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Division II
State of Washington
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No. 52557-7

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

CCT CONSTRUCTION INC. and CRAIG SHIPMAN,

Respondents,

v.

4EVER HEALING LLC and SARANJIT BASSI,

Appellants.

REPLY BRIEF OF APPELLANTS

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ARGUMENT IN REPLY	2
	A. The Court’s Damage Award Should Be Reversed.....	2
	1. The Court Erred When It Awarded Damages Without Requiring Mitigation by CCT.....	2
	2. CCT’s Response Fails To Address the Lack of Support in the Record for the Court’s Damage Award.....	3
	B. Because 4Ever’s Additions Were Intended To Aid Its Business, the Court Erred In Awarding Damages For the Rightful Removal of the Additions by 4Ever.	6
	C. The Breach of the Lease by CCT Excused 4Ever’s Performance	9
	1. CCT did not deliver exclusive possession of the leased premises	9
	2. CCT’s Failure To Comply with the Three-Day Notice and Its Blocking of the Premises Constitutes a Wrongful Eviction.....	11
III.	CONCLUSION.....	14

TABLE OF AUTHORITIES

Cases

<i>Aldrich v. Olsen</i> , 12 Wn. App. 665, 531 P.2d 825 (1975).....	13
<i>Crown Plaza Corp. v. Synapse Software Systems, Inc.</i> , 87 Wn. App. 495, 962 P.2d 824 (1997).....	2, 13
<i>Draper Machine Works, Inc. v. Hagberg</i> , 34 Wn. App. 483, 663 P.2d 141 (1983).....	10
<i>Glen Park Assocs., LLC v. Dep't of Revenue</i> , 119 Wn. App. 481, 82 P.3d 664 (2003), <i>rev. denied</i> , 152 Wn.2d 1016 (2004).....	7
<i>Gray v. Pierce County Housing Authority</i> , 123 Wn. App. 744, 97 P.3d 26 (2004).....	13
<i>Nguyen v. City of Seattle</i> , 179 Wn. App. 155, 317 P.3d 518 (2014)	5
<i>Olin v. Goehler</i> , 39 Wn. App. 688, 694 P.2d 1129, <i>rev. denied</i> , 103 Wn.2d 1036 (1985).....	13

Treatises

W.B. Stoebuck, J.W. Weaver, 17 Wash. Prac., <i>Real Estate: Property Law</i> § 6.41 (2d ed. 2004)	7
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I. INTRODUCTION

Appellants 4Ever Healing LLC and Saranjit Bassi (collectively referred to as “4Ever”) submit this brief in reply to the brief submitted by Respondents CCT Construction Inc. and Craig Shipman (collectively referred to as “CCT”).

CCT’s brief fails to address its duty to mitigate its damages while underscoring the lack of evidence in the record to support the trial court’s award of damages. Nor do CCT’s arguments justify the trial court’s rulings that incorrectly held that temporary improvements to the premises intended to aid 4Ever in its business became CCT’s property, and that ignored CCT’s failure to deliver exclusive possession of the property and its improper eviction of 4Ever.

Because the trial court erred in making these rulings and because it erred in awarding CCT damages that were unsupported by the record and that did not consider CCT’s duty to mitigate, 4Ever requests that this court reverse the trial court’s order, award 4Ever damages for its personal property withheld by CCT, and remand this matter to the trial court for an award of fees and costs to 4Ever.

II. ARGUMENT IN REPLY

A. The Court's Damage Award Should Be Reversed.

1. The Court Erred When It Awarded Damages Without Requiring Mitigation by CCT.

In its opening brief, 4Ever noted that Washington law imposes a duty on a landlord to mitigate damages by making reasonable efforts to relet the premises. App. Br. at 16. This duty to mitigate continues throughout the term of the lease. *Crown Plaza Corp. v. Synapse Software Systems, Inc.*, 87 Wn. App. 495, 505 n. 2, 962 P.2d 824 (1997). Because the court failed to address mitigation, 4Ever contends that the court committed reversible error. App. Br. at 2, 16-18.

Like the trial court, CCT ignores its failure to make any attempt at mitigating its alleged damages. *See* Resp. Br. at 12. Instead, CCT sidesteps this issue by arguing that the Lease allows CCT to claim damages for future rent. Resp. Br. at 12 (“The Lease ... saves CCT’s right to claim damages for the unaccrued rent in Paragraph 17 of the Lease.”)

In fact, however, Paragraph 17 does not limit a landlord’s duty to mitigate its damages. Indeed, Paragraph 17 requires mitigation:

If any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default in any of the agreements herein contained, then the Lessor may cancel this Lease upon giving the notice required by law, and re-enter the Premises, but, notwithstanding such re-entry by the Lessor, the liability of the Lessee for the rent provided for herein shall not be extinguished

for the balance of the term of this Lease, and **Lessee covenants and agrees to make good to the Lessor any deficiency arising from a reentry and reletting of the Premises at a lesser rental than herein agreed to.** The Lessee shall pay such deficiency each month as the amount thereof is ascertained by the Lessor.

