

**County of Fairfax, Virginia
Planning Commission Meeting
January 27, 2021
Verbatim Excerpt**

RZ/FDP 2019-SU-020 – EB ALBERMARLE, LLC AND BUCHANAN PARTNERS, LLC – Appl. to rezone from I-5, WS to PDC, WS to permit mixed use development with an overall Floor Area Ratio (FAR) of 0.47 (Inclusive of bonus density associated with ADU/WDUs) and approval of the conceptual and final development plan. Located on the W. side of Sully Rd. and E. side of Lee Rd., approx. 1,300 ft. N. of Willard Rd. on approx. 27.87 ac. of land. Comp. Plan Rec: Mixed Use. Tax Map 34-3 ((1)) 34 (pt.). (Concurrent with PCA 74-2-124). (Sully District)

PCA 74-2-124 – EB ALBERMARLE, LLC AND BUCHANAN PARTNERS, LLC – Appl. to amend the proffers for RZ 74-2-124 to permit deletion of land area. Located on the W. side of Sully Rd. and E. side of Lee Rd., approx. 1,300 ft. N. of Willard Rd. on approx. 28.52 ac. of land zoned I-5 and WS. Comp. Plan Rec: Mixed Use. Tax Map 34-3 ((1)) 34. (Concurrent with RZ/FDP 2019-SU-003 and RZ/FDP 2019-SU-020). (Sully District) During Commission Matters (Decision Only) (Public Hearing on these applications was held on December 9, 2020)

Commissioner Spain: Shall I go forward with the Albermarle?

Chairman Murphy: Yeah.

Commissioner Spain: Okay. RZ/FDP 2019-SU-020 runs concurrent with PCA 74-2-124. The applicant requests approval to rezone the property from the I-5 District to the Planned Development Commercial District, to construct mixed use development of multi-family residential and existing office/flex workhouse – oh excuse me, flex warehouse use, at a maximum FAR of 0.47, inclusive of bonus density associated with workforce dwellings. The requested PCA would delete 27.87 acres from RZ 74-2-121, to allow the property to be rezoned with RZ 2019-SU-020. To implement the Comprehensive Plan option, the applicant proposes developing a subject property in two phases. Phase one will include retention of the six existing office/flex warehouse buildings, construction of park and pedestrian improvement, and construction along additional parking area – parking spaces on the eastern portion of the property, adjacent to R - Route-28. I'm sorry. Phase two would include retention of four of the existing office/flex warehouse buildings, with the option to increase gross floor area by 10 percent. Construction of a 300 dwelling multi-family building and construction of a par and pedestrian – oh, excuse me, construction of park and pedestrian improvements. A separate FDPA would be submitted in the future to implement phase two. The applicant has provided open space on-site, consistent with the urban park's framework, to include an outdoor gym, and this is the one with play playground for the dog park, and pocket parks. Stormwater management and best management practices will be provided near an existing stormwater facility and at least one low impact development measure, or BPM manufactured device, would be provided in each phase of the proposed development. Finally, the workforce housing policy would be met via 36 WDUs provided at 80 percent of the area medium income which, exceeds the current policy. The applicant again, worked closely with staff in the adjacent property to the south to provide a unified and coordinated mixed of use development plan, that implements the recently adopted plan. Overall, the proposal includes a layout that provides for residential mixed-uses, fits into the fabric of surrounding community, provides for logical design with appropriate relationships and transitions with the neighborhood, commits to noise mitigation measures, provides for pedestrian and vehicle improvements recommended by the Comprehensive, and provides for workforce

dwellings. Before I move on these applications, I request that the applicant confirm for the record their agreement to the proposed final development plan conditions dated November 24th, 2020.

Gregory A. Riegler, Applicant's Agent, McGuire Woods LLP: Mr. Chairman, again for the record, this is Greg Riegler from McGuire Woods on behalf of the applicant, and we are in agreement with the referenced conditions dated November 24th, 2020. Thank you very much.

Chairman Murphy: Thank you.

Commissioner Spain: With that, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVES PCA 74-2-124.

Commissioner Cortina: Second.

Chairman Murphy: Seconded Ms. Cortina. Is there a discussion of the motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries unanimous.

Commissioner Spain: I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVES RZ 2019-SU-020 AND ITS ASSOCIATED CDP 2019-SU-020, SUBJECT TO PROFFERS DATED DECEMBER 3RD, 2020.

Commissioner Cortina: Second.

Chairman Murphy: Seconded by Commissioner Cortina. Is there discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Spain: I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2019-SU-020, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED NOVEMBER 24TH, 2020.

Commissioner Cortina: Second.

Chairman Murphy: Seconded by Commissioner Cortina. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Spain: And finally, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE THE WAIVERS AND MODIFICATIONS CONTAINED IN THE HANDOUT DATED JANUARY 27, 2021, WHICH WILL BE MADE PART OF THE RECORD.

Commissioner Cortina: Second.

Chairman Murphy: Seconded by Commissioner Cortina. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Each motion carried by a vote of 12-0.

Proffered Conditions
Albemarle Point
RZ 2019-SU-020
October 13, 2020
November 18, 2020
December 3, 2020

Pursuant to Section 15.2-2303(A) of the Code of Virginia (1950, as amended) and Section 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owners and the Applicant, for themselves and their successors and/or assigns (hereinafter referred to as the "Applicant"), hereby proffer that the development of the parcels under consideration and shown on the Fairfax County tax map as a portion of Tax Map 34-3-((1))-34 (collectively the "Property") must be in accordance with the following conditions if, and only if, Rezoning application RZ 2019-SU-20 (this "Rezoning") is granted. Upon approval, these Proffers will supersede any and all previously approved proffers, including without limitation those proffers approved as part of RZ 74-2-124, and development conditions governing the Property.

