4</sup>

32. By letter of May 25, 2007, Traffic Engineer James E. Henegar, Jr., and Zoning Administrator Steve M. Hundley responded with comments on the Traffic Impact Study and Transportation Plans submitted by Fairmount University Realty Trust, LLC, on May 4, 2007.

### **Conclusions of Law**

1. Virginia Code §15.2-2298 (B) provides that amendments to the text of the zoning ordinance that reduce or modify the uses permitted in the zoning district are not effective as to conditionally rezoned property if the proffered conditions include requirements "for the dedication of real property of substantial value . . . or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself." Paragraphs 1 (C) and 4 of the Proffer Statement recite that a multi-use path between Hubbard Street and Country Club Drive will be provided.

However, these paragraphs (nor any others in the Proffer Statement) contain no requirement for the dedication of real property to the Town (as a fee simple interest or by the grant of an easement) as a result of the rezoning. The land upon which the path is constructed is not dedicated to the Town. The path itself is not dedicated to the Town as a public improvement. The proffer does not even set forth the dimensions of the path or whether it will conform to Town standards for trails. For this reason, as a matter of law, that Paragraphs 1 (C) and 4 of the Proffer Statement do not require "the dedication of real

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<sup>4</sup> See attached letter of June 6, 2007 from James K. Cowan, Jr. (Exhibit "C")

property of substantial value . . . or construction of substantial public improvements,” and therefore Virginia Code § 15.2-2298 (B) does not limit the application of Ordinance 1450 to the subject property.

2. Virginia Code §15.2-2298 (B) provides that amendment to the text of the zoning ordinance that reduce or modify the uses permitted in the zoning district do not affect conditionally rezoned property if the proffered conditions include a requirement for “substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself.” Paragraph 9 (b) of the Proffer states that a \$25,000 contribution will be made “towards the cost of any improvements to the intersection of Country Club Drive and Airport Road that are approved by the Town following consultation with the surrounding neighborhood.”

The Attorney General has noted that, in the context of Virginia Code § 15.2-2298 (B) “[w]hether the proffered contributions are ‘substantial’ necessarily depends on an evaluation of all the relevant surrounding facts and circumstances, including the total size and cost of the project.”<sup>5</sup> In the context of a \$45,000,000 project, the amount of the cash proffer is an insignificant amount, constituting .055 % of the project costs. For this reason, as a matter of law Paragraph 9 (b) of the Proffer Statement does not require “substantial cash payments,” and therefore Virginia Code 15.2-2298 (B) does not limit the application of Ordinance 1450 to the subject property.

3. Virginia Code § 15.2-2307 provides that, in the context of vested rights, a “significant affirmative governmental act” occurs when “the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment.” The conditions in the Proffer Statement, at Paragraph 5, restrict 8 of 61

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<sup>5</sup> 1991 Report of the Attorney General 63.

uses permitted in the General Commercial zoning district. By accepting this condition, the Town Council knew what uses would not occur in the subject property, but did not know which of the 55 remaining possible uses would occur.<sup>6</sup> The Proffer Statement does not specify a use for which the subject property would be developed. Therefore, the conditions of Paragraph 5 do not specify use as required by Virginia Code § 15.2-2307.

In their Complaint, the Plaintiffs also alleged that the Proffers specify use by creating “restrictions on, among other things, the height and location of buildings to be constructed on the Property.” However, the conditions set forth in Paragraphs 1, 2, and 3 of the Proffer Statement apply to the border of the subject property, and merely provide buffers to adjoining residentially-zoned (R-4) property. These conditions do not specify any particular use for the subject property as required by Virginia Code § 15.2-2307.

For these reasons, as a matter of law the conditions of the Proffer Statement do not “specify use related to a zoning amendment,” and therefore this provision of Virginia Code § 15.2-2307 does not limit the application of Ordinance 1450 to the subject property.

4. Virginia Code §15.2-2307 also provides that a significant governmental affirmative act occurs with the approval of “a preliminary subdivision plat, site plan or plan of development for the landowner's property” or “a final subdivision plat, site plan or plan of development for the landowner's property.” However, the correspondence described in preceding paragraphs 18, 20 and 22 were not approvals contemplated by Virginia Code §15.2-2307; in fact, each of the letters details deficiencies in the preliminary documents submitted for review by the Zoning Administrator. All three

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<sup>6</sup> Two of the restricted uses, “adult entertainment establishments” and “adult stores,” were already prohibited at this site by Zoning Ordinance §§ 4501 and 4501.5.

letters were narrowly focused on specific aspects of the Proffer Statement. All three letters included qualifying language to note that the letter was not an approval of any site development plan. No site plan or other plan of development has been approved for the subject property. For this reason, as a matter of law, with regard to the correspondence described in paragraphs 18, 20 and 22, Virginia Code § 15.2-2307 does not limit the application of Ordinance 1450 to the subject property.

5. Given the preceding conclusions of law, there is no need to determine if the landowners have satisfied the remaining requirements for vesting: (i) reliance in good faith on the significant affirmative governmental act, and (ii) the incurrence of extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act, and no such conclusion is made.

Furthermore, it is not necessary to determine if the need for any conditions in the Proffer Statement were not generated solely by the rezoning itself.

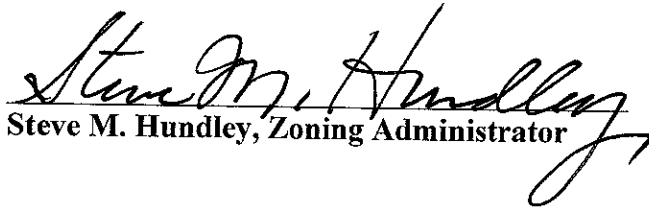
### **Determinations**

Based on the above, the subject property is subject to the provisions of Ordinance 1450. I find nothing in the conditions in the Proffer Statement or the letters from the Zoning Administrator that establish vested rights under Virginia Code §§ 15.2-2298 (B) or 15.2-2307. Therefore, in accord with Ordinance 1450, a special use permit is required for the proposed retail facility with a gross floor area of 176,411 square feet depicted in the "Phase II" site plan submitted on May 4, 2007, as well as for any other retail facility with a gross floor area in excess of 80,000 square feet that may be proposed as part of this development.

