

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

19
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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 is through the United States Department of Housing and Urban Development ("HUD"); and

WHEREAS, BGACR intends to apply 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, BGACR must be able to demonstrate site control in order to apply to HUD for Sections 202 and 811 grant funding; and

WHEREAS, the two attached leases give BGACR sufficient site control to apply for HUD grants for the two new replacement supportive housing projects; and

WHEREAS, the two proposed leases cover respectively, Parcel B of the Property which contains 5.8 acres and which will be developed with 20 to 25 units for persons with disabilities under the HUD Section 811 grant program and Parcel C which contains 6.5 acres which will be developed in two phases for assisted living units for the elderly. Phase 1 on Parcel C will be developed with 60 to 80 assisted living units and Phase II development on Parcel C is anticipated to be 40 to 60 assisted living units for the elderly; and

WHEREAS, the two proposed leases restrict the use of the site to supportive housing programs throughout the 80 year lease term; and

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;

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 Leases for Parcel B and Parcel C of the Property, copies of which are attached hereto as Exhibits A and B, respectively.
2. That the city manager is authorized to execute the 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 is necessary or desirable to implement the approvals provided in this resolution.
3. That this resolution shall be effective upon its adoption.

ADOPTED: _____

KERRY J. DONLEY MAYOR

ATTEST:

Beverly I. Jett, CMC City Clerk

LEASE

THIS LEASE is made this _____ day of _____, 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 Care Residence, as the Lessee.

WITNESSETH :

WHEREAS, Lessee is a Virginia nonstock corporation that was formed for charitable, scientific and educational purposes including the establishment, maintenance and operation of long-term care programs which are primarily for the benefit and welfare of low-income persons; and

WHEREAS, Lessee is the operator of an Adult Care Residence (ACR), an assisted living facility located on land owned by Lessors that provides housing for low-income persons; and

WHEREAS, Lessee has determined that the ACR needs to be replaced; and

WHEREAS, Lessee intends to apply for funding from the U.S. Department of Housing and Urban Development (HUD) under HUD's Section 202 program to provide the capital for replacing the ACR by building two new 'supportive housing for the elderly' projects; and

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 Lessee's construction, furnishment, equipment, operation and maintenance of two new 'supportive housing for the elderly' projects on the Land constitutes a public use; and

WHEREAS, Lessee desires to lease from Lessors a sufficient amount of the undeveloped portion of the Land for the purpose of building, furnishing, equipping, operating and maintaining two new 'supportive housing for the elderly' projects, and Lessors desire to lease such land to Lessee.

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. Lessors lease to Lessee and Lessee leases from Lessors that portion of the Land which is more particularly described as Parcel C on Exhibit A (the "Site"), together with and subject to all rights of ingress and egress over and across the Land that are a matter of record. Exhibit A is attached hereto and 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 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 shall be entitled to build two new 'supportive housing for the elderly' projects in two phases. Phase I shall consist of between 60 and 80 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 Lessee's application for funding under HUD's Section 202 program. 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 also begin

within a reasonable time after HUD has approved Lessee's second application for Section 202 funding.

- (b) Lessee shall file an application for the funding of Phase I in 2002 and an application for Phase II funding at the next opportunity after Lessee's Phase I funding application has been approved.
- (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 projects, to residents of the Localities.
- (b) Lessee will not make any capital improvements to the 'supportive housing for the elderly' projects 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 projects 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' projects 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' projects. 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 individually to each of the entities that will be the developers of each 'supportive housing for the elderly' project that is built on the Site. Any such entity shall be eligible, as specified in HUD's regulations or other requirements applicable to the Section 202 program, to be the developer of a 'supportive housing for the elderly' project.

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' projects 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' projects 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 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' projects 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' projects 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' projects 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' projects 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' projects, 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 Lessee does not obtain approval from HUD for the funding of either of the 'supportive housing for the elderly' projects discussed herein within five years from the effective date of this Lease, this Lease shall be void. If Lessee only obtains approval for the funding of one such project, 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 all parties hereto.

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 Adult Care Residence
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 law 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. Lease Addendum. The parties acknowledge that if Lessee's application to HUD, as discussed in Section 5, is approved, HUD will require that certain provisions be included as part of this Lease through the execution of an addendum. The parties shall, after Lessee's application is approved, execute the lease addendum required by HUD as long as there are no substantive changes to the lease addendum that is currently required by HUD, a copy of which is attached as Exhibit B, and HUD agrees to waive the requirement, as contained in paragraph 2 of Exhibit B, that HUD possibly be allowed to purchase the fee title underlying the leasehold estate. If HUD is unwilling to waive the forced sale requirement, or if there are any substantive changes to the lease addendum currently required by HUD, the parties will, to ensure the continued viability of the project, negotiate in good faith to devise a solution that will enable the parties to execute the addendum required by HUD and also to satisfy the concerns of the Localities with respect to possibly being required to sell the fee title in the leased premises to HUD.