GENERAL

1. Conceptual/Final Development Plan. Any development of the Property must be in substantial conformance with the Conceptual Development Plan ("CDP") and Final Development Plan ("FDP") entitled "ALBEMARLE POINT CDP/FDP" dated May 13, 2019, and revised October 13, 2020 prepared by Urban Ltd.
2. CDP. Notwithstanding the fact that the CDP and FDP are presented on the same plan, the elements that are components of the CDP are limited to the approximate size and shape of building footprints, the proposed uses, maximum gross floor area (GFA), the maximum building heights, and only a future amendment to such elements will require a subsequent Conceptual Development Plan Amendment ("CDPA") or Proffered Condition Amendment ("PCA"). Other elements of the CDPA may be adjusted or modified with approval of future Final Development Plan Amendments ("FDPAs") in accordance with the provisions set forth in Section 16-402 of the Fairfax County Zoning Ordinance (the "Ordinance") and subject to the minimum open space required in the PDC Zoning District. Such permitted adjustments or modifications will include, but not be limited to final architecture, landscape design, final design of plazas and public spaces and access and design of parking lots.
3. FDP. Future FDPAs for the Property must be in substantial conformance with the CDP and these Proffers. For all other future FDPAs applications covering any portion of the Property that are not filed concurrently with this PCA application, the following tabulations and information must be provided:
 - a. A tabulation indicating the status of development on the entire Property. The tabulation must include a listing of all existing and proposed buildings, along with the GFA and uses approved on the CDP, all approved FDPs and any approved site plans. The tabulation must be updated with each subsequent FDP, FDPAs and site

plan approved for the Property.

- b. A tabulation indicating the tree canopy calculations of the entire Property, which must be updated with each subsequent FDP, FDPA and site plan approved for the Property.
 - c. List of proposed uses and demonstration of how such uses meet the applicable "Use Limitations" referenced in Proffer 11c.
 - d. Architectural elements and maximum building heights.
 - e. Landscape plans.
 - f. Provision of a preliminary utility plan overlaid over the landscape plan and the location of existing and proposed utilities to serve the area subject to such FDP, FDPA or site plan.
 - g. Depiction of any special amenity features which, at a minimum, must include those shown on the CDP.
 - h. Bicycle parking and storage.
 - i. Refinement of the number of proposed parking structures and spaces.
 - j. Identification of specific stormwater management facilities, which, at a minimum, must include those shown on the CDP.
 - k. Vehicular sight distance lines at all public road intersections adjacent to the area subject to such FDP, FDPA or site plan based on existing posted/design speeds as well as future design speeds.
4. Minor Modifications. Minor modifications to the CDP/FDP and any future FDPA may be permitted pursuant to Section 16-403(4) of the Zoning Ordinance. Minor modifications of building footprints may be permitted and the number of units and corresponding adjustments in required parking may be made without requirement to amend this application, so long as (a) the provided open space is not reduced; (b) the total number of dwelling units is not increased; and (c) the development otherwise is in substantial conformance with the CDP and FDPs as determined by the Zoning Administrator.
5. Advance Density Credit. Advanced density credit is reserved consistent with the provisions of the Fairfax County Zoning Ordinance for all eligible dedications described herein or as may be required by Fairfax County or VDOT.
6. Zoning Administrator Consideration. Notwithstanding the timing specified in these proffers, upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond the Applicant's control, the required improvements proffered have been delayed (due to, but not limited to, an inability to secure necessary permission from VDOT or other

agencies to facilitate the improvements, etc.) beyond the timeframes specified, the Zoning Administrator may agree to a later date for completion of these improvements

7. Effect of Zoning Ordinance Amendments. To the extent the Zoning Ordinance is modified or amended in the future, the Applicant can, in accordance with the applicable provisions of the Zoning Ordinance to include applicable use limitations and additional standards and the Code of Virginia, to comply with either the Zoning Ordinance in effect at the time of the approval of these Proffers, or as the Zoning Ordinance is modified in the future. Any future amendments to these approvals must comply with the Zoning Ordinance in effect at the time of such amendment.
8. Public Access Easements. At the time of each site plan, the Applicant must cause to be recorded among the land records a public access easement running to the benefit of Fairfax County, in a form acceptable to the County Attorney, over all the private streets, sidewalks, trails and park space to be built with that respective site plan. Such facilities will be maintained by the Applicant. The Applicant reserves the right to implement reasonable rules and regulations pertaining to hours and usage for the park areas with the exception of the trail along Lee Road.
9. Access/Construction Easements. At the time of the first site plan for the Property, the Applicant will grant the necessary permission/easements for the completion of the interparcel access connections to the south, necessary to facilitate the Phase 1 improvements as shown on the FDP and referenced in Proffer 11.
10. Disclosure. The Applicant will include, as part of the leasing or sales information for units in the multifamily building, a statement indicating the proximity of Dulles Airport and potential highway noise from Route 28.

DENSITY/USES/PHASING

11. Development. In order to facilitate the transition to the PDC District, redevelopment of the Property will occur in two phases, which include those improvements shown on Sheet 6 of the CDP/FDP. The following proffers are intended to allow existing development to continue to function (including minor changes) until Phase 2 is completed.
 - a. Phase 1. Phase 1 will consist of those improvements shown on the FDP, Sheets 5 and 7, of the CDP/FDP. Phase 1 improvements may be built by the Applicant or by others in conjunction with the adjacent development to the south. Any parks to be constructed in this phase must be generally consistent with the type and quality depicted on the CDP/FDP. The existing non-residential gross floor area (“GFA”) on the Property of 297,136 square feet may be increased in the future by ten percent (10%), without the need for a proffered condition amendment (PCA) or a conceptual development plan amendment (CDPA), provided the use proposed in the expansion area is permitted in the PDC District as limited in Proffer 11c, the maximum FAR is not exceeded, and amount of landscaping or open space is not decreased. The

approval of an FDPA will be required. The architecture of any additional square footage associated with this additional non-residential GFA will be in substantial conformance with the existing buildings on the Property. Residential use cannot be established on the Property until an FDPA is approved for the multifamily building.

- b. Phase 2. Phase 2 will consist of those improvements shown on the CDP, Sheets 5A and 7, of the CDP/FDP. An FDPA will need to be approved prior to site plan approval for the Phase 2 improvements. The multifamily building may be constructed with up to 308,000 square feet of GFA and a maximum of 300 dwelling units. The Applicant, in its sole discretion, may construct fewer dwelling units or GFA without the need for a PCA, conceptual development plan amendment (CDPA), FDPA, or a proffer interpretation. In addition to the other requirements for an FDPA, a layout for the multifamily garage, the location of loading and trash pickup, and an area for storage for bicycles will be provided on the FDPA. The architecture of the multifamily building will be determined at the time of FDPA approval and will be compatible with the existing buildings on the Property in terms of quality and type of materials. The FDPA must also contain features such as streetscapes, additional open space areas, and urban design elements which function to integrate the multifamily building with the surrounding flex/industrial warehouse buildings. Any parks to be constructed in this phase must be generally consistent with the type and quality depicted on the CDP/FDP.

- c. Uses. Any existing use in the nonresidential buildings will be permitted to continue to operate. For the non-residential buildings, the following uses are permitted, provided that parking is in compliance with the Zoning Ordinance or with an approved Parking Study and/or Parking Reduction:

The following principal uses are permitted subject limitations set forth in Sect. 206 of Article 16 and any applicable additional standards for the use.