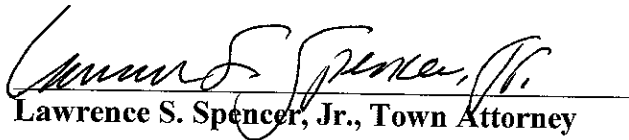
**Appeal**

This determination may be appealed to the Board of Zoning Appeals, as provided for by Zoning Ordinance § 1241 and Virginia Code § 15.2-2311. The specific process for appeals is set forth in Zoning Ordinance § 1243.

**Findings of Fact, Conclusions of Law, and Determinations:**

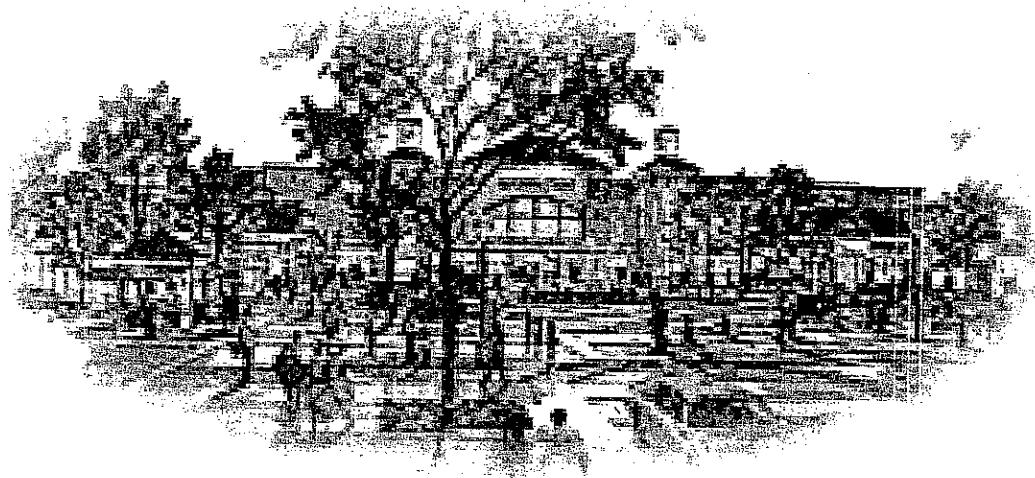
  
Steve M. Hundley, Zoning Administrator

**Concurrence as to Conclusions of Law:**

  
Lawrence S. Spencer, Jr., Town Attorney

Rezoning Application

South Main Street Property  
Country Club Drive to Hubbard Street  
Blacksburg, Virginia



Submitted to  
Town of Blacksburg  
P.O. Box 90003  
Blacksburg, VA 24062

Prepared for  
Llamas, LLC  
P.O. Box 10397  
Blacksburg, VA 24062

Submitted: January 17, 2006  
*Amended: February 14, 2006*  
*Amended: May 9, 2006*

**RECEIVED**  
MAY 04 2006

Planning & Engineering  
Department

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# I. Rezoning Application

<b>OFFICE USE ONLY</b>	
Ordinance #	_____
Date #	_____

**TOWN OF BLACKSBURG**

**REQUEST FOR A CHANGE OF ZONING CLASSIFICATION**

This application and accompanying information must be submitted in full before the rezoning request can be referred to the Planning Commission and Town Council or consideration. Please contact the Planning Department at (540) 961-1114 for application deadline.

Name of Property Owner(s): LLAMAS, LLC

Address of Owner: P.O. Box 10397, Blacksburg, VA 24062

Contract Purchaser of Agent: Fairmount Property, LLC, C/O Adam Fishman

Address: 2618 N. Moreland Blvd., Cleveland, OH, 44120

Location or Address of Property to be Rezoned: West of South Main Street, East of Kennedy Avenue, North of Hubbard Street, South of Country Club Drive.

Tax Parcel Number: 287-A-41A, 287-A-27A, 287-A-27, 287-A-28, 287-A-28A, 317-A-7

Legal Description of Property: \_\_\_\_\_

- 1) Tax Map 287-A-41A, D.B. 2004, Pg 7807; P.B. 17, Pg 125
- 2) Tax Map 287-A-27A, D.B. 2004, Pg 790; P.B. 446, Pg 836
- 3) Tax Map 287-A-27, D.B. 2005, Pg 2176
- 4) Tax Map 287-A-28, D.B. 2005, Pg 2176
- 5) Tax Map 287-A-28A, D.B. 2004, Pg. 790; P.B. 446, Pg. 832
- 6) Tax Map 317-A-7, D.B. 2004, Pg. 787

Present Zoning District: R-4 Low Density Residential (1)

Requested Zoning District: General Commercial

Present Zoning District: Office (2-6)

Requested Zoning District: General Commercial

**DESCRIPTION OF REZONING REQUEST**

Section 15.2-2286 (A) (7) of the State Code of Virginia states that, "Whenever the public necessity, convenience, general welfare, or good zoning practice require, the governing body may by ordinance, amend, supplement, or change the regulations, district boundaries, or classifications of property". The following information is required in order to assess the public necessity, convenience, general welfare, or good zoning practice of the request. (Attach additional pages if necessary.)

**Present Use of Property:**

Subject properties 287-A-27, 27A, 28, 28A, and a portion of 287-A-41A are currently undeveloped and overgrown. A portion of subject property 287-A-41A is currently open and used as recreation space (rugby lot).

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**Need and justification for the change in classification:**

The proposed change in both classifications allows greater flexibility and creativity in preparing a plan for mixed-use and residential developments that fully embody the Town's Comprehensive Plan. The Comprehensive Plan changes adopted by Town Council in Spring 2004 provided for commercial use on the entire site; the process leading to this action involved a great deal of neighborhood input. The concept plan included represents one *example* of a possible *concept* that fully responds to the Comprehensive Plan. Retailer response and required parking facilities will ultimately dictate the final site plan along with design guidelines that will be presented during the site plan submission process. Design guidelines submitted during site plan review will establish architectural development standards for all facilities within the development to insure a uniform architectural theme and appearance by specifically addressing building facades, building materials, and building styles.

