

ORDINANCE NO. **11458**

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AN ORDINANCE authorizing the King County Executive to enter into lease agreements with the Fircrest Community Foundation, a nonprofit organization which has been awarded County Housing Opportunity Funds (HOF) to provide housing in the Shoreline area, pursuant to Ordinances 9368 and 9369, as amended.

PREAMBLE:

In accordance with K.C.C. 4.56.160, K.C.C. 4.56.180 and K.C.C. 4.56.190, the King County council may adopt an ordinance permitting the county executive to lease without bidding, upon reasons submitted by the property services division to the county executive. It is proposed to grant authorization to the county executive to negotiate thirty-five-year lease-leaseback agreements with the Fircrest Community Foundation, a nonprofit organization which has been selected and funded in accordance with King County Ordinances 9368 and 9369, as amended. It has been determined that a lease term of thirty-five years for this project is in the best interests of the people of King County.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings. The King County council finds that a long-term leasehold is sufficient to acquire a significant ownership interest in the improvements made pursuant to said lease agreements entered into by the county and is sufficient for the purpose of establishing the improvements as local improvements pursuant to R.C.W. Chapter 82.46. The county council further finds that the leasehold of thirty-five years is sufficient to amortize the county's ownership interest therein, and for the purpose of providing services and/or housing to very low-income citizens of unincorporated King County. The King County council further finds that the value of improvements to be made to the property pursuant to said leases will be at least equal to the value of the property.

11458

HOUSING OPPORTUNITY FUND AGREEMENT

THIS AGREEMENT is entered into this 15th day of September, 1994, between Fircrest Community Foundation (the "Agency") and King County ("the County").

RECITALS:

A. On March 27, 1990, the King County Council established the Housing Opportunity Fund by Ordinance No. 9368, as amended, and has appropriated funds to be distributed according to policies adopted by the King County Council by Ordinance 9369, as amended.

B. The Housing Opportunity Fund is a multi-year capital improvement project fund and is carried over automatically year to year.

C. The Agency is a nonprofit corporation organized and existing under the laws of the State of Washington.

D. The County is a municipal corporation and a political subdivision of the State of Washington.

E. The Agency owns certain real property located at 12604 S.E. 168th Street, Renton WA, 98058.

F. The County is desirous of ordering certain local improvements within King County pursuant to RCW Chapter 82.46.

G. The Agency and the County are desirous of improving certain real property in order to house and serve people who are developmentally disabled and who are residents of unincorporated King County.

H. The Agency and the County are entering into an agreement to improve real property and the value of the improvement will be at least equal to the value of the property.

NOW, THEREFORE, in consideration of the mutual promises herein, the parties agree as follows:

1. LEASE AGREEMENT I. The Agency agrees to lease to the County for a term of 35 years, beginning on September 30, 1994 and ending on September 30, 2029, the real property and improvements (hereinafter called the "Premises") described in the legal description attached hereto and incorporated herein as if fully set forth. The Agency agrees to lease the Premises to the County according to the terms specified in "Lease Agreement I" which is attached hereto. Either party may record this lease.

2. CONSIDERATION BY THE COUNTY. In consideration of Lease Agreement I, the County, as lessee of the Premises, shall pay rent for the 35 year term of the Lease in a total amount not to exceed \$169,519.00 to the Agency. Such rent, or portion thereof, shall be paid upon submission by the Lessor of invoices and supporting documentation satisfactory to the Lessees and in accordance with accounts payable procedures of the Lessee. Rent shall be completely invoiced no later than December 31, 1994.

3. LEASE AGREEMENT II. The County agrees to lease the Premises to the Agency, for a term of 35 years, beginning on September 30, 1994 and ending on September 29, 2029. Said term shall be one day less than the term of Lease Agreement I. The County agrees to lease the Premises to the Agency according to the terms specified in "Lease Agreement II" which is attached hereto and incorporated herein as if fully set forth. This lease may be recorded by either party.

3.1 LEASE CONSIDERATION. In lieu of payment of rent specified in Lease Agreement II, the Agency shall improve the Premises and perform all services contained in Lease Agreement II. The Agency agrees to perform said services in lieu of payment of rent, each month for the duration of the leasehold. Such services shall be provided in a manner which fully complies with all applicable federal, state, and local laws, statutes, rules and regulations, as are now in effect or as may be hereafter amended.

4. APPROVAL OF LEASES BY THE KING COUNTY COUNCIL. The County's obligation to perform pursuant to the terms of this Agreement is contingent upon approval of both Lease Agreement I and Lease Agreement II by the King County Council pursuant to King County Code (KCC) 4.56.190(c) and KCC 4.04.040(5).

5. INSURANCE The Agency shall assume any and all liability for property damage and/or general liability associated with the Premises during the terms of Lease Agreement I and Lease Agreement II, including any time period after Lease Agreement II has expired or terminated and before such time that Lease Agreement I expires or terminates, except as otherwise provided for in Lease Agreement I, paragraphs 9 and 13.

6. COMPLIANCE WITH LAWS AND REGULATIONS, TAXES, AND FEES. In carrying out this Agreement, the Agency shall comply with all applicable laws, ordinances, and regulations which have been or will be promulgated by any and all authorities having jurisdiction. The Agency specifically agrees to bear the risks of such laws, ordinances, and regulations, and to pay all costs associated with achieving compliance without notice from the County. The Agency shall pay all license fees and all federal and state taxes on the Premises, improvements and equipment, and all licensing fees for vehicles or other licensed equipment to the extent that the parties are subject to such taxes and fees. The Agency shall pay all permit fees, including but not limited to land use, building, construction, health, sanitation and business permit fees. The County shall not in any case be held liable for any taxes and/or fees owing to any person due to the Agency's ownership, operation, use and/or possession of the Premises. The Agency shall apply for all appropriate tax exemptions, and neither this paragraph nor any other provision of this Agreement shall be construed as a waiver or relinquishment by the parties of any tax exemption available to it.

7. EFFECTIVE DATE. This Agreement shall be effective upon signature by both parties and approval by the King County Council.

8. SURVIVE CLOSING. The terms and conditions of this Agreement shall survive the execution of Lease Agreement I and Lease Agreement II.

9. ENTIRE AGREEMENT--AMENDMENTS--MEMORANDUM. This Agreement, Lease I and Lease II attached hereto, constitute the entire agreement between the parties with regard to the subject matter thereof. This Agreement supersedes all prior negotiations and no modification or amendment to this Agreement shall be valid unless in writing signed by both parties.

10. ADDITIONAL DOCUMENTS. The Agency and the County agree to execute such additional documents during the term of the Agreement as may be necessary to effectuate the intent of the parties and the purpose of this Agreement.

11. ATTORNEY'S FEES. If, by reason of any default or breach on the part of either party in the performance of any of the provisions of this Agreement, a legal action is instituted, the losing party agrees to pay all reasonable costs and attorney's fees in connection therewith. It is agreed that the venue of any legal action brought under the terms of this Agreement shall be King County.