1. Business service and supply service establishments.
2. Continuing care facility.
3. Establishments for scientific research, development and training where assembly, integration and testing of products in a completely enclosed building is incidental to the principal use of scientific research, development and training.
4. Financial institutions.
5. Garment cleaning establishments.
6. Offices.
7. Personal service establishments.
8. Public uses.
9. Repair service establishments.
10. Restaurants.
11. Retail sales establishments.

The following secondary uses are permitted, subject to the use limitations set forth in Sect. 206 of Article 16 and any applicable additional standards for the use. Secondary uses, excluding residential, must not exceed 60 percent of the gross floor area of the principle uses.

1. Accessory uses, accessory service uses and Home Occupations only in the future Multifamily Building, as permitted by Article 10.
2. Automated teller machines, located within a multiple family dwelling.
3. Commercial and industrial uses of special impact (Category 5), limited to:
 - A. Amusement arcades
 - B. Automobile-oriented uses
 - C. Car washes
 - D. Carryout restaurants
 - E. Commercial Recreation Restaurants, limited by the provisions of Sect. 9-506
 - F. Golf driving ranges
 - G. Mini-warehousing establishments
 - H. Quick-service food stores
 - I. Vehicle light service establishments
 - J. Vehicle sale, rental and ancillary service establishments, limited by the provisions of Sect. 9-518.
4. Commercial recreation uses (Group 5), limited to:
 - A. Billiard and pool halls
 - B. Bowling alleys
 - C. Commercial swimming pools, tennis courts and similar courts
 - D. Health clubs
 - E. Indoor firing ranges, archery ranges, fencing and other similar indoor recreational uses
 - F. Miniature golf courses
 - G. Skating facilities
 - H. Any other similar commercial recreation use
5. Community uses (Group 4).
6. Craft beverage production establishments, limited by the provisions of Sect. 206 below.
7. Dwellings. Multifamily Building only.
8. Institutional uses (Group 3).
9. Kennels, limited by the provisions of Sect. 206 below.
10. Light public utility uses (Category 1).
11. New vehicle storage, limited by the provisions of Sect. 206 below.
12. Quasi-public uses (Category 3), limited to:
 - A. Adult day care center
 - B. Alternate uses of public facilities
 - C. Child care centers and nursery schools education provided requirements for outdoor play area can be met exclusive of areas shown on the CDP/FDP as part of the urban park framework

- D. Churches, chapels, temples, synagogues and other such places of worship with a child-care center, nursery school or private school of general or special education provided requirements for outdoor play area can be met exclusive of areas shown on the CDP/FDP as part of the urban park framework
 - E. Colleges, universities
 - F. Conference centers and retreat houses, operated by a religious or nonprofit organization
 - G. Cultural centers, museums and similar facilities
 - H. Medical care facilities
 - I. Private clubs and public benefit associations
 - J. Private schools of general education
 - K. Private schools of special education
 - L. Quasi-public parks, playgrounds, athletic fields and related facilities
13. Small-scale production establishments, limited by the provisions of Sect. 206, except the size may be expanded with zoning administrator approval.
 14. Vehicle transportation service establishments.
 15. Veterinary hospitals.

Uses allowed by special exception or special permit in the PDC District may be authorized through a separate special exception or special permit process without the need for a PCA, CDPA or FDPA provided the layout of the uses is in conformance with the CDP. The Applicant, in its sole discretion, may choose to establish any of the above uses in the nonresidential buildings (except for Dwellings) in any combination, regardless of the options shown on the CDP/FDP or future FDPs or FDPAs, provided that enough parking is provided to accommodate the use or the use is identified in a future parking reduction.

12. Pocket Park Number 3. Pocket Park Number 3, as shown on the CDP/FDP, will be developed in Phase 2 and at that time will cease to be utilized as a playground associated with any existing or future child care center on the Property.

TRANSPORTATION

13. Parking. Parking must be provided in accordance with the Zoning Ordinance. The Applicant reserves the right to pursue parking reductions and shared parking arrangements for the Property without the need for an amendment to these Proffers or the CDP/FDP or future FDPA. Parking at revised ratios may be provided, as may be permitted by a future amendment to the Zoning Ordinance.
14. Trail along Lee Road. This trail may be built by the Applicant or by others in conjunction with the adjacent development to the south. Thus, unless constructed by others first, prior to the issuance of the first residential use permit in the multifamily building, the Applicant will construct the paved trail shown on the CDP/FDP. The final design must be subject to review and approval by Land Development Services (LDS) in consultation with Fairfax County Department of Transportation (FCDOT) and the Virginia Department of

Transportation (VDOT).

15. Trail Easement along Lee Road. As shown on the CDP/FDP, at the same time as the easement for the trail specified in Proffer 14 is recorded, the Applicant will cause to be recorded among the land records, a public access easement running to the benefit of Fairfax County, in a form acceptable to the County Attorney, 15 feet in width, in the area between the end of the proposed paved trail and the northern lot line to facilitate future construction of the trail over the drainage culvert by others. The exact location is to be determined at site plan. The Applicant will not be responsible for construction of the trail.
16. Fire Marshal Coordination. The Applicant will coordinate the layouts depicted on the CDP/FDP with the Fire Marshal. Further changes to the CDP/FDP and future FDPs may be permitted without the requirement for a CDP or FDP in response to the review of site plans by the Fire Marshal, including adjustments to the streetscape and perimeter building areas as necessary to allow for required emergency vehicle access, provided such modifications are made in consultation with the Fairfax County Department of Planning and Development (“DPD”), and the Urban Forest Management Division (“UFMD”) and are in substantial conformance with the CDP, FDPs and these Proffers.
17. Bicycle Parking. The Applicant will provide bicycle parking in accordance with Fairfax County Bicycle Parking Guidelines. The final location, quantity, and type of short-term bicycle racks and long-term secured bicycle parking will be determined in consultation with the Fairfax County Department of Transportation Bicycle Coordinator or his/her designee prior to site plan approval for the multifamily building. This proffer will not apply to the nonresidential buildings.
18. Left-turn Lane. This improvement may be completed by the Applicant or by others in conjunction with the adjacent development to the south. Thus, unless completed by others first, the Applicant will lengthen the existing southbound left-turn lane from Lee Road onto Willard Road by eradicating the existing pavement markings and restriping, subject to VDOT approval and permitting, prior to the issuance of the 1st residential use permit for the multifamily building.
19. Transportation Demand Management. This Proffer applies solely to the Multifamily Building and sets forth the programmatic elements of a transportation demand management program that must be implemented by the Applicant, and subsequently, if needed, the property owner or Home Owners Association (HOA), to encourage the use of transit (Metrorail and bus), other high occupancy vehicle commuting modes, walking, biking and teleworking, all in order to reduce automobile trips generated by the residential uses constructed on the Property.
 - Definitions. For purposes of this Proffer, "Stabilization" will be deemed to occur one (1) year following issuance of the last initial RUP for the Multifamily Building to be

constructed on the Subject Property. "Pre-stabilization" will be deemed to occur any time prior to Stabilization.