The present request is to increase General Commercial by 26.53 acres bringing the overall total of General Commercial to 39.63 acres by elimination of the Office and Low-Density Residential zoning; this will result in a more cohesive, market-responsive development and provide the necessary flexibility in placing retail, restaurants, out-parcels, residential over retail, and entertainment venues. The plan will provide for approximately 350,000 sq.ft. of retail/commercial space. Additionally, the General Commercial zoning provides for the development of medium density, multifamily residential overtop of the commercial uses on the ground floor. This additional residential component will increase the viability of the upscale town center, and is directly in line with the Comprehensive Plan which states, "*Commercial centers should be integrated with residential uses . . .*" Ultimately this affords the opportunity to integrate residential use over retail in the form of attractive townhomes with a \$225,000-\$350,000 starting price range combined with single-floor style condominium units. Prices for the single-floor units are anticipated to range from \$150,000 to \$225,000, which addresses a documented shortage of housing in this price range for active adults, retirees and young professionals.

**Anticipated effect of the proposed change (if any) on public services and facilities:**

Development of currently vacant parcels will increase the load on public services and facilities. With this knowledge, the Applicant's Engineer has initiated a process to coordinate and plan with Town staff on the scheduled upgrade of the Cedar Run Pump Station. All available information regarding development densities and uses will be provided to the Town to make their evaluation and upgrade as accurate as possible. Additionally, the Applicant will continue to cooperate with the Town in evaluating the water supply demand associated with the general commercial development.

Furthermore, the Town of Blacksburg plans to connect King Street and Hubbard Street. The Applicant actively supports this plan and will fully coordinate this development plan with the Town to accomplish this objective.

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Base and background traffic data for this property has been developed. Once the tenant mix is determined, traffic studies will be completed to define necessary traffic improvements to accommodate the new development. These studies will be done in conformance with ITE Trip Generation Models, the Manual of Uniform Traffic Control Devices, and Town Ordinance. In accordance with preliminary discussions with the Town Planning staff, the Applicant shall provide a preliminary evaluation of future traffic service levels along South Main Street. This evaluation will identify improvements required in the study year due to the following: (1) increases in current traffic without any development, and (2) increases specifically resulting from the proposed development of this property.

**Appropriateness of the property for the proposed change, as it relates to the intent of the zoning district desired:**

The intent of the GC district is to "provide for more intense commercial uses . . . in a manner consistent with the Town's character. . . . a vital lively streetscape . . . is a goal of this district."

The proposed rezoning would allow for the type of mixed-use development that will have an image-focused architectural character, and a variety of delightful public spaces will fill the development with excitement and provide an active setting for retail and commercial activity. This development will bring a synergy of full time living, shopping, working, entertainment and recreational activities. Upscale and fun, the mixed use portion of the property will provide street level retail and a variety of restaurants along with plans for a multistory boutique hotel. A 12 screen Cinema will bring activity to the site into the evening hours. The multifamily residential allowed overtop of the commercial uses will bring to the development not only built-in resident shoppers but also a 24-hour character and additional public safety benefits.

An efficient fabric of sidewalks of pedestrian ways will be planned to link all public spaces, retail and commercial activities. The greenway planned at the rear of the site running North-South parallels Blacksburg's main street and links up with the planned greenway shown on the Future Land Use map.

**Relationship of the proposed change to the general planning program (Comprehensive Plan):**

**VISION:**

The Applicant's vision for this development is a mixed use town center with commercial, residential, office, retail, hotel, entertainment, public, and cultural facilities interconnected with open spaces in a cohesive development that provides a distinctive appearance and a true sense of space. Pedestrian-scale storefronts, small-scale shopping, walkways, manicured landscaping, and open public areas compliment one another to create a social atmosphere. The development of the property adjacent to residential neighborhoods will be sensitive to the character and concerns therein.

The proposed changes would afford the flexibility necessary to:

"create a commercial area that is concentrated in an attractive, landscaped node and strip development is minimized through use of master planned and mixed-use"

developments. Commercial uses should be designed to fit the character or enhance the area in which they are located."

The requested changes dovetail nicely into the Vision of the Midtown South district as expressed by the Town's 2004 Comprehensive Plan.

Special Considerations:

Commercial and mixed-use developments should be designed to fit the character or enhance the area in which they are located. Designs should seek to create a community gathering place as well as a commercial center. Commercial Centers should be integrated with residential uses and provide convenient pedestrian access. Development should be attractively constructed and appropriately screened with new or existing vegetation to buffer existing residential areas.

A landscape buffer behind the Kennedy Avenue neighborhood will offer protection from the affects of adjoining development.

**Way in which the proposed change will further the purposes of the Zoning Ordinance and general welfare of the community:**

The proposed change will allow for the "revitalization and creative development of the South Main Street corridor between Hubbard Street and Country Club Drive [and] greatly improve the southern gateway to Blacksburg." (Blacksburg 2004).

These words, taken directly from the Town's comprehensive plan, describe the essence of what will be accomplished with the flexibility afforded by the proposed zoning changes. The result will be economic stimulus, redevelopment of aging facilities, development of overgrown properties, and creation of a social and economic hub in the community.

**PROFFERED CONDITIONS, IF ANY MUST:**

1. Have a reasonable relationship to the rezoning;
2. Not include a cash contribution to the Town;
3. Not include mandatory dedication of property; and
4. Not include payment for construction of off-site improvements. The rezoning must give rise to the need for the conditions and the conditions must be related to the physical development or physical operation of the property and be in conformity with the Comprehensive Plan

If the conditional zoning method is desired to be used by the applicant, the following conditions are voluntarily proffered:

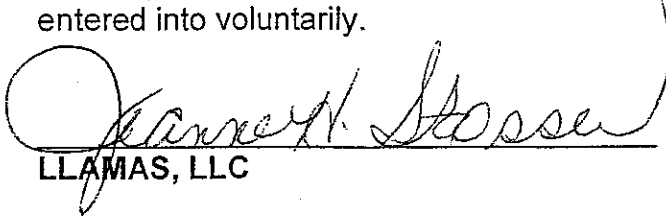
See attached, amended proffers dated May 3, 2006.

Proffers on the rezoning may be amended at any time prior to the Planning Commission and Town Council public hearings.

