

original

81977-7

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

LINDA EASTWOOD, Respondent

v.

HORSE HARBOR FOUNDATION, INC., a Washington Corporation,
MAURICE ALLEN WARREN, a single person, KATHERINE DALING
and MICHAEL DALING, a husband and wife, and the marital community
thereof, Appellants.

NO. 34995-7-II

AMENDED BRIEF OF RESPONDENT

David P. Horton, WSBA No. 27123
LAW OFFICE OF DAVID P. HORTON, INC. P.S.
3212 NW Byron Street, Suite 104
Silverdale, WA 98383
(360) 692-9444
(360) 692-1257 Facsimile
Attorney for Respondent

FILED
COURT OF APPEALS
DIVISION II
07 JUN 20 PM 12:38
STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

CO-61-9WB

ORIGINAL

TABLE OF CONTENTS

I.	STATEMENT OF THE ISSUES	1
II.	STATEMENT OF THE CASE	2
A.	FACTS	2
1.	The Double KK Farm.....	2
2.	Horse Harbor Foundation.....	3
3.	The Lease.....	3
4.	Despite repeated warnings about their substandard maintenance, the defendants fail to take action.....	5
5.	The Foundation did not take good care of their horses or the property – this let to significant damages to the property.....	7
6.	The horse stalls were not cleaned of manure and urine.....	8
7.	The Foundation did not take good care of their horses or the damage caused by them.....	10
8.	The fences were not maintained.....	11
9.	They did not care for, and hence destroyed, the drainage system.....	12
10.	The arena was not maintained.....	13
11.	Manure management, brush, and weed control were inadequate.....	14
12.	Other Damage.....	15
B.	PROCEDURE	16
III.	ARGUMENT	18
A.	THE COURTS FACTUAL FINDINGS ARE VERITIES ON APPEAL	19
1.	Because appellants did not comply with RAP 10.3(g) the trial court’s findings are verities on appeal.....	19
2.	The Court should not waive the requirements of RAP 10.3(g).....	20

3.	Any “disputed” findings are supported by substantial evidence and therefore verities on appeal.....	21
B.	THE TRIAL COURT PROPERLY HELD THE INDIVIDUAL DEFENDANTS LIABLE FOR THEIR ACTS AND OMISSIONS.....	24
1.	The Court’s unchallenged conclusions are the law of the case.....	25
2.	Permissive waste is a form of negligence	26
3.	Directors and officers of nonprofits are Liable for gross negligence.....	27
4.	The Court found gross negligence.....	27
IV.	ATTORNEY’S FEES.....	29
V.	CONCLUSION.....	30

TABLE OF AUTHORITIES

Washington State Cases

<i>Bader v. State</i> , 43 Wash.App. 223, 716 P.2d 925 (1986).....	28
<i>Barry v. Johns</i> , 82 Wash.App. 865, 869, 920 P.2d 222, 224 (1996).....	27
<i>Bayo v Davis</i> , 127 Wn. 2d 256, 264, 897 P.2d 1239 (1995).....	29
<i>Cowiche Canyon Conservancy v. Bosley</i> , 118 Wash.2d 801, 828 P.2d 549 (1992).....	19
<i>Graffell v. Honeysuckle</i> , 30 Wash.2d 390, 398, 191 P.2d 858, 863 (1948).....	26
<i>Harris v. Urell</i> , 133 Wash.App 130, 135 P.3d 530 (2006).....	20
<i>Kelly v. State</i> , 104 Wash.App. 328, 17 P.3d 1189 (2000).....	28
<i>King Aircraft Sales, Inc. v. Lane</i> , 68 Wash. App. 706, 846 P.2d 550 (1993).....	25
<i>Millician of Wash., Inc. v. Wienker Carpet Serv., Inc.</i> , 44 Wash.App. 409, 722 P.2d 861 (1986).....	25
<i>N. Fiorito Co. v. State</i> , 69 Wash.2d 616, 419 P.2d 586 (1966).....	21
<i>Nist v. Tudor</i> , 67 Wash.2d 322, 407 P.2d 798 (1965).....	24, 28, 29
<i>Painting & Decorating Contractors of America, Inc. v. Ellensburg School District</i> , 96 Wash.2d 806, 638 P.2d 1220 (1982).....	19
<i>Preugshat v. Hedges</i> , 41 Wash.2d 600, 251 P.2d 166 (1952).....	26
<i>Rasmussen v. Bendotti</i> , 107 Wash.App. 947, 29 P.3d 56 (2001).....	25
<i>State v. Slanaker</i> , 58 Wash.App 161, 791 P.2d 575 review denied, 115 Wash.2d 1031, 803 P.2d 324 (1990).....	25
<i>Tacoma Northpark, LLC. v. NW LLC</i> , 123 Wash.App. 73, 96 P.3d 454 (2004).....	29
Statutes and Court Rules	
RCW 4.24.264.....	27
RCW 4.84.330.....	29

