

MEMORANDUM

TO: THE HONORABLE MAYOR AND
MEMBERS OF CITY COUNCIL

FROM: IGNACIO B. PESSOA *IBP/lcs*
CITY ATTORNEY

KAREN S. SNOW *ks*
ASSISTANT CITY ATTORNEY

DATE: MAY 10, 2005

SUBJECT: AMENDMENT OF LEASES FOR
BIRMINGHAM GREEN ADULT CARE FACILITIES

ISSUE: Consideration of amendments to two existing leases with Birmingham Green Adult Care Residence, Inc ("BGACRI"). These leases are between BGACRI and five local jurisdictions and provide for the construction of two new facilities to provide care for the elderly and for persons with disabilities.

RECOMMENDATION: That City Council adopt the attached resolution approving the amended leases, and authorizing the City Manager to execute all documents necessary to complete the development of the new facilities.

BACKGROUND: In May 2002, the Council approved the execution of two leases between the City of Alexandria and the Counties of Fairfax, Fauquier, Loudoun and Prince William, as lessors, and BGACRI as lessee. BGACRI leased from the local governments two parcels of land, located in Prince William County, that are part of a 54-acre tract of land jointly owned by the localities. The leases provide for the construction of two facilities, to be built with funding from the U.S. Department of Housing and Urban Development ("HUD") under two separate programs, supportive housing for the elderly (Section 202) and housing for disabled low-income adults (Section 811). The local governments are not required to provide any funds for the development and construction of the new facilities. In October 2004, HUD approved the grant funding to build the facilities, in the amount of \$6.8 million.

HUD has required amendments to the existing leases before it will release the funds for construction of the buildings. The amendments to the leases substitute two newly created entities as the lessees for each facility, and reduce the amount of land leased for the facilities. HUD will not disburse the grant funds until these amendments are approved.

In accordance with HUD requirements, BGACRI formed two 501(c)(3) tax exempt corporations: (1) Birmingham Green Assisted Living, Inc. ("BGALI") for the project for the elderly facility and (2) Birmingham Green Adult Disability Services, Inc. ("BGADSI") for the facility for persons with disabilities. On June 29, 2004, in accordance with the provisions of the existing leases, BGACR assigned the leases to the newly created entities. The first amendment substitutes the new entities as the lessees.

The second amendment to the leases reduces the amount of property that will be leased for each facility, to reflect the actual amount of land that needed for each facility (approximately one half of the land that is reflected in the existing leases). In addition, the lease for the nursing home must be amended because a connecting corridor will be built between the nursing home and the existing facility. To comply with Prince William County's setback and other requirements, the two parcels of land which have been previously subdivided need to be resubdivided to include the land where the connecting corridor crosses the lot lines. This additional land will be leased by the nursing home.

As these projects proceed, the City Manager may have to execute on the City's behalf various easement and other documents including easements for utilities, storm water management and for ingress/egress for the project.

FISCAL IMPACT: None

ATTACHMENTS: Attachment I: Proposed Resolution
Attachment II: City Council Docket Memorandum, May 8, 2002,
Attachment III: Amended leases

STAFF: Jack Powers, Director, Community Programs
Department of Human Services
Mary Ann Griffin, Director, Office of Aging and Adult Services
Department of Human Services

RESOLUTION NO. _____

WHEREAS, the City of Alexandria, together with the Counties of Fairfax, Fauquier, Loudoun and Prince William (the "Localities") own, as tenants in common, 54 acres of land in Prince William County, Virginia (the "Property"); and

WHEREAS, two living facilities for the elderly have been developed on 12 acres of the Property and the remaining 42 acres are undeveloped; and

WHEREAS, the first facility is a 64-bed assisted living facility that was developed initially in the 1920s and expanded in the mid-1950s. This facility was originally built as a District Home and was operated by the District Home Board until recently, when the District Home Board established Birmingham Green Adult Care Residence ("BGACR"), a private, nonprofit corporation to operate the facility; and

WHEREAS, the second facility is a 180-bed nursing home that was built in 1990 and is operated by the Northern Virginia Health Center Commission ("NVHCC"). In 1990, the Localities entered into a lease agreement with NVHCC for the property on which the nursing home was developed; and

WHEREAS, the Localities and BGACR have determined that the BGACR assisted living facility can not be renovated to bring it up to current standards and therefore, it can not continue to accommodate the needs of the Localities and must be replaced; and

WHEREAS, the most feasible source of grant funds for the replacement and renovation of the BGACR assisted living facility was through the United States Department of Housing and Urban Development ("HUD"); and

WHEREAS, in 2002, BGACR applied for funding from HUD under two separate grant programs, Sections 202 and 811, which will provide capital and operating costs associated with replacing and expanding the assisted living facility; and

WHEREAS, under its Section 202 supportive housing for the elderly program, HUD provides funding for both construction and operating assistance, which does not require that the Localities match the funds. Housing developed under HUD's Section 202 program is restricted to very low-income elderly persons. HUD's Section 811 program provides similar funding for housing for very low-income disabled individuals; and

WHEREAS, on May 14, 2002, the City Council adopted Resolution No. 2027, by which City Council approved the leases for the construction of new facilities to replace the District Home and to support an application to HUD for funds to construct the new facilities; and

WHEREAS, in October 2004, HUD has awarded a grant in the amount of \$5,610,300 for the construction of the facility for the elderly under Section 202 and has awarded a grant in the amount of \$1,236,700 for the construction of the new facility for the disabled under the Section 811 program; and

WHEREAS, the Localities have agreed to amend the existing leases to;

- 1) substitute as lessees the two new entries that have been created to operate the new facilities under the supervision of the District Home Board, and make other clarifying amendments to the leases approved in 2002, all of which are attached; and;
- 2) reduce the leased premises to the acreage required for construction, and;

WHEREAS, the City must hold a public hearing, under the provisions of §15.2-1800 of the Code of Virginia (1950) as amended, prior to amending the leases for property owned by the City;

WHEREAS, the City of Alexandria has held a public hearing and the City Council has determined that the construction, operation and maintenance of supportive housing projects for very low income persons on the Property constitutes a public use and that the proposed amendments to the lease should be approved;

NOW, THEREFORE, BE IT RESOLVED BY THE
CITY COUNCIL OF THE CITY OF ALEXANDRIA, VIRGINIA

1. That the City Council approve the terms of the amended leases of which are attached hereto as Exhibits A and B, respectively.
2. That the city manager is authorized to execute the amended leases on behalf of the City of Alexandria and to undertake any further action on behalf of the City of Alexandria, including the execution of additional documents, that may be necessary or desirable to implement the approvals provided in this resolution.
3. That this resolution shall be effective upon its adoption.

ADOPTED: _____

WILLIAM D. EUILLE, MAYOR

ATTEST:

Jackie Henderson, City Clerk

City of Alexandria, Virginia

MEMORANDUM

19
5-14-02

DATE: MAY 8, 2002

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: PUBLIC HEARING AND CONSIDERATION OF SUPPORT FOR TWO APPLICATIONS FOR FEDERAL FUNDS TO REPLACE THE OLD DISTRICT HOME IN MANASSAS, AND ADOPTION OF A RESOLUTION TO LEASE TWO PARCELS OF PUBLICLY OWNED LAND TO BIRMINGHAM GREEN ADULT CARE RESIDENCE, INC.

ISSUE: Public hearing and City Council consideration of support for two applications for federal funds to replace the old District Home in Manassas with a modern assisted living facility, and adoption of a resolution to lease two parcels of publicly owned land to Birmingham Green Adult Care Residence, Inc. (BGACR).

RECOMMENDATION: That City Council:

- (1) hold a public hearing on this item;
- (2) approve a resolution to lease two parcels of publicly owned land to BGACR for the new facilities (the resolution is Attachment I);
- (3) send a letter of support to BGACR for their two applications for federal funds to replace the District Home (a proposed letter is Attachment II); and
- (4) authorize the City Manager to execute all lease (Attachment III) and other appropriate documents.

BACKGROUND: The City of Alexandria, along with the Counties of Fairfax, Fauquier, Loudoun, and Prince William, own as tenants in common 54 acres of land in Prince William County known as Birmingham Green. Two facilities have been developed on 12 of the 54 acres; the remaining 42 acres are undeveloped.

The first facility is a 64-bed assisted living facility that was developed initially in the 1920s and expanded in the mid-1950s. This project was originally built as a District Home and operated by the District Home Board until recently when the District Home Board established Birmingham Green Adult Care Residence (BGACR), a private, nonprofit corporation, to operate the project. Alexandria has up to nine beds reserved for use by Alexandria residents.

The second facility is a 180-bed nursing home that was built in 1990 and is operated by the Northern Virginia Health Center Commission (NVHCC). In 1990, the five participating jurisdictions entered into a lease agreement with NVHCC for the property on which the nursing home was developed. This lease is for a fixed term of thirty-nine years. Alexandria has up to 25 beds for use by Alexandria residents.

Both the assisted living program and the skilled nursing facility are overseen by boards of directors appointed by the five owning jurisdictions. Each jurisdiction appoints a member and an alternate to the boards. Alexandria's member is Robert Eiffert, Deputy Director of the Office of Housing, and the alternate is Suzanne Chis, Director of the Division of Social Services in the Department of Human Services.