IN WITNESS WHEREOF, the Localities, as the Lessors, and Birmingham Green Adult Care Residence, 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 CARE RESIDENCE,
a Virginia nonstock corporation

(SEAL)

By _____
Chief Operating Officer

ATTEST:

THE COUNTY OF FAIRFAX

Authorized Officer

By _____
Title:

ATTEST:

THE COUNTY OF FAUQUIER

By _____
Authorized Officer

By _____
Title:

ATTEST:

THE COUNTY OF LOUDOUN

By _____
Authorized Officer

By _____
Title:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ATTEST:

THE CITY OF ALEXANDRIA

By _____
Authorized Officer

By _____
Title:

ATTEST:

THE COUNTY OF PRINCE WILLIAM

By _____
Authorized Officer

By _____
Title:

LEASE

THIS LEASE is made this _____ day of _____, 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 Care Residence, as the Lessee.

WITNESSETH :

WHEREAS, Lessee is a Virginia nonstock corporation that was formed for charitable, scientific and educational purposes including the establishment, maintenance and operation of long-term care programs which are primarily for the benefit and welfare of low-income persons; and

WHEREAS, Lessee intends to apply for funding from the U.S. Department of Housing and Urban Development (HUD) under HUD's Section 811 program to provide the capital for the construction of a supportive housing project for very low-income persons with disabilities; and

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 Lessee's construction, furnishment, equipment, operation and maintenance of a supportive housing project for very low-income persons with disabilities on the Land constitutes a public use; and

WHEREAS, Lessee desires to lease from Lessors a sufficient amount of the undeveloped portion of the Land for the purpose of building, furnishing, equipping, operating and maintaining a supportive housing project for very low-income persons with disabilities, and Lessors desire to lease such land to Lessee.

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. Lessors lease to Lessee and Lessee leases from Lessors that portion of the Land which is more particularly described as Parcel B on Exhibit A (the "Site"), together with and subject to all rights of ingress and egress over and across the Land that are a matter of record. Exhibit A is attached hereto and 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 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 (the "Project"). The Project shall consist of between 20 and 25 units, or a lesser number consistent with the amount of funding approved by HUD.
- (b) Lessee shall file an application for the funding of the Project in 2002. If Lessee's application is not approved, Lessee shall be entitled, consistent with Section 15, to submit another application to HUD. Construction shall begin within a reasonable time after Lessee's application is approved.
- (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 except that Lessee may assign all, or part, of its interest in this Lease to the entity that will be the developer of the supportive housing project for very low-income persons with disabilities that is built on the Site. Any such entity shall be eligible, as specified in HUD's regulations or other requirements applicable to the Section 811 program, to be the developer of a supportive housing project for very low-income persons with disabilities.

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 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. HUD Approval. If Lessee does not obtain approval from HUD for the funding of the supportive housing project for very low-income persons with disabilities discussed herein within five years from the effective date of this Lease, this Lease shall be void.

SECTION 16. Amendments. This Lease may only be amended by a writing signed by all parties hereto.

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 Adult Care Residence
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 law 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. Lease Addendum. The parties acknowledge that if Lessee's application to HUD, as discussed in Section 5, is approved, HUD will require that certain provisions be included as part of this Lease through the execution of an addendum. The parties shall, after Lessee's application is approved, execute the lease addendum required by HUD as long as there are no substantive changes to the lease addendum that is currently required by HUD, a copy of which is attached as Exhibit B, and HUD agrees to waive the requirement, as contained in paragraph 2 of Exhibit B, that HUD possibly be allowed to purchase the fee title underlying the leasehold estate. If HUD is unwilling to waive the forced sale requirement, or if there are any substantive changes to the lease addendum currently required by HUD, the parties will, to ensure the continued viability of the project, negotiate in good faith to devise a solution that will enable the parties to execute the addendum required by HUD and also to satisfy the concerns of the Localities with respect to possibly being required to sell the fee title in the leased premises to HUD.

