

SUMMARY OF COMMITMENTS

PULTE HOME COMPANY, LLC

ZONING MAP AMENDMENT Z-18-00539

October 18, 2021

Pursuant to Section 15.2-2303(a) of the *Code of Virginia*, 1950, as amended, and Section 6.4.10 of the Zoning Ordinance of the City of Fairfax, Virginia (the “Zoning Ordinance”), Pulte Home Company, LLC, for itself, the owners, and successors and/or assigns (collectively, "the Applicant") in Z-18-00539 filed on property identified on the City of Fairfax tax map as 57-1-14-055A, 57-1-14-043, 57-1-14-083, 57-1-14-75A, 57-1-14-76A and 57-1-14-77A, and portions of right-of-way to be vacated and/or abandoned (hereinafter collectively referred to as the "Subject Property") hereby commits to the following, provided that the City Council approves a rezoning of the Subject Property from the CR, RMF and RH Districts to the PD-M District in conjunction with a Master Development Plan for the development of up to twenty (20) stacked condominium multifamily dwelling units, and forty-two (42) townhouses. The Master Development Plan also includes a commercial component consisting of a building up to 10,010 square feet, to be constructed by others, that will be occupied by a commercial use(s) to be determined as set forth in these Commitments. In the event this rezoning is denied by the City Council, these commitments shall immediately become null and void.

1. **MASTER DEVELOPMENT PLAN.** Development of the Subject Property shall be in substantial conformance with the Master Development Plan, prepared by ATCS, PLC consisting of twenty (20) sheets, dated August 6, 2018, as amended through October 18, 2021 (the “MDP”). Minor modifications to site design and improvements shown on the MDP based on final engineering and design may be permitted, subject to the approval of the Zoning Administrator.
2. **PHASING.** The Applicant anticipates that the Subject Property will be developed in phases, subject to market conditions, as follows:
 - A. **Phase One - Demolition** of all existing structures and improvements on the Subject Property, inclusive of the Breezeway Motel. Demolition shall be complete prior to the issuance of a certificate of occupancy for the first residential unit in Phase Two. The demolition work in Phase One may be completed prior to or concurrent with the work in Phase Two at the applicant’s discretion.
 - B. **Phase Two – Construction** of 42 townhouses and 20 stacked condominium multifamily dwelling units and associated infrastructure, utilities, stormwater management facilities, required open space and recreational amenities as identified on the MDP. Phase Two will also include the removal of existing overhead utilities as identified on Sheet 9 of the MDP, and the construction of streetscape and traffic calming improvements as identified on Sheet 5 of the MDP. At the Applicant’s discretion, the townhouses and stacked condominium multifamily units in Phase One

may be constructed in two (2) separate sub-phases corresponding with the areas north and south of Cedar Avenue, provided that the infrastructure, utilities, and stormwater management facilities associated with each sub-phase are constructed prior to the issuance of the first certificate of occupancy for each sub-phase. The recreational amenities associated with each sub-phase will be constructed prior to the issuance of the final certificate of occupancy for each sub-phase. Upon completion of all of the residential units in Phase One, a minimum of twenty percent (20%) of the Subject Property shall be provided as open space that meets the requirements of Section 3.8.7 of the Zoning Ordinance.