DISCUSSION: The BGACR Board has determined that the existing assisted living building cannot reasonably be renovated to bring it up to current standards. The staff of the Prince William County Public Works Department conducted an inspection of the building in 2000 and concurred that a replacement building is needed to provide adequate assisted living services. Accordingly, BGACR has decided to apply for funding from the U. S. Department of Housing and Urban Development (HUD) under two separate programs, Section 202 and Section 811, which would provide capital and operating costs associated with replacing and expanding the assisted living facilities at Birmingham Green.

Under its Section 202 supportive housing for the elderly program, HUD provides funding for both construction and rental assistance, which does not require a local match. The funds are in the form of a grant, not a loan. Housing developed under HUD's 202 program is restricted to very low-income (50% of the median or below) persons age 62 and older. HUD's Section 811 program provides similar funding for housing for very low-income adults with disabilities.

In order to replace the assisted living facility, the localities have agreed to lease to BGACR two parcels of land, Parcels B and C. The first parcel, Parcel B (Attachment V), is approximately 5.8 acres and will be developed with 20 to 25 units. The second parcel, Parcel C (Attachment V), is approximately 6.5 acres and is proposed to be developed in two phases for assisted living units for the elderly. Phase I of the development of Parcel C anticipates that between 60 to 80 units will be built on the parcel. Phase II of the development proposes that between 40 to 60 units be developed. The leases are virtually identical with the exception of the references to the two separate HUD supportive housing programs. The lease term of each lease restricts the use of each parcel to supportive housing programs for a period of 80 years.

Both HUD programs require that a private, non-profit corporation develop and operate the facilities. The private, non-profit corporation must also have control of the land upon which the proposed structures are to be built. BGACR meets the HUD requirement for a private, non-profit corporation, and the two proposed leases accomplish the land control requirement. The leases are for 80 years, which meets the HUD requirement of a minimum of 75 years, with a five year cushion to allow for development time.

The five jurisdictions currently appropriate funds to subsidize the operation of BGACR. The State's Auxiliary Grant for assisted living, which most BGACR residents receive, provides \$958 per month per resident toward the cost of care. The remainder of the total cost of care, which averages \$1,871 per month per resident, is paid by the member jurisdictions. Alexandria's share for FY2003 for nine residents at \$912.50 per month each is \$98,550.

Using the HUD 202 and 811 funds as proposed would include ongoing monthly rental assistance for each unit in the new facilities. This funding source would provide an additional \$355 per month per unit in rental subsidy. Therefore, the initial jurisdictional subsidy, which is currently around \$913 per month per resident, would decrease by \$355 per month to about \$558 per month per resident. This decrease would allow for an expansion of up to 143 total units in the two projects without increasing the current jurisdictional subsidies. The maximum number of units planned for the two phases is 140.

The member jurisdictions would not be required to provide funds for the development and construction of the projects.

BGACR is preparing applications for capital grants and project rental assistance from HUD, with proposals due June 5, 2002. BGACR requests that each of the five owning jurisdictions send a letter of support (Attachment II) and approve and sign the two leases of land (Attachment III) to allow these applications to move forward.

BGACR is also considering whether to partner with another non-profit organization that has experience in the process of developing housing under HUD's programs. In addition, if BGACR is successful in its efforts to obtain HUD funding, a partnership structure will be needed if Low Income Housing Tax Credits are deemed a viable alternative for raising equity for the proposed facilities. Therefore, the proposed leases provide that BGACR may enter into partnerships with other entities, both for-profit and non-profit entities and/or assign its interest in the proposed projects.

A separate Working Group composed of City/County staff studied possible funding alternatives for the replacement of BGACR. Gene Swearingen, OMB Director, represented Alexandria on the Working Group. In a memorandum dated March, 15, 2002, the Working Group recommended using HUD 202 and 811 funds as the best solution for replacement. A copy of their memorandum is Attachment IV.

Both the Alexandria Commission on Aging and the Alexandria Commission on Persons with Disabilities have heard presentations on the project and have sent letters of support to BGACR.

STAFF:

Robert Eiffert, Deputy Director, Office of Housing
Gene Swearingen, Director, Office of Management and Budget
Meg O'Regan, Director, Department of Human Services
Karen Snow, Assistant City Attorney

ATTACHMENTS:

Attachment I: Resolution to Authorize Signing the Leases
Attachment II: Letter of Support for Two HUD Applications
Attachment III: Leases for Two Parcels of Publicly Owned Land
Attachment IV: Memorandum from the Birmingham Green Working Group
Attachment V: Birmingham Green Parcel Exhibit

LEASE

THIS LEASE is made as of June 1, 2002 by and between the City of Alexandria, Virginia and the Virginia Counties of Fairfax, Fauquier, Loudoun and Prince William (the "Localities"), as the Lessors, Birmingham Green Assisted Living, Inc. ("BGALI"), as the Lessee and as assignee of Birmingham Green Adult Care Residence, and Birmingham Green Adult Care Residence ("BGACR"), as assignor to BGALI.

WITNESSETH:

WHEREAS, the Localities own, as tenants in common, 54 acres of land (the "Land") located in Prince William County, Virginia as evidenced by the Deeds recorded in the land records of Prince William County in Deed book 1119, at pages 601, 610 and 617; and

WHEREAS, 42 acres of the Land are undeveloped; and

WHEREAS, the Localities are authorized, in accordance with Section 15.2-1800B of the Code of Virginia, to lease the Land for public use; and

WHEREAS, the Localities have each held a public hearing and determined that leasing part of the Land for the purpose of building, furnishing, equipping, operating and maintaining two supportive housing for the elderly projects under the U.S. Department of Housing and Urban Development's ("HUD") Section 202 program on the Land constitutes a public use; and

WHEREAS, in accordance with a Lease dated June 1, 2002 (the "June 1, 2002 Lease") by and between the Localities, as Lessors, and BGACR, as Lessee, the Localities leased a portion of the Land to BGACR for the purpose of building, furnishing, equipping, operating and maintaining two supportive housing for the elderly projects; and

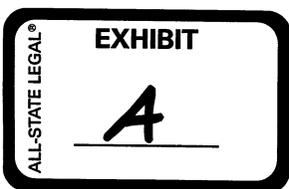
WHEREAS, it has been determined that the entire parcel of land leased from the Localities pursuant to the June 1, 2002 Lease will not be needed; and

WHEREAS, BGALI is a Virginia nonstock corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code and that was formed for the purpose of building and owning one of the two supportive housing for the elderly projects that will be built on the parcel of land leased from the Localities; and

WHEREAS, in accordance with Section 9 of the June 1, 2002 lease, BGACR assigned all of its right, title and interest in and to the June 1, 2002 Lease to BGALI; and

WHEREAS, as stated in Section 25 of the June 1, 2002 Lease, HUD requires that certain provisions be included in this Lease through the execution of a lease addendum; and

WHEREAS, Section 25 of the June 1, 2002 Lease requires the Localities to execute the HUD-required lease addendum as long as there have been no substantive changes to the lease addendum that was attached as Exhibit B to the June 1, 2002 Lease and HUD has agreed to



waive the requirement, as specified in paragraph 2 of the aforementioned Exhibit B, that HUD be permitted, upon a default by the Lessee, to purchase the fee title underlying the leasehold estate; and

WHEREAS, there have been no changes to the lease addendum that was attached as Exhibit B to the June 1, 2002 Lease and HUD has agreed to waive paragraph 2 of the HUD-required lease addendum as long as the project that will be built obtains a property tax exemption from Prince William County, the jurisdiction in which the Land is located; and

WHEREAS, Prince William County has approved a property tax exemption for BGALI that will be effective when BGALI begins construction on the supportive housing for the elderly project that it will build, own and operate on the land leased under this Lease; and

WHEREAS, HUD has agreed that instead of executing a separate lease addendum the provisions of the HUD-required lease addendum may be included in this Lease; and

WHEREAS, the Localities and BGALI desire to replace the June 1, 2002 Lease for the purpose of: (1) reflecting both the determination that less land than the parcel of land currently leased pursuant to the June 1, 2002 Lease is needed and the assignment of the June 1, 2002 Lease from BGACR to BGALI; (2) including the provisions of the HUD-required lease addendum; and (3) making other non-material changes to the June 1, 2002 Lease.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Rules of Interpretation. For the purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires:

- (a) "this Lease" means this agreement as originally executed and as it may from time to time be supplemented or amended.
- (b) All references in this Lease to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this Lease. The words "herein," "hereof," "hereunder" and "herewith" and any other words of similar import refer to this Lease as a whole and not to any particular Section or other subdivision.
- (c) The singular shall include the plural and vice versa.
- (d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.
- (e) The headings used in this Lease are for convenience of reference only and shall not define or limit the provisions hereof.