12. NO THIRD PARTY BENEFICIARY. This Agreement is for the benefit of the named parties only and no third party shall have any rights thereunder.

IN WITNESS WHEREOF, the parties have signed this Agreement on _____, 19___. The execution of this Lease has been authorized by the King County Council, according to Ordinance No. _____.

Fircrest Community Foundation
AGENCY

KING COUNTY, WASHINGTON

By _____

Its _____

By _____

Gary Locke
King County Executive

APPROVED AS TO FORM

By _____

Deputy Prosecuting Attorney

EXHIBITS

- A. Legal Description of the Premises
- B. Lease Agreement I
- C. Lease Agreement II

11458 *

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

Lot 7, Block 5, cascade Hills No. 4, according to the plat thereof recorded in Volume 74 of Plats, page 36, in King County, Washington.



EXHIBIT BLEASE AGREEMENT I

THIS LEASE made this ____ day of _____, 1994, by and between Fircrest Community Foundation, (hereinafter called "Lessor") and King County (hereinafter called "Lessee"):

WITNESSETH

1. PREMISES: Lessor does hereby lease to Lessee, certain real property and improvements (hereinafter called "Premises"), legally described as follows:

Lot 7, Block 5, cascade Hills No. 4, according to the plat thereof recorded in Volume 74 of Plats, page 36, in King County, Washington.

2. TERM: The term of this Lease shall be for 35 years commencing the 30th day of September, 1994, and shall terminate on the 30th day of September, 2029.
3. RENT: Lessee covenants and agrees to pay Lessor, at Lessor's address, 414 Stewart Street, Room 200, Seattle WA, 98101, rent for the 35-year term of this Lease in a total amount not to exceed \$169,519.00 Such rent shall be paid to assist with the acquisition and improvement of the Premises. Such rent, or portion thereof, shall be paid upon submission by the Lessor of invoices and supporting documentation satisfactory to the Lessee and in accordance with accounts payable procedures of the Lessee. Rent shall be fully invoiced no later than December 31, 1994.
4. COSTS AND ATTORNEY'S FEES: If, by reason of any default or breach on the part of either party in the performance of any of the provisions of this Lease, a legal action is instituted, the losing party agrees to pay all reasonable costs and attorney's fees in connection therewith.

It is agreed that the venue of any legal action brought under the terms of this Lease shall be in the county in which the Premises are situated.
5. NO WAIVER OF COVENANTS: Any waiver by either party of any breach hereof by the other shall not be considered a waiver of any future similar breach. There shall be no modification of Lease Agreement I except by written instrument signed by both parties.
6. BINDING ON SUCCESSORS AND ASSIGNS: The covenants and agreements of this Lease shall be binding upon the successors and assigns of both parties hereto, except as hereinabove provided.
7. NOTICE: Any notice required to be given by either party to the other shall be deposited in the United States mail, postage prepaid, addressed to Lessor at 414 Stewart Street, Room 200, Seattle WA, 98101 or to Lessee at King County Planning and Community Development Division, 707 Smith Tower Building, 506 Second Avenue, Seattle, WA 98104, or at such other address as either party may designate to the other in writing from time to time.

8. DEFAULT: Upon either party's failure to observe or perform any of the provisions of Lease Agreement I, that failure having continued for thirty days after the non-defaulting party gives

written notice to cure such failure to the other party, such party shall be deemed in default of Lease Agreement I; provided, however, that if the nature of the default is such that more than thirty days are reasonably required for its cure, then such party shall not be deemed in default if it commences such cure within such thirty-day period and thereafter diligently pursues such cure to completion within 180 days. In the case of default, Lessor and Lessee shall be willing to meet and confer for the purpose of curing such default.

9. **TERMINATION:** In the event that Lessor or its successor in interest is in default of Lease Agreement II and such default has not been cured as provided for in Lease Agreement II and King County elects to terminate Lease Agreement II, Lessee, at its sole discretion and upon providing thirty days written notice to Lessor, may terminate Lease Agreement I. In the event that either Lessor or Lessee is in default of Lease Agreement I, and such default is not cured as provided for in paragraph 8 above, and upon thirty days written notice of termination to the party in default, non-defaulting party may terminate Lease Agreement I or pursue any other remedies permitted at law.
10. **ASSIGNMENT AND SUBLETTING:** Lessee may assign, transfer, or sublet this lease or any interest therein, either in whole or part, only with written consent of Lessor, which consent shall not be unreasonably withheld. However, in the event Lessor or any successor-in-interest is in default of Lease Agreement II, Lessee may terminate Lease Agreement II, and Lessee need not procure Lessor's consent to assign or transfer this Lease or any interest therein or to sublet the whole or part of the Premises.
11. **NONINTERFERENCE:** As long as this lease and Lease Agreement II remain in full force and effect, Lessee agrees not to interfere in the maintenance and operation of the Premises. This provision shall not be construed to limit Lessee's right to access the Premises or right to receive and/or examine records pertaining to the construction and ongoing operation of the Premises.
12. **SUBORDINATION AND NON-DISTURBANCE:** Lessee will subordinate to mortgage financing but Lessee shall reserve the rights to occupy the Premises in accordance with the terms and conditions of this lease, without regard to mortgage default of Lessor so long as Lessee is not in default of this lease.
13. **LEASE AGREEMENT I GENERAL TERMS AND CONDITIONS:** Upon default of Lease Agreement II by Lessor or its successor in interest, and only in the event that Lessee chooses not to terminate Lease Agreement I, Lessee agrees to assume the obligations of the "Lessee" under the following provisions:
 - A. **LICENSE AND TAXES:** Lessee shall pay throughout the term of this lease, all applicable taxes, and all license and excise fees covering the business conducted on the Premises.
 - B. **COMPLIANCE WITH ALL LAWS AND REGULATIONS:** In using the Premises, Lessee will comply with all applicable laws, ordinances and regulations, from any and all authorities having jurisdiction. The Lessee specifically agrees to comply and pay all costs associated with achieving such compliance without any notice of requirement or requirements from Lessor, and that Lessor does not waive this section by giving notice of demand for compliance in any instance.
 - C. **UTILITIES:** Lessee shall pay for all costs, expenses, fees, services and charges of all kinds for heat, light, water, gas and telephone and for all other public utilities used on said Premises so that the same shall not become a lien against the leased Premises.