- C. Phase Three –Completion of interim improvements on tax map Parcel 57-1-14-043 (“Parcel 43”). The interim improvements on Parcel 43 shall include, but are not limited to, the clearing and grading of Parcel 43, the installation of landscaping on the southern portion of Parcel 43 included in the required open space calculations as shown on the MDP, the seeding of all open areas, the installation of a temporary 10’ asphalt trail along Fairfax Boulevard, and the retention of the existing interim sidewalk Walnut Street as generally identified in the interim conditions plan on Sheet 6 of the MDP. The landscaped open space area on the southern portion of Parcel 43 shall be open and usable in the interim condition. Parcel 43 and the interim improvements shall be maintained by the Applicant and/or the Umbrella Owners Association (UOA) discussed in Commitment 10 until such time as Parcel 43 is conveyed to a third party. The interim improvements in Phase Three shall be complete prior to the issuance of a certificate of occupancy for Phase Two.
- D. Phase Four – Construction of the future commercial building on Parcel 43 and associated infrastructure, utilities, stormwater management facilities, ultimate streetscape and open space. The commercial component of the development in Phase Three shall be in substantial conformance with the MDP with respect to the location and orientation of the building to Fairfax Boulevard, the number and location of vehicular access points, the location of surface parking areas and maximum number of parking spaces, the ultimate streetscape conditions along Fairfax Boulevard and Walnut Street, and the minimum open space identified on the MDP. Notwithstanding the foregoing, the building footprint shown on the MDP shall be considered a maximum, and may be reduced by the future developer of the commercial component in response to final architecture and design provided that the commercial building includes a minimum of 8,000 and a maximum of 10,010 square feet. The maximum building height of the commercial building shall be two (2) stories and thirty five (35) feet. To the extent the landscaped open space area on the southern portion of Parcel 43 installed in Phase Two is impacted by construction activities in Phase Four, the area shall be re-planted and restored to its pre-existing condition prior to issuance of a certificate of occupancy in Phase Four. The commercial component will require the processing and approval of a separate Major Certificate of Appropriateness, site plan, building permit and any other necessary applications and/or permits. The submission and processing of these applications and the construction of the commercial component shall be completed by and at the sole cost and expense of others without any requirement for the consent or joinder of the owner(s) of any portion of Phase Two. Notwithstanding the foregoing, the

Applicant reserves for itself the rights to review and approve the architectural design of the commercial building and open space associated with Phase Four and the use(s) of the commercial building prior to the submission of any application for the Phase Four improvements.

3. COMMERCIAL USES.

A. The future use(s) of the commercial component in Phase Four will be determined in the future by others. Uses permitted in the commercial component of the development shall include all non-residential uses permitted in the PD-M District as defined in Section 3.8.4 of the Zoning Ordinance, except for the following uses which are specifically excluded:

- (1) Auditoriums or Arenas
- (2) Cemeteries
- (3) Detention Facilities or Jails
- (4) Drive-Through Facilities
- (5) Adult Uses
- (6) Building Supplies and Lumber Sales
- (7) Fuel Stations
- (8) Funeral Homes
- (9) Pawn Shops
- (10) Tattoo Parlors
- (11) Vehicle Repairs
- (12) Vehicle Sales and Leasing
- (13) Vehicle Service
- (14) Parking, commercial or municipal

4. COMMERCIAL MARKETING PLAN. Until such time as Parcel 43 is conveyed to a third party in which the Applicant has no ownership interest, the Applicant shall diligently implement a marketing plan for the commercial component of the development in Phase Four. The marketing plan, which shall be prepared and implemented by a licensed commercial real estate agent selected at the Applicant's discretion, shall be in general conformance with the Commercial Marketing Plan attached hereto as Exhibit A and incorporated by reference herein. The Commercial Marketing Plan may be amended or revised by the Applicant or its agent from time to

time to include additional strategies, approaches or marketing efforts not expressly stated therein.

5. RIGHT OF WAY VACATION AND DEDICATION.

- A. At time of the first final site plan approval for Phase Two, the Applicant, with the consent of the City of Fairfax, shall vacate and/or abandon approximately 4,569 square feet of existing Cedar Avenue right-of-way as depicted on the "Plat Showing the Vacation of a Portion of Walnut Street & Cedar Avenue" prepared by ATCS, PLC, subject to review and approval of the Director of the City of Fairfax Department of Public Works (the "DPW"). Future improvements of the right-of-way to be vacated and/or abandoned shall be limited to those identified on the MDP, except as may be modified at the time of site plan.
- B. At the time of the first final site plan approval for Phase Two, the Applicant shall dedicate up to 50 feet from centerline of the Subject Property's Fairfax Boulevard frontage (approximately 2,500 square feet) as identified on the MDP to comply with the minimum right-of-way required by the Subdivision Ordinance. Said dedication shall be made at no cost to the City of Fairfax.