SECTION 2. Premises. For the term and upon the conditions specified herein, Lessors lease to Lessee and Lessee leases from Lessors that portion of the Land which is more particularly described as Lease Area C on the Plat which is attached hereto as Exhibit A (the "Site"), together with a nonexclusive right of vehicular and pedestrian access to and from the Site pursuant to all of the ingress and egress easements, both existing and proposed, shown on Exhibit A. Exhibit A is expressly incorporated and made a part of this Lease.

SECTION 3. Terms. The term of this Lease shall be for a period of eighty years beginning on June 1, 2002 and ending on May 31, 2082. If necessary to meet HUD requirements, the term of this Lease shall be extended to the extent necessary to comply with any such requirements. If Lessors, upon the expiration of this Lease, decide to continue leasing the Site, together with any improvements, Lessee shall have the right of first refusal for any new lease. This right of first refusal shall entitle Lessee to the absolute right to enter into a new Lease with Lessors if Lessee is willing to match the terms of a new Lease as agreed to by any other prospective lessee.

SECTION 4. Rent. Lessee shall pay annually rent in the amount of one dollar (\$1.00), payable on or before the first day of each Lease year.

SECTION 5. Construction of Projects.

- (a) Lessee, or its assignee, shall be entitled to build two new supportive housing for the elderly projects under HUD's Section 202 program in two phases. Phase I shall consist of 77 units, and construction shall begin within a reasonable time after the initial closing required by HUD is completed. Phase II shall be between 40 and 60 units, or a lesser number consistent with the amount of funding approved by HUD, and construction shall begin within a reasonable time after HUD has approved the second application for Section 202 funding and the initial closing has been completed.
- (b) An application for the funding of Phase I was approved in November 2002. An application for the Phase II funding may be submitted to HUD by BGACR, or any other entity approved by BGACR, at the next appropriate opportunity.
- (c) Lessors shall cooperate in obtaining all necessary approvals for the construction of each supportive housing for the elderly project, including any zoning, subdivision or other land use action with respect to the Site that may be required to enable the construction of either or both projects to take place.

SECTION 6. Payment of Amounts Imposed Against Property. During the terms of this Lease, the Lessee shall pay directly, or otherwise reimburse Lessors, as appropriate, all existing and future taxes, fees, assessments, duties, impositions, and burdens of any nature whatsoever charged or imposed upon the Site, or any improvements thereon and shall, upon request, promptly deliver to the Lessors proper and sufficient receipts and other evidence of the payment and discharge of the same.

SECTION 7. Covenants of Lessee.

- (a) To the extent permitted by HUD, a priority will be given, in selecting persons for admission to the project(s), to residents of the Localities.
- (b) Lessee will not make any capital improvements to the supportive housing for the elderly project(s) which would expose Lessors to liability unless those improvements are made under terms and conditions approved by Lessors in advance. However, Lessee shall have the full right and authority, consistent with its operation of the supportive housing project(s) to maintain the Site in good condition, and Lessee affirmatively covenants to do so. This authority shall include the right, without Lessors' prior approval, to make repairs and reasonable enhancements to the buildings and operating systems, at Lessee's sole cost and expense.
- (c) Lessee will maintain at all times insurance on the Site, and any improvements thereon, in accordance with Section 13 hereof, and will name Lessors as an additional insured under all such insurance policies, subject to a non-contribution clause.
- (d) Lessee shall permit Lessors or their agent, at all reasonable times, to enter the Site to inspect the condition thereof.
- (e) Lessee will not, without the express written consent of Lessors, create nor attempt to create any lien or in any way encumber the Site, or its leasehold interest created hereby, except as permitted herein.
- (f) Lessee covenants that the Site shall be used by Lessee exclusively for the purpose of operating and maintaining the supportive housing for the elderly project(s) constructed thereon. Such use shall conform with applicable local ordinances and State and Federal laws and regulations. No other use of the Site shall be allowed unless prior written consent is obtained from the Lessors, which shall be granted or not granted at the absolute discretion of the Lessors.
- (g) Lessee shall not generate, handle, use, store or treat any hazardous substance, or solid, infectious or medical waste on the Site except in compliance with all applicable environmental laws and regulations. Lessee shall be liable for cleanup of, or damages caused by, Lessee's generation, handling, use, storage or treatment of any hazardous substance, or solid, infectious or medical waste on the Site.
- (h) Lessee covenants at all times to indemnify and hold Lessors harmless from all loss, liability, cost or damage that may occur or be claimed with respect to any person or property on, in or about the Site, or to the Site itself, resulting from any act done or omission by or through Lessee, its agents, employees,

invitees, or any person on the Site by reason of Lessee's use or occupancy, or resulting from Lessee's non-use or possession of the Site, and any and all loss, cost, liability or expense resulting therefrom; and further covenants at all times to maintain the Site in a safe and careful manner.

- (i) Lessee is responsible for, and covenants to obtain, all permits and approvals which may be required for the use and occupancy of the Site and the operation of the supportive housing for the elderly project(s). Lessors shall cooperate, to the extent necessary, in obtaining all such permits and approvals.

SECTION 8. Covenants of Lessors

- (a) Lessors warrant that the Site is free of encumbrances or claims adversely affecting the leasehold interest created hereby, and that they will defend the Lessee in the quiet enjoyment and peaceful possession thereof, provided Lessee is not in default in the performance of its obligations hereunder.
- (b) Each of the Localities covenants and represents that it owns an undivided one-fifth interest in the Site; that it has the full power and right to execute this Lease and to perform the obligations hereunder; that other than as recorded among the land records of Prince William County, no private restrictions exist with respect to the Site or the use thereof; and that no one, exclusive of the Lessors and Lessee and their respective successors in interest, has any interest in or claim against the Site.
- (c) Lessors covenant and represent that they have no actual knowledge of any hazardous substance or solid waste existing on, under or about the Site which would give rise to any claim or suit under any Federal or State environmental law.

SECTION 9. Assignment and Sublease. This Lease may not be assigned or transferred, and the Site may not be sublet, either in whole or in part, by the Lessee without the prior written consent of the Lessors except that Lessee may assign all, or part, of its interest in this Lease to BGACR, or any other entity that may, as permitted by Section 5(b), submit an application to HUD for the funding of the second supportive housing for the elderly project that is authorized by this Lease to be built on the Site. In addition, in the event any part of this Lease is assigned to another entity for the purpose of submitting an application to HUD for the second project authorized hereunder, such entity may reassign any such interest in this Lease to the entity that must, in accordance with HUD requirements, be formed to be the owner of the second project. Any entity that is formed to be the owner of the second supportive housing for the elderly project authorized by this Lease shall comply with all HUD requirements applicable to HUD's Section 202 program.

SECTION 10. Improvements and Alterations by Lessee. Consistent with the provisions of Sections 5(a) and 7(b), the Lessee may, at any time during the term of this Lease, construct improvements or make alterations upon all or any part of the Site provided, however, the Lessee shall pay all amounts, if any, incurred in the construction of such improvements.

SECTION 11. Ownership of Improvements. Throughout the term of this Lease, the Lessee shall have the benefit and burden of all incidents of ownership pertaining to the Site, including the buildings, structures and improvements now on, or hereafter constructed on, the Site whether or not affixed thereto. Accordingly, Lessee shall, during the term of this Lease, have the exclusive right to possession and use of the Site, including the right to furnish, equip, operate and maintain the supportive housing for the elderly project(s) built on the Site. Upon the termination of this Lease, the property and all improvements located on the Site and all personal property permanently affixed thereto shall become the sole property of the Lessors, free and clear of any encumbrances which did not exist at the time of initial execution of this Lease by the parties, and the Lessee agrees to execute and deliver such documents as the Lessors may reasonably request to evidence the transfer of such property to the Lessors.

SECTION 12. Lessee Liable.

- (a) Lessors shall not be liable to the Lessee or any other person for any loss or damage suffered during the term of this Lease on account of any defective condition or depreciation of the Site arising or occurring during the term of this Lease.
- (b) All obligations and liabilities, whether on account of constructing, operating, improving, furnishing, equipping or maintaining the supportive housing for the elderly project(s) or any improvements and alterations thereon by the Lessee; claims for damages or personal injuries, arising out of such constructing, operating, improving, furnishing, equipping or maintaining of such projects or any improvements and alterations thereon by the Lessee are and shall be exclusively the obligations and liabilities of the Lessee.

SECTION 13. Insurance. Lessee will maintain in force the following insurance coverages, at its cost and expense:

- (a) Casualty Insurance. A policy or policies of insurance to keep the Site, and any improvements thereon, (referred to in this context as the "Insured Property") constantly insured against loss or damage by fire, lightning and all other risks covered by the "all-risk" and extended coverage insurance endorsements then in use in the Commonwealth of Virginia in an amount equal to the Full Insurable Value thereof (subject to a deductible of not more than \$50,000). The Full Insurable Value of the Insured Property shall be determined from time to time at the request of the Lessors by an architect, appraiser, appraisal company or one of the insurers, to be selected and paid by the Lessee. The insurance required pursuant to this Section shall be maintained at the Lessee's sole cost and expense, and shall be maintained with one or more generally recognized responsible insurance company or companies authorized to do business in the Commonwealth of Virginia as may be selected by the Lessee. Copies of the insurance policies required under this Section, or originals or certificates thereof, each bearing notations evidencing payment of the premiums or other evidence of such payment,

shall, upon request, be delivered by the Lessee to the Lessors. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Lessors and the Lessee as insureds, as their respective interests may appear and shall contain a provision that such insurance may not be canceled, amended, modified or otherwise changed by the issuer thereof without at least thirty (30) days' advance written notice to the Lessors and the Lessee.