Lease at ¶ 17, Ex. 1 (emphasis added).

On its face, the Lease only requires that 4Ever pay any deficiency after CCT mitigates its damages by reletting the Premises. Thus, the Lease contemplates that CCT will mitigate its damages by reletting the Premises.

If allowed to stand, the trial court's order would allow CCT to collect five years of future rent, and then relet or sell the premises the following month, resulting in a double recovery or windfall to CCT.

Because the court awarded damages without considering CCT's duty to mitigate, the award should be reversed.

2. CCT's Response Fails To Address the Lack of Support in the Record for the Court's Damage Award.

In its opening brief, 4Ever contended that there is no factual basis for the trial court's award of \$56,500 in damages to CCT. App. Br. at 17. As 4Ever noted, there is no basis in the record to support the trial court's award for the unaccrued rent of the Premises. *Id.*

In response, CCT does not dispute the factual arguments in 4Ever's brief. Instead, CCT argues that 4Ever failed to assign errors to the court's

findings and that this failure prevents 4Ever from challenging the findings. Resp. Br. at 11-12.

This argument fails, however, because 4Ever challenged the trial court's conclusions of law that awarded CCT rent that would accrue over a five-year lease term without requiring CCT to mitigate its damages. Specifically, 4Ever's first assignment of error states:

1. The trial court erred when it awarded rent that would accrue over a five-year lease term, regardless of a lease provision barring prospective rent claims. **(Conclusions of Law 2, 3, 8, 11, 13, 14)**

Assignment of Error #1, App. Br. at 1.

Conclusions of Law 2 states that CCT is entitled to rent for a five-year period and Conclusion of Law 3 adds that the rent due for this period is \$360,000. CP 73. Conclusion of Law 8 then states the basis for determining total damages to CCT:

8. Total damages to CCT from 4Ever Healing's failure to pay rent in breach of the Lease is \$45,800.00 based on the following calculation: \$360,000.00 total amount due under the Lease \$33,000.00 rent and relocation fee paid by 4Ever Healing - \$123,200.00 rental value of Unit during the balance of the Lease term - \$151,200.00 rental value of Unit A during the balance of the Lease term - \$6,800.00 lost rent to 4Ever Healing = \$45,800.00.

Conclusion of Law 8, CP 74. This conclusion of law contains factual assertions. Indeed, it is very similar to Finding of Fact ("FoF") # 22. CP 72.

As the Court of Appeals has noted, the label applied by the trial court to a finding or conclusion is not determinative. *Nguyen v. City of Seattle*, 179 Wn. App. 155, 163, 317 P.3d 518 (2014). Instead, the court will look to the substance of the finding or conclusion to determine its nature. *Id.* Following a bench trial, appellate review determines whether the court's findings are supported by substantial evidence and whether those findings support the conclusions of law. *Id.*

In addition, challenges to conclusions of law based upon lack of factual support are also reviewed to determine if the court's findings are supported by substantial evidence and whether those findings support the conclusion of law. *Id.* As the *Nguyen* court stated:

We review conclusions of law de novo. [citation omitted] But when an appellant challenges conclusions of law not based on the law itself, but rather claiming that the findings do not support the court's conclusions, appellate review is limited to determining whether the trial court's findings are supported by substantial evidence and, if so, whether those findings support the conclusions of law.

Nguyen, 179 Wn. App. at 163-64.

Here, Conclusion of Law 8 consists entirely of the court's findings, with no support in the record for those findings. Because 4Ever has challenged Conclusion of Law 8, appellate review should determine whether the findings are supported by substantial evidence and, if so, whether those findings support Conclusion of Law 8. *See Nguyen*, 179 Wn.

App. at 164. For this reason, CCT's argument that 4Ever failed to challenge the findings supporting the court's damage award is without merit.

CCT's failure to cite to any evidence in the record to support the trial court's damage award reinforces 4Ever's assertion that the record is devoid of support for the court's award. *See* App. Br. at 17. Despite finding that CCT had charged \$3800 per month for the rental of Unit A, for example, the trial court only deducted a rent of \$2700 per month for the balance of the five-year term. FoF # 22, CP 72 and Conclusion 8, CP 74. There is no support in the record for this \$2700 per month figure and the Respondents fail to cite to any support for this figure.

Because there is no support in the record to support the trial court's damage award and because the court failed to address any mitigation of damages by CCT, this matter should be remanded for a calculation of damages, taking into consideration any mitigation of damages by CCT.

B. Because 4Ever's Additions Were Intended To Aid Its Business, the Court Erred In Awarding Damages For the Rightful Removal of the Additions by 4Ever.