6. INTERSECTION AND TRAFFIC CALMING IMPROVEMENTS. In coordination with DPW at the time of site plan, the Applicant shall design and reconfigure the intersection of Walnut Street and Cedar Avenue, and shall design and construct traffic calming improvements on Cedar Avenue as shown on the MDP and in accordance with the following:

- A. The Applicant shall remove the existing median in the intersection of Cedar Avenue and Walnut Street and shall reconfigure this intersection into a three-legged stop-controlled intersection. The street design on the northeast and southeast quadrants of this intersection shall include a 5-foot wide sidewalk, variable width planting strips, curb and gutter, ADA curb ramps, and curb bump-outs as depicted on the MDP. On street parking will be provided along the west side of Walnut Street, and portions of Walnut Street will be re-striped to accommodate the on-street parking and traffic calming improvements. The Applicant will install a painted crosswalk across Cedar Avenue to align with the curb ramps.
- B. The Applicant will construct one (1) tabled mid-block pedestrian crossing on Cedar Avenue as generally shown on the MDP. The design of this mid-block crossing shall be ADA accessible. At the time of site plan the Applicant shall coordinate with DPW on the final design of this crosswalk and any required painting, striping or pavement markings.
- C. The existing curb on the south side of Cedar Avenue shall be removed and replaced by the Applicant, and Cedar Avenue shall be widened by approximately three (3) feet. The Applicant will install striping for on-street parking spaces on the north and south side of Cedar Avenue as shown on the MDP. Notwithstanding the number of

parking spaces shown on the MDP, the final number of on-street parking spaces on Cedar Avenue may be adjusted at the time of site plan in coordination with the City.

- D. The street design on the northwest and southwest quadrants of the intersection of Cedar Avenue and Oak Street shall include variable width planting strips, curb and gutter, ADA curb ramps, and curb bump-outs as identified on the MDP. The existing sidewalk in the northwest quadrant of the intersection shall remain, and the Applicant shall install a new 5-foot wide sidewalk in the southwest quadrant as shown on the MDP. The Applicant will provide on-street parking spaces on the west side of Oak Street as identified on the MDP.
7. **FUTURE INTER-PARCEL ACCESS.** The Applicant shall reserve the area identified on the MDP as “Future Inter Parcel Connection” to permit the connection of a future inter-parcel access to the adjacent property identified as City of Fairfax Tax Map 57-1-14-048 (“Parcel 48”). At such time as Parcel 48 is redeveloped by others, the Applicant shall provide at no cost the requisite temporary construction easements and/or permissions reasonably necessary to permit the construction of the inter-parcel access by others. At such time as the inter-parcel access is constructed, the Applicant shall enter into an agreement with the owner of Parcel 48 to allow inter-parcel vehicular and pedestrian access between Parcel 43 and Parcel 48.
8. **FAIRFAX BOULEVARD FRONTAGE IMPROVEMENTS.** Prior to the issuance of the occupancy permit for the commercial building, the interim streetscape conditions installed with the Phase Three improvements shall be removed and the ultimate streetscape improvements along Fairfax Boulevard shall be constructed as shown on the MDP. The ultimate streetscape improvements will be installed by others in conjunction with the Phase Four improvements. The Fairfax Boulevard ultimate streetscape improvements shall include a five (5) foot wide landscape strip, and a ten (10) foot wide sidewalk or multi-use trail. These streetscape improvements shall coordinate with and tie into the existing streetscape on the adjacent parcel to the east to the extent feasible.
9. **UTILITIES.** All new on-site utilities constructed with each phase of development will be located underground. All existing overhead utilities on the Subject Property will be either removed or relocated underground as depicted on the MDP. In conjunction with the utility undergrounding or relocation the Applicant will coordinate as necessary with any affected abutting or surrounding property owners.
10. **UMBRELLA OWNERS ASSOCIATION.** The Applicant shall form an umbrella owners association (UOA) for the residential component of the Subject Property constructed in Phase Two. The Applicant may also, at its discretion, establish individual homeowners association(s) or condominium association(s) (collectively, the “HOA”) for the stacked condominium units and/or the townhouses on the Subject Property. The UOA shall be organized and governed in accordance with Virginia law. The members of the UOA shall be the HOAs established for the stacked condominiums and/or the townhouses. Maintenance obligations shall be assigned and/or allocated between the UOA and/or the HOAs in accordance with applicable shared maintenance/cross easement agreements. Maintenance obligations include, but are not