RCW 64.12.020.....29
RAP 18.1.....29, 30

Appendix

Appendix A.....Exhibit 101
Appendix B.....Exhibit 102
Appendix C.....Exhibit 103
Appendix D.....Exhibit 105
Appendix E.....Exhibit 106
Appendix F.....Exhibit 107
Appendix G.....Exhibit 109
Appendix H.....Exhibit 110
Appendix I.....Exhibit 122
Appendix J.....Exhibit 123
Appendix K.....Complaint
Appendix L.....Stipulation and Order of Continuance
Appendix M.....Objection to Plaintiff’s Findings and Conclusions

I. STATEMENT OF THE ISSUES

A. On substantial evidence the trial court found the appellants caused extensive damage to Ms. Eastwood's property. Are they liable for waste?

B. Appellants' factual statements contradict the findings made by the trial court. But they fail to assign error to any specific finding. Should the Court consider the arguments based on their recitation of facts?

C. A non-profit corporation's directors are personally liable only if their act or omission constitutes gross negligence. Appellants' failure to heed Ms. Eastwood's warnings regarding the Foundation's inadequate maintenance program led to substantial damage. Appellants concede in their brief that the evidence presented a "picture of absolute devastation to the property."¹ The trial court found that the defendants' failure to heed warnings, and their insistence at continuing an inadequate maintenance program, caused waste by gross negligence. Did the trial court err by awarding judgment against those individuals.

¹ Brief of Appellants at 21.

II. STATEMENT OF THE CASE

A. FACTS

1. The Double KK Farm

Linda Eastwood owned a horse farm called the Double KK farm in Poulsbo for over 20 years. It is approximately 14 acres. Her personal residence and equestrian shop were also located on the farm.²

Over the years, she developed it into a well-kept horse farm with a large barn, many paddocks, outbuildings, horse shelters of different sizes, turnout pastures, and a large covered riding arena with stalls, office, bathrooms, and a kitchen. The facility had been used as a breeding farm for horses and, later, as a commercial boarding facility. It is designed, and large enough to contain at least twenty horses with ease if proper maintenance and management programs are used.³ Witnesses described the facility as “pristine” and “beautiful”⁴ prior to appellants' tenancy. By all accounts, it was superbly maintained.⁵

² CP 123-124. Except where noted, this factual statement is taken from the trial court's Findings of Fact, to which no error is assigned.

³ Id.

⁴ VRP 184:3-4, 256:14, CP125.

⁵ VRP 184-187, 256:14.

2. Horse Harbor Foundation

Horse Harbor Foundation is a Washington nonprofit organization. It provides public education on horse care, and cares for mistreated and abandoned horses.⁶ Allen Warren was the paid manager for the Foundation and responsible for its day-to-day operations.⁷ Katherine Daling and Michael Daling were directors and officers.⁸ Ms. Daling, the president, was at the facility once or twice a week. She was in charge of supervising the maintenance program.⁹ Prior to moving to Ms. Eastwood's property, Horse Harbor Foundation was located on property owned by Mr. Warren.¹⁰ After they left the Eastwood property, the Foundation moved to a property owned by the Dalings.¹¹

3. The Lease

Ms. Eastwood wanted someone else to maintain her property, and Horse Harbor Foundation was looking for an inexpensive facility. As such, Ms. Eastwood agreed to lease the property at a rate under the fair

⁶ CP 124.

⁷ Id.

⁸ Id.

⁹ VRP at 163:24-164:4.

¹⁰ VRP at 30:15-18.

¹¹ VRP at 172:11-15.

market value. This was due to Horse Harbor Foundation's agreement to maintain and repair the facility at their expense.¹²

Ms. Eastwood leased a portion¹³ of her property to Horse Harbor Foundation. The written lease, prepared by the Foundation,¹⁴ stated, in part:

VI. Condition of Premises: Lessee stipulates that he has examined the demised premises, including the grounds and all buildings and improvements, and that they are, at the time of this lease, in good order, repair, and in a safe, clean and tenantable condition.

XII. Maintenance and repair: Lessee will, at his sole expense, keep and maintain the leased premises and appurtenances in good and sanitary condition and repair during the term of this lease and any renewal thereof. In particular, Lessee shall keep the fixtures on or about the leased premises on good order and repair, keep the grounds clean: keep the walks free from dirt and debris: and, at his sole expense, shall make all required repairs to plumbing, heating apparatus, and electric and gas fixtures whenever damage thereto shall have resulted from lessee's misuse, waste or neglect or that of his employee, family, agent or visitor. Major maintenance and repair of the

¹² VRP 502-503, CP 125.