Under the common law, a commercial tenant's right to remove additions to the premises depends primarily upon whether the addition is intended to be permanent or temporary and whether the addition is intended to aid the tenant's business. As discussed in 4Ever's opening brief,

Washington follows the common law test for determining when an improvement has become a permanent fixture of the realty:

A chattel becomes a fixture if: (1) it is actually annexed to the realty, (2) its use or purpose is applied to or integrated with the use of the realty it is attached to, and (3) the annexing party intended a permanent addition to the freehold. Each element of this three-pronged test must be met before an article may properly be considered a fixture.

Glen Park Assocs., LLC v. Dep't of Revenue, 119 Wn. App. 481, 487, 82 P.3d 664 (2003), *rev. denied*, 152 Wn.2d 1016 (2004) (citations omitted).

With respect to the third prong of the test, “[e]vidence of intent is gathered from the surrounding circumstances at the time of installation.” *Id.* (citation omitted).

Furthermore, a tenant’s right to remove improvements is enhanced if “they were installed to aid a tenant in conducting a business.” W.B. Stoebuck, J.W. Weaver, 17 Wash. Prac., *Real Estate: Property Law* § 6.41 (2d ed. 2004). This is true even if the “improvements and additions ... are quite firmly annexed to the land.” *Id.* Thus, Washington courts “have allowed tenants to remove: a furnace from an automobile repair shop; garage tools and equipment; a built-in pipe organ, bolted-down seats and a movie projector, and other business items from a theater; and a shingle mill and small buildings.” *Id.* (footnotes omitted); *See also* App. Br. at 21-22.

Here, the additions installed by 4Ever were intended to aid its business: 4Ever purchased and mounted television monitors to display its products to customers; it purchased cases to show its products; and the air conditioning units were connected by hoses or wires, not installed inside the walls. RP I:141-42, II:232-42. None of these items was specially designed for the building, and all could be removed without damage.

The court, however, concluded that the show cases, television monitors and air conditioning units were fixtures that were to remain with the building. Conclusion of Law 9, CP 74. Because 4Ever removed these items, the court awarded damages to CCT. Conclusion of Law 10, CP 74.

In support of the court's award, CCT cites to Paragraph 16 of the Lease. Resp. Br. at 13. This paragraph states that "any alterations, additions, or improvements" require the *written* consent of the landlord:

16. Lessee shall not make any alterations, additions or improvements to said Premises **without the consent of Lessor in writing** first had and obtained, and all alterations, additions and improvements which shall be made at the sole cost and expense of Lessee, and shall become the Premises of the Lessor, and shall remain in and be surrendered with the Premises as a part thereof at the termination of this Lease, without disturbance, molestation or injury. If the Lessee shall perform work with the consent of the Lessor, as aforesaid, Lessee agrees to comply with all laws, ordinances, rules and regulations of any authorized public authority. The Lessee further agrees to save the Lessor free and harmless from damage, loss or expense arising out of the said work.

Lease at ¶ 16, Ex. 1.

There is no evidence in the record to indicate that either party intended Paragraph 16 to apply to temporary improvements such as show cases, detached air conditioning units, or TV monitors, installed by 4Ever to aid in the operation of its business.

Furthermore, construing Paragraph 16 to apply to temporary improvements would lead to absurd results: 4Ever would be required to get the written approval of CCT before installing a TV monitor or show case, and 4Ever would have to hold CCT harmless from the installation of a TV monitor. No reasonable person would interpret this paragraph as requiring the written consent of the landlord before the tenant installs a TV monitor. Yet that is the interpretation advocated by CCT.

Because there is no evidence in the record to indicate that the parties intended Paragraph 16 to apply to the installation of TV monitors and show cases, and because such an interpretation would lead to absurd results, the court erred when it held that 4Ever's television monitors, show cases, and air conditioning units became the property of CCT.

C. The Breach of the Lease by CCT Excused 4Ever's Performance

1. CCT did not deliver exclusive possession of the leased premises

As discussed in Appellants' opening brief, landlords have a duty to deliver exclusive possession of the leased premises to the tenant. *Draper Machine Works, Inc. v. Hagberg*, 34 Wn. App. 483, 486, 663 P.2d 141

(1983). The landlord's failure to deliver exclusive possession constitutes a material breach of the lease that excuses any obligation to pay rent. *Id.*

Here, the lease states that: "The lease of Units A and B shall be exclusive upon possession" Lease at ¶ 2, Trial Ex. 1 (attached as Appendix A to this brief). The lease adds that Lessor may continue to use Unit A for 60 days after commencement of the lease and that Lessor must give written notice when Lessor vacates Unit A. Lease at ¶ 3, Tr. Ex. 1.

CCT, however, failed to vacate Unit A after 60 days. RP I 32:22-24. Indeed, the trial court found that CCT "never relocated from Unit A on the property." FoF #17; FoF # 21.

In response, CCT does not dispute that it failed to vacate the property. Instead, CCT argues that 4Ever failed to give notice of the breach. Resp. Br. at 8. CCT even claims that: "The Lease does not allow them to assert breach without prior notice," citing to the entire eleven-page lease to support this assertion. Resp. Br. at 8.