- D. **MAINTENANCE:** Lessee shall throughout the term of this lease, without cost or expense to Lessor, keep and maintain the leased Premises and all improvements, landscaping and fixtures which may now or hereafter exist thereon, in a neat clean and sanitary condition, and shall except for reasonable wear and tear, at all times preserve the Premises in good and safe repair. Upon the expiration or sooner termination of the lease, Lessee shall forthwith return the same in as good condition as that existing at the commencement of occupancy, ordinary wear and tear excepted. Notwithstanding the foregoing, Lessor shall have the obligation to make all capital improvements and to keep in good repair the structural components of the Premises including roof, exterior walls, foundations and HVAC system.
- E. **INDEMNITY AND HOLD HARMLESS:** Lessee shall protect, defend, indemnify, and save harmless Lessor, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of Lessee, its officers, employees, and/or agents. Lessee agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, Lessee, by mutual negotiation, hereby waives, as respects Lessor only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event Lessor incurs any judgment, award, and/or cost arising therefrom including attorney's fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from Lessee.
- F. **INSURANCE:** Upon Fircrest Community Foundation's default of Lease Agreement II and upon King County's termination of Lease Agreement II, and further in the event that King County chooses not to terminate Lease Agreement I, King County shall ensure that appropriate property and general liability insurance are provided for the Premises either through its self-funded insurance program, by purchasing coverage from a private insurance company or by requiring a successor Lessee to purchase appropriate property and general liability insurance.
- G. **MUTUAL RELEASE AND WAIVER:** To the extent a loss is covered by insurance in force, Lessor and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies, including any extended coverage endorsements hereto; provided, that this agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of Lessor or the Lessee.
- H. **ADVANCES BY LESSOR FOR LESSEE:** If Lessee fails to pay any fees or perform any of its obligations under this lease other than payment of rent, Lessor will mail notice to Lessee of its failure to pay or perform. Thirty (30) days after mailing notice, if Lessee's obligation remains unpaid or unperformed Lessor may pay or perform these obligations at Lessee's expense. Upon written notification to Lessee of any costs incurred by Lessor under this paragraph, Lessee will reimburse Lessor within sixty (60) days.
- I. **NON-WAIVER:** It is hereby agreed that no waiver of any condition or covenant in this lease or any breach thereof, shall be taken to constitute waiver of any subsequent breach.
- J. **INSPECTION:** Lessor reserves the right to inspect the Premises at any and all reasonable times throughout the term of this lease; provided, that Lessor shall not interfere unduly with Lessee's operations. The right of inspection reserved to Lessor hereunder shall impose no obligation on Lessor to make inspections to ascertain the condition of the Premises, and shall impose no liability upon Lessor for failure to make such inspections.

- K. **LIENS:** It is understood and agreed that this lease is executed and delivered upon the express condition that the Lessee will not and cannot contract any debt or debts for labor, materials, services or otherwise which will or may become a lien against the interest of Lessor in the Premises and Lessor hereby denies to Lessee any right, power or authority to do any act or contract any obligation or liability which would in any way subject the interest of Lessor in the Premises to any lien, claim or demand whatsoever.
- L. **ANTI-DISCRIMINATION:** In all services or activities, and all hiring or employment made possible by or resulting from this lease there shall be no discrimination against any employee or applicant for employment because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, sexual orientation, or the presence of any sensory, mental, or physical disability, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Lessee shall not violate any of the terms of RCW 49.60, Title VII of the Civil Rights Act of 1964, or any other applicable federal, state, or local law or regulations regarding nondiscrimination. Any violation of this provision shall be considered a violation of a material provision of this lease and shall be grounds for cancellation, termination, or suspension, in whole or in part, of the lease by the Lessor. The Lessee will also comply with other anti-discrimination laws or requirements of any and all jurisdictions having authority.
- M. **HAZARDOUS SUBSTANCES:** Lessee shall not, without first obtaining Lessor's prior written approval, generate, release, spill, store, deposit, transport, or dispose of (collectively "Release") any hazardous substances, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances, hazardous materials, toxic substances or any pollutants, or substances defined as hazardous or toxic in accordance with applicable federal, state, and local laws and regulations in any reportable quantities ("Hazardous Substances") in or about the Premises except for commercial cleaning supplies which shall be handled in accordance with all applicable federal, state, and local laws and regulations. In the event, and only in the event, Lessor approves such Release of Hazardous Substances on the Premises, Lessee agrees that such Release shall occur safely and in compliance with all applicable federal, state, and local laws and regulations. Lessee shall indemnify, hold harmless, and defend Lessor from any and all claims, liabilities, losses, damages, clean up costs, response costs, and expenses, including reasonable attorney's fees arising out of or in any way related to the Release by Lessee, or any of its agents, representatives, or employees, or the presence of such Hazardous Substances in, on or about the Premises occurring at any time after the commencement date.
- N. **CASUALTY/CONDEMNATION:** In the event that all or any portion of the Premises is taken or conveyed as a result of any condemnation proceeding or damaged as a result of any casualty, Lessor and Lessee agree that the proceeds of any condemnation or casualty affecting the Premises shall be made available for the repair or restoration of the Premises if Lessor and Lessee in their reasonable judgment agree that: (a) repair or restoration of the Premises is feasible and that sufficient funds are available to complete such work; (b) after the completion of work, the Premises can be feasibly operated within the restrictions and requirements of the Housing Opportunity Fund Agreement and the Provision of Services; and (c) more than two years remain after the completion of the work until the end of the term of Lease Agreement I. Lessor and Lessee shall meet as necessary to discuss in good faith the rebuilding or repair of the Premises and reach a decision with respect thereto within sixty (60) days after the occurrence of the casualty or condemnation.

If the parties cannot in good faith agree to repair or restore the Premises as provided above, then any proceeds of the casualty or condemnation, within 60 days of demand, shall

be paid first to Lessee in the amount of its interest in the Premises, of \$169,519.00 less \$4,843.40 for each full year that this lease has been in full force and effect. The balance of the proceeds shall be paid to Lessor.

- 14. **NO THIRD PARTY BENEFICIARY:** This lease is for the benefit of the named parties only and no third party shall have any rights hereunder.
- 15. **SEVERABILITY:** If any term or provision of this lease or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this lease, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.
- 16. **CAPTIONS:** The captions in this lease are for convenience only and do not in any way limit or amplify the provisions of this lease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the date first above written.

LESSOR:
Fircrest Community Foundation

LESSEE:
KING COUNTY, WASHINGTON

BY _____

BY _____

Gary Locke
King County Executive

Its _____

APPROVED AS TO FORM:

BY _____

Deputy Prosecuting Attorney

STATE OF WASHINGTON)
)ss
COUNTY OF KING)

On this ____ day of _____, 19__ before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____ to me known to be the _____ of _____ the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC in and for the State
of Washington residing at

STATE OF WASHINGTON)
)ss
COUNTY OF KING)

On this day personally appeared before me _____ to me known to be the County Executive of King County, Washington, the person who signed the above and foregoing instrument for King County for the uses and purposes therein stated and acknowledged to me that he signed the same as the free and voluntary act and deed of King County and that he was so authorized to sign.

GIVEN under my hand and official seal this _____ day of _____, 19__.

NOTARY PUBLIC in and for the
State of Washington, residing at

EXHIBIT CLEASE AGREEMENT II

1. PARTIES. This Lease dated the _____ day of _____, 1994, is between King County, ("Lessor") a municipal corporation and a political subdivision of the State of Washington, and Fircrest Community Foundation, ("Lessee").