- Transportation Demand Management Plan. The proffered elements of the TDM Program as set forth below will be more fully described in a TDM Plan submitted by the Applicant prior to second submission of the site plan, (the "TDM Plan"). It is the intent of this Proffer that the TDM Plan will adapt over time to respond to the changing transportation related circumstances of the Subject Property, the surrounding community and the region, as well as to technological and/or other improvements, all with the objective of meeting the trip reduction goals as set forth in these Proffers. Accordingly, modifications, revisions, and supplements to the TDM Plan as coordinated with FCDOT can be made without the need for a PCA provided that the TDM Plan continues to reflect the proffered elements of the TDM Program as set forth below.
- Transportation Management Association. The Applicant must participate in or otherwise become associated with a larger Transportation Management Association for the community should one be established.
- Trip Reduction Goals. The objective of the TDM Plan must be to reduce the number of weekday peak hour vehicle trips generated by the residential uses located within the Property through the use of mass transit, ridesharing and other strategies including but not limited to those outlined in the TDM Plan. In addition, the implementation of enhanced pedestrian connections will provide safe and convenient access to nearby bus facilities thereby encouraging commuting options other than the automobile to residents, employees and visitors to the Property.
 - i. Baseline. The baseline number of weekday peak hour residential vehicle trips for the proposed units within the Property against which the TDM Goals (as defined in subparagraph d.ii) will be measured must be derived upon the number of residential units site plan approved, constructed and occupied on the Property as part of the proposed development at the time traffic counts are conducted in accordance with subparagraph e.vi. or as qualified below and using the trip generation rates/equations applicable to such residential uses as set forth in the Institute of Transportation Engineers, Trip Generation, 10th Edition for Land Use Code = 220.
 - ii. TDM Goal. The TDM strategies must be utilized to reduce the peak hour vehicular trips by a minimum of fifteen percent (15%) for the residential uses.
- Process of Implementation. The TDM Program must be implemented as follows, provided that modifications, revisions, and supplements to the implementation process as set forth herein as coordinated with FCDOT can be made without requiring a PCA.
 - i. TDM Program Manager. The applicant must appoint and continuously employ, or cause to be employed, a TDM Program Manager (TPM) for the Multifamily

Building. If not previously appointed, the TPM must be appointed by no later than sixty (60) days after the issuance of the first building permit for the first new building to be constructed on the Multifamily Building. The TPM duties may be part of other duties associated with the appointee. The TPM must notify FCDOT in writing within 10 days of the appointment of the TPM. Thereafter the TPM must do the same within ten (10) days of any change in such appointment.

- ii. Annual Report and Budget. The TPM must prepare and submit to FCDOT an initial TDM Work Plan ("TDMWP") and Annual Budget no later than 180 days after issuance of the first building permit for the first building constructed for the Multifamily Building. Every calendar year after the first issuance of RUP, and no later than May 15, the TPM must submit an Annual Report, based on a report template provided by FCDOT, which may revise the Annual Budget in order to incorporate any new construction on the Property.

The Annual Report and Budget must be reviewed by FCDOT. If FCDOT has not responded with any comments within sixty (60) days after submission, then the Annual Report and Budget will be deemed approved and the program elements will be implemented. If FCDOT responds with comments on the Annual Report and Budget, then the TPM will meet with FCDOT staff within fifteen (15) days of receipt of the County's comments. Thereafter, but in any event, no later than thirty (30) days after the meeting, the TPM must submit such revisions to the program and/or budget as discussed and agreed to with FCDOT and begin implementation

of the approved program and fund the approved TDM Budget.

- iii. TDM Account. The TPM must establish a separate interest bearing account with a bank or other financial institution qualified to do business in Virginia (the "TDM Account") within 30 days after approval of the TDMWP and TDM Budget. All interest earned on the principal must remain in the TDM Account and must be used by the TPM for TDM purposes.

Funding of the TDM Account must be in accordance with the budget for the TDM Program elements to be implemented in a year's TDMWP. In no event must the TDM Budget exceed \$5,000 (this amount must be adjusted annually from the date of rezoning approval for the Subject Property (the "Base Year")) and must be adjusted on each anniversary thereafter of the Base Year in accordance with adjustment proffer below. The TPM must provide written documentation to FCDOT demonstrating the establishment of the TDM Account within ten (10) days of its establishment. The TDM Account must be replenished annually thereafter following the establishment of each year's TDM Budget (not to exceed \$1,000 annually). The TDM Account must be managed by the TPM.

- iv. TDM Incentive Fund. The "TDM Incentive Fund" is an account into which the building owner, through the TPM, must deposit contributions to fund a

multimodal incentive program for initial purchasers/lessees. Such contributions must be made one time on a building by building basis at the rate of \$0.02 per gross square foot of new residential uses to be constructed in the Multifamily Building and provided prior to the issuance of the first RUP for the Multifamily Building. In addition to providing transit incentives, such contributions may also be used for enhancing/providing multimodal facilities within and proximate to the Multifamily Building.