¹³ The portion of the property leased included the barn, arena, outbuildings, paddocks and pastures. It excluded Ms. Eastwood's residence and Equestrian store.

¹⁴ VRP 34-39, CP 232. (Exhibit 101). Appendix A.

leased premises, not due to lessee' misuse, waste, or neglect or that of his employee, family, agent, or visitor, shall be the responsibility of Lessor or his assigns. In the event the water pump system fails, lessee agrees to pay 3/4th the cost of repairs and the lessor 1/4th the cost of the repairs.¹⁵

The trial court found that the facility was "pristine" when their tenancy began.¹⁶ Ms. Eastwood reasonably believed that Horse Harbor Foundation had the ability to conduct required maintenance and upkeep as required by the lease. Based on their representations, Ms. Eastwood reasonably believed they would keep her property in the condition it was in when they took possession.¹⁷

4. **Despite repeated warnings about their substandard maintenance, the defendants fail to take action.**

On October 1, 2003, Horse Harbor Foundation took occupancy of the leasehold and moved about 16 horses to the property.¹⁸ Within three weeks, Ms. Eastwood gave the Foundation notice that their maintenance program was lacking.¹⁹ In the letter, Ms. Eastwood's tone was positive and cooperative:

¹⁵ CP 124-125, 232. (Exhibit 101). Appendix A.

¹⁶ CP 125.

¹⁷ CP 125-126.

¹⁸ CP 126.

¹⁹ Id; CP 232. (Exhibit 103). Appendix C.

Other than these items, things look pretty good. Just want to keep up on things before they snow ball. With this many horses, it can be really labor intensive.²⁰

Within a few weeks, Ms. Eastwood made more written complaints. These written complaints continued for months, and there was no evidence that Kay Daling and/or Michael Daling--who were most involved--took any steps to question Warren or to correct his acts and omissions. They were on the farm most weeks. They had ample opportunity to observe the lack of maintenance programs and deterioration of the farm.²¹

After receiving these complaints, the Foundation's board held a meeting on February 22, 2004. Allen Warren, Michael and Kay Daling were present at the meeting.²² The only item on the agenda was Ms. Eastwood's complaints. The minutes state that Ms. Eastwood's complaints were discussed but no action was taken.²³

²⁰ Id.

²¹ CP 126, 232. (Exhibits 105, 106, 109). Appendices D, E and G.

²² CP 126.

²³ Id.

On April 20, 2004, Ms. Eastwood's attorney sent a Notice of Default listing defaults and actions required to cure.²⁴ The defaults were not cured and this action commenced.²⁵ On May 7, 2004, the Kitsap County Health District sent Horse Harbor Foundation notice of solid waste violations regarding manure management and burning practices.²⁶

Horse Harbor Foundation vacated in June 2005. Before they left they made some repairs. But they admitted that they did not make all the repairs they thought were necessary.²⁷ And while they did some maintenance while they were there, the trial court found that there was a broad, persistent, and systemic failure in the care of the facility and its horses.²⁸

5. The Foundation did not take good care of their horses or the property – this led to significant damages to the property.

The trial court found that "Horse Harbor Foundation had very poor horse care, maintenance, and manure programs."²⁹ Horse Harbor Foundation's lack of care was widespread and touched on all aspects of its

²⁴ CP 127, 232. (Exhibit 102). Appendix B.

²⁵ CP 172. Appendix K.

²⁶ CP 127. (Exhibit 107). Appendix F.

²⁷ VRP at 65:20-23; 1125:17-19.

²⁸ CP 131.

²⁹ CP127.

operations. One of the reasons the maintenance was inadequate was that Horse Harbor Foundation relied on teenage or pre-teenage children who were students to provide mucking and maintenance services.³⁰ But they were not adequately trained or supervised for the task.³¹

The Foundation only budgeted one-hundred dollars per month for maintenance.³² To trained eyes, the facility did not appear properly taken care of, or even that *any* maintenance program existed.³³

6. The horse stalls were not cleaned of manure and urine.

The facility had a large barn and several outbuildings. They were not maintained. The stalls for the horses were not “mucked” or cleaned daily, as they should have been.³⁴ The barn had clay floors that were covered with rubber mats, which is ideal flooring for stables. It was imperative that the bedding be laid in sufficient volume to cover the floor as it has to absorb and catch the gallons of urine and manure. It is also imperative that the material used -- wood shavings, straw, or sawdust -- be dry and in a volume sufficient to absorb the waste.³⁵ Horse Harbor

³⁰ CP 127-128.