IN WITNESS WHEREOF, the Localities, as the Lessors, and Birmingham Green Adult Care Residence, 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 CARE RESIDENCE,
a Virginia nonstock corporation

By _____
Chief Operating Officer

(SEAL)

ATTEST:

THE COUNTY OF FAIRFAX

Authorized Officer

By _____
Title:

ATTEST:

THE COUNTY OF FAUQUIER

By _____
Authorized Officer

By _____
Title:

ATTEST:

THE COUNTY OF LOUDOUN

By _____
Authorized Officer

By _____
Title:

ATTEST:

THE CITY OF ALEXANDRIA

By _____
Authorized Officer

By _____
Title:

ATTEST:

THE COUNTY OF PRINCE WILLIAM

By _____
Authorized Officer

By _____
Title:

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 project 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 project 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 capital funding for the replacement and renovation of the BGACR assisted living facility is through the United States Department of Housing and Urban Development (“HUD”); and

WHEREAS, BGACR intends to apply for funding from HUD under two separate 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 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, BGACR must demonstrate site control to HUD in the form of the two attached leases in order to apply for funding for the two new replacement supportive housing projects; and

WHEREAS, the two proposed leases cover respectively, Parcel B of the Property which contains 5.8 acres and which will be developed with 20 to 25 units for persons with disabilities

under the HUD Section 811 grant program and Parcel C which contains 6.5 acres which will be developed in two phases for assisted living units for the elderly. Phase 1 on Parcel C will be developed with 60 to 80 assisted living units and Phase II development on Parcel C is anticipated to be 40 to 60 assisted living units for the elderly; and

WHEREAS, the two proposed leases restrict the use of the site to supportive housing programs throughout the 80 year lease term; and

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;

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

1. That the city council approves the terms of the Leases for Parcel B and Parcel C of the Property, copies of which are attached hereto as Exhibits A and B, respectively.
2. That the city manager is authorized to execute the 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 is necessary or desirable to implement the approvals provided in this resolution.
3. That this resolution shall be effective upon its adoption.

Adopted: _____

KERRY J. DONLEY MAYOR

The Honorable Mel Martinez, Secretary
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Dear Mr. Secretary:

On behalf of the City Council of Alexandria, Virginia, I would like to convey our strong support for the application of Birmingham Green Adult Care Residence, Inc. for funds from the Section 202 and 811 programs. The money requested would go to replace the existing 60-bed residence in Prince William County, Virginia.

Birmingham Green currently serves very low-income, predominantly elderly, mentally disabled persons from several jurisdictions in Northern Virginia, including the City of Alexandria. The building is more than 75 years old and has never been fully renovated. Its basic systems are obsolete, residents' rooms house two or more people, and the physical additions to the home over the years have rendered it seriously inefficient. Access through the building and into a variety of its spaces is also a challenge for a number of residents with physical disabilities. Birmingham Green, supported by the Prince William County Department of Public Works, has concluded that the building cannot reasonably be renovated to bring it to current standards. Renovation according to the department is not economically feasible.

Replacing the existing building with a new one that could double the number of people served at Birmingham Green would address the growing need for community-based care in Northern Virginia for many elderly people and persons with disabilities who need the kind of environment that the new project could provide. Without the proposed replacement, many needy individuals will have to be placed in facilities far away from their home communities and their friends and relatives, or else go without adequate services, which would place these persons at serious risk.

As a regional facility, the proposed replacement project would play an important role in the efforts of Northern Virginia communities to help ensure a healthier, safer, more comfortable and dignified environment for persons with no other suitable living arrangements available to them.

I urge you to support these proposals. Thank you for your serious consideration of this application.

Sincerely,

Kerry J. Donley, Mayor

LEASE

THIS LEASE is made this ____ day of _____, 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 Care Residence, as the Lessee.

WITNESSETH:

WHEREAS, Lessee is a Virginia nonstock corporation that was formed for charitable, scientific and educational purposes including the establishment, maintenance and operation of long-term care programs which are primarily for the benefit and welfare of low-income persons; and

WHEREAS, Lessee is the operator of an Adult Care Residence (ACR), an assisted living facility located on land owned by Lessors that provides housing for low-income persons; and

WHEREAS, Lessee has determined that the ACR needs to be replaced; and

WHEREAS, Lessee intends to apply for funding from the U.S. Department of Housing and Urban Development (HUD) under HUD's Section 202 program to provide the capital for replacing the ACR by building two new 'supportive housing for the elderly' projects; and

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 Lessee's construction, furnishment, equipment, operation and maintenance of two new 'supportive housing for the elderly' projects on the Land constitutes a public use; and

WHEREAS, Lessee desires to lease from Lessors a sufficient amount of the undeveloped portion of the Land for the purpose of building, furnishing, equipping, operating and maintaining two new 'supportive housing for the elderly' projects, and Lessors desire to lease such land to Lessee.