The following items must accompany this application:

1. The written consent of the owner or agent of the owner. If the applicant is the contract purchaser, the written consent of the owner is required.
2. Surveyed map of the property at a scale of 1:100 or larger on 8 ½" x 11" or 11" x 17" paper.
3. Vicinity map on 8 ½" x 11" or 8 ½" x 14" paper indicating existing land use and zoning of property in question and within 300 feet of property. (This may be added to the survey map.)
4. A list of adjacent property owners (including properties across any street) and their addresses, plus the cost of CERTIFIED mailing for notifying each adjacent property owner (no stamps, please).
5. Fee of \$1500 for rezoning, \$2000 for Planned Residential rezoning, and \$1000 for an amendment to an existing Planned district. These fees are to be applied to the cost of advertising and expense incidental to reviewing, publishing, and processing this application. Please make you check or money order payable to the TOWN OF BLACKSBURG.
6. Any item submitted that is in excess of 11" x 17" paper size requires thirty-six (36) copies.

The undersigned hereby warrants that all of the owners of a legal interest in the subject property have signed this proffer statement, that they have full authority to bind the property to these conditions, and that the proffers are entered into voluntarily.

  
LLAMAS, LLC

By Jeanne Stosser, Member

COMMONWEALTH OF VIRGINIA

COUNTY OF MONTGOMERY:

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of May, 2006, by, Jeanne Stosser of LLAMAS, LLC.

  
Notary Public

My Commission Expires:

7-31-09

Georgia Anne Snyder-Falkingham  
LLAMAS, LLC

By Georgia Anne Snyder-Falkingham, Member

COMMONWEALTH OF VIRGINIA

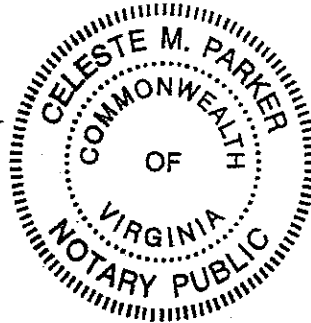
COUNTY OF MONTGOMERY:

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of May, 2006, by Georgia Anne Snyder-Falkingham, of LLAMAS, LLC.

Celeste M. Parker  
Notary Public

My Commission Expires:

January 31, 2008



Amendment to  
Rezoning Application  
May 3, 2006

The following improvements have been made to the previously submitted rezoning application in response to feedback from Town Council during the Town Council work session on April 25, 2006. Earlier revisions included improvements based upon the Greenway Bikeway meeting, the neighborhood meeting, letters of February 14 and March 9, 2006, from Kennedy Avenue residents, follow up meetings with the Kennedy Avenue residents on February 28th, March 2<sup>nd</sup>, March 19th, and March 25, 2006, and input from other neighborhood meetings and interested parties. These items are offered herein in the form of an amendment with the following instructions:

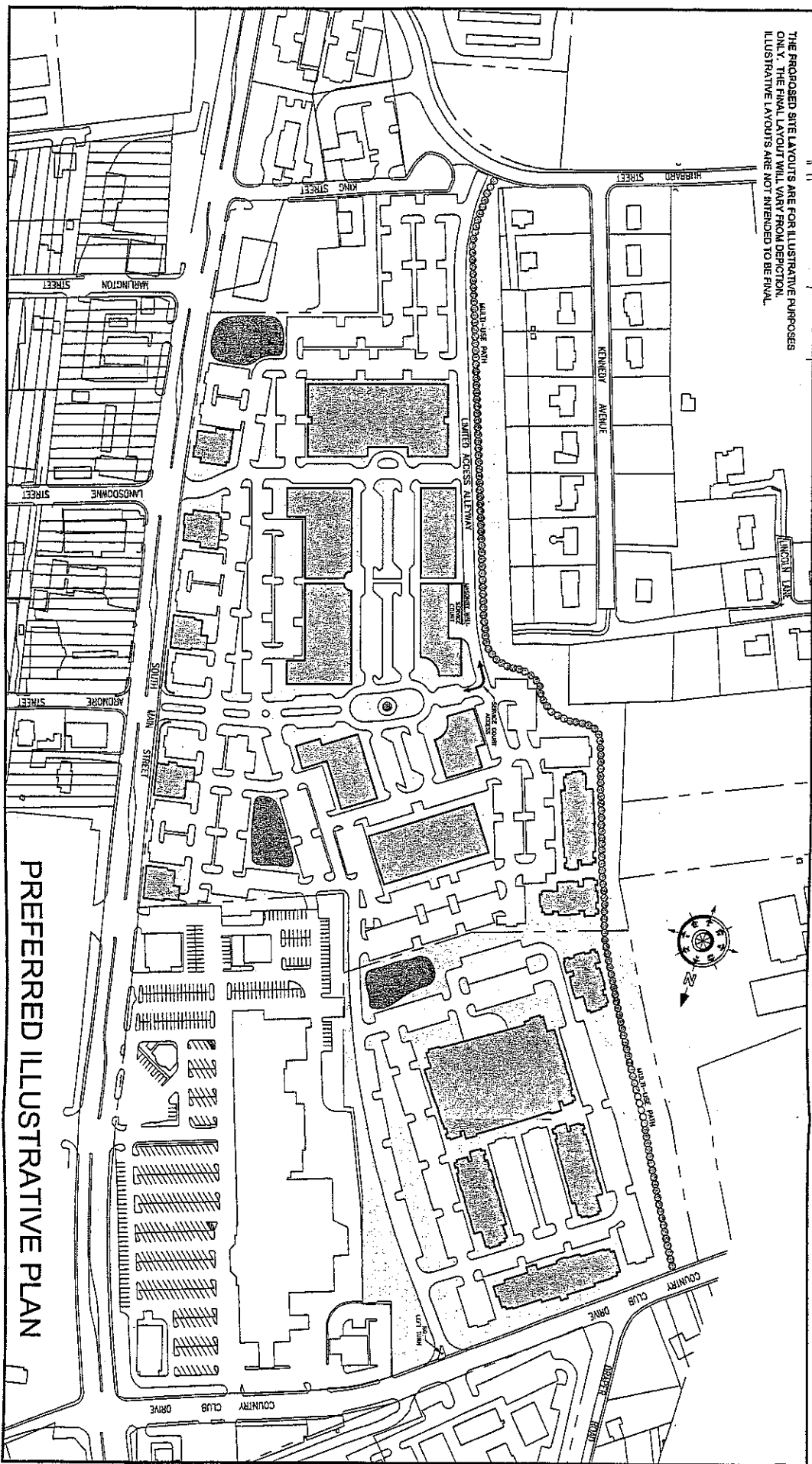
**Changes to previously submitted material:**

Delete the entire set of proffer language (with all sub-items), and replace it with the expanded proffer language attached herein.