³¹ Id.

³² VRP 176:5-8.

³³ VRP 233:5-6, 194:7. CP 232. (Exhibit 110). Appendix H.

³⁴ CP 127-128.

³⁵ Id.

Foundation's floor cover, bedding material and mucking program was inadequate, unreliable, and inconsistent. Horse Harbor Foundation's choice of stable floor material was sawdust. While this is an acceptable material, the sawdust used by Horse Harbor Foundation was frequently wet when applied and the volume used was usually a five-gallon bucket, which was inadequate.³⁶ The barn reeked of urine and manure during and after Horse Harbor Foundation's occupancy.³⁷

When possession was returned, the barn floor was damaged and not in the condition Horse Harbor Foundation found it in when they took occupancy.³⁸ The clay floor was cut into and had surface damage with sizable divots and defects. There was also damage caused by the horses to the walkways, doors, and gates.³⁹

The stalls, while superficially cleaned, were still not in the condition they were when Horse Harbor Foundation first took possession. There was horse urine under mats in the barn, there were pieces of manure and horse hair. The walls were damaged. The aisles were not in good condition. Doors had been ajar and fixtures were broken. The wooden

³⁶ CP 127.

³⁷ CP 129.

³⁸ The clay barn floor was irreparably damaged during the tenancy. This natural surface had to be replaced. VRP 566.

³⁹ CP 129.

ramps leading to the lean-tos over the drains of the barn had been destroyed by constant water, mud, and urine.⁴⁰

A washing rack leaked at a broken faucet. This was due to improper maintenance during the winter resulting in freezing.⁴¹

The three outbuildings had stalls and paddocks. The same failures noted above existed in these structures as well, along with substantial water and waste damage. In addition, the horses caused significant kicking and chewing damage to the outbuildings.⁴² Due to the lack of care, the one-horse stall needed replacement. The two-horse stall needed structural repair and ground repair. The four-horse stall needed structural repair and ground repair.⁴³

7. **The Foundation did not take good care of their horses or the damage caused by them.**

Good horse care will prevent damage to a facility. Failure to properly care for horses leads to chewing, also called cribbing. It also leads to kicking and to fighting.⁴⁴ The Foundation's horses were not fed regularly. The older horses had teeth problems, which were not regularly

⁴⁰ CP 130-131.

⁴¹ CP 131.

⁴² CP 129-130.

⁴³ CP 131.

⁴⁴ CP 128.

floated or filed. Sharp teeth edges can lead to poor nutrition and excessive cribbing. Some of the horses appeared to have poor nutrition in addition to the other problems.⁴⁵ There were cribbing problems. Standard maintenance requires that the facility be inspected for cribbing and that any damage be repaired and the problem be abated. Horse Harbor Foundation had several horses that frequently chewed on wood surfaces. Horse Harbor Foundation did little to repair or prevent cribbing.⁴⁶

8. The fences were not maintained.

The fences around the property were a source of much contention. The trial court found that Horse Harbor Foundation did not inspect or repair damage to fences as it was occurring. When asked to buy needed rails and material to fix them, the material was not purchased. The damaged rails and posts were not repaired by Horse Harbor Foundation, as they should have been. Rails were down or broken and improperly affixed to posts.⁴⁷ Water damage to the fences and other structures was extensive.⁴⁸

⁴⁵ CP 128.

⁴⁶ CP 129.

⁴⁷ Id.

⁴⁸ CP 131.

When the Foundation vacated, the fences had loose rails, which were improperly attached, posts were leaning and some broken, rot from overgrown grass was present, and all needed painting and upkeep, which had not been done properly.⁴⁹

9. They did not care for, and hence destroyed, the drainage system.

The property had an excellent water drainage system with well-designed and well-constructed curtain drains and water intake covers and runoff areas. The drain systems worked well for many years. Within weeks of when it began to rain after Horse Harbor Foundation's occupancy, the drains began to back up and fail, leaving standing water and mud throughout the paddocks. Horse Harbor Foundation was relying on its students to inspect the drains and keep them clean. But because they were poorly supervised, the work was not performed adequately. Moreover, there was not sufficient aid from adults to correct the problems. The drain covers were not kept clean. Water and mud were so deep that some horses were up to their knees in the muck. This, or similar conditions, existed in all paddocks and areas occupied by Horse Harbor Foundation. The mud was so deep that horses who were allowed to access the areas over the curtain drains sunk down to the drain piping and the

⁴⁹ CP 131.