- v. Monitoring. The TPM must verify that the proffered trip reduction goals are being met through the completion of Person Surveys, Vehicular Traffic Counts of residential and/or other such methods as may be reviewed and approved by FCDOT. The results of such Person Surveys and Vehicular Traffic Counts must be provided to FCDOT as part of the Annual Reporting process. Person Surveys and Vehicular Traffic Counts must be conducted for the Property beginning one year following issuance of the final initial RUP for the Multifamily Building to be constructed in the Multifamily Building. Person Surveys must be conducted every three (3) years and Vehicular Traffic Counts must be collected annually until the results of three consecutive annual traffic counts conducted upon Build Out show that the applicable trip reduction goals for the Property have been met. Any time during which Person Survey response rates do not reach 20%, FCDOT may request additional surveys be conducted the following year. At such time and notwithstanding other portions of this Proffer below, Person Surveys and Vehicular Traffic Counts must thereafter be provided every five (5) years. Notwithstanding the aforementioned, at any time prior to or after Stabilization, FCDOT may suspend such Vehicle Traffic Counts and/or Person Surveys if conditions warrant such.
- Additional Trip Counts. If an Annual Report indicates that a change has occurred that is significant enough to reasonably call into question whether the applicable vehicle trip reduction goals are continuing to be met, then FCDOT may require the TPM to conduct an additional Vehicular Traffic Count (pursuant to the methodology set forth in the TDM Plan) within 90 days to determine whether in fact such objectives are being met. If any such Vehicular Traffic Counts demonstrate that the applicable vehicle trip reduction goals are not being met, then the TPM must meet with FCDOT to review the TDM strategies in place and to develop modifications to the TDM Plan to address the surplus of trips.
- Review of Trip Reduction Goals. At any time and concurrent with remedial actions and/or the payment of penalties as outlined in this Proffer, the Applicant may request that FCDOT review the vehicle trip reduction goals established for the Multifamily Building and set a revised lower goal for the Multifamily Building consistent with the results of such surveys and vehicular traffic counts provided for by this Proffer. In the event a revised lower goal is established for the Multifamily Building, the Maximum Trips After Reduction must be revised accordingly for the subsequent review period

without the need for a PCA.

- Continuing Implementation. The TPM must bear sole responsibility for continuing implementation of the TDM Program and compliance with this Proffer. The TPM must continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.
 - Notice to Owners. All owners of the Multifamily Building must be advised of the TDM Program set forth in this Proffer. The then current owner must advise all successor owners and/or developers of their funding obligations pursuant to the requirements of this Proffer prior to purchase and the requirements of the TDM Program, including the annual contribution to the TDM Program (as provided herein), must be included in all initial and subsequent purchase documents.
20. Bicycle Trail Easement. At the same time as the easement for the trail specified in Proffer 14 is recorded, the Applicant will cause to be recorded among the land records, a public access easement running to the benefit of Fairfax County, in a form acceptable to the County Attorney, 10 feet in width, in the area between the northern lot line and the Resource Protection Area for the purpose of a trail as shown on the Master Bicycle Plan. The exact location is to be determined at site plan for Phase 1. The Applicant will not be responsible for construction or maintenance of the trail.
21. Bus Stop. Prior to the site plan approval for the multifamily building, the Applicant will contribute \$10,000 to the Fairfax County Board of Supervisors as a contribution toward the installation of a bus shelter along Lee Road.
22. Signal Modifications. Prior to the site plan approval for the multifamily building, the Applicant will submit a signal timing modification study for the existing traffic signal at the intersection Lee Road and Willard Road and the intersection of Lee Road and Chantilly Crossing to VDOT for review and approval. If approved and permitted, the applicant will modify the timing of the existing traffic signal prior to the issuance of the first residential use permit for the multifamily building.

ENVIRONMENTAL

23. Urban Design. Elements within the new park areas such as landscaping, benches, garbage cans, lamp posts, and the like will be compatible and coordinated throughout the development, in terms of materials and design and also be compatible and coordinated with those proposed in the Ellipse development to the south and be generally consistent with the type and quality depicted on the CDP/FDP. This does not apply to existing lighting or benches around the existing non-residential buildings. However, should any existing urban design elements such as those listed above be replaced in the future, they will be generally consistent with the type and quality as shown on the CDP/FDP.

24. Electric Vehicle Charging. For purposes of this Proffer, “electric vehicle-ready” or “EV-ready” means the provision of a universal parking space, conduit banks, conduits and access points allowing for the easy installation of electric vehicle charging stations in the future, space for potential future installation of increased transformer capacity, and space within the electrical room to accommodate future electric capacity, and does not include the installation of transformers, switches, wiring or charging. The parking garage in the proposed multi-family building will be designed and constructed with universal Level 2 electric vehicle (“EV”) charging infrastructure for a minimum of two percent (2%) of the spaces within such structure and the Applicant may provide additional infrastructure and spaces if the market supports the same. The Applicant will include within site plan and building plan submissions, as applicable, the identification of spaces within the parking structure that will be universal EV spaces, as well as information demonstrating the following, to the satisfaction of Land Development Services (“LDS”):

That electric load estimates prepared for the building will account for additional EV-ready spaces. Estimates can calculate a cumulative load, where EV-ready load is added to building service load, or, alternately, the building permit plans can demonstrate that building service load can accommodate EV-ready loads for the EV-ready spaces identified above; and

That the electrical room of the building will be sized to support future electrical capacity expansions for a Level 2 EV charging station for each identified space within the parking facility, including empty panel space for EV charging that could ultimately be connected with pull string conduits to the parking. In addition, unless and until all EV-ready spaces will have EV charging stations installed, the Applicant will include, within closing and leasing documents, disclosure to prospective purchasers/renters the presence of EV-ready parking spaces on the property.

25. Noise. Concurrent with the review of an FDPA for the multifamily building, the Applicant must submit a noise study to determine what, if any, attenuation measures may be needed for dwelling units and open space impacted by noise associated with Route 28. Based upon the findings of that report, the Applicant must identify units and open space, if any, on the site plan and building plans that are anticipated to be impacted by interior noise greater than 45 dB Ldn and exterior noise greater than 65 dB Ldn and must provide noise attenuation measures designed to reduce interior noise of those identified units to a level no greater than 45 dB Ldn and reduce exterior noise in open spaces to be level no greater than 65 dB Ldn.

26. Limits of Clearing and Grading. Applicant must conform to the limits of clearing and grading as shown on the CDP/FDP, as may be modified by final engineering and the tree preservation walk-through. Allowances will be made for encroachments specified in the proffers and for the installation of utilities and/or trails. Utilities and/or trails in areas protected by the limits of clearing and grading must be located in the least disruptive manner necessary as determined by the UFMD, DPWES.

27. Landscaping. The Applicant must submit a landscape plan with each site plan for review and approval of UFMD, DPWES. The landscape plan must be in substantial conformance

with the landscape plan shown in the approved CDP/FDP. Applicant must provide maintenance and replacement of common area landscaping until bond release.

Landscaping must be generally consistent with the quality, quantity and the locations shown on the CDP/FDP and must be non-invasive, predominantly native species. Applicant reserves the right to make modifications or relocations of landscaping to accommodate utilities and other design considerations, provided such relocated landscaping must retain a generally equivalent number of plantings as shown on the approved CDP/FDP.