2. PREMISES. Lessor hereby leases to Lessee, upon the following terms and conditions, certain real property and any improvements thereon located in King County, Washington (hereafter referred to as the "Premises"), legally described as follows:

Lot 7, Block 5, cascade Hills No. 4, according to the plat thereof recorded in Volume 74 of Plats, page 36, in King County, Washington

Post Office Address: 12604 S.E. 168th Street, Renton WA, 98058

3. TERM. This lease term shall be for one day less than 35 years and shall begin on the 30th day of September, 1994, and end on the 29th day of September, 2029.

4. SERVICES IN LIEU OF RENT. In lieu of payment of rent, Lessee shall acquire and improve the Premises and perform all those services specified below. Lessee agrees to perform said services in lieu of payment of rent each month for the duration of the leasehold. Such services shall be provided in a manner which fully complies with all applicable federal, state and local laws, statutes, rules and regulations, as are now in effect or may be hereafter amended.

A. USE.

1. The Lessee shall acquire and improve the Premises substantially in compliance with plans and specifications submitted to King County Planning and Community Development.
2. The Lessee shall fund the acquisition and improvement of the Premises substantially in compliance with the following Project Sources and Uses Statement. The Lessee shall notify the King County Planning and Community Development Division of any modification greater than 10% to any line item listed.

SOURCES OF FINANCING:

King County Housing Opportunity Fund	\$169,519
WA Housing Assistance Program	\$ 2,166
TOTAL:	\$171,685

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USES OF FINANCING:

Acquisition	\$142,892
Rehabilitation	\$ 14,833
Project Management/Developer Fee	\$ 8,333
Other development costs	\$ 5,627

TOTAL: \$171,685

3. The Lessee shall operate the Premises and two other properties located in unincorporated King County with the mailing addresses of 2321 N. 188th Street, Seattle WA, 98133 and 2325 N. 158th Street, Seattle WA, 98133 as permanent affordable housing coupled with support services for developmentally disabled adults (hereinafter referred to as "Tenants"). The condition of being developmentally disabled is defined as having mental retardation, cerebral palsy, autism, epilepsy or other neurological impairments causing a person to be treated as mentally retarded before 18 years of age. These Tenants shall fully occupy the improved Premises no later than January 1, 1995.
4. The Lessee shall provide for Tenants, appropriate supportive services, including housing, case management, life skills training, financial management assistance and other support services designed to meet the needs of each resident.
5. If at any time during the course of this lease, the Lessee determines that it is no longer feasible for it to serve and house Tenants within the Premises, the Lessee may inform King County that it desires to negotiate with King County for the purpose of serving an alternative population within the Premises. King County may at its sole option exercise its rights and remedies set forth in this Lease, or negotiate this matter with the Lessee. Such negotiation period shall not exceed 180 days. If parties are unable to reach an agreement regarding an alternative population, the Lessee shall be deemed to have failed to perform conditions of this Lease and King County shall be entitled to liquidated damages pursuant to paragraph 8. Upon such payment of liquidated damages by the Lessee to King County as provided in paragraph 8, Lease Agreement I and Lease Agreement II shall terminate and neither party shall have further liability hereunder.

B. MANAGEMENT AND OPERATION OF THE PREMISES

1. The Lessee shall engage in sound property and program management practices and at all times shall operate and maintain the Premises in a manner which fully complies with all applicable federal, state, and local laws, statutes, rules and regulations, as now in effect or as may be hereafter amended. The Lessee specifically agrees to comply and pay all costs associated with achieving such compliance without any notice of requirement or requirements from Lessor, and that Lessor does not waive this section by giving notice of demand for compliance in any instance.
2. The Lessee shall at all times comply with all applicable federal, state, and local laws, statutes, rules and regulations relating to relocation of those persons and households residing at the Premises prior to occupancy by Tenants. The Lessee shall be solely responsible for the cost of all relocation benefits required by law. At no time shall King County be responsible for the cost of such benefits.

3. Lessee shall provide King County with a copy of the comprehensive management plan (the "Plan") for the management of the Premises before the Premises is initially occupied and no later than December 31, 1994. The Plan shall not conflict with the policies and procedures of the HOF as contained in King County Ordinance 9369, as amended from time to time and shall address, but not be limited to, a description of: the physical plant, the tenant population, the housing program and services, and the maintenance and operation of the Premises.
4. Lessee shall throughout the term of this lease, without cost or expense to Lessor, keep and maintain the leased Premises and all improvements, landscaping, fixtures and equipment which may now or hereafter exist thereon, in a neat, clean and sanitary condition, and shall except for reasonable wear and tear, at all times preserve the Premises in good and safe repair. Upon the expiration or sooner termination of the lease, Lessee shall forthwith return the same in as good condition as that existing at the commencement of occupancy, ordinary wear and tear excepted.
5. If, after thirty (30) days notice from Lessor, Lessee fails to maintain or repair any part of the leased Premises or any improvement, landscaping, fixtures or equipment thereon, Lessor may, but shall not be obligated to, enter upon leased Premises and perform such maintenance or repair and Lessee agrees to pay the costs thereof to Lessor upon receipt of a written demand. Any unpaid sums under this paragraph shall be payable as additional rent on the next rent payment date due following the written demand, and will bear interest at the maximum rate allowed by Washington State Law.

C. TENANT INCOME AND RENTS

1. Lessee shall provide housing at affordable rents for Tenants at the Premises. At the time of initial occupancy all (4) Tenants at the Premises and Tenants at the two other properties located in unincorporated King County with the mailing addresses of 2321 N. 188th Street, Seattle WA, 98133 and 2325 N. 158th Street, Seattle WA, 98133 shall have annual household incomes that do not exceed 30% of the annual median income for the Seattle-Everett Metropolitan Statistical Area (SMSA median income), adjusted for family size, as estimated by the U.S. Department of Housing and Urban Development (HUD). If at any time, HUD no longer estimates SMSA median income, the benefit standard shall be based on a program selected by King County at its sole discretion.

Lessee shall verify Tenants' income only in accordance with methods prescribed by or agreed to by King County's Planning and Community Development Division.

2. Lessee shall ensure that monthly rent established throughout the term of this Lease:
 - o shall not exceed 1/12 of 30% of 18% of the SMSA median income per person per bedroom.

Rents shall include a utility allowance. Rents shall not be increased more than once every twelve months. Rent may be reduced at any time on a temporary or permanent basis if there is a loss of household income. If Tenant incomes increase to above 80% of SMSA median income during the course of their residence at the Premises, the Lessee shall change rent based on 30% of Tenant household income adjusted for family size.

Changes in the method of determining Tenant rent or modifications in the rent schedule for the Premises must be approved in advance of implementation by King County Planning and Community Development Division.

D. RECORDKEEPING AND REPORTING

1. The Lessee shall keep and maintain all records as King County may from time to time reasonably require, including, but not limited to, records pertaining to the acquisition, rehabilitation and operation of the Premises, the provision of services for residents and records pertaining to Tenants' annual income. King County shall have access upon reasonable notice to any and all of the Lessee's records at any time during the course of the rehabilitation and operation of the Premises.
2. The Lessee shall submit an annual report to King County's Planning and Community Development Division within 60 days of the close of each calendar year. This annual report shall include information pertaining to the Tenants, including numbers served, age, ethnicity, gender, income; and information pertaining to The Lessee, including the Lessee's annual report of activities, an audited financial statement and federal tax return and a list of names and addresses of current board members and officers. The Lessee shall also submit additional reports which King County may from time to time reasonably require.