- (b) Public Liability Insurance. A policy or policies of general accident and public liability insurance (including but not limited to coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), under which the Lessors and the Lessee shall be named as insureds, properly protecting and indemnifying the Lessors and the Lessee, in an amount of not less than \$5,000,000 combined single limit injury (including death) and property damage in any one occurrence (with a deductible of not more than \$50,000). The policies of said insurance shall contain a provision that such insurance may not be canceled, amended, modified or otherwise changed by the issuer thereof without at least thirty (30) days' advance written notice to the Lessors and the Lessee. Such policies or copies or certificates thereof shall, upon request, be furnished to the Lessors.
- (c) Worker's Compensation Insurance. Any worker's compensation coverage that Lessee is required to maintain by the laws of the Commonwealth of Virginia.
- (d) Builder's Risk Insurance. In the event that Lessee undertakes to construct improvements or alterations to the Site, Lessee will obtain builder's risk coverage in the form and amount acceptable to Lessors.
- (e) Blanket Insurance Policies. The Lessee may satisfy any of the insurance requirements set forth in this Section by using blanket policies of insurance, providing all of the requirements and specifications of this Section regarding insurance are complied with.

SECTION 14. Damage, Destruction or Condemnation.

- (a) If the Site, or any of the improvements thereon, are damaged or destroyed, in whole or in part, by fire or other casualty, or taken under the exercise of the power of eminent domain or sold under the threat of the exercise of the power of eminent domain, the Lessee shall promptly notify the Lessors in writing as to the nature and extent of such damage or loss.
- (b) Upon the occurrence of any damage, destruction, taking or sale under the threat of taking as described above, the Lessee shall promptly proceed to rebuild, repair, restore or replace the supportive housing for the elderly project(s) unless (i) the Lessors fail or refuse to make the insurance,

condemnation or sales proceeds resulting from such event available to the Lessee for such purpose, or (ii) either the Lessors or the Lessee elects to terminate this Lease by written notice given to the other party within sixty (60) days following the event of loss, taking or sale, such notice to be effective as of the date stated therein, not more than thirty (30) days following the date of notice.

- (c) If the Lessee determines to rebuild, repair, restore or replace the supportive housing for the elderly project(s) and, conditioned upon the availability of insurance, condemnation or sales proceeds sufficient for such purpose, the Lessee shall proceed promptly with, and complete with reasonable dispatch, and in any event within one (1) year after such damage or loss (or such longer period of time as the Lessors may permit if the rebuilding, repair, restoration or replacement has been commenced and is being diligently pursued by the Lessee), such rebuilding, repairing, restoring or replacing of the property damaged or destroyed so as to place the supportive housing for the elderly project(s) in substantially the same condition as existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair operating unity or productive capacity of the supportive housing for the elderly project(s) subject to the prior written approval of such changes, alterations and modifications by the Lessors. If the insurance, condemnation or sales proceeds have been paid to the Lessors, then such proceeds may be paid to a trustee designated by the Lessors for the purposes of administering and distributing such proceeds to assure an orderly and complete rebuilding, repair, restoration or replacement of the supportive housing for the elderly project(s), or may be paid by the Lessors directly to the Lessee for such purpose. If, within one (1) year after the date of such damage or destruction (or such longer period as the Lessors may permit), (i) the rebuilding, repairing, restoring and replacing is completed in accordance with plans and specifications therefore approved by the Lessors; (ii) all costs thereof have been paid by the Lessee, in full, as evidenced by appropriate sworn construction cost statements and mechanics' lien waivers; and (iii) the Lessee delivers to the Lessors satisfactory evidence of completion of said rebuilding, repairing, restoring and replacing, then the Lessors, or the trustee appointed by the Lessors, shall transfer any remaining proceeds and any sums earned upon the investment thereof to the Lessee.
- (d) Notwithstanding any other provision, of this Lease, upon the occurrence of any damage, destruction, taking or sale under the threat of taking as described above, the insurance, condemnation or sales proceeds shall be utilized in accordance with any applicable HUD requirements.

SECTION 15. HUD Approval. If approval from HUD for the funding of the second supportive housing for the elderly project discussed herein is not obtained within ten years from

the effective date of this Lease, this Lease shall be modified to the extent deemed necessary by the parties.

SECTION 16. Amendments. This Lease may only be amended by a writing signed by the Lessors and the Lessee.

SECTION 17. Successors and Assigns. This Lease shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assigns.

SECTION 18. Notices. All notices in writing required or permitted by this Lease may be delivered in person or sent by registered mail, return receipt requested as follows:

If to Lessors:

(i) Office of the County Attorney, 12000 Government Center Parkway, Fairfax, Virginia 22035; (ii) Office of the County Attorney, One County Complex Court, Prince William, Virginia 22192; (iii) Office of the County Attorney, 1 Harrison Street, S.E., 5th Floor, Leesburg, Virginia 22177; (iv) Office of the County Attorney, 40 Culpepper Street, Warrenton, Virginia 22186; and (v) Office of the City Attorney, 301 King Street, Alexandria, Virginia 22314

If to Lessee:

Birmingham Green Assisted Living, Inc.
8605 Centreville Road
Manassas, Virginia 20110

SECTION 19. Waiver. The waiver of any breach of any provision of this Lease shall not constitute a waiver of any other provision or breach of this Lease.

SECTION 20. Severability. If any provision of this Lease shall be held or deemed to be, or shall in fact be, unlawful, inoperative or unenforceable under Virginia law, such provision shall be ineffective only to the extent of such prohibition, without invalidating the remaining provisions of this Lease.

SECTION 21. Entire Understanding. This Lease, including the exhibits hereto, constitutes the entire understanding of all agreements of the parties hereto with respect to the subject matters hereof. Neither the Lessors nor the Lessee has made or shall be bound by any agreement or representation to the other which is not expressly set forth herein or in the exhibits attached hereto.

SECTION 22. Governing Law. This Lease shall be governed by the laws of the Commonwealth of Virginia.

SECTION 23. Counterparts. This Lease may be executed in any number of counterparts and by different parties thereto on separate counterparts, each of which when so executed and

delivered, shall be deemed to be an original and all of which, taken together, shall constitute but one and the same Lease.

SECTION 24. Lessors' Liability. To the extent permitted by law and notwithstanding anything to the contrary contained in this Lease, Lessee agrees that Lessee shall look solely to the estate of Lessors in the Site for the collection of any judgment or other judicial process requiring the payment of money by Lessors for any default or breach by Lessors under this Lease.

SECTION 25. HUD Requirements. Notwithstanding any other provisions of this Lease, if and so long as this leasehold is subject to a Section 202 Mortgage held by the Secretary of Housing and Urban Development, or given to the Secretary of HUD in connection with a resale, or the demised premises are acquired and held by him because of a default under said mortgage:

(a) The Lessee is authorized to obtain a Section 202 Capital Advance from the Secretary of HUD, secured by a mortgage on this leasehold estate. Lessee is further authorized to execute a mortgage on the leasehold and otherwise to comply with the requirements of HUD for obtaining a mortgage.

(b) If approved by the Secretary of HUD, Lessee may assign, transfer or sell its interest in the demised premises.

(c) (1) Insurance policies shall be in an amount and by such companies, and in such form, and against such risks and hazards, as shall be required by the mortgagee and/or the Secretary of HUD.

(2) The Lessors shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Lessee to HUD. The Lessors may at their own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be.

(d) (1) If all or any part of the demised premises shall be taken by condemnation that portion of any award attributable to the improvements, or damage to the improvements, shall be paid to the mortgagee or otherwise disposed of as may be provided in the mortgage. Any portion of the award attributable solely to the taking of the land shall be paid to the Lessors. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to the Lessors bears to the total value of the land as established by the amount the Secretary of Housing and Urban Development would be required to pay upon acquisition of the fee.

(2) In the event of a negotiated sale of all or any portion of the demised premises in lieu of condemnation, the proceeds shall be distributed and ground rents reduced as provided in cases of condemnation, but the approval of the Secretary of HUD shall be required as to the amount and division of the payment to be received.

(e) Nothing in this Lease contained shall require the Lessee to pay any franchise, estate, inheritance, succession, capital levy or transfer tax, or any other tax, assessment, charge or levy upon the rent payable by the Lessors under this Lease.

(f) Upon any default under this Lease which authorizes the cancellation thereof by the Lessors, Lessors shall give notice to the Secretary of HUD, and the Secretary of HUD, his successors and assigns, shall have the right any time within six (6) months from the date of such notice to correct the default and reinstate the Lease unless Lessors have first terminated the Lease as provided herein.