CCT's assertion that the lease requires notice before the tenant claims breach is false: there is **no** provision in the Lease requiring notice of a breach. The lack of any provision in the Lease requiring notice of breach explains why the Respondents' Brief could not cite to a specific paragraph or page to support its erroneous claim that the Lease requires 4Ever to give notice of a breach.

In addition, CCT certainly knew that it was occupying the property in violation of the Lease, and CCT and 4Ever discussed this fact in August. RP I:32-33. Moreover, CCT has never claimed that it was unaware of its breach. For these reasons, CCT's attempt at excusing its failure to vacate the premises is without merit.

CCT's continued possession of the property constitutes a material breach that excuses 4Ever's failure to pay rent. And as discussed in the following section, CCT's continued possession of the property combined with its improper eviction, resulted in 4Ever having to move its business to a new location, RP I:125-27, and that further excuses 4Ever's failure to pay rent. Thus, the trial court erred when it held that CCT was entitled to rent.

2. CCT's Failure To Comply with the Three-Day Notice and Its Blocking of the Premises Constitutes a Wrongful Eviction.

In its opening brief, 4Ever contended that CCT failed to give a proper Three-Day Notice To Pay Rent or Vacate Premises and that CCT constructively evicted 4Ever when it failed to wait for three days prior to occupying the premises. App. Br. at 10. 4Ever noted that CCT failed to follow the Lease requirement that the Three-Day notice be sent by certified mail or even mail the notice as required by RCW 59.12.040. Had CCT complied with the Lease or the statute, 4Ever would have had the right to possess the premises until at least Monday September 19. App. Br. at 10.

In response, CCT does not dispute that it failed to comply with the lease or the statute. *See* Resp. Br. at 8. Instead, it dodges the issue by asserting that 4Ever had actual notice because CCT posted the Three-Day notice on the premises. Resp. Br. at 8-9. CCT posted the notice on Friday, September 16, 2016 at 8:20 p.m. Tr. Ex. 20. The Trial Court found that the posting occurred on September 17, 2016. FoF # 15.

If CCT had complied with the Lease or the statute, the earliest the notice period would have expired would have been Monday, September 19, 2016. App. Br. at 10. Even if CCT's posting of the Three-Day Notice on the property on the evening of September 16 is deemed to be legally sufficient, CCT would have been required to wait until Monday, September 19 before occupying the premises.

Instead of waiting for the legally-required period, CCT occupied the premises on Sunday, September 18. The Respondents do not dispute that CCT failed to wait for the three-day period to expire, *see* Resp. Br. at 8-9, and the trial court failed to address this issue.

In addition, when CCT occupied the premises, it used at least three vehicles to block 4Ever's access to the premises. In its findings, the trial court recognized that the vehicles were positioned "so that items could not be removed from the shop." FoF # 16, CP 71.

By engaging in “self-help” to exclude a tenant, a landlord forfeits the right to rent. *See, e.g., Aldrich v. Olsen*, 12 Wn. App. 665, 531 P.2d 825 (1975). No landlord “may ever use non-judicial, self-help methods to remove a tenant.” *Gray v. Pierce County Housing Authority*, 123 Wn. App. 744, 757, 97 P.3d 26 (2004).

A landlord who does so is “liable for any damage caused by his self-help eviction” as well as “for the conversion of the personality in the leased building.” *Olin*, 39 Wn. App. at 693; *McKennon v. Anderson*, 49 Wn.2d 55, 62, 298 P.2d 492 (1956) (in “a wrongful eviction, the tenant is entitled to recover all the damages which reasonably resulted to him from the landlord's wrongful act ...”). Moreover, the action precludes the landlord from recovering further rent. *Olin v. Goehler*, 39 Wn. App. 688, 693, 694 P.2d 1129, *rev. denied*, 103 Wn.2d 1036 (1985); *See also Crown Plaza* 87 Wn. App. at 503 (“A landlord's act preventing a tenant from gaining possession of leased property constitutes constructive eviction and excuses the tenant's obligation to pay rent.”).

CCT attempts to distinguish *Aldrich* and *Gray*, because the landlords in those cases “locked out residential tenants.” Resp. Br. at 11. CCT then asserts that 4Ever had access to the premises. *Id.*

This assertion is incorrect. CCT occupied the premises while 4Ever had a legal right to the premises then blocked 4Ever from removing items

from the premises. FoF 16, CP 71. These actions by CCT constitute a wrongful eviction.

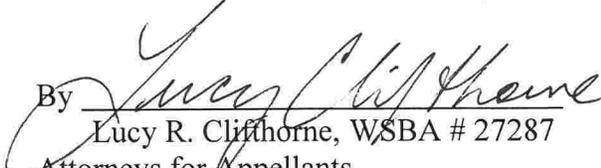
Thus, CCT had no right to recover rent accruing after the eviction. 4Ever is entitled to recover damages proximately caused by the eviction.

