

DRAFT PROFFERS**NORTHERN VIRGINIA HEALTH INVESTORS, LLC****RZ 2012-SU-010****February 4, 2013**

Pursuant to Section 15.2-2303(a), *Code of Virginia*, 1950 as amended, and subject to the Board of Supervisors approving a rezoning to the PRM District in conjunction with a conceptual/final development plan for property identified as Tax Map 24-4 ((1)) 11B, hereinafter referred to as the "Application Property," the Applicant proffers for itself, the owners, its successors and assigns, the following conditions. These proffers shall supersede and replace all previously approved proffers applicable to the Application Property.

1. CONCEPTUAL/FINAL DEVELOPMENT PLAN

- A. Development of the Application Property shall be in substantial conformance with the Conceptual/Final Development Plan ("CDP/FDP") prepared by Charles P. Johnson & Associates, Inc. consisting of thirteen (13) sheets, dated April 30, 2012, as revised through February 4, 2013.
- B. Notwithstanding that the CDP/FDP is presented on thirteen (13) sheets and said CDP/FDP is the subject of Proffer 1.a. above, it shall be understood that the CDP shall be limited to the use and maximum floor area ratio and the location and amount of open space, limits of clearing and grading and the location of vehicular entrances/exits. The Applicant has the option to request Final Development Plan Amendments ("FDPAs") for elements other than CDP elements from the Planning Commission for all of, or a portion of, the Application Property in accordance with the provisions set forth in Section 16-402 of the Fairfax County Zoning Ordinance (the "Zoning Ordinance").
- C. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, the Applicant reserves the right to make minor modifications to the layout, building orientation, grading, utility locations and final engineering design at the time of site plan/subdivision plat submission without requiring approval of an amendment to the CDP/FDP or these proffers, provided such changes do not materially decrease the amount and location of open space, or materially decrease the distances to peripheral lot lines, or increase the maximum gross floor area and are in substantial conformance with the CDP/FDP and the proffers as determined by the Zoning Administrator.

2. TRANSPORTATION

- A. The Application Property will be developed with one access to Centreville Road as shown on the CDP/FDP. Subject to approval of VDOT and FCDOT, the Applicant shall modify the striping of Centreville Road to increase the length of the left turn lane into the Application Property. If necessary as determined by VDOT at the time of site plan approval, this improvement shall include minor modifications to, but not total reconstruction of the existing median. At the time of site plan approval, the Applicant shall dedicate in fee simple along the Application Property's Centreville Road frontage, right of way up to 69 ½ feet (approximately 4,636 square feet) from centerline to the Board of Supervisors for public street purposes as shown on the CDP/FDP.
- B. To encourage the use of mass transit, at the time of site plan approval, the Applicant shall work with the Fairfax County Department of Transportation and Fairfax Connector to determine a suitable location for a bus stop and shelter along the Application Property's Centreville Road frontage. Upon successful identification of a location, the Applicant shall designate an area for the bus stop, subject to VDOT approval, on Centreville Road and construct a bus shelter, prior to the issuance of a RUP or Non-RUP for the Application Property. If the Applicant is not successful with its efforts to locate a bus stop on the Application Property prior to site plan approval, the Applicant shall escrow the cost of the bus shelter, up to \$20,000.00, with Fairfax County for future installation on the Application Property or its immediate proximity by others.
- C. Advanced density credit shall be reserved as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance for all eligible dedications described herein, or as may be reasonably required by Fairfax County or VDOT at time of site plan approval.