At any time after two (2) months from the date a notice of default is given to the Secretary of HUD, the Lessors may elect to terminate the Lease and acquire possession of the demised premises. Upon acquiring possession of the demised premises, Lessors shall notify the Secretary. The Secretary shall have six (6) months from the date of such notice of acquisition to elect to take a new Lease on the demised premises. Such new Lease shall have a term equal to the unexpired portion of the term of this Lease and shall be on the same terms and conditions as contained in this Lease, except that the Secretary's liability for ground rent shall not extend beyond his occupancy under such lease. The Lessors shall tender such new Lease to the Secretary within thirty (30) days after a request for such Lease and shall deliver possession of the demised premises immediately upon execution of the new Lease. Upon executing a new Lease, the Secretary shall pay to Lessors any unpaid ground rentals due or that would have become due under this Lease to the date of execution of the new Lease, including any taxes which were liens on demised premises and which were paid by Lessors, less any net rentals or other income which Lessors may have received on account of this property since the date of default under this Lease.

(g) All notices, demands and requests which are required to be given by the Lessors or the Lessee to the Secretary shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to:

U.S. Department of Housing and Urban Development
Virginia State Office
600 East Broad Street, 3rd Floor
Richmond, VA 23219

unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.

(h) This Lease shall not be modified without the consent of the Secretary of the Department of Housing and Urban Development.

SECTION 26. Former Lease. This Lease replaces and supercedes the June 1, 2002 Lease by and between the Localities and BGACR.

SECTION 27. Effective date. The effective date of this Lease is June 1, 2002.

IN WITNESS WHEREOF, the Localities, as the Lessors, Birmingham Green Assisted Living, Inc., as the Lessee, and as the assignee of Birmingham Green Adult Care Residence, and Birmingham Green Adult Care Residence, as the assignor to Birmingham Green Assisted Living, Inc., have caused this Lease to be executed in their respective names and their corporate seals to be hereunto affixed and attested by their respective duly authorized officer.

BIRMINGHAM GREEN
ASSISTED LIVING, INC.,
a Virginia nonstock corporation

By _____
Chief Operating Officer

City/County of _____)
State of Virginia) ss:

Subscribed and sworn to before me by _____ this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

Attest:

THE COUNTY OF FAIRFAX

Authorized Officer

By _____
Title:

City/County of _____)
State of Virginia) ss:

Subscribed and sworn to before me by _____ this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

Attest:

THE COUNTY OF FAUQUIER

By _____
Authorized Officer

By _____
Title:

City/County of _____)
State of Virginia) ss:

Subscribed and sworn to before me by _____ this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

Attest:

THE COUNTY OF LOUDOUN

By _____
Authorized Officer

By _____
Title:

City/County of _____)
State of Virginia) ss:

Subscribed and sworn to before me by _____ this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

Attest:

THE CITY OF ALEXANDRIA

By _____
Authorized Officer

By _____
Title:

City/County of _____)
State of Virginia _____) ss:

Subscribed and sworn to before me by _____ this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

Attest:

THE COUNTY OF PRINCE WILLIAM

By _____
Authorized Officer

By _____
Title:

City/County of _____)
State of Virginia _____) ss:

Subscribed and sworn to before me by _____ this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

BIRMINGHAM GREEN
ADULT CARE RESIDENCE,
a Virginia nonstock corporation

By _____
Chief Operating Officer

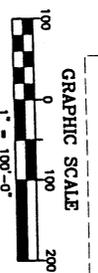
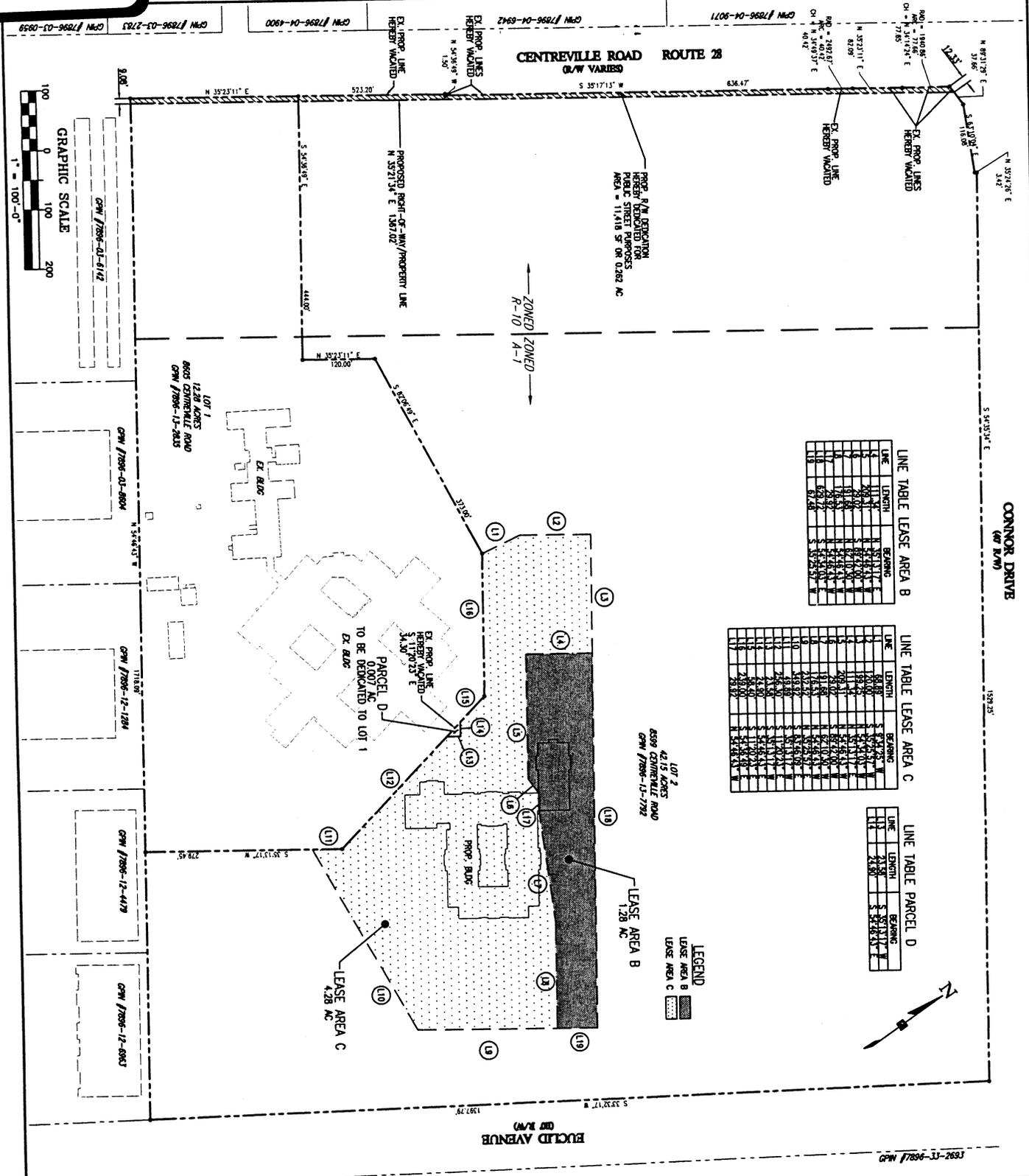
City/County of _____)
State of Virginia _____) ss:

Subscribed and sworn to before me by _____ this _____ day of
_____, 2005.

Notary Public

My Commission Expires: _____

PLOTTED Dec 02, 2004



LINE TABLE LEASE AREA B

LINE	LENGTH	BEARING
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97	21.36	S 84°25'00" W
98	21.36	S 84°25'00" W
99	21.36	S 84°25'00" W
100	21.36	S 84°25'00" W

LEGEND
 LEASE AREA B
 LEASE AREA C
 LEASE AREA D

PLAT SHOWING PROPOSED PROPERTY LINES AND LEASE AREAS ON THE PROPERTY OF BIRMINGHAM GREEN ASSISTED LIVING AND RIGHT OF WAY DEDICATION OF CENTREVILLE ROAD BRENTSVILLE MAGISTERIAL DISTRICT PRINCE WILLIAM COUNTY, VIRGINIA

THIS DRAWING SHALL BE USED FOR THE PROJECT DESCRIBED HEREIN AND FOR NO OTHER PURPOSES UNLESS SPECIFICALLY NOTED OTHERWISE BY THE ENGINEER OR SURVEYOR.

SCALE: 1" = 100' DATE: DEC 2004 SHEET 1 OF 1

DRAWN BY: DJS CHECKED BY: KDE PROJECT NUMBER: 03

LEASE

THIS LEASE is made as of June 1, 2002 by and between the City of Alexandria, Virginia and the Virginia Counties of Fairfax, Fauquier, Loudoun and Prince William (the "Localities"), as the Lessors, and Birmingham Green Adult Disability Services, Inc. ("BGADSI"), as the Lessee and as assignee of Birmingham Green Adult Care Residence, and Birmingham Green Adult Care Residence ("BGACR"), as assignor to BGADSI.