III. CONCLUSION

For the above reasons, and for the reasons stated in its opening brief, 4Ever requests that this court reverse the trial court's award of damages to CCT and remand this matter to the trial court for an award of damages and fees and costs in favor of 4Ever.

RESPECTFULLY SUBMITTED this 19th day of April, 2019.

VANDEBERG JOHNSON & GANDARA, LLP

By 
Lucy R. Clifhorne, WSBA # 27287
Attorneys for Appellants

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date I caused to be [] mailed, [X] delivered by Legal Messenger Service, a true copy of this document to the attorneys of record for Respondents, Stephen Andrew Burnham, 317 S Meridian, Puyallup, WA 98371.

Dated this 22nd day of April, 2019, at Tacoma, Washington.


Kim Redford, Legal Assistant

COMMERCIAL LEASE

THIS LEASE, made this 28th day of May, 2016, between CCT Construction, Inc., a Washington Corporation (hereinafter referred to as "Lessor") and 4Ever Healing, LLC, a Washington Limited Liability Company, (hereinafter referred to as "Lessee").

PREMISES.

1. The Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, those certain premises situate in the City of Bonney Lake, Pierce County, Washington, described as follows:

That certain office, access and parking space, commonly known as 22308 State Route 410 E, Units "A" and "B", Bonney Lake, WA 98391 as shown on the attached Exhibit "A" (the "Premises").

BUSINESS PURPOSE.

2. The Premises is to be used for the purpose of marijuana retail store, and for no other business or purpose without the written consent of Lessor. The lease of Units A and B shall be exclusive upon possession and the access and parking shall be nonexclusive and used in common by Lessor and Lessee. Lessee acknowledges and agrees that Lessor reserves the right to use those portions of Lessor's Premises outside the Premises for equipment storage or for any other purposes at the discretion of Lessor.

TERM.

3. The term of this Lease shall be for sixty (60) months and shall commence on the 1st day of June, 2016, and end on May 31, 2021 ("Term"). Lessee acknowledges that Lessor will continue to use Unit A for a period of sixty (60) days after commencement of this lease and Lessor shall give written notice to Lessee that Lessor has vacated Unit A.

RENT.

4. Monthly Base Rent. Lessee agrees to pay Lessor as Monthly Base Rent for the Premises the sum of EIGHT THOUSAND FIVE HUNDRED AND NO/100'S DOLLARS (\$8,500.00), in advance on the first day of each and every calendar month during the Term, except that one month's rent shall be paid upon the execution of this Lease. Further, all charges to be paid by Lessee hereunder, including, without limitation, payments for real and personal property taxes, insurance, repairs, utilities, and parking, if any, shall be considered additional rent for

the purposes of this Lease, and the word "rent" in this Lease shall include such additional rent.

In addition to the Base Rent and additional rent stated above the Lessee shall prior to possession pay to the Lessor a relocation fee of \$15,000 in consideration for the Lessor moving out of the Premises and into another location. In the event Lessee purchases the property in the future, this relocation fee shall be credited against the purchase price at the closing of a future sale.

SURRENDER OF POSSESSION.

5. Lessee agrees that, at the expiration or sooner termination of this Lease, Lessee will quit and surrender the Premises without notice or demand by Lessor in a neat and clean condition, and will deliver all keys to said premises to Lessor or Lessor's agents.

REPAIRS AND MAINTENANCE.

6. Lessee will, at its sole cost and expense, maintain the Premises and make repairs, restorations, and replacements to the fixtures and appurtenances to the Premises as and when needed to preserve them in good working order and condition including without limitation lawn and landscape areas. All such repairs, restorations and replacements will be in quality and class equal to the original work or installations, and will be paid for promptly during or on completion of the work.

INDEMNIFICATION.

7. (a) Lessee, subject to subsection (b) below, hereby indemnifies and agrees to defend and hold Lessor, the Premises and Lessor's property harmless from and against (i) any and all liability, penalties, losses, damages, costs and expenses, demands, causes of action, claims, judgments or appeals arising from any injury to any person or persons or any damage to any property as a result Lessee's or Lessees' officers, employees, agents, assignees, sub-lessees, concessionaires, licensees, contractors or invitees' use, maintenance, occupation, operation or control of the Premises during the Term, or resulting from any breach or default in the performance of any obligation to be performed by Lessee hereunder or for which Lessee is responsible under the terms of the Lease or pursuant to any governmental or insurance requirement, or arising from any act, neglect, fault or omission of Lessee or any of Lessee's officers, employees, agents, servants, sub-lessees, concessionaires, licensees, contractors or invitees, and (ii) from and against all legal costs and charges, including attorneys' and other professional fees, incurred in and about any of such matters and the defense of any action arising out of the same or in discharging the property and/or Premises or any part thereof from any and all liens, charges or judgments which may accrue or be placed thereon by reason of any act or omission of the Lessee, except and to the extent as may arise out of the negligence or willful misconduct of Lessor and/or its agents or employees.