pipe and drains were destroyed.⁵⁰ At the end of the tenancy all the paddock drains were clogged or broken.⁵¹

Ms. Daling admitted that there were one to two inches of water and urine up against the buildings and that she was warned about this condition.⁵² She testified there was *nothing* they could do to prevent the damage.⁵³

10. The arena was not maintained.

The arena, a large, mostly enclosed riding arena, had stalls, a kitchen, office, bathrooms, as well as sprinkler and lighting systems. The arena's north and east sides were partially open to the outside. Proper maintenance of the riding surface required the use of the sprinkler system to maintain the arena's floor and to keep dust down. Horse Harbor Foundation chose not to use the sprinklers to water the floor after it occupied the premises. The bathrooms and kitchen were not kept clean.⁵⁴

This lack of care led to damages. When the Foundation left, the arena riding surface was not leveled and put back in proper condition. The

⁵⁰ CP 128-129.

⁵¹ CP 131.

⁵² VRP 155:20-156:3.

⁵³ VRP 151:9-10.

⁵⁴ CP 129.

aisle floor was still covered with urine and the surface was damaged. The stalls available to Horse Harbor Foundation were still dusty. Bathrooms and faucets were attempted to be cleaned but were still dirty. The kitchen was not properly cleaned.⁵⁵

11. Manure management, brush, and weed control were inadequate.

Grass and weed control are an integral part of horse farm management. This requires regular mowing and clearance of grass from around fences and fence posts, which are vulnerable to water damage. Mowing and pasture maintenance was not done sufficiently by Horse Harbor Foundation.

The manure management program by Horse Harbor Foundation was inadequate. This led to damage to the facility.⁵⁶ When the Foundation moved out there was manure and defecation damage throughout the arena, barn and paddocks and pasture.⁵⁷

⁵⁵ CP 130.

⁵⁶ Id.

⁵⁷ CP 131.

The pastures were significantly altered from the manure piles that had been brought into them. Weeds were growing uncontrolled in all pastures, as grass had overgrown parts of it as well.⁵⁸

12. Other Damage.

Driveways and pathways were also damaged. They were worn down and/or rutted and needed grading and new rock⁵⁹ Horse gates were damaged and had not been repaired. They needed replacement.⁶⁰

Upon moving out – in the face of all this damage – the Foundation spent approximately eight-hundred dollars to make repairs.⁶¹

The trial court found that the damage caused by the Foundation resulted in a diminution in value of over three hundred and fifty thousand dollars.⁶² Fortunately, to repair the damages caused by the Foundation did not cost this much. Ms. Eastwood spent only \$46,790.89 in material and labor to rebuild, repair, and clean.⁶³

⁵⁸ CP 131.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ VRP 177:17-21.

⁶² CP 132.

⁶³ CP 232. (Exhibit 121).

B. PROCEDURE

This case started as an unlawful detainer action.⁶⁴ Eventually, the parties resolved the possession issue by stipulation and the Foundation vacated.⁶⁵ Before they moved out, the Court permitted Ms. Eastwood and her representatives to go on site to view and document the damages. Much of the evidence presented at trial was from the observations and photographs taken during these inspections. After they vacated, plaintiff amended her complaint alleging claims against the individual defendants for the damages caused to the property.⁶⁶

The case was tried to the bench over nine days. Ms. Eastwood called thirteen witnesses, including the defendants.⁶⁷ Three of Ms. Eastwood's witnesses had, at one time, worked for the Foundation.⁶⁸ Three witnesses were real estate professionals with a background in horsemanship.⁶⁹

At the close of the evidence the Court found that the defendants' lack of care led to waste and damages. The court found that the neglect

⁶⁴ CP 172. Appendix K.

⁶⁵ CP 187. Appendix L.

⁶⁶ CP 1-6.

⁶⁷ CP 122-123.

⁶⁸ VRP 234, 256-257, 304-305.

⁶⁹ VRP 182, 374, 384-385.

was substantial and appreciably greater than ordinary negligence. And despite being warned about the consequences by Ms. Eastwood, the court found that the neglect was persistent and visible. The court divided the damages into three categories. First, there was normal wear and tear for which none of the defendants was liable. Second, there was damage caused by gross negligence for which all the defendants were liable. And third, there were damages that were the result of simple negligence – for which only the Foundation was responsible.⁷⁰

The defendants objected to thirty-six of the forty-eight proposed findings of fact prior to their entry.⁷¹ Defendants did not, however, object to the award or the amount of attorney's fees. They merely objected to the allocation of those fees as to the defendants.⁷² The Court entered the proposed Findings of Fact and Conclusions of Law, as well as judgments against all the defendants based on those findings and conclusions.