3. PEDESTRIAN FACILITIES

- A. The Applicant shall construct a paved pedestrian connection to the adjacent property identified as Tax Map Parcel 24-4 ((1)) 11A (Rachel Carson Middle School). Said connection shall be five (5) feet in width and constructed to the Application Property's boundary in the location generally shown on the CDP/FDP.
- B. The Applicant shall construct a five (5) foot wide concrete sidewalk throughout the Application Property to ADA standards to facilitate connectivity between the buildings and to encourage resident fitness.
- C. Prior to receipt of the RUP/Non-RUP and subject to coordination with and approval of Fairfax County Public Schools, the Applicant shall construct a five (5) foot wide asphalt trail, approximately 245 feet in

length and in the location generally shown on the CDP/FDP, across the property identified as Tax Map Parcel 24-4 ((1)) 11A (Rachel Carson Middle School) to connect to the existing sidewalk located on the property identified as Tax Map Parcel 24-4 ((6)) B (Creekside Townhouses HOA). Construction of said trail shall be subject to the receipt of any necessary easements and/or letters of permission at no cost to the Applicant. Following construction of the trail by the Applicant and bond release for the Application Property, the Applicant shall have no further maintenance obligations for that portion of the trail located off-site, which shall be placed within a public ingress-egress easement in a form approved by the County Attorney recorded among the Fairfax County land records. If the Applicant cannot obtain the necessary easements and/or letters of permission, the Applicant shall escrow the cost of an asphalt trail, approximately 245 feet in length and five (5) feet wide, with Fairfax County for future installation across the Rachel Carson Middle School property by others.

4. LANDSCAPING, BARRIERS AND OPEN SPACE

- A. The Applicant shall provide landscaping on the Application Property as generally shown on the CDP/FDP. A landscape plan that shows, at a minimum, landscaping in conformance with the landscape design shown on Sheet 5 of the CDP/FDP shall be submitted in conjunction with the site plan. The landscape plan shall incorporate the use of native species to the greatest extent feasible, as determined by the Urban Forest Management Division ("UFMD"). The landscaped berm and buffering along Centreville Road shall be installed prior to the first Non-RUP/RUP.
- B. The Applicant shall install an undulating landscaped berm along the Application Property's Centreville Road frontage. The height of the berm shall be an average of four (4) feet, not to exceed five (5) feet, as shown on the CDP/FDP, and shall screen the surface parking. Landscaping shall be an unbroken and continuous curvilinear row of shade trees, shrubs and ornamental trees as shown on the CDP/FDP. Species selection and final locations to be coordinated with UFMD. The final design of the landscaped berm shall be determined at the time of site plan submission and is subject to existing easements and right of way restrictions that may be imposed by VDOT or other government agencies or utilities. If at the time of site plan, the Applicant cannot provide the landscaping in the locations as shown on the CDP/FDP, the Applicant will provide an equivalent number of trees and or shrubs in the same general location, as determined by UFMD. The landscaped berm shall be installed prior to the issuance of the first Non-RUP/RUP.

C. The Applicant shall provide the following outdoor recreation facilities and amenities to serve the residents of the Application Property.

(1) Recreation facilities on Parcel 1, as identified on the CDP/FDP, shall include seating areas, sidewalks, a courtyard, and a memory garden, as generally shown on Sheet 6 of the CDP/FDP. The Applicant shall provide a minimum of one passive and one active recreational use, as generally shown on the CDP/FDP with the final design and location of all recreational uses to be determined at site plan submission. Active recreation uses as generally shown on the CDP/FDP may include but are not limited to bocce ball and a putting green. Passive recreational uses as generally shown on the CDP/FDP shall include dispersed shaded gathering areas, benches, trees and/or umbrellas. The secure memory garden shall be available to the assisted living residents of the memory care/Alzheimer's units. The memory garden will include benches and landscaping.

(2) Recreation facilities on Parcel 2 shall include an outdoor fitness trail and equipment, passive seating areas, a central entrance feature and a secure, courtyard and gardens, as shown on Sheet 6 of the CDP/FDP. The courtyard and gardens shall include benches and a combination of landscaping and paved surfaces.

D. The recreation facilities on Parcels 1 and 2 shall be available to all residents of both buildings. The Applicant proposes a masonry retaining wall along the southern and western property lines. The maximum height of the retaining wall shall not exceed seven (7) feet in height. The retaining wall will be constructed with masonry interlocking block manufactured by Allan Block, or a material equivalent in quality and appearance. The color of the retaining wall shall be a neutral or earth tone, that is compatible with the colors of the proposed buildings' facades.