The landscape planting plan and specifications must incorporate sustainable landscape planting techniques designed to reduce maintenance requirements; and contribute to a cleaner and healthier environment with improved air quality, stormwater management, and resource conservation capabilities that can be provided by trees and other desirable vegetation. Sustainable landscape planting implemented with the subdivision/site plan should be made up of groups of trees including larger overstory trees (Category III and IV as listed in PFM Table 12.17) together smaller understory trees, (Category II) shrubs and groundcovers. In this application, it is acceptable for the 10-year projected canopies of overstory trees to overlap the canopies of understory trees as well as shrubs and groundcovers, as may occur in a multi-layer, wooded environment.

28. Landscape Planting Pre-installation Meeting. Prior to installation of any plants to meet the requirements of the approved landscape planting plan, the contractor/developer must coordinate a pre-installation meeting on the site with the landscape contractor, UFMD staff, and any additional appropriate parties. Any proposed changes to planting locations, tree/shrub planting sizes, and species substitutions shown on the approved plan must be reviewed and must be approved by UFMD staff prior to planting. The installation of plants not approved by UFMD may require the submission of a revision to the landscape plan or removal and replacement with approved trees/shrubs prior to bond release.
29. Tree Space Requirements. Tree planting spaces proposed in the streetscape and other areas restricted by barriers to root growth must provide a planter open surface area at least 6 x 6 feet. Where minimum planting areas cannot be met and planting spaces at least 8 feet wide cannot be provided, rooting zone width a minimum of 8 feet must be provided beneath paved surfaces using structural cell technology or other solutions acceptable to UFMD that provide uncompacted soil within the planting space, with planting sites meeting the following specifications:
 - A minimum of 6 feet open surface width and 36 square feet open surface area.
 - Rooting area beneath paved surfaces a minimum of 8 feet wide, taking into consideration sloped sides as may be needed to support adjacent compacted soils for roadways and pedestrian walkways. Planting space depth must be 4 feet within four feet of the tree on all sides. Soil depth in areas beyond four feet may be shallower or narrower as long as specified minimum soil volumes are met. Paved surfaces over the specified rooting area must not be dependent upon compacted soil for structural support.

- Soil volume for Category III or IV trees (as indicated in Table 12.17 of the Public Facilities Manual) must be a minimum of 700 cubic feet per tree for single trees. For two trees planted in a contiguous planting area, a total soil volume of at least 1200 cubic feet must be provided. For three trees or more planted in a contiguous area, the soil volume must equal at least 500 cubic feet per tree. A contiguous area must be defined as any area with a soil depth of 3-4 feet, within which lateral root growth is unrestricted.
 - Soil in planting sites must be as specified in planting notes to be included in site plans reviewed and approved by UFMD.
 - Applicant must contact UFMD at least 3 business days prior to installation of trees, and provide an opportunity for UFMD staff to verify conformance with these requirements.
30. Preservation/Measures. Applicant must submit a Tree Preservation Plan and Narrative with each site plan submission including items specified in PFM sections 12-0307 and 12-0309 prepared by a Certified Arborist or a Registered Consulting Arborist and will be subject to the review and approval of the UFMD. Each tree preservation plan must include a tree inventory and condition analysis that identifies the location, species, critical root zone, size, and condition analysis percentage rating for individual trees, living or dead, with trunks 12 inches in diameter. The tree preservation plan must provide for the preservation of areas shown for tree preservation, areas outside of the limits of clearing and those additional areas in which trees can be preserved as a result of final engineering. Specific activities that will maximize the survivability of any tree identified to be preserved such as crown pruning, root pruning, mulching, fertilization, determined by the certified arborist must be included in the plan. Tree preservation measures must be clearly identified labeled, and detailed on the Erosion and Sediment Control Plan sheets and the Tree Preservation Plan. Tree preservation methods must be completed during implementation of Phase 1 of the Erosion and Sediment Control Plan.
31. Project Arborist/Pre-construction Meeting: Prior to the pre-construction meeting the Applicant Must have the approved limits of clearing and grading flagged with a continuous line of flagging. The Applicant must retain the services of a Certified Arborist or Registered Consulting Arborist (Project Arborist) to attend the pre-construction meeting to review the limits of clearing and grading with an UFMD representative to determine where adjustments to the clearing limits can be made to increase the area of the tree preservation and/or to increase the survivability of trees at the limits of clearing and grading. Such adjustments must be recorded by the Project Arborist and tree protection fencing must be implemented under the Project Arborist's supervision based on these adjustments
32. Tree Preservation Fencing. Trees to be preserved as shown on the tree preservation plan must be protected by tree protection fence. Tree protection fencing must be four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or super silt fence so long as any required trenching is done per the root pruning guidelines.

All tree protection fencing must be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities or demolition of any existing structures. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, must be notified and given three (3) business days to inspect the site to ensure that all tree protection devices have been installed. Clearing and grading activities may commence the earlier of: the expiration of the three (3) business day notice period, or upon confirmation from UFMD, DPWES the fencing is installed correctly.

33. Site Monitoring: The Applicant's Project Arborist must be present on site during implementation of the Phase 1 Erosion and Sediment Control Plan and monitor any construction activities conducted within or adjacent to areas of trees to be preserved. Construction activities include, but may not be limited to clearing, root pruning, tree protection fence installation, vegetation/tree removal, and demolition activities. During implementation of Phase 2 Erosion and Sediment Control Plan, the Project Arborist must visit the site on a regular basis to continue monitoring tree preservation measures and ensure that all activities are conducted as identified in the Tree Preservation Plan and approved by UFMD. Written reports must be submitted to UFMD and SDID site inspector detailing site visits. A monitoring schedule and Project Arborist reports must be described and detailed in the Tree Preservation Plan.
34. Soil Remediation. Soil in planting areas that contain construction debris and rubble, are compacted or are unsuitable for the establishment and long-term survival of landscape plants, must be the subject of remedial action to restore planting areas to satisfy cultural requirements of trees, shrubs and groundcovers specified in the landscape planting plan. The applicant must provide notes and details specifying how the soil will be restored for the establishment and long-term survival of landscape plants for review and approval by UFMD.
35. Invasive Species Management. Invasive Plant Species Management: Forested areas containing plant species that are known to be invasive in quantities that threaten the long term health and survival of the existing vegetation present will be the subject of an invasive plant species management plan targeting the invasive vines in order for the area to be awarded full 10-year canopy credit. At the time of the site plan submission for the proposed multifamily development, the applicant will provide a management plan for review and approval by UFMD specifying the common and scientific name of invasive species proposed for management, the target area(s) for management efforts, methods of control and disposal of invasive plants, timing of treatments and monitoring, duration of the management program, and potential reforestation as needed. Management efforts will include the hand cutting and removal of the invasive plants from the designated area, and treatment of stumps with herbicide to prevent regrowth. The invasive species management program will begin not later than the first spring after multifamily construction commences. The applicant will engage a certified or registered professional arborist to provide quarterly monitoring. Retreatment, if deemed necessary by the project arborist review, will be provided once per year during the following two spring seasons after initial treatment. The duration of the management program will be for three years from the commencement of construction.