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. Lessors lease to Lessee and Lessee leases from Lessors that portion of the Land which is more particularly described as Parcel C on Exhibit A (the "Site"), together with and subject to all rights of ingress and egress over and across the Land that are a matter of record. Exhibit A is attached hereto and 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 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 shall be entitled to build two new 'supportive housing for the elderly' projects in two phases. Phase I shall consist of between 60 and 80 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 Lessee's application for funding under HUD's Section 202 program. 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 also begin within

a reasonable time after HUD has approved Lessee's second application for Section 202 funding.

- (b) Lessee shall file an application for the funding of Phase I in 2002 and an application for Phase II funding at the next opportunity after Lessee's Phase I funding application has been approved.
- (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 projects, to residents of the Localities.
- (b) Lessee will not make any capital improvements to the 'supportive housing for the elderly' projects 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 projects 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' projects 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' projects. 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 individually to each of the entities that will be the developers of each 'supportive housing for the elderly' project that is built on the Site. Any such entity shall be eligible, as specified in HUD's regulations or other requirements applicable to the Section 202 program, to be the developer of a 'supportive housing for the elderly' project.

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' projects 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' projects 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 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' projects 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' projects 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' projects 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' projects 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' projects, 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 Lessee does not obtain approval from HUD for the funding of either of the 'supportive housing for the elderly' projects discussed herein within five years from the effective date of this Lease, this Lease shall be void. If Lessee only obtains approval for the funding of one such project, 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 all parties hereto.

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 Adult Care Residence
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 law 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. Lease Addendum. If Lessee's application to HUD, as discussed in Section 5, is approved, the parties shall execute an addendum to this Lease. Such addendum shall be in the form prescribed, and include the provisions required, by HUD. A sample of the type of lease addendum currently required by HUD is attached as Exhibit B. The parties acknowledge that the provisions of said addendum are subject to change between the date this Lease is executed and the date the parties execute a lease addendum in accordance with this section.

IN WITNESS WHEREOF, the Localities, as the Lessors, and Birmingham Green Adult Care Residence, 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 CARE RESIDENCE,
a Virginia nonstock corporation

(SEAL)

By _____
Chief Operating Officer

Attest:

THE COUNTY OF FAIRFAX

Authorized Officer

By _____
Title:

Attest:

THE COUNTY OF FAUQUIER

By _____
Authorized Officer

By _____
Title:

Attest:

THE COUNTY OF LOUDOUN

By _____
Authorized Officer

By _____
Title:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Attest:

THE CITY OF ALEXANDRIA

By _____
Authorized Officer

By _____
Title:

LEASE

THIS LEASE is made this ____ day of _____, 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 Care Residence, as the Lessee.

WITNESSETH:

WHEREAS, Lessee is a Virginia nonstock corporation that was formed for charitable, scientific and educational purposes including the establishment, maintenance and operation of long-term care programs which are primarily for the benefit and welfare of low-income persons; and

WHEREAS, Lessee intends to apply for funding from the U.S. Department of Housing and Urban Development (HUD) under HUD's Section 811 program to provide the capital for the construction of a supportive housing project for very low-income persons with disabilities; and

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 Lessee's construction, furnishment, equipment, operation and maintenance of a supportive housing project for very low-income persons with disabilities on the Land constitutes a public use; and

WHEREAS, Lessee desires to lease from Lessors a sufficient amount of the undeveloped portion of the Land for the purpose of building, furnishing, equipping, operating and maintaining a supportive housing project for very low-income persons with disabilities, and Lessors desire to lease such land to Lessee.

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. Lessors lease to Lessee and Lessee leases from Lessors that portion of the Land which is more particularly described as Parcel B on Exhibit A (the "Site"), together with and subject to all rights of ingress and egress over and across the Land that are a matter of record. Exhibit A is attached hereto and 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 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 (the "Project"). The Project shall consist of between 20 and 25 units, or a lesser number consistent with the amount of funding approved by HUD.
- (b) Lessee shall file an application for the funding of the Project in 2002. If Lessee's application is not approved, Lessee shall be entitled, consistent with Section 15, to submit another application to HUD. Construction shall begin within a reasonable time after Lessee's application is approved.
- (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 except that Lessee may assign all, or part, of its interest in this Lease to the entity that will be the developer of the supportive housing project for very low-income persons with disabilities that is built on the Site. Any such entity shall be eligible, as specified in HUD's regulations or other requirements applicable to the Section 811 program, to be the developer of a supportive housing project for very low-income persons with disabilities.

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 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. HUD Approval. If Lessee does not obtain approval from HUD for the funding of the supportive housing project for very low-income persons with disabilities discussed herein within five years from the effective date of this Lease, this Lease shall be void.

SECTION 16. Amendments. This Lease may only be amended by a writing signed by all parties hereto.