5. INDOOR AMENITIES

The independent living and medical care facility (assisted living including Alzheimer's and memory care units) building shall include the following on-site amenities for its residents:

- (1) Sitting areas, lounges and other common areas for resident use.
- (2) An arts, crafts and multi-purpose room for group activities.
- (3) A game room, a billiards room, a pub/café and a theater.
- (4) A fitness center.

(5) A library and a computer center.

(6) A beauty/barber salon.

6. TREE PRESERVATION AND LIMITS OF CLEARING

- A. Tree Preservation. The Applicant shall submit a tree preservation plan and narrative as part of the site plan submission. The preservation plan and narrative shall be prepared by a certified arborist, landscape architect or a registered consulting arborist, and shall be subject to the review and approval of the UFMD, DPWES.

The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees to be preserved, as well as all on and off-site trees, living or dead with trunks 12 inches in diameter and greater (measured at 4 ½ -feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) located within 25 feet outside the limits of clearing and grading and 10 feet inside the limits of clearing and grading. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the CDP/FDP and those additional areas in which trees can be preserved as a result of final engineering. The tree preservation plan and narrative shall include all items specified in PFM 12-0507 and 12-0509. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

- B. Limits of Clearing and Grading. The Applicant shall conform strictly to the limits of clearing and grading as shown on the CDP/FDP, subject to allowances specified in these proffered conditions for removal of invasive species and for the installation of utilities. If it is determined necessary to install utilities in areas protected by the limits of clearing and grading as shown on the CDP/FDP, they shall be located in the least disruptive manner necessary, as further restricted by Proffer 4.B. A replanting plan shall be developed and implemented, subject to approval by the UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such utilities.

- C. Tree Preservation Fencing. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of 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 to the extent that required trenching for super silt fence does not

sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" proffer below.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, or landscape architect and accomplished in a manner that does not harm existing vegetation that is to be preserved. 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, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by the UFMD, DPWES.

D. Root Pruning. The Applicant shall root prune, as needed, to comply with the tree preservation requirements of these proffers. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a certified arborist.
- An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

E. Site Monitoring. During any clearing or tree/vegetation/structure removal on the Application Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by the UFMD. The Applicant shall retain the services of a certified arborist, landscape architect or registered consulting arborist to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation proffers, and UFMD approvals. The monitoring schedule

shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.

7. STORMWATER MANAGEMENT/BEST MANAGEMENT PRACTICES

- A. The Applicant shall provide on-site stormwater management (SWM) and Best Management Practices (BMPs) facilities as shown on the CDP/FDP to satisfy detention and water quality requirements in accordance with the requirements of the Public Facilities Manual, DPWES, and the waiver #9329-WPFM-001-1, dated November 20, 2012.
- B. The SWM/BMP facilities shall be maintained by the Applicant, its successors and assigns, in accordance with the regulations of DPWES. The maintenance responsibilities shall be incorporated in an agreement to be reviewed and approved as to form by the Fairfax County Attorney's Office and recorded among the Fairfax County land records. The Applicant shall establish a reserve fund, in an amount as determined by DPWES at time of site plan, for maintenance of the facility and for replacement cost based on the life expectancy of the system.

8. SUSTAINABLE DESIGN/GREEN BUILDING PRACTICES

In order to promote energy conservation and green building techniques, the Applicant shall design and construct the proposed development as an ENERGY STAR[®] qualified senior care facility. Within two years of the issuance of the final Non-RUP, the Applicant shall provide to the Environment and Development Review Branch of DPZ demonstration of attainment of certification, by the U.S. Environmental Protection Agency, of the Energy Star for senior care facility certification. The provision of documentation from the U.S. Environmental Protection Agency to the Environment and Development Review Branch of DPZ will be sufficient to satisfy this commitment.

9. USES/FEATURES OF RESIDENTIAL UNITS

As shown on the CDP/FDP, the Application Property shall be developed with two buildings. One building (located on Parcel 1 as identified in the CDP/FDP) shall consist of multi-family dwelling units comprised of age-restricted independent living units and a medical care facility (assisted living including Alzheimer's and memory care units). The second building (located on Parcel 2 as identified in the CDP/FDP) will be a medical care facility including skilled nursing services.