36. Storm Water Management Facilities and Best Management Practices. The existing stormwater management ponds will be used to meet SWM/BMP requirements, including at least 50% phosphorous removal. In the event the Applicant is unable to demonstrate at least 50% phosphorous removal prior to site plan approval, the Applicant must provide additional SWM/BMP measures onsite. The Applicant will also provide at least one Low Impact Development (LID) measure or BMP manufactured device in Phase 1 of the development and one LID or BMP manufactured device in Phase 2 of the development.

37. Safety Measures. In order to promote pond safety, the Applicant will install appropriate signage around the pond as well as employ a minimum of one (1) of the safety measures as described on the CDP/FDP, the choice of which will be at the Applicant's discretion. These measures will be installed prior to bond release associated with Phase 1.

38. Green Building Multifamily Building. The applicant commits to certification of the multifamily building with one of the following programs:

- LEED for Homes Proffer. Prior to approval of the building plan for the building, the applicant will post, for that building, a "green building escrow," in the form of cash or a letter of credit from a financial institute acceptable to LDS as defined in the Public Facilities Manual, in the amount of (80% of the square footage of the building multiplied by \$2). This escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of certification, by the U.S. Green Building Council, under the most current version of the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design for Homes (LEED® for Homes) rating system. The provision to the Environment and Development Review Branch of DPD of documentation from the U.S. Green Building Council that each building has attained LEED certification will be sufficient to satisfy this commitment. If the applicant fails to provide documentation to the Environment and Development Review Branch of DPD demonstrating attainment of LEED certification within one year of issuance of the final RUP for the building, the escrow will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives. That said, if the Applicant can demonstrate that despite diligent pursuit of the certification, the issuance of the certification has not occurred, such escrow will not be released until two years of issuance of the final RUP for the building.

If the applicant provides to the Environment and Development Review Branch of DPD, within one year of issuance of the final RUP for the building, documentation demonstrating that LEED certification for the building has not been attained but that the building has been determined by the U.S. Green Building Council to fall within three points of attainment of LEED certification, 50% of the escrow will be released to the applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the applicant fails to provide, within one year of issuance of the final RUP for the building, documentation to the Environment and Development Review Branch of

DPD demonstrating attainment of LEED certification or demonstrating that the building has fallen short of certification by three points or less, the entirety of the escrow for that building will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives. If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPD, that USGBC completion of the review of the LEED certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the proffered time frame will be extended until such time as evidence is obtained, and no release of escrowed funds will be made to the Applicant or to the County during the extension.

LEED-AP. The applicant will include a LEED®-accredited professional as a member of the design team. This professional will also be a professional engineer or licensed architect. The LEED-accredited professional will work with the team to incorporate sustainable design elements and innovative technologies into the project with a goal of having the project attain LEED certification. At the time of site plan submission, the applicant will provide documentation to the Environment and Development Review Branch of DPD demonstrating compliance with the commitment to engage such a professional.

Checklist. The applicant will include, as part of the site plan/subdivision plan submission and building plan submission, a list of specific credits within the most current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design for Homes (LEED® for Homes) rating system that the applicant anticipates attaining. A professional engineer or licensed architect will provide certification statements at the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED certification of the project.

- NGBS (formerly NAHB). Certification in accordance with the most current version of National Green Building Standard (NGBS) using either the ENERGY STAR® Qualified Homes path for energy performance, or another approved energy performance path, as demonstrated through documentation submitted the Environment and Development Review Branch (EDRB) of DPD from a home energy rater certified through Home Innovation Research Labs that demonstrates that the dwelling unit has attained the certification prior to the issuance of the RUP for each dwelling unit/building. To use an energy path other than ENERGY STAR, the dwelling unit must provide both the above referenced certification documentation and additional documentation demonstrating equivalent or greater energy performance to the ENERGY STAR standard prior to the issuance of the RUP for each dwelling unit/building. A green building escrow is not required if the Applicant seeks certification using the provisions of this Proffer.
- Earth Craft Multifamily. Certification in accordance with the Earth Craft Multifamily Program as demonstrated through documentation provided to LDS and EDRB prior to the issuance of a residential use permit.

- The Applicant reserves the right to utilize an equivalent program in consultation with and approved by the Environmental and Development Review Branch of the DPD prior to the issuance of the first building permit for the multi-family unit.

39. Sanitary Sewer Study. Concurrent with the site plan submission for the multifamily building, a sanitary sewer capacity study will be submitted to Department of Public Works and Environmental Services (DPWES) for review and approval.

CONTRIBUTIONS

40. Affordable Dwelling Units. Unless otherwise exempt pursuant to Sect. 2-800 et seq. of the Zoning Ordinance in effect as of the approval date of this Application (the "ADU Ordinance"), the Applicant will provide Affordable Dwelling Units ("ADUs") pursuant to the ADU Ordinance unless modified by the ADU Advisory Board. ADU units will be dispersed within the multifamily building so as not to concentrate them on one floor.

41. Workforce Dwelling Units ("WDUs"). In addition to any ADUs required pursuant to these proffers, the Applicant also must provide Workforce Dwelling Units ("WDUs") administered as set forth in the "Board of Supervisors' Workforce Dwelling Unit Administrative Policy Guidelines" adopted on October 15, 2007, in effect as of the approval date of this Application (the "Policy Guidelines"), such that a minimum of twelve percent (12%) of the total number of residential units constructed as part of the Proposed Development are either ADUs or WDUs. The Applicant must provide all of the required WDUs priced at a rent or sales prices, if applicable, to serve households with an income of up to 80% of the Area Median Income for the Washington Standard Metropolitan Statistical Area (AMI). WDU units will be dispersed within the multifamily building so as not to concentrate them on one floor.

Notwithstanding the foregoing, the Applicant reserves the right to enter into a separate binding written agreement with the appropriate Fairfax County agency as to the terms and conditions of the administration of the WDUs following approval of this Application. Such an agreement must be on terms mutually acceptable to both the Applicant and Fairfax County and may occur after the approval of this Application. Neither the Board of Supervisors nor Fairfax County must be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the WDUs must be administered solely in accordance with such an agreement and the provisions of this Proffer as it applies to WDUs must become null and void. Such an agreement and any modifications thereto must be recorded in the land records of Fairfax County.