limited to, private streets, sidewalks, fencing, open space, landscaping, snow removal, and on-site stormwater management facilities. The Applicant shall notify all prospective purchasers of the units, in writing, and prior to entry into a contract of sale, of the maintenance responsibilities and restrictions of the UOA and the HOA.

11. **PRIVATE STREETS AND SIDEWALKS.** The Applicant shall record among the land records a public ingress/egress easement, in a form as approved by the City attorney, over all private streets and all sidewalks or portions thereof located on private property identified on the MDP. The UOA and/or the HOAs established for the development shall be responsible for the maintenance of the private streets, sidewalks, and associated streetscape elements.
12. **EMERGENCY ACCESS.** Concurrent with each record plat approval for each phase of development, the Applicant and the developer of the commercial component in Phase Three, as applicable, shall record among the land records an emergency vehicle access easement to the benefit of the City in a form acceptable to the City attorney over all private streets, parking areas, trails, sidewalks and open space areas located in each phase as shown on the MDP.
13. **LANDSCAPING AND SCREENING.** The following commitments apply only to the landscaping and screening associated with the residential component in Phase Two and the interim improvements in Phase Three, unless otherwise specified. The ultimate landscaping associated with the commercial component in Phase Four will be determined and installed by and at the sole cost and expense of others in conjunction with the future Certificate of Appropriateness and site plan for Phase Four.
 - A. Landscaping on the Subject Property shall be in general conformance with the landscaping shown on the MDP, and consistent with the Certificate of Appropriateness. Notwithstanding what is shown on the MDP or the Certificate of Appropriateness, final selection of landscape materials and may be modified at the time of site plan as approved by the Director of Community Development and Planning.
 - B. The Applicant and the developer of the commercial component in Phase Four shall screen any mechanical equipment at grade or located on a roof that is visible from the public right-of-way. Any mechanical equipment that is not visible from the public right-of-way shall not require screening.
 - C. The UOA and or the HOAs will be responsible for the maintenance of all proposed landscaping and all existing vegetation to be preserved as shown on the MDP.
 - D. Prior to issuance of a certificate of occupancy, the Applicant shall record among the land records sight distance easements in a form approved by the City attorney providing the City with the right to enter the Subject Property and trim, prune or otherwise maintain landscaping located within sight distance triangles at intersections shown on the MDP to maintain sight distance.