WITNESSETH:

WHEREAS, the Localities own, as tenants in common, 54 acres of land (the "Land") located in Prince William County, Virginia as evidenced by the Deeds recorded in the land records of Prince William County in Deed book 1119, at pages 601, 610 and 617; and

WHEREAS, 42 acres of the Land are undeveloped; and

WHEREAS, the Localities are authorized, in accordance with Section 15.2-1800B of the Code of Virginia, to lease the Land for public use; and

WHEREAS, the Localities have each held a public hearing and determined that leasing part of the Land for the purpose of building, furnishing, equipping, operating and maintaining a supportive housing project for very low-income persons with disabilities under the U.S. Department of Housing and Urban Development's ("HUD") Section 811 program on the Land constitutes a public use; and

WHEREAS, in accordance with a Lease dated June 1, 2002 (the "June 1, 2002 Lease") by and between the Localities, as Lessors, and Birmingham Green Adult Care Residence ("BGACR"), as Lessee, the Localities leased a portion of the Land to BGACR for the purpose of building, furnishing, equipping, operating and maintaining a supportive housing project for very low-income persons with disabilities; and

WHEREAS, BGACR has determined that it will not need the entire parcel of land that it leased from the Localities pursuant to the June 1, 2002 Lease; and

WHEREAS, BGADSI is a Virginia nonstock corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code and that was formed for the purpose of owning a supportive housing project for very low-income persons with disabilities that will be built on the parcel of land leased from the Localities; and

WHEREAS, in accordance with Section 9 of the June 1, 2002 lease, BGACR assigned all of its right, title and interest in and to the June 1, 2002 Lease to BGADSI; and

WHEREAS, as stated in Section 25 of the June 1, 2002 Lease, HUD requires that certain provisions be included in this Lease through the execution of a lease addendum; and



WHEREAS, Section 25 of the June 1, 2002 Lease requires the Localities to execute the HUD-required lease addendum as long as there have been no substantive changes to the lease addendum that was attached as Exhibit B to the June 1, 2002 Lease and HUD has agreed to waive the requirement, as specified in paragraph 2 of the aforementioned Exhibit B, that HUD be permitted, upon a default by the Lessee, to purchase the fee title underlying the leasehold estate; and

WHEREAS, there have been no changes to the lease addendum that was attached as Exhibit B to the June 1, 2002 Lease and HUD has agreed to waive paragraph 2 of the HUD-required lease addendum as long as the project that will be built obtains a property tax exemption from Prince William County, the jurisdiction in which the Land is located; and

WHEREAS, Prince William County has approved a property tax exemption for BGADSI that will be effective when BGADSI begins construction on the supportive housing project for very-low income persons with disabilities that it will build, own and operate on the land leased under this Lease; and

WHEREAS, HUD has agreed that instead of executing a separate lease addendum the provisions of the HUD-required lease addendum may be included in this Lease; and

WHEREAS, the Localities and BGADSI desire to replace the June 1, 2002 Lease for the purpose of: (1) reflecting both the determination that less land than the parcel of land currently leased pursuant to the June 1, 2002 Lease is needed and the assignment of the June 1, 2002 Lease from BGACR to BGADSI; (2) including the provisions of the HUD-required lease addendum; and (3) making other non-material changes to the June 1, 2002 Lease.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Rules of Interpretation. For the purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires:

- (a) "This Lease" means this agreement as originally executed and as it may from time to time be supplemented or amended.
- (b) All references in this Lease to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this Lease. The words "herein," "hereof," "hereunder" and "herewith" and any other words of similar import refer to this Lease as a whole and not to any particular Section or other subdivision.
- (c) The singular shall include the plural and vice versa.
- (d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

- (e) The headings used in this Lease are for convenience of reference only and shall not define or limit the provisions hereof.

SECTION 2. Premises. For the term and upon the conditions specified herein, Lessors lease to Lessee and Lessee leases from Lessors that portion of the Land which is more particularly described as Lease Area B on the Plat which is attached hereto as Exhibit A (the "Site"), together with a nonexclusive right of vehicular and pedestrian access to and from the Site pursuant to all of the ingress and egress easements, both existing and proposed, shown on Exhibit A. Exhibit A is expressly incorporated and made a part of this Lease.

SECTION 3. Terms. The term of this Lease shall be for a period of eighty years beginning on June 1, 2002 and ending on May 31, 2082. If necessary to meet HUD requirements, the term of this Lease shall be extended to the extent necessary to comply with any such requirements. If Lessors, upon the expiration of this Lease, decide to continue leasing the Site, together with any improvements, Lessee shall have the right of first refusal for any new lease. This right of first refusal shall entitle Lessee to the absolute right to enter into a new lease with Lessors if Lessee is willing to match the terms of a new lease as agreed to by any other prospective lessee.

SECTION 4. Rent. Lessee shall pay annually rent in the amount of one dollar (\$1.00), payable on or before the first day of each lease year.

SECTION 5. Construction of Project.

- (a) Lessee shall be entitled to build a supportive housing project for very low-income persons with disabilities under HUD's Section 811 program (the "Project"). The Project shall consist of 14 units for very low-income persons with disabilities and one unit for a resident manager.
- (b) An application for the funding of the Project was approved in November 2002. Construction shall begin within a reasonable time after the initial closing required by HUD is completed.
- (c) Lessors shall cooperate in obtaining all necessary approvals for the construction of the Project, including any zoning, subdivision or other land use action with respect to the Site that may be required to enable the construction of the Project to take place.

SECTION 6. Payment of Amounts Imposed Against Property. During the terms of this Lease, the Lessee shall pay directly, or otherwise reimburse Lessors, as appropriate, all existing and future taxes, fees, assessments, duties, impositions, and burdens of any nature whatsoever charged or imposed upon the Site, and any improvements thereon, and shall, upon request, promptly deliver to the Lessors proper and sufficient receipts and other evidence of the payment and discharge of the same.

SECTION 7. Covenants of Lessee.

- (a) To the extent permitted by HUD, a priority will be given in selecting persons for admission to the Project, to residents of the Localities.
- (b) Lessee will not make any capital improvements to the Project which would expose Lessors to liability unless those improvements are made under terms and conditions approved by Lessors in advance. However, Lessee shall have the full right and authority, consistent with its operation of the Project, to maintain the Site in good condition, and Lessee affirmatively covenants to do so. This authority shall include the right, without Lessors' prior approval, to make repairs and reasonable enhancements to the building and operating systems, at Lessee's sole cost and expense.
- (c) Lessee will maintain at all times insurance on the Site, and any improvements thereon, in accordance with Section 13 hereof, and will name Lessors as an additional insured under all such insurance policies, subject to a non-contribution clause.
- (d) Lessee shall permit Lessors or their agent, at all reasonable times, to enter the Site to inspect the condition thereof.
- (e) Lessee will not, without the express written consent of Lessors, create nor attempt to create any lien or in any way encumber the Site, or its leasehold interest created hereby, except as permitted herein.
- (f) Lessee covenants that the Site shall be used by Lessee exclusively for the purpose of operating and maintaining the supportive housing project for very low-income persons with disabilities constructed thereon. Such use shall conform with applicable local ordinances and State and Federal laws and regulations. No other use of the Site shall be allowed unless prior written consent is obtained from the Lessors, which shall be granted or not granted at the absolute discretion of the Lessors.
- (g) Lessee shall not generate, handle, use, store or treat any hazardous substance, or solid, infectious or medical waste on the Site except in compliance with all applicable environmental laws and regulations. Lessee shall be liable for cleanup of, or damages caused by, Lessee's generation, handling, use, storage or treatment of any hazardous substance, or solid, infectious or medical waste on the Site.
- (h) Lessee covenants at all times to indemnify and hold Lessors harmless from all loss, liability, cost or damage that may occur or be claimed with respect to any person or property on, in or about the Site, or to the Site itself, resulting from any act done or omission by or through Lessee, its agents, employees, invitees, or any person on the Site by reason of Lessee's use or occupancy, or

resulting from Lessee's non-use or possession of the Site, and any and all loss, cost, liability or expense resulting therefrom; and further covenants at all times to maintain the Site in a safe and careful manner.

- (i) Lessee is responsible for, and covenants to obtain, all permits and approvals which may be required for the use and occupancy of the Site and the operation of the Project. Lessors shall cooperate, to the extent necessary, in obtaining all such permits and approvals.

SECTION 8. Covenants of Lessors.

- (a) Lessors warrant that the Site is free of encumbrances or claims adversely affecting the leasehold interest created hereby, and that they will defend the Lessee in the quiet enjoyment and peaceful possession thereof, provided Lessee is not in default in the performance of its obligations hereunder.
- (b) Each of the Localities covenants and represents that it owns an undivided one-fifth interest in the Site; that it has the full power and right to execute this Lease and to perform the obligations hereunder; that other than as recorded among the land records of Prince William County, no private restrictions exist with respect to the Site or the use thereof; and that no one, exclusive of the Lessors and Lessee and their respective successors in interest, has any interest in or claim against the Site.
- (c) Lessors covenant and represent that they have no actual knowledge of any hazardous substance or solid waste existing on, under or about the Site which would give rise to any claim or suit under any Federal or State environmental law.