Independent Living units shall be operated as follows:

- (1) Housing and general care shall be provided only for persons who are sixty-two (62) years of age or over, couples where either the husband or wife is sixty-two (62) years of age or over and/or

persons with disabilities, as defined in the Federal Fair Housing Act Amendments of 1988, who are eighteen (18) years of age or older and with a spouse, if any.

- (2) Available services for residents shall include:
 - (1) Periodically scheduled social activities will be available both on-site and off-site.
 - (2) A shuttle van service to provide transportation to and from nearby health care facilities and retail establishments.
 - (3) Personal care services as may be necessary.

10. AFFORDABLE HOUSING

- A. The Applicant shall comply with the ADU provisions as set forth in Part 8 of Article 2 of the Zoning Ordinance at the time of rezoning. The number of ADUs to be provided shall be equivalent to six percent (6%) of the independent living units. In the event that the Building Construction Type is modified at time of site plan submission to 1, 2, 3 or 4, as specified in the Virginia Uniform Statewide Building Code, the Applicant shall be exempt from the requirements of the ADU Ordinance.
- B. The Applicant shall maintain four percent (4%) of the assisted living units for residents who are eligible for the Virginia Department of Social Services' Auxiliary Grant Program.

11. EMERGENCY ACCESS EASEMENT

Prior to RUP/Non-RUP, the Applicant shall reserve an eighteen (18) foot wide access easement to Tax Map Parcel 24-4 ((1)) 11A for the purposes of vehicle emergency access to Centreville Road, as shown on the CDP/FDP. Such easement shall be located over the proposed travel lanes of the Application Property. The Applicant shall not be responsible for the design, permitting or construction of any future connection to Tax Map Parcel 24-4 ((1)) 11A from the easement. The Applicant reserves the right to provide appropriate signs, fencing, landscaping and other security features, as may be necessary to ensure that no unauthorized vehicular access from the adjacent parcel or Centreville Road is permitted through the Application Property until such time as a physical connection is constructed.

12. PARKS AND RECREATION

The Applicant shall comply with Paragraph 2 of Section 6-110 of the Zoning Ordinance regarding developed recreation facilities for the residential uses. The

Applicant shall provide indoor and outdoor recreation facilities for the residents including multi-purpose rooms, seating areas, courtyards, landscaped gardens, outdoor recreation facilities and formal gardens. The Applicant proffers a minimum expenditure for recreational facilities, including trails and seating areas, of one thousand seven-hundred (\$1,700.00) per independent living unit. Any funds not expended on-site shall be contributed to the Fairfax County Park Authority for recreation facilities located in the vicinity of the Application Property.

13. ARCHAEOLOGICAL SURVEY

Prior to any land disturbing activities on the Application Property, the Applicant shall conduct a Phase I archaeological study of the Application Property, and provide the results of such studies to the Heritage Resources Branch of the Fairfax County Park Authority ("Heritage Resources"). If deemed necessary by Heritage Resources, the Applicant shall conduct a Phase II and/or Phase III archaeological study on only those areas of the Application Property identified for further study by Heritage Resources. The studies shall be conducted by a qualified archaeological professional approved by Heritage Resources, and shall be reviewed and approved by Heritage Resources. The studies shall be completed prior to approval of the site plan.

14. SIGNS

All signs shall be in conformance with Article 12 of the Zoning Ordinance and shall be compatible with the buildings in terms of materials, style and colors. The Applicant reserves the right to pursue an application for a comprehensive sign plan.