## VI. Proposed Concept Layouts\*

\* Proposed layouts provided for illustrative purposes only. Final layout will depend upon developer and tenant mix.

THE PROPOSED SITE LAYOUTS ARE FOR ILLUSTRATIVE PURPOSES ONLY. THE FINAL LAYOUT WILL VARY FROM DESCRIPTION. ILLUSTRATIVE LAYOUTS ARE NOT INTENDED TO BE FINAL.

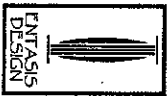


UNIVERSITY TOWNE CENTRE

PREFERRED ILLUSTRATIVE PLAN



ANDERSON & ASSOCIATES, INC.  
Professional Design Services  
VA - NC - TN - WV



110 West A Street  
Kannapolis, NC 28081  
(704) 933-2328 (FJ)  
(704) 938-3252 (J)

for  
Fairmount Properties, Inc.  
20 March 2006 Job # 05-007

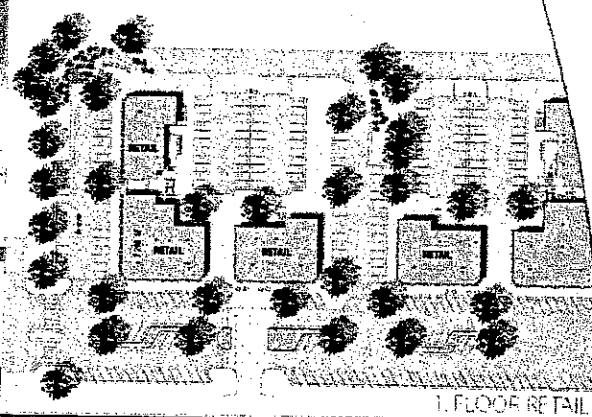
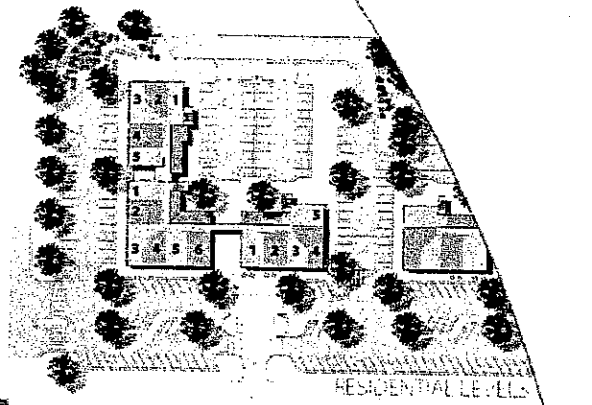
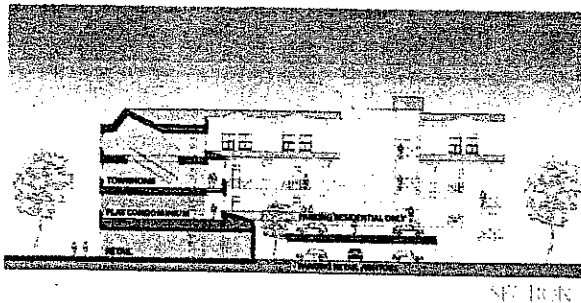
Blacksburg, VA



FAIRMOUNT  
PROPERTIES

# Illustrative Design Concepts

Residential and Retail  
Mixed-use Development



Entasis Design, PLLC

110 West A Street  
Kannapolis, NC 28081  
(704) 953-6294 (p) (704) 956-3252 (f)

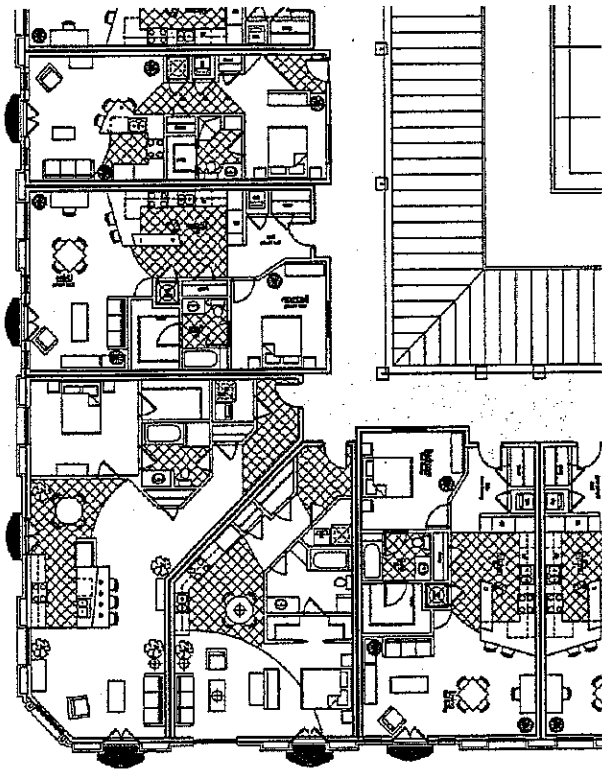
MAIN STREET VILLAGE

Blacksburg, VA  
Fairmount Properties, LLC  
22 November 2005 Job # 05-007

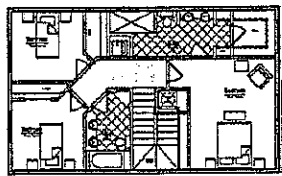
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# ILLUSTRATIVE DESIGN CONCEPTS