Defendants moved the Court for reconsideration arguing, *inter alia*, that thirty-three of the Court's factual findings were contrary to the

⁷⁰ CP 132-135.

⁷¹ Objection to Plaintiff's Findings and Conclusions; Designated for inclusion in record in respondent's Second Supplemental Designation of Clerk's Papers. Appendix M.

⁷² *Id.*

evidence provided.⁷³ Reconsideration was denied⁷⁴ and the defendants timely appealed.⁷⁵

III. ARGUMENT

Although they do not assign error to the trial court's factual findings, appellants do not argue that the trial court made an error of law – they only argue the facts. Their factual statements and arguments run completely counter to the findings the court made – findings that were supported by substantial evidence. They ignore, or discount, that many witnesses testified to the facts the court found. They do not argue that the court used the wrong legal standard. They argue only that under that standard the appellants did not commit gross negligence. They were only – maybe – negligent. But the court's factual findings are unchallenged, and in any event, supported by substantial evidence.

Appellants' gross negligence caused waste. As such, they are liable for the damages incurred by Ms. Eastwood.

⁷³ CP 138-139, 153.

⁷⁴ CP 155-156.

⁷⁵ CP 159.

A. THE COURTS FACTUAL FINDINGS ARE VERITIES ON APPEAL.

Appellants' factual statement and arguments regarding facts directly contradict the findings of fact made by the trial court. But they do not assign error to these findings. As such they are verities. Nevertheless, because each finding is supported by substantial evidence appellants arguments regarding factual disputes must be resolved in Ms. Eastwood's favor.

1. Because appellants did not comply with RAP 10.3(g) the trial court's findings are verities on appeal.

"RAP 10.3(g) requires that an appellant's brief contain a separate and concise statement of each error claimed."⁷⁶ Appellants did not assign error to any of the trial court's forty-eight factual findings. Generally, an unchallenged trial court finding is verity on appeal.⁷⁷ Here, appellants were aware of the factual findings they took issue with, identifying them specifically in their post-trial pleadings.⁷⁸ But on appeal, they have not identified any specific factual findings with which they take issue. Instead, they argue that the findings were contradicted by other evidence. This, of course, is the case in most contested matters. It is therefore

⁷⁶ *Painting & Decorating Contractors of America, Inc. v. Ellensburg School District*, 96 Wash.2d 806, 814-815, 638 P.2d 1220 (1982).

⁷⁷ *Cowiche Canyon Conservancy v. Bosley*, 118 Wash.2d 801, 828 P.2d 549 (1992).

⁷⁸ CP 153, Objections to Plaintiff's Findings and Conclusions. Appendix M.

difficult, if not impossible, for respondent to address any factual issues that could possibly be raised by appellants' brief. This court should simply adopt the trial court's factual findings.

2. The Court should not waive the requirements of RAP 10.3(g).

In limited circumstances, an appellate court can waive the requirements of RAP 10.3(g), where the claimed errors are apparent in the text of the brief:

In appropriate circumstances, we will waive technical violations of RAP 10.3(g), especially, where, as here, the appellant's brief makes the nature of the challenge clear and includes the challenged findings in the text....The Urells, appearing pro se, explain in their Reply Brief that their failure to assign error to the findings of fact in their opening brief was in good faith. They argue that because their arguments clearly establish the nature of their challenges, the circumstances justify waiving RAP 10.3(g)'s technical requirement that they must assign error to each challenged finding of fact.⁷⁹

Here, there are no challenged findings in the text of appellants' brief. It is unclear which, if any, factual findings are challenged. Further, appellants are not *pro se* and should have identified which of the findings of fact they challenge. Because at the trial court they took issue with at

⁷⁹ *Harris v. Urell*, 133 Wash.App. 130, 137-138, 135 P.3d 530, 533 - 534 (2006).

least thirty-three of the court's findings, it would be difficult for respondents to address each in this brief without knowing the basis for those challenges. The facts presented by appellants in their brief are the facts they presented in evidence that were rejected by the trial court. This evidence directly contradicts the court's factual findings. Nevertheless, each finding made by the trial court was supported by substantial evidence.

3. **Any "disputed" findings are supported by substantial evidence and therefore verities on appeal.**

A trial court's factual findings are a verity on appeal:

...unless a review of the evidence demonstrates them to be without substantial evidentiary support. And, if, in turn, the relevant and sustainable findings support the judgment of dismissal, this court will not disturb the judgment, for [an appellate court] cannot substitute [its] findings for those of the trial court.⁸⁰

Here, substantial evidence supports the trial court's findings.