(b) In the event of the concurrent negligence of Lessee, its sub-lessees, assignees, invitees, agents, employees, contractors, or licensees on the one hand and the negligence of Lessor, its agents, employees or contractors on the other hand, which concurrent negligence results in injury or damage to persons or property of any nature and howsoever caused, and relates to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of the Common Areas or Premises such that RCW 4.24.115 is applicable, Lessee's obligation to indemnify Lessor shall be limited to the extent of Lessee's negligence and that of Lessee's officers, sub-lessees, assignees, invitees, agents, employees, contractors or licensees, including Lessee's proportional share of costs, attorneys' fees and expenses incurred in connection with any claim, action or proceeding brought with respect to such injury or damage. LESSOR AND LESSEE HEREBY WAIVE AND AGREE THAT IT WILL NOT ASSERT ITS INDUSTRIAL INSURANCE IMMUNITY UNDER TITLE 51 RCW IF SUCH ASSERTION WOULD BE INCONSISTENT WITH THE RIGHT OF THE OTHER PARTY TO INDEMNIFICATION PURSUANT TO THIS SECTION. THE PARTIES AGREE THAT THIS PROVISION WAS MUTUALLY NEGOTIATED.

(c) In no event shall Lessor, its agents, employees and/or contractors be liable for any personal injury or death or property damage caused by other lessees or persons in or about the Premises or the property, or caused by public or quasi-public work, or for consequential damages arising out of any loss of the use of the Premises or any equipment or facilities therein by Lessee or any person claiming through or under Lessee, except to the extent any such injury or damage is due to the negligent act or omission of Lessor.

CARE OF PREMISES.

8. Lessee will permit no waste, damage or injury to the Premises. The Lessee shall keep, use and, if necessary as a result of Lessee's business operations at the Premises, modify, the Premises in accordance with the laws of the State of Washington and any county, city or other applicable ordinances, and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector, or other proper officer of any regulatory entity including without limitation meeting all handicap standards for access and other accommodations required by law.

USE.

9. The Lessee shall conduct and carry on the business for which the Premises is leased. The Lessee agrees that no dangerous stock of goods will be carried, nor anything dangerous done in or about the Premises, nor keep, store, transfer or use any hazardous material, or any activity that will increase the present rate of insurance; provided, however, if the Lessee shall engage in such business with the written consent of the Lessor, and the business increases insurance rates, Lessee shall pay any such increase in insurance rates.

LIENS AND INSOLVENCY.

10. Lessee shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Lessee. In the event Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the Lessee, then the Lessor may cancel this Lease at Lessor's option.

ASSIGNMENT.

11. Lessee shall not assign this Lease or any part thereof and shall not let or sublet the whole or any portion of the Premises without the written consent of the Lessor, or Lessor's agents, which consent shall not be unreasonably withheld. In the event of any assignment so consented to, a minimum charge of one month's rent shall be made by the Lessor for services in transferring or assigning this Lease, which shall be paid by the Lessee, provided however, the termination of the membership interest of Zakara Hazarat shall not be considered an assignment of Lessee's interest and Lessee may make this change without the consent of Lessor. This minimum charge shall have no effect on any commission agreement between Lessor, Lessee or any real estate broker. This Lease shall not be assignable by operation of law.

ACCESS.

12. Lessee will allow Lessor or Lessor's agent free access at all reasonable times to said premises for the purpose of inspection or of making necessary repairs, additions or alterations to the premises; provided, however, the right to inspect does not imply a duty on the Lessor to discover repairs which are the responsibility of the Lessor or Lessee or to make repairs on behalf of the Lessee. Lessor shall have the right to show the interior of the premises to interested parties and place and maintain "For Rent" and "For Sale" signs in conspicuous places on the Premises.

NOTICES.

13. Any notice required to be served in accordance with the terms of this Lease shall be sent by certified mail. Unless another address is designated in writing, the notice from the Lessee is to be sent to the Lessor or Lessor's agent at this address:

CCT Construction Inc.
Attn: Craig Shipman
P.O. Box 1307
Summer, Wa. 98390

Unless otherwise designated in writing, the notice from the Lessor shall be sent to Lessee at the following address. Such notice is effective two (2) business days after mailing.

Lessee at the Premises address, and to

Pivotal Law Group
1200 5th Avenue, Ste. 1217
Seattle WA 98101
Attn: Michael A. Larson
mlarson@PivotalLawGroup.com
206-340-1131

GOVERNMENTAL FEES.

14. All fees due the city, county or state on account of any inspection made on said premises by any officer thereof as a result of Lessee's use of Premises and ancillary uses, other than taxes, shall be paid by Lessee.

SIGNS.