5. DEFAULT. Upon either party's failure to observe or perform any of the provisions of Lease Agreement II, that failure having continued for thirty days after the non-defaulting party gives written notice to cure such failure to the other party, such party shall be deemed in default of Lease Agreement II; provided however that if the nature of the default is such that more than thirty days are reasonably required for its cure, then such party shall not be deemed in default if it commences such cure within such thirty-day period and diligently pursues such cure to completion within 180 days. In the case of default, Lessor and Lessee shall be willing to meet and confer for the purpose of curing such default.
6. ASSURANCE OF PERFORMANCE. In the event a default in the performance of any obligation under this lease which remains uncured for more than thirty (30) days after demand, Lessor may request and the Lessee shall provide adequate assurance of the future performance of all obligations under this lease. The adequacy of any assurance shall be determined according to commercially reasonable standards for lessors of real property in the County of King, State of Washington. Adequate assurance shall include, but not be limited to, a deposit in escrow, a guarantee by a third party acceptable to Lessor, a surety bond, or a letter of credit. Lessee's failure to provide adequate assurance within twenty (20) days of receipt of a request shall constitute a material breach and Lessor may in its discretion terminate this lease.
7. TERMINATION. In the event that either Lessor or Lessee or Lessee's successor in interest is in default of Lease Agreement II and such default has not been cured as provided for in paragraph 5 above, the non-defaulting party at its sole discretion and upon providing thirty days written notice of termination to the defaulting party may terminate Lease Agreement II. This provision in no way shall be considered a limitation of either party's ability to pursue any other proceeding to protect its interest as provided by law.
8. LIQUIDATED DAMAGES. Default of Lessee or any failure of Lessee to perform any conditions of Lease Agreement II that are not cured as provided herein shall result in the limitation of the availability of permanent housing and services for developmentally disabled adults to the loss and damage of Lessor. Because it would be impracticable to fix the actual damages sustained in the event of such failure to perform, Lessor and Lessee, therefore, agree that in the event of Lessee's failure to perform, the damages incurred by Lessor shall be \$169,519.00 less \$4,843.40 for each full year that Lease Agreement II has been in full force and effect at the time of such default or failure to perform. Lessor and Lessee agree that Lessee shall pay such amount to Lessor as liquidated damages and not as a

penalty. Lessor and Lessee agree that Lessee shall pay such amount to Lessor as liquidated damages arising from all causes including causes beyond its reasonable control and without the fault or negligence of Lessee. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of any government body acting in its sovereign capacity, war, explosions, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes and unusually severe weather. Upon payment of such sum, Lease Agreement I and Lease Agreement II shall terminate, and neither party shall have any further liability hereunder.

9. TAXES AND LICENSES.

A. LEASEHOLD TAX.

A leasehold excise tax is levied pursuant to the Revised Code of Washington (RCW) Chapter 82.29A. If applicable, the Lessee agrees to pay this tax to King County. If the State of Washington or King County changes the Leasehold Excise Tax, the tax payable shall be correspondingly changed.

B. LICENSE AND TAXES.

Lessee shall pay throughout the term of this lease, all applicable taxes, and all license and excise fees covering the business conducted on the Premises.

C. OTHER CONSIDERATION.

No offset, reduction, or credit toward rent shall be allowed unless it is in writing and signed by the Manager of the Real Property Division of King County.

10. UTILITIES. Lessee shall pay for all costs, expenses, fees, services and charges of all kinds for heat, light, water, gas and telephone and for all other public utilities used on said Premises so that the same shall not become a lien against the leased Premises.

11. CONDITION OF PREMISES. The Lessee has inspected and knows the condition of the Premises, and it is understood and agreed that the Premises are leased on an "as is" basis without any obligation on the part of Lessor to make any changes, improvements, or to incur any expenses whatsoever for the maintenance or repair of the Premises.

12. CONSTRUCTION DEFECTS. Lessor shall not be liable to the Lessee for claims or damages arising from any defect in the construction of or the present condition of the Premises, whether known or unknown, or for damage by storm, rain or leakage or any other occurrence.

13. INDEMNITY AND HOLD HARMLESS. Lessee shall protect, defend, indemnify, and save harmless Lessor, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of Lessee, its officers, employees, and/or agents. Lessee agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, Lessee, by mutual negotiation, hereby waives, as respects Lessor only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event Lessor incurs any judgment, award and/or cost arising therefrom including attorney's fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from Lessee.

14. LIABILITY INSURANCE DURING THE TERM OF THIS AGREEMENT. The Lessee shall assume any and all liability for property damage and/or general liability associated with the Premises during the terms of Lease Agreement I and Lease Agreement II, including any time period after Lease

Agreement II has expired or terminated and before such time that Lease Agreement I expires or terminates, except as otherwise provided for in Lease Agreement I, paragraphs 9 and 13. This obligation shall survive termination of Lease Agreement II.

By date of execution of this lease, Lessee shall procure and maintain for the duration of this Lease insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities of Lessee, its agents, representatives, employees, and/or subcontractors. The cost of such insurance shall be paid by Lessee.

For All Coverages:

Each insurance policy shall be written on an "Occurrence" form.

A. MINIMUM SCOPE OF INSURANCE.

Coverage shall be at least as broad as:

1. General Liability

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering
COMMERCIAL GENERAL LIABILITY.

-or-

Insurance Services Office form number (GL 0002 Ed. 1-73) covering
COMPREHENSIVE GENERAL LIABILITY and Insurance Services Office form
number (GL 0404 Ed. 5-81) covering BROAD FORM COMPREHENSIVE
GENERAL LIABILITY ENDORSEMENT;

2. Fire Insurance

Insurance Services Office form number (DP-3 Ed. 1-77) covering SPECIAL FORM
DWELLING PROPERTY INSURANCE.

B. MINIMUM LIMITS OF INSURANCE.

Lessee shall maintain limits no less than, for:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
2. Fire Insurance: 100% of replacement value: \$

C. LIABILITY INSURANCE DURING BUILDING CONSTRUCTION.

Prior to commencement of building construction and until construction is complete and approved by the Lessee, the Lessee shall cause the construction contractor to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to this Agreement, of the Lessee, its agents, representatives, employees, and/or subcontractors. The Lessee shall be a named or an additional insured on all policies. The cost of such insurance shall be paid by the Lessee and/or any of the Lessee's subcontractors.

For All Coverages: Each insurance policy shall be written on an "Occurrence" form.