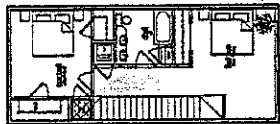
RESIDENTIAL/RETAIL



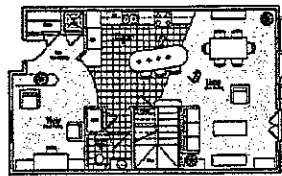
FLOOR PLANS



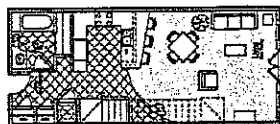
FLAT UNIT - 1 FLOOR



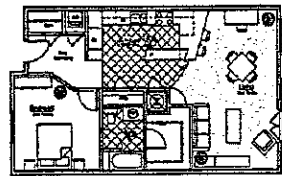
TOWNHOME - 1 FLOOR



FLAT UNIT - 1 FLOOR



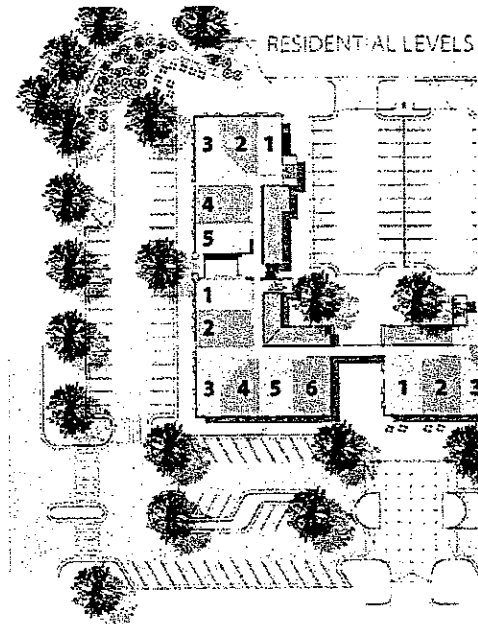
TOWNHOME - 1 FLOOR



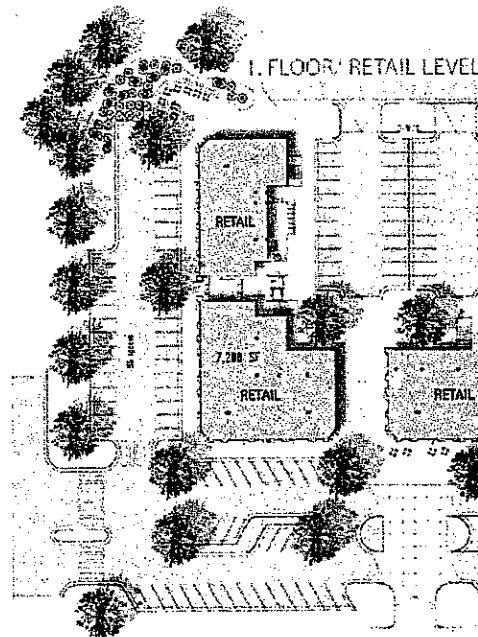
FLAT UNIT



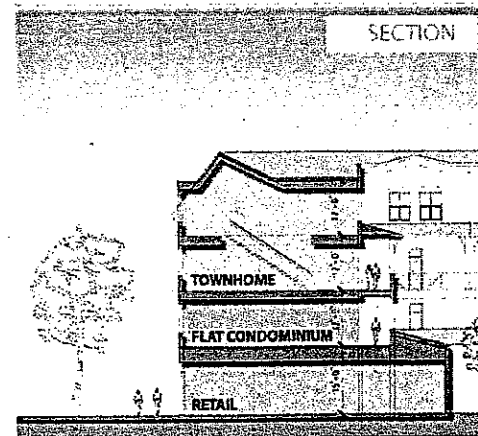
TOWNHOME



RESIDENTIAL LEVELS



1. FLOOR/ RETAIL LEVEL



SECTION

## MAIN STREET VILLAGE

Entasis Design, PLLC

110 West A Street  
Kannapolis, NC 28081  
(704) 933-6294 (p) (704) 938-3292 (f)

Blacksburg, VA  
Fairmount Properties, LLC  
22 November 2005 Job # 05-007

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REVISED PROFFER STATEMENT FOR THE APPLICATION OF LLAMAS, LLC  
TO REZONE TAX PARCEL NUMBERS 287-A-41A, 287-A-27A, 287-A-27, 287-  
A-28, 287-A-28A, 317-A-7 FROM R-4 LOW DENSITY RESIDENTIAL AND  
OFFICE TO GENERAL COMMERCIAL PURSUANT TO ORDINANCE #1412

May 3, 2006

**University Towne Centre Environment and Proffer Statement**

University Towne Centre (Hereafter UTC) represents an exciting "main-street" retail destination that invites neighbors and guests to enjoy a host of offerings such as specialty shops, unique dining establishments, and entertainment – all within a short stroll. The architecture shall resemble the vernacular of Blacksburg with casual elegance and a pedestrian-friendly, tree-lined boulevard. The Comprehensive Plan places this property within the prime area for redevelopment in the Town, and the proposed development is consistent with the Comprehensive Plan's recommendations for re-development in the area.

The future development will be the result of meticulous planning and design, which blends the best of sophisticated and casual architecture to resemble and enhance the current Blacksburg charm. UTC brings to the shopping and retail environment a scale and texture that is atypical of either conventional shopping centers or housing communities. Together, they deliver a varied and rich experience not found elsewhere in the New River Valley.

Within the UTC, shops with colorful windowscapes will line the development's "main-street" and unique residential dwellings can be nestled above. A linear park may showcase fountains or provide a cheerful garden walk for shoppers to enjoy.

Therefore, pursuant to Section 15.2-2298 of the Code of Virginia (1950) as amended, and Section 1160 of the Town of Blacksburg Zoning Ordinance, Town Code Appendix A, LLAMAS, LLC, applicant, hereby voluntarily proffers that the property which is the subject of this Rezoning Application will be developed in accordance with the following conditions, if and only if approval of Ordinance #1412 is granted, and the property is zoned General Commercial. The Applicant, the owners, their successors and assigns, voluntarily proffer for the property as follows:

- 1. Kennedy Avenue.** The Developer proffers the following conditions along the rear lot line between the subject property and the Kennedy Avenue Properties (specifically delineated on the subject Property Plat as 934.84' @ N 19°22'49" W, the properties commonly known as 1601, 1605, 1607, 1609, 1611, 1613, 1615, 1617, and 1619 Kennedy Avenue)(see attached

*Proffer Plan, which is hereby incorporated by reference and made part of these the Proffers):*