15. All signs or symbols placed in the windows or doors or elsewhere about the premises, or upon any exterior part of the building, by the Lessee shall be subject to the approval of the Lessor or Lessor's agents. In the event Lessee shall place signs or symbols on the exterior of said building, or in the windows or doors or elsewhere where they are visible from the street, that are not satisfactory to the Lessor or Lessor's agents, the Lessor or Lessor's agents may immediately demand the removal of such signs or symbols. The refusal of the Lessee to comply with such demand within a period of 24 hours will constitute a breach of this Lease and entitle the Lessor to immediately recover possession of said premises in the manner provided by law. Any signs so placed on the premises shall be so placed upon the understanding and agreement that Lessee will remove same at the termination of the tenancy herein created and repair any damage or injury to the premises caused thereby. If not so removed by Lessee, then Lessor may have same removed at Lessee's expense.

ALTERATIONS.

16. Lessee shall not make any alterations, additions or improvements to said Premises without the consent of Lessor in writing first had and obtained, and all alterations, additions and improvements which shall be made at the sole cost and expense of Lessee, and shall become the Premises of the Lessor, and shall remain in and be surrendered with the Premises as a part thereof at the termination of this Lease, without disturbance, molestation or injury. If the Lessee shall perform work

with the consent of the Lessor, as aforesaid, Lessee agrees to comply with all laws, ordinances, rules and regulations of any authorized public authority. The Lessee further agrees to save the Lessor free and harmless from damage, loss or expense arising out of the said work.

DEFAULT AND RE-ENTRY.

17. If any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default in any of the agreements herein contained, then the Lessor may cancel this Lease upon giving the notice required by law, and re-enter the Premises, but, notwithstanding such re-entry by the Lessor, the liability of the Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee covenants and agrees to make good to the Lessor any deficiency arising from a re-entry and reletting of the Premises at a lesser rental than herein agreed to. The Lessee shall pay such deficiency each month as the amount thereof is ascertained by the Lessor.

COSTS AND ATTORNEYS' FEES.

18. If by reason of any default on the part of the Lessee it becomes necessary for the Lessor to employ an attorney; or in case Lessor shall bring suit to recover any rent due hereunder, or for breach of any provision of this Lease, or to recover possession of the Premises; or if Lessee shall bring any action for any relief against Lessor, declaratory or otherwise, arising out of this Lease, and Lessor shall prevail in such action, then, and in any of such events, Lessee shall pay Lessor a reasonable attorney's fee and all costs and expenses expended or incurred by the Lessor in connection with such default or action.

NON-WAIVER OR BREACH.

19. The failure of the Lessor to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

REMOVAL OF PREMISES.

20. In the event of any entry in, or taking possession of, the Premises, the Lessor shall have the right, but not the obligation, to remove from the Premises all of Lessee's personal Premises located on or around the Premises, and may store the same in any place selected by Lessor, including, but not limited to, a public warehouse, at the expense and risk of the owners thereof, with the right to sell such stored Premises, without notice to Lessee, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of

such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Lessee to Lessor under any of the terms hereof, the balance, if any, to be paid to Lessee.

HEIRS AND SUCCESSORS.

21. Subject to the provisions hereof pertaining to assignment and subletting, the agreements of this Lease shall be binding upon the heirs, legal representatives, successors and assigns of any and all of the parties hereto.

INSURANCE.

22. **Lessor's Insurance.** During the Term, Lessor shall procure and maintain in full force and effect with respect to the Building, a policy or policies of all-risk insurance. If the annual premiums charged Lessor for such casualty insurance exceed the standard premium rates because the nature of Lessee's operations results in increased exposure, then Lessee shall, upon receipt of appropriate premium invoices, reimburse Lessor for such increased amount. Lessor shall have the right, at its option, to keep and maintain in full force and effect during the Term such other insurance in such amounts and on such terms as Lessor and/or any mortgagees or the beneficiary of any trust deed against the Premises or the Property may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent Lessor would protect itself, including but not limited to rental abatement, earthquake and flood insurance.

Lessee Insurance. Lessee shall, at its own cost and expense, keep and maintain in full force during the Term and any other period of occupancy of the Premises by Lessee, a policy or policies of commercial liability insurance, written by a reputable insurance company authorized to do business in the State of Washington in form and content acceptable to Lessor insuring Lessee's activities with respect to the Premises, the and Lessor's other Property for loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in, upon or about the Premises in an amount of not less than Two Million Dollars (\$2,000,000) combined single limit or such larger amounts as may hereafter be reasonably requested by Lessor. The policy shall insure the hazards of the Premises and Lessee's operations therein, shall include independent contractor and contractual liability coverage and shall (a) name Lessor as an additional insured; (b) contain a cross-liability provision and; (c) contain a provision that the insurance provided hereunder shall be primary and non-contributing with any other insurance available to Lessor.

WAIVER OF SUBROGATION RIGHTS.

23. Lessor and Lessee each hereby waive any and all rights of recovery, claims, actions or causes of action against the other, its agents, officers, directors, shareholders or employees, for loss or damage to the premises or any improvements

thereto, or any personal Premises of such party therein, that is caused by or results from fire and other perils insured against under the normal extended coverage clauses of standard fire insurance policies carried by the parties and in force at the time of damage or loss. Notwithstanding the foregoing, Each party's waiver under this section 23 only applies to the extent allowed under the party's insurance contracts.