1. **MINIMUM SCOPE OF INSURANCE.** Coverage shall be at least as broad as:

a. **General Liability**

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering **COMMERCIAL GENERAL LIABILITY**;

-or-

Insurance Services Office form number (GL 0002 Ed. 1-73) covering **COMPREHENSIVE GENERAL LIABILITY** and Insurance Services Office form number (GL 0404 Ed. 5-81) covering **BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT**;

b. **Products and Completed Operations**

Lessee shall procure and maintain, during the life of this Agreement, **Products and Completed Operations** coverage for the protection against bodily injury and property damage claims arising from this hazard, at a limit acceptable to the County.

c. **Automobile Liability**

Insurance Services Office form number (CA 00 01 d. 12-90) covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.

d. **Professional Liability, Errors and Omissions Coverage**

In the event that services delivered pursuant to this Agreement either directly or indirectly involve or require professional services, **Professional Liability, Errors and Omissions** coverage shall be provided. "Professional Services" for the purposes of this section shall mean any services provided by a licensed professional.

e. **Builder's Risk Insurance**

The Lessee will obtain a builder's risk policy (Insurance Services Offices form number (CP-00 02 Ed. 10-90) **BUILDER'S RISK COVERAGE FORM**) covering 100% of the replacement value of the building/structures.

f. **Worker's Compensation**

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "Other States" State law.

g. **Stop Gap, Employers Contingent Liability**

2. **MINIMUM LIMITS OF INSURANCE.** Lessee shall maintain limits no less than, for:

a. **General Liability:** \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

- b. Products and Completed Operations: \$1,000,000.
- c. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- d. Professional Liability, Errors & Omissions: \$1,000,000.
- e. Builder's Risk Insurance: \$ (100% replacement cost value).
- f. Workers Compensation: Statutory requirements of the State of residency.
- g. Stop Gap or Employers Liability Coverage: \$1,000,000.

D. DEDUCTIBLES AND SELF-INSURED RETENTIONS.

Any deductibles or self-insured retentions must be declared to, and approved by, Lessor. The deductible and/or self-insured retention of the policies shall not limit or apply to Lessee's liability to Lessor and shall be the sole responsibility of Lessee.

E. OTHER INSURANCE PROVISIONS.

The insurance policies required in this lease are to contain, or be endorsed to contain the following provisions:

1. General Liability Policy

- a. Lessor, its officers, officials, employees and agents are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Lessee in connection with this lease.
- b. To the extent of Lessee's negligence, Lessee's insurance coverage shall be primary insurance as respects Lessor, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by Lessor, its officers, officials, employees or agents shall not contribute with Lessee's insurance or benefit Lessee in any way.
- c. Lessee's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2. Builder's Risk Policy.

The policy shall include Lessor and Lessee as insureds in the amount equal to their interests, as their interests may appear.

3. Fire Insurance Policy

The policy shall include the Lessor as an insured in the amount equal to its interest, as its interest may appear.

4. All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to Lessor.

F. ACCEPTABILITY OF INSURERS.

Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated with Best's, with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time of the foregoing policies shall be or become unsatisfactory to Lessor, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to Lessor, Lessee shall, upon notice to that effect from Lessor, promptly obtain a new policy, and shall submit the same to Lessor, with the appropriate certificates and endorsements, for approval.

G. VERIFICATION OF COVERAGE.

Lessee shall furnish Lessor with certificate(s) of insurance and endorsement(s) required by this lease. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by Lessor and are to be received and approved by Lessor prior to the commencement of activities associated with the Lease. Lessor reserves the right to require complete, certified copies of all required insurance policies at any time.

H. PROVISION FOR INCREASE OF COVERAGE.

To ensure that appropriate insurance is carried by Lessee, Lessor at its sole option may adjust these insurance requirements every three (3) years, the first adjustment to occur three (3) years after the beginning of the term of this lease. Such adjustments shall not be greater than amounts customarily required by King County in leases of a similar character.

15. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, Lessor and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies, including any extended coverage endorsements hereto; provided, that this agreement shall be in-applicable if it would have the effect of invalidating any insurance coverage of Lessor or the Lessee.
16. INSPECTION. Lessor reserves the right to inspect the Premises at any and all reasonable times and upon reasonable notice throughout the term of this lease; provided, that Lessor shall not interfere unduly with Lessee's operations. The right of inspection reserved to Lessor hereunder shall impose no obligation on Lessor to make inspections to ascertain the condition of the Premises, and shall impose no liability upon Lessor for failure to make such inspections.
17. LIENS. It is understood and agreed that this lease is executed and delivered upon the express condition that the Lessee will not and cannot contract any debt or debts for labor, materials, services or otherwise which will become a lien against the interest of Lessor in the Premises unless such lien is released within 60 days from the date such lien is placed and Lessor hereby denies to Lessee any right, power or authority to do any act or contract any obligation or liability which would in any way subject the interest of Lessor in the Premises to any lien, claim or demand whatsoever.

18. ASSIGNMENT OR SUBLEASE.

- A. Other than rentals pursuant to Section 4 above, Lessee shall not assign or transfer this lease or any interest therein nor sublet the whole or any part of the Premises, nor shall this lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the written consent of Lessor first had and obtained, which consent shall not be unreasonably withheld. If Lessor shall give its consent to any assignment or sublease, this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Lessor's consent.
- B. If Lessee desires to assign, transfer, or sublease any portion of this lease or any interest therein, it shall notify Lessor in writing of the details of the proposed agreement, at least thirty (30) days prior to the proposed date of assignment, transfer, or sublease to a third party. The notification shall include, but not be limited to a financial statement of the proposed assignee, including but not limited to a full disclosure of the monetary payment or any other considerations involved, and an affidavit from the proposed assignee stating the assignee has examined this lease, understands this lease, agrees to assume and be bound by all of the Lessee's obligations and covenants under this lease, the same as if it were the original Lessee hereunder, and the proposed date of assignment, transfer of sublease.
- C. Lessor will review the request and respond with either an approval or disapproval of the request not later than ten (10) days prior to the proposed date. Disapproval of any such request shall be final and binding on the Lessee and not subject to any arbitration, mediation or legal action, provided that any approval will not be unreasonably withheld.

19. NONDISCRIMINATION

A. GENERAL

- 1. During the performance of Lease Agreement II, neither Lessee nor any party subcontracting under authority of Lease Agreement II shall discriminate on the basis of race, color, sex, religion, nationality, creed, sexual orientation, marital status, age, or the presence of any sensory, mental or physical disability in employment or application for employment or in the administration or delivery of services or any other benefits under Lease Agreement II.

Lessee will comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations which prohibit such discrimination. These laws include, but are not limited to, RCW 49.60, Titles VI and VII of the Civil Rights Laws of 1964, Section 504 of the Rehabilitation Act of 1973, Executive Order 11246 issued by the President of the United States and Executive Order 2001-R issued by the County Executive.