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 Adult Care Residence
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 law 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. Lease Addendum. If Lessee's application to HUD, as discussed in Section 5, is approved, the parties shall execute an addendum to this Lease. Such addendum shall be in the form prescribed, and include the provisions required, by HUD. A sample of the type of lease addendum currently required by HUD is attached as Exhibit B. The parties acknowledge that the provisions of said addendum are subject to change between the date this Lease is executed and the date the parties execute a lease addendum in accordance with this section.

IN WITNESS WHEREOF, the Localities, as the Lessors, and Birmingham Green Adult Care Residence, 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 CARE RESIDENCE,
a Virginia nonstock corporation

By _____
Chief Operating Officer

(SEAL)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Attest:

THE COUNTY OF FAIRFAX

Authorized Officer

By _____
Title:

Attest:

THE COUNTY OF FAUQUIER

By _____
Authorized Officer

By _____
Title:

Attest:

THE COUNTY OF LOUDOUN

By _____
Authorized Officer

By _____
Title:

Attest:

THE CITY OF ALEXANDRIA

By _____
Authorized Officer

By _____
Title:

*City of Alexandria, Virginia***MEMORANDUM**

DATE: MARCH 15, 2002

TO: NORTHERN VIRGINIA CHIEF ADMINISTRATIVE OFFICERS

FROM: BIRMINGHAM GREEN WORKING GROUP

SUBJECT: FUNDING OPTION RECOMMENDATION FOR THE BIRMINGHAM GREEN LONG-TERM CARE FACILITY

The Birmingham Green Working Group, composed of representatives from the five Birmingham Green member jurisdictions, endorses the effort to obtain funding for the replacement of the Long-term care facility through application for HUD 202 (facilities for the elderly) and HUD 811 (facilities for disabled adults) grant funding. This endorsement is based on analyses conducted by the Working Group at the request of Prince William County.

Background

At the request of the Deputy County Administrator for Prince William County, each of the Birmingham Green member jurisdictions provided a representative to the Birmingham Green Working Group to review funding options for the replacement of the Birmingham Green Long Term Care Facility. Specifically, the Group was asked to review the report prepared by ZA Consultants in August, 2001 regarding the replacement of the facility. That report had suggested two possible methods for funding the facility replacement and had developed both construction and maintenance costs for the proposed new facility.

The funding options recommended by ZA Consulting were:

- Replace the 64-bed facility with a 120-bed facility using the HUD 202 grant program and, if available, tax credits.
- Finance the facility replacement through the rezoning and sale or lease of the portion of the Birmingham Green property considered to be in excess of the needs of the facility.

A third funding option was suggested by Prince William County:

- Replace the 64-bed facility with another 64-bed facility using tax credits and local funds.

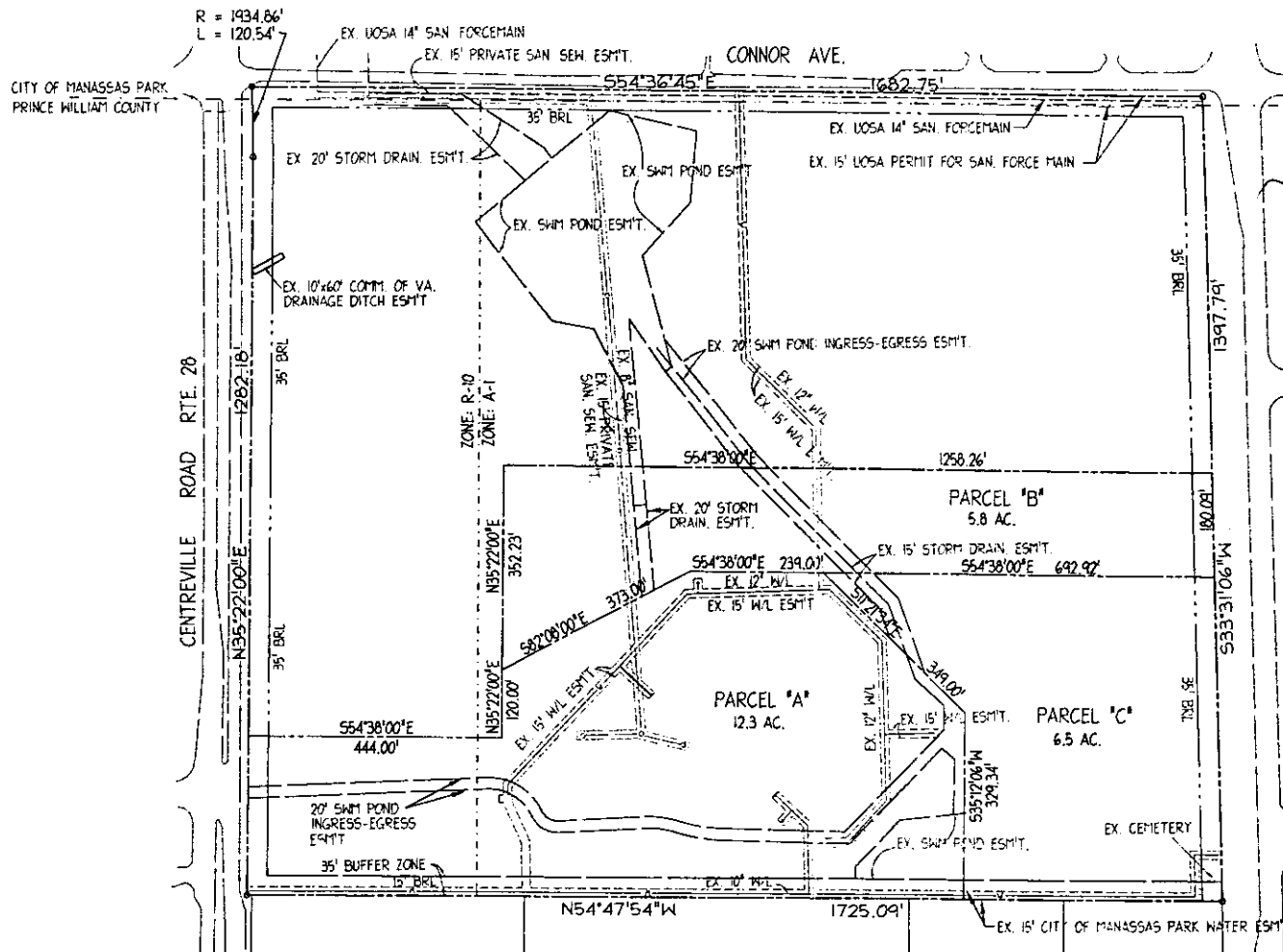
An additional grant option, the HUD 811 grant program for construction of residential facilities for disabled adults, was included as part of the funding analysis.