HOLD-OVER.

24. If the Lessee shall, with the written consent of Lessor, hold over after the expiration of the term of this Lease, such tenancy shall be for an indefinite period of time on a month-to-month tenancy, which tenancy may be terminated as provided by the laws of the State of Washington. During such tenancy, Lessee agrees to pay to the Lessor one hundred fifty percent (150%) of the rate of rental as set forth herein, unless a different rate is agreed upon, and to be bound by all of the terms, covenants and conditions as herein specified, so far as applicable.

INDEMNITY CLAUSE AND HOLD HARMLESS

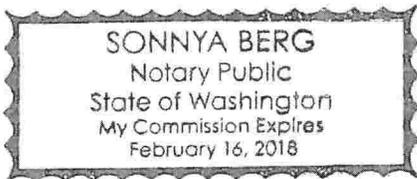
25. Lessee shall defend, indemnify and hold harmless lessor Lessor, and its shareholders, directors, officers, agents, employees, and contractors from and against any and all potential claims arising from or in connection with any dispute, demand, suit, judgment or loss of any kind, including attorney's fees and costs, and any other kind of expense related to zoning prohibition, restrictions, or any ordinance violation with the City of Bonney Lake.

SIGNATURES ON FOLLOWING PAGE

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

On this 1st day of June, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Saranjit Bassi, to me known to be the manager and authorized agent of 4Ever Healing, LLC, the Limited Liability Company 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 the aforesaid officer is authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.



Sonnya Berg

Sonnya BERG
Notary Public in and for the State of
Washington
My commission expires: February 16, 2018

GUARANTY OF LESSEE'S LEASE OBLIGATIONS RIDER

The undersigned hereby unconditionally guarantee, jointly and severally, to CCT CONSTRUCTION, INC., ("Lessor"), its successors and assigns, the full and prompt payment of Rent and any and all other sums and charges payable by SARANJIT BASSI ("Lessee"), its successors, assigns and subLessees, and the full performance and observance of all of the covenants, terms, conditions and agreements to be performed and observed by Lessee, its successors, subLessees and assigns pursuant to the terms of the Lease Agreement dated 6/7 2016, regarding the premises commonly known as 22308 State Route 410 E, Units "A" and "B", Bonney Lake, WA 98391 (the "Lease").

This Guaranty is an absolute and unconditional guaranty of payment and performance by Lessee under the Lease. It shall be enforceable against the undersigned without the necessity of any suit or proceeding on the part of Lessor against Lessee or any other party.

Except for the right to receive such notice of default by Lessee, the undersigned waives any necessity of notice of nonpayment, nonperformance, or nonobservance by Lessee of any term or provision of the Lease.

This Guaranty shall not be discharged by reason of any assignment, renewal, modification or extension of the Lease or waiver or forbearance by Lessor of any of its terms, notice of all of which the undersigned hereby waives. If Lessor is required to employ an attorney to enforce or declare its rights hereunder, the prevailing party in any such action shall be entitled to recover its attorneys' fees and costs from the nonprevailing party, in an amount to be determined by the court in any such action.

Dated: 6/7, 2016

GUARANTOR



SARANJIT BASSI



Lessor's Initials:



Lessee's Initials:

EXHIBIT "A"

N 00°19'09" E 2968.61

SET CORNER 1.3' S AND 1.1' EAST OF NW CORNER OF 6" CHAINLINK FENCE.

S 84°52'09" E 301.06

S 84°52'09" E 200.71

SEPTIC TANK AND DRAIN FIELD

RETENTION POND

SEE DETAIL "C"

BUILDING SETBACK LINE

A

UNDERGROUND 24" CONC. STORM CULVERT

B

LIMITS OF GRAVEL PARKING AREA

116,369 ft²
2.671 Acres

LIMITS OF GRAVEL DRIVE

73,160 ft²
1.680 Acres

BUILDING SETBACK LINE

WOOD GARAGE

PARCEL "B"
BLA 8912150340

SEPTIC TANK AND DRAIN FIELD

METAL COMMERCIAL BUILDING

MOBILEHOME

PORTABLE METAL

2-STORY WOOD FRAME HOUSE

S 84°52'09" E

OLD PROP. LINE

ADJUSTED AREA
6,051 ft²
0.598 Acre

DRAIN SHALE TO CULVERT

100' WELLSITE NONCONTAMINATION RADIUS

BUILDING SETBACK LINE

NEW PROP. LINE

WELL

500.00

VANDEBERG JOHNSON

April 22, 2019 - 10:17 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52557-7
Appellate Court Case Title: 4Ever Healing LLC and Saranjit Bassi, Appellants v. CCT Construction Inc.,
Respondent
Superior Court Case Number: 16-2-12861-6

The following documents have been uploaded:

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