- 2. Lessee will consult and cooperate fully with King County, the Washington State Human Rights Commission, the Equal Employment Opportunity Commission and other appropriate federal, state and local agencies in ensuring its full compliance with the laws against discrimination. Lessee will consult the Compliance Unit of the King County Office of Civil Rights and Compliance for information and technical assistance and/or for referral to other agencies for assistance.
- 3. In the event of noncompliance by Lessee with any of the nondiscrimination provisions of Lease Agreement II, the County shall have the right, at its option, to cancel Lease Agreement II in whole or in part. If Lease Agreement II is canceled after partial performance, the County's obligation will be limited to the fair market value or Lease

Agreement II price, whichever is lower, for goods or services which were received and approved by the County prior to cancellation.

B. EMPLOYMENT

1. Lessee will not discriminate against any employee or applicant for employment due to race, color, sex, religion, nationality, creed, sexual orientation, marital status, age, or the presence of any sensory, mental or physical disability in any employment practice including, but not limited to, hiring and firing, layoffs, upgrading, demotion or transfer, recruitment or recruitment advertising, rates of pay or other forms of compensation, training or any other term, condition or practice of employment.
2. Lessee will give notice of its nondiscrimination policy and obligation in all solicitations or advertisements for employees, and will send to each labor union or worker representative with which it has a collective bargaining agreement or other understanding a notice of the obligations under this section.
3. Lessee will comply with all applicable federal, state and local laws and regulations regarding nondiscrimination in employment and will develop and implement such affirmative action plans and reporting procedures as may be required, including those required by King County.
4. During the performance of Lease Agreement II neither Lessee nor any party subcontracting under the authority of Lease Agreement II shall engage in unfair employment practices as defined by King County Code (K.C.C.), Chapter 12.18. It is an unfair employment practice for any:
 - a. employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
 - b. employment agency or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program, or other occupational training program;
 - c. employer, employment agency, or labor organization to print, circulate, or cause to be printed published or circulated, any statement, advertisement or publication relating to employment or membership, or to use any form or application therefor, which indicates any discrimination unless based upon a bona fide occupation qualification;
 - d. employment agency to discriminate against any person with respect to any reference for employment or assignment to a particular job classification;
 - e. employer, employment agency or a labor organization to retaliate against any person because this person opposed any practice forbidden by K.C.C. Chapter 12.18 or because that person made a charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provisions of K.C.C., Chapter 12.18;
 - f. publisher, firm corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to print or cause to be printed or circulated any advertisement with knowledge that

the same is in violation of K.C.C. 12.18.030(C), or to segregate and separately designate advertisements as applying only to men and women unless such discrimination is reasonable necessary to the normal operation of the particular business, enterprise or employment, unless based upon a bona fide occupational qualification;

- g. employer to prohibit any person from speaking in a language other than English in the workplace unless:
- (1) the employer can show that requiring that employees speak English at certain times is justified by business necessity, and
 - (2) the employer informs employees of the requirement and the consequences of violating the rule.

If the Lessee fails to comply with K.C.C. Chapter 12.18, the Lessee shall be subject to the procedures and penalties set forth therein.

C. PROGRAM AND SERVICES

1. Lessee, or any subcontracting authority under Lease Agreement II, agrees not to discriminate on the basis of race, color, sex, religion, nationality, creed, sexual orientation, marital status, age, or the presence of any mental, physical or sensory handicap in the access to, or in the provision and administration of, any program or activity under Lease Agreement II.
2. "Discrimination" includes but may not be limited to 1) denial of services or benefits, 2) segregation, separate or different treatment or benefits, 3) utilization of administrative criteria or methods that have the effect of discriminatory treatment. This obligation includes taking affirmative steps to make programs and services available and accessible to the handicapped.

D. AFFIRMATIVE ACTION REPORTING

1. Lessee shall submit a total personnel inventory employment profile including minority, female, and disabled employee data.

Lessee shall complete the employment profile form provided by the County and attach the completed form to Lease Agreement II.

2. Lessee, entering into a contract with King County valued at more than \$10,000, or contracts which in the aggregate have a value to the contractor of more than \$10,000, shall submit an affidavit of compliance in the form provided by the County, demonstrating its commitment to comply with the provisions of K.C. C., Chapter 12.16.

Lessee shall complete the affidavit of compliance provided by the County and attach the original notarized completed form to this Lease Agreement II. If the improvement of the Premises described in Lease Agreement II continues for longer than one year, a new affidavit will be submitted at the beginning of each year.

3. Within 30 days after signing this Lease, the Lessee will prepare a self evaluation report of its ability to provide program and services to the handicapped as mandated under Sections 504 of the Rehabilitation Act of 1973. Lessee will prepare a plan for

the structural and/or programmatic changes necessary at its Premises for compliance with Section 504.

Lessee shall complete the self evaluation report and return it to the issuing County unit 30 days after signing Lease Agreement II.

If Lessee has previously submitted this self-evaluation report to the County, it is exempt from filing a report for this contractual year, provided that Lessee is in the same location. In this instance Lessee will sign a waiver statement indicating continued efforts to comply with Sections 503 and 504 of the 1973 Rehabilitation Act, as amended.

Lessee shall complete the waiver statement provided by the County and attach the completed form to this Lease.

4. Lessee shall complete all reports and forms (including Department of Social and Health Services non-discrimination forms, where applicable) provided by the County and shall otherwise cooperate fully with the County in monitoring and assisting Lessee to provide nondiscriminatory programs.

E. MINORITY/WOMEN'S BUSINESSES

Unless waived, Lessee shall fully comply with the provisions of K.C.C., Chapter 4.18 in conducting the improvement of the Premises described in Lease Agreement II. Failure by Lessee to comply with any requirements of this Chapter shall be a breach of Lease Agreement II.

1. If the improvement of the Premises described in Lease Agreement II is conducted with County funds, Lessee shall:
 - a. Comply, as to tasks and proportional dollar amount, with minority/women's business (M/WB) utilization requirements specified in the County's request for proposal and identified in Lease Agreement II. If a contract subject to this Lease is awarded to a firm or individual certified by the State of Washington Office of Minority and Women's Business Enterprise and recognized by King County as a minority or women's business, the M/WB set-aside provisions shall not apply provided that the certified firm shall perform at least 25% of the work of this contract itself.
 - b. Request approval for any proposed substitution of M/WBs. The King County Office of Civil Rights and Compliance will approve the substitution of a certified M/WB when:
 - (1) The M/WB cannot perform the necessary tasks; or
 - (2) The M/WB is unwilling to perform the necessary tasks.
 - c. Comply with those provisions of the King County Code which applied to the original contract regarding the percentage use of minority business enterprises and/or women's business enterprises whenever contract supplements, amendments or change orders are made which affect the total dollar value of Lease Agreement II.

- d. Not engage in agreements between a responding party and a minority business enterprise and/or women's business enterprise in which said minority and/or women's business enterprise promise to not provide subcontracting quotations to other responding or potential responding parties.

Contained within K.C.C, Chapter 4.18 is a provision calling for the establishment of Countywide goals for contracting with minority/women's business enterprises. Goals for this Lease are X percent for minority businesses and X percent for women's businesses, or combined M/WB goal of X percent.