The Working Group researched each of the proposed funding options and reviewed the assumptions regarding construction and maintenance costs contained in the consultant's report. The outcome of the analysis is the following set of recommendations:

- That Birmingham Green Adult Care Residences, Inc. , the private, non-profit entity which manages the Birmingham Green facilities, pursue the application process to obtain funding from both the HUD 202 program and the HUD 811 program.
- That other funding options including development of a portion of the Birmingham Green property and/or any debt financing alternatives not be pursued until all grant application alternatives have been exhausted.

The members of the Birmingham Green Working Group appreciate the opportunity to assist with the replacement of the Birmingham Green facility. We would be pleased to provide further assistance as this much-needed project continues.

cc: Wayne Kurtz, Executive Director
Birmingham Green



SCALE: 1" = 200'
MARCH 11, 2002

PARCEL EXHIBIT
BIRMINGHAM GREEN

Brentsville Magisterial District
Prince William County, Virginia

Dewberry & Davis LLC
A Dewberry Company

10525 Battlevue Parkway
Manassas, VA 20109
(703) 831-3430 Fax (703) 831-3834

31

RESOLUTION NO. 2027

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 cannot be renovated to bring it up to current standards and, therefore, it cannot 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 is through the United States Department of Housing and Urban Development ("HUD"); and

WHEREAS, BGACR intends to apply 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, BGACR must be able to demonstrate site control in order to apply to HUD for Sections 202 and 811 grant funding; and

WHEREAS, the two attached leases give BGACR sufficient site control to apply for HUD grants for the two new replacement supportive housing projects; and

WHEREAS, the two proposed leases cover respectively, Parcel B of the Property which contains 5.8 acres and which will be developed with 20 to 25 units for persons with disabilities under the HUD Section 811 grant program and Parcel C which contains 6.5 acres which will be developed in two phases for assisted living units for the elderly. Phase I on Parcel C will be developed with 60 to 80 assisted living units and Phase II development on Parcel C is anticipated to be 40 to 60 assisted living units for the elderly; and

WHEREAS, the two proposed leases restrict the use of the site to supportive housing programs throughout the 80-year lease term; and

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;

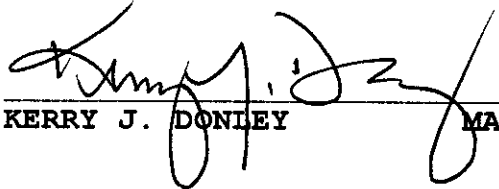
**NOW, THEREFORE, BE IT RESOLVED BY THE
CITY COUNCIL OF THE CITY OF ALEXANDRIA, VIRGINIA:**

1. That the city council approve the terms of the Leases for Parcel B and Parcel C of the Property, copies of which are attached hereto as Exhibits A and B, respectively.