The major issues at trial were the condition of the property before the lease, the maintenance program conducted by appellants, and the condition of the property after they vacated. On each of these points Ms. Eastwood presented substantial evidence to support her claims – evidence

⁸⁰ *N. Fiorito Co. v. State*, 69 Wash.2d 616, 619, 419 P.2d 586, 588 (1966).

that was accepted by the court. Appellants admit, “the testimony of Respondent and her remaining witnesses painted a picture of absolute devastation for the property...”⁸¹ While the Court could have rejected this evidence it did not.

Appellants claim pre-lease “problems” with the property.⁸² But this claim was rebutted by the testimony of several witnesses⁸³ and the written lease.⁸⁴ Each of Ms. Eastwood’s witnesses testified that the condition of the property before the lease was excellent.⁸⁵ This was also evidenced by the lease,⁸⁶ and other exhibits.⁸⁷

Ms. Eastwood’s witnesses testified that during the tenancy there were serious problems with the maintenance program conducted by the defendants; the horrible conditions during their tenancy (as observed during court ordered inspections); and the destruction left in their wake.⁸⁸ This testimony was buttressed by the admission of several hundred

⁸¹ Brief of Appellants at 21.

⁸² Brief of Appellants at 3.

⁸³ VRP 182-196, 257-260, 377, 386, 495-505.

⁸⁴ CP 124-125, 232. (Exhibit 101) Appendix A.

⁸⁵ There was substantial testimony from Ms. Eastwood’s witnesses on this point. *See* VRP 182-196, 257-260, 377, 386, 495-505.

⁸⁶ CP 101.

⁸⁷ CP 232. (Exhibits 122, 123). Appendices I, J.

⁸⁸ VRP 190-196, 234-242, 268-276, 308-313, 331-342, 392-403, 433-441, 467-640.

photographs⁸⁹ that documented the condition of the property before, during, and after the tenancy.

Additionally, the defendants admitted to many of their own failings. The “move-out” videotape made by appellants actually supported Ms. Eastwood’s claims.⁹⁰ They admitted that there was standing water and urine.⁹¹ They admitted they caused damage that they did not repair.⁹² They admitted they spent only approximately one-hundred dollars per month to maintain a facility that housed over fifteen horses.⁹³

So, while appellants put on evidence to support their defense, the trial court obviously discounted that evidence and relied on the substantial evidence presented by Ms. Eastwood. A perfect example of these competing claims are those regarding the drainage system. Appellants note in their brief that “Mr. Meeks noticed that the drainage on the property by the upper barn and lean-tos was installed incorrectly.”⁹⁴ But the Court did not permit Mr. Meeks to testify as an expert regarding drains or whether they were installed correctly, stating:

⁸⁹ CP 232. (Exhibits 1-100, 125-143, 147).

⁹⁰ VRP 935-949.

⁹¹ VRP 155:20-156:3

⁹² VRP 65:20-23; 1125: 17-19.

⁹³ VRP 176: 5-8.

⁹⁴ Brief of Appellants at 8.

I'm going to sustain the objection. I don't think we have enough experience in building or designing curtain drains to allow the opinion.⁹⁵

Ms. Eastwood's contractor was qualified as an expert and testified the drains were designed and installed properly, and damaged by the Foundation.⁹⁶

On a contested record the trial court made factual findings based on substantial evidence. Appellants do not assign error to any of the court's forty-eight findings. As such they are verities on this appeal.

B. THE TRIAL COURT PROPERLY HELD THE INDIVIDUAL DEFENDANTS LIABLE FOR THEIR ACTS AND OMISSIONS.

Appellants' single assignment of error faults the trial court for entering judgment against the individual defendants. Appellants concede that the court was justified in finding negligence,⁹⁷ but argue that a finding of gross negligence was not warranted. But a finding of gross negligence is warranted when a finder of fact can infer that the care exercised by a defendant is so small as to be "appreciably more negligent than ordinary."⁹⁸ Here, the court's unchallenged findings of fact and

⁹⁵ VRP 1157.

⁹⁶ VRP 433-441.

⁹⁷ Appellants Brief at 19-21.

⁹⁸ *Nist v. Tudor*, 67 Wash.2d 322, 332, 407 P.2d 798 (1965).

conclusions of law support the inference that the care exercised by the defendants was so small that it was appreciably more negligent than ordinary. A basis for this finding is that the Foundation failed, despite repeated warnings, to correct its maintenance program.

1. **The Court's unchallenged conclusions are the law of the case.**

“An unchallenged conclusion of law becomes the law of the case.”⁹⁹ Here, appellants did not challenge any of the Court's ten conclusions of law. Impliedly, they have challenged only the finding that the appellants' acts and omissions constituted gross negligence.