- E. The open space areas shown on the MDP will include a combination of landscaping and hardscape, as generally shown on the MDP, and as further described in the Certificate of Appropriateness. Final selection of materials and design shall be made at the time of site plan.
 - F. The Applicant shall use native species and native cultivars to the greatest extent feasible and non-invasive species for landscaping on the Subject Property. Plant lists identifying selected species will be submitted at the time of site plan and be consistent with the Certificate of Appropriateness.
14. **TREE PRESERVATION.** Tree preservation measures will be utilized for the trees that are identified on the MDP as being preserved. These measures may include, but are not limited to, the following: root pruning, crown pruning, mulching, and watering. In addition, the Applicant shall install the appropriate tree protection devices, such as tree protection fencing, based on site conditions and proposed construction activities.
 15. **OPEN SPACE.** Prior to or concurrent with record plat approval, the Applicant will convey to the UOA and/or the HOA the open space areas as identified on the MDP. The conveyance shall ensure permanent protection of the open space and the deed shall be in a form as approved by the City Attorney and recorded among the land records. The open space areas identified on the MDP shall be subject to a public access easement, however, the Applicant, the UOA and/or the HOAs reserve the right to subject the open space areas to reasonable rules and regulations. All open space in Phase Two identified on the MDP shall be maintained by the Applicant until such time as conveyed to the UOA and/or the HOA. All open space associated with Phases Three and Four including any interim landscaping installed with the Phase Three improvements shall be maintained by the Applicant until such time as conveyed to the developer of the commercial component. Future residents of the residential component in Phase Two shall have access to the open space located on the commercial component of the development in both its interim and ultimate conditions both prior and subsequent to development of the commercial component.
 16. **AFFORDABLE HOUSING.** The Applicant shall make a monetary contribution to the City's Affordable Housing Trust Fund in the amount of two hundred thousand dollars (\$237,524.00) prior to the issuance of the first occupancy permit in the development.
 17. **TENANT RELOCATION ASSISTANCE.** The Applicant shall provide relocation assistance to all tenants in good standing of the Fairfax Gardens Apartments in accordance with the Tenant Relocation Assistance Plan attached hereto as Exhibit B and incorporated by reference herein.
 18. **UNIVERSAL DESIGN.** All units on the Subject Property shall be designed and constructed with a selection of universal design features and options as determined by the Applicant and at the sole cost of the purchaser. Said universal design features and options may include, but are not be limited to, seat in master bath shower where possible, emphasis on lighting in stairs and entrances, lever door handles, and front loading washers and dryers.

19. TRASH COLLECTION.

- A. Commercial Building. Trash and recycling receptacles for the commercial use(s) shall be located either within the building or in the enclosed dumpster area identified on the MDP and will not be visible from the public right-of-way.
- B. Townhouses and Stacked Condominiums. Trash and recycling receptacles shall be located within the individual parking garages for the townhouses and stacked condominium units and will not be visible from the public right of way. Such receptacles will be moved outdoors for collection on scheduled trash or recycling days.

20. STORMWATER MANAGEMENT. Design and construction of stormwater management facilities shall comply with Virginia Stormwater Management Program (VSMP) Permit Regulations, as may be amended, or other relevant standard in place at the time of the applicable site plan submission.

21. SANITARY SEWER. At the time of site plan the Applicant shall perform an analysis to demonstrate that the existing sanitary sewer connection beneath Cedar Avenue identified on the MDP as to remain is adequate to support the flows generated by the proposed development. If the analysis demonstrates that improvements to or replacement of the existing sanitary connection are necessary, the Applicant shall be responsible for implementing such improvements or replacement and shall incorporate any necessary revisions in coordination with the City at the time of site plan.

22. CONSTRUCTION MANAGEMENT PLAN.

- A. Prior to site plan approval for each phase of development, the Applicant and the future developer of the commercial component for Phase Four, as applicable, will submit a construction management plan for approval by the Director of the Department of Public Works (DPW) or designee for phasing and construction which will include the following information:
 - (1) Hours of operation;
 - (2) Truck routes to and from entrances;
 - (3) Location of parking areas for construction employees;
 - (4) Truck staging and cleaning areas;
 - (5) Storage areas;
 - (6) Temporary fencing as needed to screen on-site staging areas;
 - (7) Trailer and sanitary facility locations;
 - (8) Traffic control measures; and

- (9) Maintenance of entrances.
- B. The construction management plan submitted for Phase Two shall identify the area(s) the Subject Property that may be used for storage and construction staging during the construction of the commercial development in Phase Four.
- C. Prior to commencement of construction, the Applicant for Phases One through Three and the future developer of the commercial component for Phase Four, shall provide the Department of Community Development and Planning with the name and telephone number of a community liaison who will be available throughout the duration of construction on the Subject Property.
- D. Prior to site plan approval, the Applicant for Phases One through three and the future developer of the commercial component for Phase Four, shall provide a plan to DPW for temporary pedestrian and vehicular circulation during construction. This plan shall identify temporary sidewalks and any other features necessary to ensure safe pedestrian and vehicular travel around the Subject Property during construction.
- E. Outdoor construction activity shall be limited to the hours of 7:00 A.M. to 6:00 P.M., weekdays and 8:30 A.M. to 5:00 P.M., Saturdays. No construction activity shall take place on Sundays.