42. Public Schools. The Applicant must contribute \$12,262 per projected student, based on such student generation rates in effect at the time of site plan approval. Said contribution will be made to the Board of Supervisors for transfer to Fairfax County Public Schools (FCPS) and designated for capital improvements at the public schools serving the development at the time of the issuance of the first building permit. Following approval of this Application and prior to the Applicant's payment of the amount(s) set forth in this

Proffer, if Fairfax County should modify the ratio of students per unit or the amount of contribution per student, the Applicant must pay the modified contribution amount for the development to reflect the then-current ratio and/or contribution. Concurrent with the submission to Fairfax County for the first site plan related to the development of the Property, the applicant must notify Fairfax County Public Schools Office of Facilities Planning Services, in writing, that submission has occurred.

43. Traffic Signal Preemptive Devices. Prior to the site plan approval for the multifamily building, the Applicant must contribute \$20,000 to the Capital Project Fund titled Traffic Light Signals – FRD Proffers in Fund 300-C30070, Public Safety Construction for use in the installation of preemptive signal devices on traffic signals within the Supervisor District where the Fire and Rescue station serving the Property is located and as determined by the Fire and Rescue Department. The Applicant will have no responsibility for the maintenance of the device after installation.
44. Recreation Contribution. The Applicant will contribute \$893 per projected resident in the multifamily building based on the number of units shown on the final approved site plan and the current published household size for the appropriate Planning District to the FCPA for use at off-site recreational facilities intended to serve the future residents of the Sully District, as determined by FCPA in consultation with the Sully District Supervisor. This contribution must be made as a lump sum at the time of the first residential use permit for the multifamily building.
45. Recreation Facilities. The Applicant will provide amenity areas and facilities designed to meet the on-site recreational needs of the future residents of the multifamily building. The specific design of these areas may be adjusted at the time of final site plan approval, provided the quality and character of the designs are consistent with the type and quality depicted on the CDP/FDP. The Applicant will expend a minimum of \$1,900.00 per non-Affordable Dwelling Unit residential dwelling unit toward said recreational facilities, which must be made available to all residents of the development. Expenditure for which credit can be obtained will include the amenity areas, facilities and trails in Phase 1 and Phase 2 of development. Prior to final bond release for the residential uses on the Property, the balance of any funds not expended for the Property, if any remain as determined by LDS, will be contributed or may be escrowed, and contributed to the Fairfax County Park Authority for the provision of recreational facilities located in the service area for the Property based on consultation with the District Supervisor.
46. Route 28 Prepayment of Taxes. In accordance with Virginia Code Ann. § 15.2-4608(C)(Ch. 770, 2002 Acts of Assembly; H. 735), the Applicant must prepay, in full, the taxes that would have been attributable to the residential portion of the Property in its current non-residential zoning district (that is, the special improvements taxes estimated by the County to be lost as a result of the change in zoning classification requested in this rezoning application), in accordance with the formula and provisions adopted by the Board of Supervisors for optional residential development within the Route 28 Tax District. The prepayment of taxes must be made in full within sixty (60) days after the Board of Supervisors approves this Rezoning application, and the effective date of this rezoning must be deferred until such payment in full is made. Once this payment is made, the two existing non-residential buildings that are approved for redevelopment with residential uses

will no longer be subject to the special improvements tax. The Applicant recognizes that failure to provide payment to the County in the full amount determined by the Board's formula within 60 days of the Board of Supervisors' approval of this rezoning must mean that the rezoning must not become effective and that the ordinance rezoning the Property and the Board's rezoning decision must both be void in accordance with Virginia Code Ann. § 15.2-4608(C).

47. Escalation. All monetary contributions, with the exception of that required by Proffer 42, required by these proffers must escalate on a yearly basis from the base year of 2020, and change effective each January 1 thereafter, based on the Consumer Price Index as published by the Bureau of Labor Statistics, the U.S. Department of Labor for the Washington-Baltimore, MD-VA-DC-WV Consolidated Metropolitan Statistical Area (the "CPI"), as permitted by Virginia State Code Section 15.2-2303.3. 3.

48. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicant and their successors and assigns. Each reference to "Applicant" in this proffer statement must include within its meaning and must be binding upon Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site.

49. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered will be deemed an original, and all of which taken together will constitute but one and the same instrument.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

EB Albemarle, LLC
Title Owner/Applicant
Tax Map 34-3((1))34, part

By: _____

Printed Name: _____

Title: _____

**DEVELOPMENT CONDITIONS
FDP 2019-SU-020**

November 24, 2020

If it is the intent of the Planning Commission to approve Final Development Plan (FDP) 2019-SU-020, on property located on a portion of Tax Map Parcel 34-3 ((1)) 34 pt., staff recommends that the Planning Commission condition the approval by requiring conformance with the following development conditions, which supersede all previously approved conditions as they pertain to this site.

1. Development of the property will be in substantial conformance with the Final Development Plan (FDP) entitled "Albemarle Point Conceptual and Final Development Plan" prepared by Urban, dated May 13, 2019 as revised through October 13, 2020 and containing 22 sheets and these conditions.

The proposed conditions are staff recommendations and do not reflect the position of the Planning Commission unless and until adopted by that Commission.

**Planning Commission
January 27, 2021
RZ/FDP 2019-SU-020
Concurrent with PCA 74-2-124
EB Albemarle, LLC**

Waivers and Modifications

- Waiver of the 600' maximum private street length per Par. 2 of Sec. 11-302 of the Zoning Ordinance.
- Waiver of the Route 28 service drive requirement per Sect. 7-0104 of the Public Facilities Manual.
- Modification of Par. 5 of Sect. 6-206 of the Zoning Ordinance to permit greater than 50% of the gross floor area for residential use and to modify the secondary uses as referenced in the proffers.
- Waiver of the major paved trail requirement per Par. 2 of Sect. 17-201 of the Zoning Ordinance along the east side of Lee Road (northern portion of property).
- Waiver and modification of Pars. 1 and 2 of Sect. 13-203 of the Zoning Ordinance for peripheral parking lot landscaping in favor of that shown on the CDP/FDP.
- Waiver of the sidewalk requirement along Lee Road per Par. 2 of Sect. 17-201 of the Zoning Ordinance.
- Modification of the transitional screening and barrier requirements, per Sect. 13-303 and Sect. 13-304 of the Zoning Ordinance, to modify internal transitional screening yard and barrier requirements within the PDC District per Par. 1 of Sect. 13-305.