SECTION 9. Assignment and Sublease. This Lease may not be assigned or transferred, and the Site may not be sublet, either in whole or in part, by the Lessee without the prior written consent of the Lessors.

SECTION 10. Improvements and Alterations by Lessee. Consistent with the provisions of Sections 5(a) and 7(b), the Lessee may, at any time during the term of this Lease, construct improvements or make alterations upon all or any part of the Site provided, however, the Lessee shall pay all amounts, if any, incurred in the construction of such improvements.

SECTION 11. Ownership of Improvements. Throughout the term of this Lease, the Lessee shall have the benefit and burden of all incidents of ownership pertaining to the Site, including the buildings, structures and improvements now on, or hereafter constructed on, the Site whether or not affixed thereto. Accordingly, Lessee shall, during the term of this Lease, have the exclusive right to possession and use of the Site including the right to furnish, equip, operate and maintain the Project. Upon the termination of this Lease, the property and all improvements located on the Site and all personal property permanently affixed thereto shall become the sole property of the Lessors, free and clear of any encumbrances which did not exist

at the time of initial execution of this Lease by the parties, and the Lessee agrees to execute and deliver such documents as the Lessors may reasonably request to evidence the transfer of such property to the Lessors.

SECTION 12. Lessee Liable.

- (a) Lessors shall not be liable to the Lessee or any other person for any loss or damage suffered during the term of this Lease on account of any defective condition or depreciation of the Site arising or occurring during the term of this Lease.
- (b) All obligations and liabilities, whether on account of constructing, operating, improving, furnishing, equipping or maintaining the Project or any improvements and alterations thereon by the Lessee; claims for damages or personal injuries, arising out of such constructing, operating, improving, furnishing, equipping or maintaining of the Project or any improvements and alterations thereon by the Lessee are and shall be exclusively the obligations and liabilities of the Lessee.

SECTION 13. Insurance. Lessee will maintain in force the following insurance coverages, at its cost and expense:

- (a) Casualty Insurance. A policy or policies of insurance to keep the Site, and any improvements thereon, (referred to in this context as the "Insured Property") constantly insured against loss or damage by fire, lightning and all other risks covered by the "all-risk" and extended coverage insurance endorsements then in use in the Commonwealth of Virginia in an amount equal to the Full Insurable Value thereof (subject to a deductible of not more than \$50,000). The Full Insurable Value of the Insured Property shall be determined from time to time at the request of the Lessors by an architect, appraiser, appraisal company or one of the insurers, to be selected and paid by the Lessee. The insurance required pursuant to this Section shall be maintained at the Lessee's sole cost and expense, and shall be maintained with one or more generally recognized responsible insurance company or companies authorized to do business in the Commonwealth of Virginia as may be selected by the Lessee. Copies of the insurance policies required under this Section, or originals or certificates thereof, each bearing notations evidencing payment of the premiums or other evidence of such payment, shall, upon request, be delivered by the Lessee to the Lessors. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Lessors and the Lessee as insureds, as their respective interests may appear and shall contain a provision that such insurance may not be canceled, amended, modified or otherwise changed by the issuer thereof without at least thirty (30) days' advance written notice to the Lessors and the Lessee.

- (b) Public Liability Insurance. A policy or policies of general accident and public liability insurance (including but not limited to coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), under which the Lessors and the Lessee shall be named as insureds, properly protecting and indemnifying the Lessors and the Lessee, in an amount of not less than \$5,000,000 combined single limit injury (including death) and property damage in any one occurrence (with a deductible of not more than \$50,000). The policies of said insurance shall contain a provision that such insurance may not be canceled, amended, modified or otherwise changed by the issuer thereof without at least thirty (30) days' advance written notice to the Lessors and the Lessee. Such policies or copies or certificates thereof shall, upon request, be furnished to the Lessors.
- (c) Worker's Compensation Insurance. Any worker's compensation coverage that Lessee is required to maintain by the laws of the Commonwealth of Virginia.
- (d) Builder's Risk Insurance. In the event that Lessee undertakes to construct improvements or alterations to the Site, Lessee will obtain builder's risk coverage in the form and amount acceptable to Lessors.
- (e) Blanket Insurance Policies. The Lessee may satisfy any of the insurance requirements set forth in this Section by using blanket policies of insurance, providing all of the requirements and specifications of this Section regarding insurance are complied with.

SECTION 14. Damage, Destruction or Condemnation.

- (a) If the Site, or any of the improvements thereon, are damaged or destroyed, in whole or in part, by fire or other casualty, or taken under the exercise of the power of eminent domain or sold under the threat of the exercise of the power of eminent domain, the Lessee shall promptly notify the Lessors in writing as to the nature and extent of such damage or loss.
- (b) Upon the occurrence of any damage, destruction, taking or sale under the threat of taking as described above, the Lessee shall promptly proceed to rebuild, repair, restore or replace the Project unless (i) the Lessors fail or refuse to make the insurance, condemnation or sales proceeds resulting from such event available to the Lessee for such purpose, or (ii) either the Lessors or the Lessee elects to terminate this Lease by written notice given to the other party within sixty (60) days following the event of loss, taking or sale, such notice to be effective as of the date stated therein, not more than thirty (30) days following the date of notice.

- (c) If the Lessee determines to rebuild, repair, restore or replace the Project, and conditioned upon the availability of insurance, condemnation or sales proceeds sufficient for such purpose, the Lessee shall proceed promptly with, and complete with reasonable dispatch, and in any event within one (1) year after such damage or loss (or such longer period of time as the Lessors may permit if the rebuilding, repair, restoration or replacement has been commenced and is being diligently pursued by the Lessee), such rebuilding, repairing, restoring or replacing of the property damaged or destroyed so as to place the Project in substantially the same condition as existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair operating unity or productive capacity of the Project subject to the prior written approval of such changes, alterations and modifications by the Lessors. If the insurance, condemnation or sales proceeds have been paid to the Lessors, then such proceeds may be paid to a trustee designated by the Lessors for the purposes of administering and distributing such proceeds to assure an orderly and complete rebuilding, repair, restoration or replacement of the Project, or may be paid by the Lessors directly to the Lessee for such purpose. If, within one (1) year after the date of such damage or destruction (or such longer period as the Lessors may permit), (i) the rebuilding, repairing, restoring and replacing is completed in accordance with plans and specifications therefore approved by the Lessors; (ii) all costs thereof have been paid by the Lessee, in full, as evidenced by appropriate sworn construction cost statements and mechanics' lien waivers; and (iii) the Lessee delivers to the Lessors satisfactory evidence of completion of said rebuilding, repairing, restoring and replacing, then the Lessors, or the trustee appointed by the Lessors, shall transfer any remaining proceeds and any sums earned upon the investment thereof to the Lessee.
- (d) Notwithstanding any other provision, of this Lease, upon the occurrence of any damage, destruction, taking or sale under the threat of taking as described above, the insurance, condemnation or sales proceeds shall be utilized in accordance with any applicable HUD requirements.

SECTION 15. Amendments. This Lease may only be amended by a writing signed by the Lessors and the Lessee.

SECTION 16. Successors and Assigns. This Lease shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assigns.

SECTION 17. Notices. All notices in writing required or permitted by this Lease may be delivered in person or sent by registered mail, return receipt requested as follows:

If to Lessors:

(i) Office of the County Attorney, 12000 Government Center Parkway, Fairfax, Virginia 22035; (ii) Office of the County Attorney, One County Complex Court, Prince William, Virginia 22192; (iii) Office of the County Attorney, 1 Harrison Street, S.E., 5th Floor, Leesburg, Virginia 22177; (iv) Office of the County Attorney, 40 Culpepper Street, Warrenton, Virginia 22186; and (v) Office of the City Attorney, 301 King Street, Alexandria, Virginia 22314

If to Lessee:

Birmingham Green Adult Disability Services, Inc.
8605 Centreville Road
Manassas, Virginia 20110

SECTION 18. Waiver. The waiver of any breach of any provision of this Lease shall not constitute a waiver of any other provision or breach of this Lease.

SECTION 19. Severability. If any provision of this Lease shall be held or deemed to be, or shall in fact be, unlawful, inoperative or unenforceable under Virginia law, such provision shall be ineffective only to the extent of such prohibition, without invalidating the remaining provisions of this Lease.

SECTION 20. Entire Understanding. This Lease, including the exhibits hereto, constitutes the entire understanding of all agreements of the parties hereto with respect to the subject matters hereof. Neither the Lessors nor the Lessee has made or shall be bound by any agreement or representation to the other which is not expressly set forth herein or in the exhibits attached hereto.

SECTION 21. Governing Law. This Lease shall be governed by the law of the Commonwealth of Virginia.

SECTION 22. Counterparts. This Lease may be executed in any number of counterparts and by different parties thereto on separate counterparts, each of which when so executed and delivered, shall be deemed to be an original and all of which, taken together, shall constitute but one and the same Lease.

SECTION 23. Lessors' Liability. To the extent permitted by law and notwithstanding anything to the contrary contained in this Lease, Lessee agrees that Lessee shall look solely to the estate of Lessors in the Site for the collection of any judgment or other judicial process requiring the payment of money by Lessors for any default or breach by Lessors under this Lease.