15. SITE EXCAVATION AND BLASTING

If blasting is required on-site, the Applicant shall ensure that blasting is done pursuant to Fairfax County Fire Marshal requirements and all safety recommendations of the same, including without limitation, the use of blasting mats. In addition, the Applicant shall:

- A. Retain a professional consultant to perform a pre-blast survey of each house or residential building, to the extent that any of these structures are located on the properties within two hundred and fifty (250) feet of the property line of the Application Property;
- B. Prior to any blasting being done, the Applicant shall provide written confirmation to DPWES that the pre-blast survey has been completed and provide a copy of the survey to Fairfax County upon request;

- C. Require the blasting consultant to request access to any houses, wells, buildings, or swimming pools, by notification to owners in within two hundred and fifty (250) feet of the property line of the Application Property, if permitted by owner, determine the pre-blast conditions of these structures. The Applicant's consultant will be required to give a minimum of fourteen (14) days notice of the scheduling of the pre-blast survey. The Applicant shall provide the residents entitled to pre-blast inspections, the name, address and phone number of the blasting contractor's insurance carrier;
- D. Require his consultant to place seismographic instruments prior to blasting to monitor shock waves. The Applicant shall provide seismographic monitoring records to County agencies upon their request;
- E. Notify owners two hundred and fifty (250) feet of the property line of the Application Property, ten (10) days prior to blasting; no blasting shall occur until such notice has been given;
- F. Upon receipt of a claim of actual damage resulting from said blasting, the Applicant shall cause his consultant to respond within five (5) days of meeting at the site of the alleged damage to confer with the property owner;
- G. The Applicant will require blasting subcontractors to maintain necessary liability insurance to cover the costs of repairing any damages to structures, which are directly attributable to the blasting activity and shall take necessary action to resolve any valid claims in an expeditious matter; and
- H. The consultant shall be required to provide an analysis of the potential for gas migration from the site to the Fire Marshal for review and approval prior to blasting. Appropriate gas migration mitigation and/or notification pursuant to County regulations shall be implemented.

16. MEDICAL CARE FACILITY (SKILLED NURSING FACILITY) OPERATION

To ensure that an adequate number of high quality beds are available within the County in the interests of the public convenience, health, and general welfare, pursuant to Zoning Ordinance Section 9-308, the medical care facility (skilled nursing facility) shall endeavor to maintain a minimum overall rating of "average" (three stars or higher) as established and reported by the Federal Medicare program's Five Star Quality Rating System and the Virginia Department of Health. In the event the skilled nursing facility receives an overall rating of "below average" or "poor" (two stars or fewer), the Applicant shall demonstrate acknowledgement of the cited deficiencies by submitting copies of the State Department of Health-issued Health Deficiency Reports and the Operator's Plan of Corrective Action to the Health Care Advisory Board or their designated staff

at the Fairfax County Health Department. Failure to provide copies of said reports within six (6) months of receipt by the Applicant shall be evidence of non-conformance with this proffer. This proffer shall be in effect for the first five (5) years of operation or until the operator receives two (2) consecutive periods of average or above.

17. COVERED WALKWAY

The Applicant shall install a covered walkway that will connect the independent living/medical care facility (assisted living) building and the medical care facility (skilled nursing) building. The covered walkway shall be eight (8) feet in height and extend to fourteen (14) feet in height across the internal road as generally shown on the CDP/FDP, or as required upon review and approval by the Fire Marshal. The covered walkway will be constructed to match both the independent living/assisted living and skilled nursing buildings with regards to colors and materials. The pre-manufactured composite columns will sit on concrete bases, and support the roof structure above.

18. MISCELLANEOUS

Except as may be specified herein, all transportation, pedestrian and landscaping improvements shall be constructed and/or installed concurrent with the development shown on the CDP/FDP.

19. SUCCESSORS AND ASSIGNS

These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.

20. COUNTERPARTS

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

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APPLICANT/CONTRACT PURCHASER OF
TAX MAP 24-4 ((1)) 11B

NORTHERN VIRGINIA HEALTH INVESTORS, LLC, a
Virginia Limited Liability Company

By: Smith/Packett Med-Com, LLC, A Virginia limited
liability company, Its Manager

By: Hunter D. Smith
Its: Vice Chairman Manager

[SIGNATURES CONTINUE ON THE NEXT PAGE]

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TITLE OWNER OF 24-4 ((1)) 11B

BMS-MCLEAREN ASSOCIATES, LLC, a
Virginia Limited Liability Company

By: Benjamin M. Smith, Jr.
Its: Manager

[SIGNATURES END]