- a. **A Perimeter Fence.** Developer shall provide a continuous opaque perimeter fence to be maintained by the developer behind the adjacent residential lots, the Kennedy Avenue Properties and the vacant lot with Parcel ID # 009022, Map # 287-8A (the "Vacant Lot"); the developer will issue various options on style and color that shall be approved by the Town engineer after input from the adjacent homeowners. The developer shall proffer various options, based upon input from the adjacent homeowners, for the exact location of the fence within the buffer yard which shall be approved by the Town engineer. This fence shall be constructed no later than 60 days after grading of the landscaped buffer area along the fence-line is completed and the grade stabilized.
- b. **A Landscaped Buffer Area.** Developer shall provide a 50' buffer yard vegetated in accordance with Type C Architectural buffer requirements along the property line with the Kennedy Avenue Properties and the Vacant Lot. The 50' buffer width shall be maintained, at a minimum, past the end-line of the last house on Kennedy Avenue, 1619 Kennedy Avenue, on the corner with Hubbard Street, and may thereafter be tapered in width if necessary to allow the connection to King/Hubbard as depicted on the *Proffer Plan*. The grading of the buffer shall not come within ten (10) feet of the Kennedy Avenue Properties' rear lot line. The average grade of the slope within the buffer yard shall not exceed two feet of run for each foot of drop, as depicted in the *Proffer Plan*. The Developer will request approval from the Town to include deciduous canopy trees and under story flowering trees in the vegetative buffer with input from the adjacent homeowners. This landscaped buffer area, and the restrictions on grading referenced above, will also continue along the property line with the Vacant Lot.
- c. **A Multi-Use Path.** Developer will place the 15' multi-use path corridor beyond the initial 50' buffer referenced in b. along the property line of the Kennedy Avenue Properties and the Vacant Lot, as depicted on the *Proffer Plan*.
- d. **Vehicular Traffic Restriction Behind Buildings.** Developer shall not develop or allow any vehicular parking or driveways between the exterior wall of the first building or buildings facing the Kennedy Avenue Properties' rear lot line and the buffer yard referenced in b., above, except for the limited access paved alleyway required for fire and emergency access (as depicted in the *Proffer Plan*). This access alleyway shall also be accessible for tenant move-in and move-out, but shall not be used by

motorized vehicles for regular deliveries or trash pick-up to these buildings, which shall be limited to the masonry walled service courtyard referenced in f., below. The entrance to the walled service courtyard by motorized vehicles shall be located past the northern end of the Kennedy Avenue Properties, and motorized vehicle access to the entrance shall be limited to the access road or alley coming from the north, and not via the portion of the access alleyway behind the Kennedy Avenue Properties.

Developer shall require all tenant leases and contracts with refuse removal services to prohibit commercial deliveries and pick-ups from the service courtyard behind the Kennedy Avenue Properties, including trash pick-up, before seven (7) a.m. and after nine (9) p.m. (except for tenant move-in and move-outs).

- e. **Traffic Restriction along Property Line.** Developer shall not create any continuous cross streets connecting Country Club Drive to Hubbard Street, or any public access roads, between the first building beyond the rear lot line of the Kennedy Avenue Properties and the landscaped buffer area.
- f. **Additional Building Setbacks.** Developer shall construct no buildings within the first 100' behind the Kennedy Avenue Properties, but one masonry walled service courtyard may extend beyond the building line no more than thirty feet (30'), as depicted on the *Proffer Plan*. All trash rooms will be interior to the buildings which are located behind the Kennedy Avenue Properties.
- g. **Limitation on Building Height.** Developer shall limit all buildings in the next 100' behind the Kennedy Avenue Properties to a maximum building height that does not exceed either: (1) an elevation of 2148'; or (2) twenty feet (20') above the existing grade at the property line along the Kennedy Avenue Properties, as depicted on the *Proffer Plan*.
- h. **Additional Protection around Vacant Lot.** Developer shall construct masonry walls around any refuse dumpsters within 100 feet of the property line between the Vacant Lot and Parcel 13. Developer shall require all tenant leases and contracts with refuse removal services to prohibit commercial deliveries and pick-ups in this area, including trash pick-up, before seven (7) a.m. and after nine (9) p.m. (except for tenant or owner move-in and move-outs). Developer shall not locate any streets connecting Country Club Drive to Hubbard Street in the area separating the property line between the Vacant Lot and Parcel 13 from the closer of: (1) the first building beyond the said property line; or (2) a distance of 150' from said property line. Developer may locate parking within this area, beyond the landscaped buffer area and multi-use path corridor referenced in b. and c., above, but shall take reasonable steps to limit through traffic in any parking located in this area, such as limiting parking in this area to employees or residents,

constructing speed bumps, landscaped lot dividers, and/or such other access restrictions as may be approved by the Town Engineer to discourage such through traffic.

2. **Country Club Drive.** The Developer proffers the following conditions along the side lot line between the subject property and Country Club Drive (*see attached Proffer Plan*).
  - a. **Additional Building Setbacks.** Developer shall expand the 10' zoning setback currently established along the Country Club Drive frontage to create a total of 25' zoning setback.
  - b. **Limitation on Building Height.** Developer shall limit all buildings within 100' feet of Country Club Drive to a maximum building height of fifty feet (50'), or to an elevation of 2184', whichever is lower, as depicted on the *Proffer Plan*.
  - c. **Additional Landscaped Buffer.** Developer shall preserve the existing vegetative buffer, or create a buffer in accordance with Type C Architectural buffer requirements where the existing vegetated buffer does not meet the requirements of the Code in a 100' radius measured from the Northwest corner of the Parcel identified as Tax Map 287-A-41-A (the "Country Club Parcel"), as depicted on the *Proffer Plan*. As depicted, the Multi-Use Path may be located within this buffer. This area shall have no buildings and no parking.
3. **Margaret Beeks Elementary School.** The Developer proffers the following conditions along the rear lot line between the subject property and the Margaret Beeks Elementary School (*see attached Proffer Plan*).
  - a. **A Perimeter Fence.** Developer shall continue and connect to the existing perimeter fence, with the permission of the Montgomery County School Board, between the subject property and the Margaret Beeks Elementary property and repair or replace any missing or damaged sections with like materials. The continued fence shall extend northward to connect to the existing fence along Country Club Drive, and it shall continue southward to the southern boundary of the school property.
  - b. **A Vegetative Buffer.** Developer shall preserve no less than 50' of the existing vegetative buffer or create a buffer in accordance with Type C Architectural buffer requirements where the existing buffer does not meet the requirements of the Code.
  - c. **A Connection to the Kennedy Avenue Perimeter Fence.** The Developer shall connect this fence to the fence behind the Kennedy Avenue residences.
4. **Multi-use Path Connection to Huckleberry Trail.** Developer proffers to provide a continuous multi-use path from Hubbard Street to Country Club

Drive so as to provide pedestrian and bikeway interconnectivity throughout the neighborhood and access from the development to the Huckleberry Trail via the existing bike lane along Country Club Drive (*see attached Proffer Plan*). The Developer will not connect the multi-use path to Kennedy Street or East-View Terrace, or request that Kennedy Avenue or East View Terrace be extended to connect to the development.