SECTION 24. HUD Requirements. Notwithstanding any other provisions of this Lease, if and so long as this leasehold is subject to a Section 811 Mortgage held by the Secretary of Housing and Urban Development, or given to the Secretary of HUD in connection with a resale, or the demised premises are acquired and held by him because of a default under said mortgage:

(a) The Lessee is authorized to obtain a Section 811 Capital Advance from the Secretary of HUD, secured by a mortgage on this leasehold estate. Lessee is further authorized to execute a mortgage on the leasehold and otherwise to comply with the requirements of HUD for obtaining a mortgage.

(b) If approved by the Secretary of HUD, Lessee may assign, transfer or sell its interest in the demised premises.

(c) (1) Insurance policies shall be in an amount and by such companies, and in such form, and against such risks and hazards, as shall be required by the mortgagee and/or the Secretary of HUD.

(2) The Lessors shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Lessee to HUD. The Lessors may at their own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be.

(d) (1) If all or any part of the demised premises shall be taken by condemnation that portion of any award attributable to the improvements, or damage to the improvements, shall be paid to the mortgagee or otherwise disposed of as may be provided in the mortgage. Any portion of the award attributable solely to the taking of the land shall be paid to the Lessors. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to the Lessors bears to the total value of the land as established by the amount the Secretary of Housing and Urban Development would be required to pay upon acquisition of the fee.

(2) In the event of a negotiated sale of all or any portion of the demised premises in lieu of condemnation, the proceeds shall be distributed and ground rents reduced as provided in cases of condemnation, but the approval of the Secretary of HUD shall be required as to the amount and division of the payment to be received.

(e) Nothing in this Lease contained shall require the Lessee to pay any franchise, estate, inheritance, succession, capital levy or transfer tax, or any other tax, assessment, charge or levy upon the rent payable by the Lessors under this lease.

(f) Upon any default under this Lease which authorizes the cancellation thereof by the Lessors, Lessors shall give notice to the Secretary of HUD, and the Secretary of HUD, his successors and assigns, shall have the right any time within six (6) months from the date of such notice to correct the default and reinstate the Lease unless Lessors have first terminated the Lease as provided herein.

At any time after two (2) months from the date a notice of default is given to the Secretary of HUD, the Lessors may elect to terminate the Lease and acquire possession of the demised premises. Upon acquiring possession of the demised premises, Lessors shall notify the Secretary. The Secretary shall have six (6) months from the date of such notice of acquisition to elect to take a new Lease on the demised premises. Such new Lease shall have a term equal to the unexpired portion of the term of this Lease and shall be on the same terms and conditions as

contained in this Lease, except that the Secretary's liability for ground rent shall not extend beyond his occupancy under such lease. The Lessors shall tender such new Lease to the Secretary within thirty (30) days after a request for such Lease and shall deliver possession of the demised premises immediately upon execution of the new lease. Upon executing a new lease, the Secretary shall pay to Lessors any unpaid ground rentals due or that would have become due under this Lease to the date of execution of the new lease, including any taxes which were liens on demised premises and which were paid by Lessors, less any net rentals or other income which Lessors may have received on account of this property since the date of default under this Lease.

(g) All notices, demands and requests which are required to be given by the Lessors or the Lessee to the Secretary shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to:

U.S. Department of Housing and Urban Development
Virginia State Office
600 East Broad Street, 3rd Floor
Richmond, VA 23219

unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.

(h) This Lease shall not be modified without the consent of the Secretary of the Department of Housing and Urban Development.

SECTION 25. Former Lease. This Lease replaces and supercedes the June 1, 2002 Lease by and between the Localities and BGACR.

SECTION 26. Effective date. The effective date of this Lease is June 1, 2002.

IN WITNESS WHEREOF, the Localities, as the Lessors, and Birmingham Green Adult Disability Services, Inc., as Lessee, have caused this Lease to be executed in their respective name and their corporate seals to be hereunto affixed and attested by their respective duly authorized officer, all as of the date first above written.

BIRMINGHAM GREEN
ADULT DISABILITY SERVICES, INC.,
a Virginia nonstock corporation

By _____
Chief Operating Officer

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

City/County of _____)
State of Virginia) ss:

Subscribed and sworn to before me by _____ this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

Attest:

THE COUNTY OF FAIRFAX

Authorized Officer

By _____
Title:

City/County of _____)
State of Virginia) ss:

Subscribed and sworn to before me by _____ this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

Attest:

THE COUNTY OF FAUQUIER

By _____
Authorized Officer

By _____
Title:

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

City/County of _____)
State of Virginia) ss:

Subscribed and sworn to before me by _____ this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

Attest:

THE COUNTY OF LOUDOUN

By _____
Authorized Officer

By _____
Title:

City/County of _____)
State of Virginia) ss:

Subscribed and sworn to before me by _____ this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

Attest:

THE CITY OF ALEXANDRIA

By _____
Authorized Officer

By _____
Title:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

City/County of _____)
State of Virginia _____) ss:

Subscribed and sworn to before me by _____ this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

Attest:

THE COUNTY OF PRINCE WILLIAM

By _____
Authorized Officer

By _____
Title:

BIRMINGHAM GREEN
ADULT CARE RESIDENCE,
A Virginia nonstock corporation

By _____
Chief Operating Officer

City/County of _____)
State of Virginia _____) ss:

Subscribed and sworn to before me by _____ this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

RESOLUTION NO. 2154

WHEREAS, the City of Alexandria, together with the Counties of Fairfax, Fauquier, Loudoun and Prince William (the "Localities") own, as tenants in common, 54 acres of land in Prince William County, Virginia (the "Property"); and

WHEREAS, two living facilities for the elderly have been developed on 12 acres of the Property and the remaining 42 acres are undeveloped; and

WHEREAS, the first facility is a 64-bed assisted living facility that was developed initially in the 1920s and expanded in the mid-1950s. This facility was originally built as a District Home and was operated by the District Home Board until recently, when the District Home Board established Birmingham Green Adult Care Residence ("BGACR"), a private, nonprofit corporation to operate the facility; and

WHEREAS, the second facility is a 180-bed nursing home that was built in 1990 and is operated by the Northern Virginia Health Center Commission ("NVHCC"). In 1990, the Localities entered into a lease agreement with NVHCC for the property on which the nursing home was developed; and

WHEREAS, the Localities and BGACR have determined that the BGACR assisted living facility can not be renovated to bring it up to current standards and therefore, it can not continue to accommodate the needs of the Localities and must be replaced; and

WHEREAS, the most feasible source of grant funds for the replacement and renovation of the BGACR assisted living facility was through the United States Department of Housing and Urban Development ("HUD"); and

WHEREAS, in 2002, BGACR applied for funding from HUD under two separate grant programs, Sections 202 and 811, which will provide capital and operating costs associated with replacing and expanding the assisted living facility; and

WHEREAS, under its Section 202 supportive housing for the elderly program, HUD provides funding for both construction and operating assistance, which does not require that the Localities match the funds. Housing developed under HUD's Section 202 program is restricted to very low-income elderly persons. HUD's Section 811 program provides similar funding for housing for very low-income disabled individuals; and

WHEREAS, on May 14, 2002, the City Council adopted Resolution No. 2027, by which City Council approved the leases for the construction of new facilities to replace the District Home and to support an application to HUD for funds to construct the new facilities; and

WHEREAS, in October 2004, HUD has awarded a grant in the amount of \$5,610,300 for the construction of the facility for the elderly under Section 202 and has awarded a grant in the amount of \$1,236,700 for the construction of the new facility for the disabled under the Section 811 program; and

WHEREAS, the Localities have agreed to amend the existing leases to;

- 1) substitute as lessees the two new entries that have been created to operate the new facilities under the supervision of the District Home Board, and make other clarifying amendments to the leases approved in 2002, all of which are attached; and;

- 2) reduce the leased premises to the acreage required for construction, and;

WHEREAS, the City must hold a public hearing, under the provisions of §15.2-1800 of the Code of Virginia (1950) as amended, prior to amending the leases for property owned by the City;

WHEREAS, the City of Alexandria has held a public hearing and the City Council has determined that the construction, operation and maintenance of supportive housing projects for very low income persons on the Property constitutes a public use and that the proposed amendments to the lease should be approved;

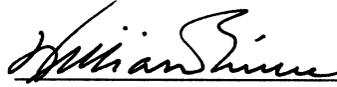
**NOW, THEREFORE, BE IT RESOLVED BY THE
CITY COUNCIL OF THE CITY OF ALEXANDRIA, VIRGINIA**

1. That the City Council approve the terms of the amended leases of which are attached hereto as Exhibits A and B, respectively.

2. That the city manager is authorized to execute the amended leases on behalf of the City of Alexandria and to undertake any further action on behalf of the City of Alexandria, including the execution of additional documents, that may be necessary or desirable to implement the approvals provided in this resolution.

3. That this resolution shall be effective upon its adoption.

ADOPTED: June 14, 2005



WILLIAM D. EULLE MAYOR

ATTEST:



Jacqueline M. Henderson, CMC City Clerk