2. That the city manager is authorized to execute the 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 is necessary or desirable to implement the approvals provided in this resolution.

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

ADOPTED: May 14, 2002


KERRY J. DONLEY MAYOR

ATTEST:


Beverly I. Jett, CMC City Clerk

LEASE

THIS LEASE is made this _____ day of _____, 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 Care Residence, as the Lessee.

WITNESSETH:

WHEREAS, Lessee is a Virginia nonstock corporation that was formed for charitable, scientific and educational purposes including the establishment, maintenance and operation of long-term care programs which are primarily for the benefit and welfare of low-income persons; and

WHEREAS, Lessee is the operator of an Adult Care Residence (ACR), an assisted living facility located on land owned by Lessors that provides housing for low-income persons; and

WHEREAS, Lessee has determined that the ACR needs to be replaced; and

WHEREAS, Lessee intends to apply for funding from the U.S. Department of Housing and Urban Development (HUD) under HUD's Section 202 program to provide the capital for replacing the ACR by building two new 'supportive housing for the elderly' projects; and

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 Lessee's construction, furnishment, equipment, operation and maintenance of two new 'supportive housing for the elderly' projects on the Land constitutes a public use; and

WHEREAS, Lessee desires to lease from Lessors a sufficient amount of the undeveloped portion of the Land for the purpose of building, furnishing, equipping, operating and maintaining two new 'supportive housing for the elderly' projects, and Lessors desire to lease such land to Lessee.

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:

EXHIBIT A

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. Lessors lease to Lessee and Lessee leases from Lessors that portion of the Land which is more particularly described as Parcel C on Exhibit A (the "Site"), together with and subject to all rights of ingress and egress over and across the Land that are a matter of record. Exhibit A is attached hereto and 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 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 shall be entitled to build two new 'supportive housing for the elderly' projects in two phases. Phase I shall consist of between 60 and 80 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 Lessee's application for funding under HUD's Section 202 program. 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 also begin

within a reasonable time after HUD has approved Lessee's second application for Section 202 funding.

- (b) Lessee shall file an application for the funding of Phase I in 2002 and an application for Phase II funding at the next opportunity after Lessee's Phase I funding application has been approved.
- (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 projects, to residents of the Localities.
- (b) Lessee will not make any capital improvements to the 'supportive housing for the elderly' projects 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 projects 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' projects 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' projects. 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 individually to each of the entities that will be the developers of each 'supportive housing for the elderly' project that is built on the Site. Any such entity shall be eligible, as specified in HUD's regulations or other requirements applicable to the Section 202 program, to be the developer of a 'supportive housing for the elderly' project.

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' projects 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' projects 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 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' projects 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' projects 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' projects 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' projects 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' projects, 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 Lessee does not obtain approval from HUD for the funding of either of the 'supportive housing for the elderly' projects discussed herein within five years from the effective date of this Lease, this Lease shall be void. If Lessee only obtains approval for the funding of one such project, 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 all parties hereto.

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 Adult Care Residence
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 law 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. Lease Addendum. The parties acknowledge that if Lessee's application to HUD, as discussed in Section 5, is approved, HUD will require that certain provisions be included as part of this Lease through the execution of an addendum. The parties shall, after Lessee's application is approved, execute the lease addendum required by HUD as long as there are no substantive changes to the lease addendum that is currently required by HUD, a copy of which is attached as Exhibit B, and HUD agrees to waive the requirement, as contained in paragraph 2 of Exhibit B, that HUD possibly be allowed to purchase the fee title underlying the leasehold estate. If HUD is unwilling to waive the forced sale requirement, or if there are any substantive changes to the lease addendum currently required by HUD, the parties will, to ensure the continued viability of the project, negotiate in good faith to devise a solution that will enable the parties to execute the addendum required by HUD and also to satisfy the concerns of the Localities with respect to possibly being required to sell the fee title in the leased premises to HUD.

IN WITNESS WHEREOF, the Localities, as the Lessors, and Birmingham Green Adult Care Residence, 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 CARE RESIDENCE,
a Virginia nonstock corporation

(SEAL)

By _____
Chief Operating Officer

ATTEST:

THE COUNTY OF FAIRFAX

Authorized Officer

By _____
Title:

ATTEST:

THE COUNTY OF FAUQUIER

By _____
Authorized Officer

By _____
Title:

ATTEST:

THE COUNTY OF LOUDOUN

By _____
Authorized Officer

By _____
Title:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ATTEST:

THE CITY OF ALEXANDRIA

By _____
Authorized Officer

By _____
Title:

ATTEST:

THE COUNTY OF PRINCE WILLIAM

By _____
Authorized Officer

By _____
Title:

LEASE

THIS LEASE is made this _____ day of _____, 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 Care Residence, as the Lessee.