5. **Restricted Uses.** Developer proffers that the following uses and structures shall not be permitted; Adult Entertainment Establishments; Adult Stores, Automobile Repair Services; Car Washes; Gasoline Stations; Funeral Homes; Commercial Kennel; Pawn Shops.
6. **Traditional Neighborhood Design.** The developer proffers that all site plans shall conform with the following principal elements of "Traditional Neighborhood" design:
  - a. All buildings in the development shall be connected to others in the development via the multi-use path and/or sidewalks.
  - b. Retail and commercial structures will have their frontage on any Street changed in one or more of the following elements not more than every sixty (60) feet:
    - (1) setback from street or sidewalk; and/or
    - (2) facing materials (which shall be defined as the surface material covering a majority of the frontage area, typically brick, block stucco or siding); and/or
    - (3) the color of the material that is covering the majority of the frontage area; and/or
    - (4) either the dominant roof line, height or pitch, or the use of different dormer window shapes on the roof.
  - c. The development will have a discernible center. This will be either:
    - (1) a plaza; or
    - (2) a landscaped square, green, or promenade with public seating areas; or
    - (3) a landscaped traffic circle; or
    - (4) a street corner with outdoor restaurant and other public seating areas.
  - d. Streets within the development will form a connected network incorporating traffic calming elements as required by the Town Engineer.
  - e. Parking areas (other than parking in the row directly adjacent to buildings or along access drives), will be broken up into four or more landscaped sub-lots.

- f. Entrances and exits to the rezoned parcels from existing public roads will be limited to the following:
- (1) one entrance and exit on King Street/Hubbard Street; and
  - (2) one entrance and exit on Country Club Drive. Any new exit onto Country Club Drive from the rezoned parcels shall be designated as right turn only and left turns exiting onto Country Club Drive shall be prohibited.

**7. Residential Density.** Developer will limit total residential density on Parcels, 10, 11, 12 and 13 to no more than 27 bedrooms per acre. Developer will limit the total residential density on the Parcel identified as Tax Map 287-A-41-A which is 14.8 acres in size more or less (the "Country Club Parcel") to no more than four hundred (400) bedrooms. Total residential density shall not exceed 48 bedrooms per acre on any parcel resulting from a subdivision of the Country Club Parcel. The subdivision plat and any related agreements for any such subdivision shall allocate the division of the four hundred (400) bedrooms between the resulting lots and Town staff shall review this allocation as part of the plat review. The resulting bedroom allocation shall also be recorded on the plat for each parcel.

**8. No Cellular Antennas or Towers.** Developer proffers that on Parcels, 10, 11, 12 and 13 there will be no rooftop, building mounted, or freestanding cellular communication antennas or towers.

**9. Final Traffic Study.**

- a. Developer proffers that at the time of submission of each site plan application, Developer will perform and submit a final traffic study subject to Town approval to evaluate the level of service along South Main Street and to determine any necessary improvements resulting from the rezoning of the subject property. The study shall include level of service impacts to the following intersections of South Main Street:
- (1) Country Club Drive; (2) the traffic lighted entrance to the Kroger shopping center; (3) Ardmore Street; (4) Landsdowne Street; (5) Marlinton Street; (6) Hubbard Drive; and (7) King Street. Developer will make the improvements that are indicated in the traffic study as necessary to mitigate any reduction in level of service at the time of development. However, if the resultant level of service is C or better, no improvements shall be required.
- b. Developer will contribute to the Town of Blacksburg \$25,000.00 towards the cost of any improvements to the intersection of Country

Club Drive and Airport Road that are approved by the Town following consultation with the surrounding neighborhood to provide a roundabout or other traffic calming measures or other intersection improvements to improve traffic flow at this location. This cash payment shall be made to the Town prior to approval of the first site plan.

LR  
LECLAIR RYAN

A Professional Corporation

2000 Kraft Drive  
Suite 1000  
Blacksburg, Virginia 24060  
Phone: 540.961.2600  
Fax: 540.961.2941

ATTORNEYS AT LAW

JAMES K. COWAN, JR.  
james.cowan@leclairryan.com

Direct Dial: 540.443.3300

June 6, 2007

Steve Hundley  
Zoning Administrator  
Town of Blacksburg  
300 South Main Street  
P.O. Box 90003  
Blacksburg, VA 24062-9003

Re: Site Plan Review  
Vested Rights Determination

Dear Steve:

In response to your June 4 letter, I write to provide the following information you requested.

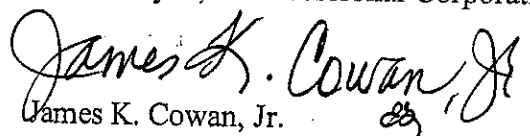
We estimate the total build costs of the development project at approximately \$45,000,000.00. We estimate the value of the proffers restricting our development rights on the project at approximately \$5,000,000.00. We believe these improvements and dedications of the land use for the public benefit are substantial and can be validated by independent appraisal.

As you are already in possession of the litigation filings, the various correspondence items on this matter, and other related documents, please let us know what other information you might require to conclude your determination.

Nothing in this letter waives any rights or arguments we or any other plaintiff party may have in the pending lawsuit. We provide this estimation in response to Judge Turk's suggestion that the parties continue to cooperate in this matter and without prejudice to our rights or the rights of any plaintiff party in the pending litigation.

Regards,

LeClair Ryan, A Professional Corporation

  
James K. Cowan, Jr.

17616.0002

Alexandria • Blacksburg • Charlottesville • Glen Allen  
• New York • Norfolk • Richmond • Roanoke • Virginia Beach • Washington DC

www.leclairryan.com

EXHIBIT C