- e. Maintain relevant records and information necessary to document compliance with K.C.C., Chapter 4.18 and the contractor's utilization of minority and women's businesses in its overall public and private business activities and shall include the right of the County to inspect such records.

2. Failure to comply with the provisions of K.C.C., Chapter 4.18 may result in:

- a. Suspension or cancellation of Lease Agreement II in part or in whole;
- b. Disqualification and/or disbarment of the violator from participation in County contracts for a period of up to five years;
- c. Exclusion of the violator from future contracts or vending until demonstration of compliance.

3. The purpose of King County's minority/women's business legislation is to provide a prompt remedy for the effects of past discrimination. The County in general, and the M/WB program in particular, are damaged when a contract, or portion of a contract, to be performed by a minority/women's business is not actually performed by a minority/women's business enterprise in compliance with K.C.C., Chapter 4.18. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages equal to the dollar value of the M/WB utilization lost to the County due to the violation, not to exceed 10% of the total dollar value of the contract, shall be the amount required to compensate the County for resulting delays in carrying out the purpose of the program, the costs of meeting utilization goals through additional contracts, the administrative costs of investigation and enforcement and other damages and costs caused by the violation. Lessee shall be liable to the County for such liquidated damages in the event the Lessee or subcontractor fails to perform a commercially useful function and/or operates as a broker, front, conduit or pass-through, as defined in K.C.C., Chapter 4.18.

F. SUBCONTRACTS AND PURCHASES

Lessee will include the requirements of this Section 15 in every subcontract or purchase order for goods or services which are the subject of this Lease Agreement II.

20. HAZARDOUS SUBSTANCES. Lessee shall not, without first obtaining Lessor's prior written approval, generate, release, spill, store, deposit, transport, or dispose of (collectively "Release") any hazardous substances, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances, hazardous materials, toxic substances or any pollutants, or substances defined as hazardous or toxic in accordance with applicable federal, state, and local laws and regulations in any reportable quantities ("Hazardous Substances") in or about the Premises except for commercial cleaning supplies, pest control materials and gardening materials incident to the maintenance and operations of the Premises which shall be handled in accordance with all applicable

federal, state, and local laws, manufacturer's directions, specifications and recommendation and any other regulations. In the event, and only in the event, Lessor approves such Release of Hazardous Substances on the Premises, Lessee agrees that such Release shall occur safely and in compliance with all applicable federal, state, and local laws and regulations. Lessee shall indemnify, hold harmless, and defend Lessor from any and all claims, liabilities, losses, damages, clean up costs, response costs, and expenses, including reasonable attorney's fees arising out of or in any way related to any Release by Lessee, or any of its agents, representatives, or employees, or the presence of such Hazardous Substances in, on or about the Premises occurring at any time after the commencement date.

21. CASUALTY/CONDEMNATION. In the event that all or any portion of the Premises is taken or conveyed as a result of any condemnation proceeding or damaged as a result of any casualty, Lessor and Lessee agree that the proceeds of any condemnation or casualty affecting the Premises shall be made available for the repair or restoration of the Premises if Lessor and Lessee in their reasonable judgment agree that: (a) repair or restoration of the Premises is feasible and that sufficient funds are available to complete such work; (b) after the completion of work, the Premises can be feasibly operated within the restrictions and requirements of the Housing Opportunity Fund Agreement, Lease Agreement I and Lease Agreement II; and (c) more than two years remain after the completion of the work until the end of the term of Lease Agreement I. Lessor and Lessee shall meet as necessary to discuss in good faith the rebuilding or repair of the Premises and reach a decision with respect thereto within sixty (60) days after the occurrence of the casualty or condemnation. If the parties cannot in good faith agree to repair or restore the Premises as provided above, then any proceeds of the casualty or condemnation, within 60 days of demand, shall be paid first to satisfy any prior liens to which Lessor has subordinated in its capacity as Lessee pursuant to paragraph 12 of Lease Agreement I and then to Lessor in the amount of its interest in the Premises of \$169,519.00 less \$4,843.40 for each full year that this lease has been in full force and effect. The balance of the proceeds shall be paid to Lessee.
22. COSTS AND ATTORNEY'S FEES. If, by reason of any default or breach on the part of either party in the performance of any of the provisions of this Lease, a legal action is instituted, the losing party agrees to pay all reasonable costs and attorney's fees in connection therewith. It is agreed that the venue of any legal action brought under the terms of this Lease shall be in the county in which the Premises are situated.
23. ENTIRE AGREEMENT - AMENDMENTS. This Lease Agreement II shall constitute the whole agreement between the parties as to the matters set forth herein. There are no terms, obligations, covenants, or conditions regarding matters addressed herein other than those contained herein. No modification or amendment of this lease shall be valid or effective unless evidenced by an agreement in writing signed by both parties.
24. NOTICES. Required notices except legal notices shall be given in writing to the following respective address:

TO Lessor: King County Planning and Community Development Division
707 Smith Tower Building
506 Second Avenue
Seattle, WA 98104

TO Lessee: 404 Stewart Street, Room 200
Seattle WA, 98101

or such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed.

- 25. **SEVERABILITY.** If any term or provision of this Lease Agreement II or an application of any term or provision to any person or circumstance is invalid or unenforceable, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.
- 26. **AGENTS AND ASSIGNS.** Without limiting any provisions of this Lease pertaining to assignment and subletting, the provisions of this Lease bind the successors, agents and assigns of any of the parties to this Lease.
- 27. **CAPTIONS.** The captions in this lease are for convenience only and do not in any way limit or amplify the provisions of this lease.
- 28. **TIME IS OF THE ESSENCE.** Time is of the essence in this lease, and in the event of the failure of Lessee to pay any charges at the time in the manner herein specified, or to keep any of the covenants or agreements herein set forth, the Lessee shall be in default.
- 29. **CUMULATIVE REMEDIES.** No provision of this lease precludes Lessor from pursuing any other remedies for Lessee's failure to perform his obligations.
- 30. **NO THIRD PARTY BENEFICIARY.** This Lease Agreement II is for the benefit of the named parties only and no third party shall have any rights thereunder.

IN WITNESS WHEREOF, the parties hereto have subscribed their names as of the _____ day of _____, 1994.

LESSEE:
Fircrest Community Foundation _____

LESSOR:
KING COUNTY, WASHINGTON

BY _____
Its _____

BY _____
Gary Locke
King County Executive

APPROVED AS TO FORM

BY _____
Deputy Prosecuting Attorney

Lease Agreement II

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STATE OF WASHINGTON)
)ss
COUNTY OF KING)

On this _____ day of _____, 19__ before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____ to me known to be the _____ of the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the
State of Washington, residing at

STATE OF WASHINGTON)
)ss
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be the County Executive of King County, Washington, the person who signed the above and foregoing instrument for King County for the uses and purposes therein stated and acknowledged to me that he signed the same as the free and voluntary act and deed of King County and that he was so authorized to sign.

GIVEN under my hand and official seal this _____ day of _____, 19__.

NOTARY PUBLIC in and for the
State of Washington, residing at