WITNESSETH:

WHEREAS, Lessee is a Virginia nonstock corporation that was formed for charitable, scientific and educational purposes including the establishment, maintenance and operation of long-term care programs which are primarily for the benefit and welfare of low-income persons; and

WHEREAS, Lessee intends to apply for funding from the U.S. Department of Housing and Urban Development (HUD) under HUD's Section 811 program to provide the capital for the construction of a supportive housing project for very low-income persons with disabilities; and

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 Lessee's construction, furnishment, equipment, operation and maintenance of a supportive housing project for very low-income persons with disabilities on the Land constitutes a public use; and

WHEREAS, Lessee desires to lease from Lessors a sufficient amount of the undeveloped portion of the Land for the purpose of building, furnishing, equipping, operating and maintaining a supportive housing project for very low-income persons with disabilities, and Lessors desire to lease such land to Lessee.

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.

EXHIBIT B

- (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. Lessors lease to Lessee and Lessee leases from Lessors that portion of the Land which is more particularly described as Parcel B on Exhibit A (the "Site"), together with and subject to all rights of ingress and egress over and across the Land that are a matter of record. Exhibit A is attached hereto and 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 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 (the "Project). The Project shall consist of between 20 and 25 units, or a lesser number consistent with the amount of funding approved by HUD.
- (b) Lessee shall file an application for the funding of the Project in 2002. If Lessee's application is not approved, Lessee shall be entitled, consistent with Section 15, to submit another application to HUD. Construction shall begin within a reasonable time after Lessee's application is approved.
- (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 except that Lessee may assign all, or part, of its interest in this Lease to the entity that will be the developer of the supportive housing project for very low-income persons with disabilities that is built on the Site. Any such entity shall be eligible, as specified in HUD's regulations or other requirements applicable to the Section 811 program, to be the developer of a supportive housing project for very low-income persons with disabilities.

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 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. HUD Approval. If Lessee does not obtain approval from HUD for the funding of the supportive housing project for very low-income persons with disabilities discussed herein within five years from the effective date of this Lease, this Lease shall be void.

SECTION 16. Amendments. This Lease may only be amended by a writing signed by all parties hereto.

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 Adult Care Residence
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.

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BIRMINGHAM GREEN
ADULT CARE RESIDENCE,
a Virginia nonstock corporation

(SEAL)

By _____
Chief Operating Officer

ATTEST:

THE COUNTY OF FAIRFAX

Authorized Officer

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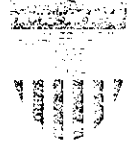
#19, P.F. 5/14/02



City of Alexandria, Virginia

301 King Street, Suite 2300

Alexandria, Virginia 22314



Kerry J. Donley
Mayor

(703) 838-4500
Fax (703) 838-6433

May 15, 2002

The Honorable Mel Martinez, Secretary
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, D.C. 20410

Dear Mr. Secretary:

On behalf of the City Council of Alexandria, Virginia, I would like to convey our strong support for the application of Birmingham Green Adult Care Residence, Inc. for funds from the Section 202 and 811 programs. The money requested would go to replace the existing 60-bed residence in Prince William County, Virginia.

Birmingham Green currently serves very low-income, predominantly elderly, mentally disabled persons from several jurisdictions in Northern Virginia, including the City of Alexandria. The building is more than 75 years old and has never been fully renovated. Its basic systems are obsolete, residents' rooms house two or more people, and the physical additions to the home over the years have rendered it seriously inefficient. Access through the building and into a variety of its spaces is also a challenge for a number of residents with physical disabilities. Birmingham Green, supported by the Prince William County Department of Public Works, has concluded that the building cannot reasonably be renovated to bring it to current standards. Renovation according to the department is not economically feasible.

Replacing the existing building with a new one that could double the number of people served at Birmingham Green would address the growing need for community-based care in Northern Virginia for many elderly people and persons with disabilities who need the kind of environment that the new project could provide. Without the proposed replacement, many needy individuals will have to be placed in facilities far away from their home communities and their friends and relatives, or else go without adequate services, which would place these persons at serious risk.

As a regional facility, the proposed replacement project would play an important role in the efforts of Northern Virginia communities to help ensure a healthier, safer, more comfortable and dignified environment for persons with no other suitable living arrangements available to them.

I urge you to support these proposals. Thank you for your serious consideration of this application.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerry J. Donley".
Kerry J. Donley
Mayor

cc: Alexandria City Council

"Home Town of George Washington and Robert E. Lee"