23. PARKING.

- A. As shown on the MDP, the Applicant shall provide parking spaces on the Subject Property as follows.
 - (1) Each townhouse shall include a two-car garage. Contract purchasers of townhouses shall be notified in writing prior to, or as a part of, entering a contract of sale of the restrictions in Commitment 28.
 - (2) Each stacked condominium unit shall include a one (1) car garage and one (1) tandem driveway space. Contract purchasers of stacked condominium units shall be notified in writing prior to, or as part of, entering a contract of sale of the restrictions in Commitment 28.
 - (3) A maximum of forty-four (44) surface parking spaces shall be provided for the commercial component of the development in Phase Four. The size and use/mix of uses in the commercial building may vary, provided that the parking requirement for the use/mix of uses does not exceed 44 spaces based on applicable Zoning Ordinance requirements. Notwithstanding the foregoing, the Applicant reserves for itself, the future developer of the commercial building, and the future user(s) of the commercial building the right to pursue a parking reduction in the future in accordance with Zoning Ordinance requirements.
 - (4) In addition to the above parking spaces, twenty two (22) surface parking spaces shall be constructed throughout the residential component of

development. These spaces are exclusive of any on-street parking spaces to be constructed on Cedar Avenue, Walnut Street or Oak Street. Notwithstanding the number of on-street Cedar Avenue parking spaces shown on the MDP, the number of parking spaces to be constructed on Cedar Avenue is subject to change at the time of site plan in coordination with the DPW on the final design of Cedar Avenue and associated improvements.

24. **BICYCLE RACKS.** The Applicant shall install bicycle racks on the Subject Property, as generally depicted on the MDP, to provide storage for a minimum of ten (10) bicycles in accordance with Zoning Ordinance requirements. Notwithstanding the locations indicated on the MDP, the final locations of the bicycle racks may be adjusted at the time of site plan.
25. **SIGNS.** All signs on the Subject Property shall comply with the regulations set forth in Section 4.6.8 of the Zoning Ordinance. However, the Applicant reserves the right for itself, its successors and assigns, including but not limited to the future owner or tenant(s) of the commercial building, to pursue a special exception for signs not otherwise permitted by the Zoning Ordinance.
26. **LIGHTING.** The parking areas behind the commercial building and the stacked condominium multifamily units shall comply with the nighttime lighting standards set forth in Section 4.8 of the Zoning Ordinance. Street lights shall be provided in accordance with the requirements of the Public Facilities Manual. The location of street lights shall be coordinated with the City and Dominion at the time of site plan.
27. **DOCUMENTATION OF BREEZEWAY MOTEL.** Prior to commencement of demolition activities in Phase One, the Applicant will submit photographs of the existing Breezeway Motel to the Office of Historic Resources. In addition, no less than thirty (30) days prior to commencement of demolition activities in Phase One, the Applicant will provide the Office of Historic Resources with access to the Subject Property for the purpose of salvaging examples of the original architectural components of the Breezeway Motel.
28. **RESTRICTIVE COVENANTS.** Restrictive covenants for the Subject Property shall be included in the UOA and/or HOA documents, as applicable, and shall include, but not be limited to, the following:
 - A. Conversion of townhouse or stacked condominium garages that will preclude the parking of vehicles and the storage of trash and recycling containers within the garage will be prohibited. This shall not preclude the use of said garages as sales offices in model homes during marketing of the development, with the understanding the sales offices will be converted back to garages upon sale of the models.
 - B. Prohibition against the parking of vehicles in driveway aprons behind the townhouses.
 - C. Prohibition of the outside storage or parking of recreational vehicles on the Subject Property.

29. SUCCESSORS AND ASSIGNS. These commitments shall bind and inure to the benefit of the Applicant and its successors and assigns.

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