This is not a conclusion of law. Rather, the question of whether a duty is breached is a question of fact. The *existence* of a duty is a question of law. The question of whether the duty is breached is a question of fact.¹⁰⁰

Here, there seems to be no dispute that there was a duty owed and it was breached. The degree of breach is the issue. And so the same standard discussed above, whether the Court's finding of gross negligence

⁹⁹ *King Aircraft Sales, Inc. v. Lane*, 68 Wash.App. 706, 717, 846 P.2d 550, 556 (1993), citing *State v. Slanaker*, 58 Wash.App. 161, 791 P.2d 575, review denied, 115 Wash.2d 1031, 803 P.2d 324 (1990); *Millican of Wash., Inc. v. Wienker Carpet Serv., Inc.*, 44 Wash.App. 409, 413, 722 P.2d 861 (1986).

¹⁰⁰ *Rasmussen v. Bendotti*, 107 Wash.App. 947, 29 P.3d 56 (2001).

is supported by substantial evidence is the one that needs resolution by this Court. Because there is a mountain of evidence that the maintenance program was severely lacking, they were repeatedly warned that their inaction would have dire consequences, and their complete and utter failure to take *any* corrective action, the trial court's findings of gross negligence are well supported.

2. Permissive waste is a form of negligence.

A lease is a conveyance of real property.¹⁰¹ A party in possession by way of a lease has a duty not to commit waste.

RCW 64.12.020 governs waste actions in Washington. As our Supreme Court has explained:

Waste, as understood in the law of real property and as variously defined by this court, is an unreasonable or improper use, abuse, mismanagement, or omission of duty touching real estate by one rightfully in possession, which results in its substantial injury. It is the violation of an obligation to treat that premises in such manner that no harm be done to them and that the estate may revert to those having an underlying interest undeteriorated by any willful or negligent act.

¹⁰¹ *Preugschat v. Hedges*, 41 Wash.2d 600, 663, 251 P.2d 166, 168 (1952).

Permissive waste implies negligence or omission to do that which will prevent injury, as, for instance, to suffer a house to go to decay for want of repair or to deteriorate from neglect.¹⁰²

3. **Directors and officers of nonprofits are liable for gross negligence.**

Directors and officers of nonprofit corporations are not liable for discretionary decisions or failure to make a discretionary decision within their official capacity unless it constitutes gross negligence:¹⁰³

...[A] member of the board of directors or an officer of any nonprofit corporation is not individually liable for any discretionary decision or failure to make a discretionary decision within his or her official capacity as director or officer unless the decision or failure to decide constitutes gross negligence.¹⁰⁴

4. **The Court found gross negligence.**

The trial court made a finding that gross negligence caused much of the damage. The appellants had what appeared to be no maintenance program. They spent almost nothing to maintain the facility. Once this became apparent, Ms. Eastwood repeatedly warned the appellants that

¹⁰² *Graffell v. Honeysuckle*, 30 Wash.2d 390, 398, 191 P.2d 858, 863 (1948). (Internal citations omitted).

¹⁰³ *Barry v. Johns*, 82 Wash.App. 865, 869, 920 P.2d 222, 224 (1996).

¹⁰⁴ RCW 4.24.264 .

great harm would befall the leasehold if remedial action was not taken.

No action was taken.

Appellants assert that because they did some maintenance they cannot be guilty of gross negligence. What they fail to acknowledge is that their maintenance program was lacking and they were warned that more was necessary. They completely ignored these warnings, denying throughout that their program was deficient. As such they took no corrective action.

A common thread in many cases where gross negligence is found is a warning and subsequent failure to take action.¹⁰⁵ In *Kelley v. State*¹⁰⁶ this Court pointed out that a failure to take appropriate action could lead to a finding of gross negligence:

Bader and *Nist* are distinguishable. In each, the defendant knew of the impending danger and failed to take appropriate action. In *Bader*, the treatment center failed to report that Roseberry was violating the conditions of his release even though it knew that Roseberry had missed several appointments, was not taking his medication, and was exhibiting paranoid behavior. And in *Nist*, Tudor knew there was a truck coming and

¹⁰⁵ See *Bader v. State*, 43 Wash.App. 223, 716 P.2d 925 (1986). *Nist v. Tudor*, 67 Wash.2d 322, 407 P.2d 798 (1965).

¹⁰⁶ 104 Wash.App. 328, 17 P.3d 1189 (2000).

turned in front of it anyway because she failed to realize its speed.¹⁰⁷

In *Nist* the Supreme Court concluded that a jury can infer from evidence that the exercise of care exhibited by a defendant can be so small that, under the circumstances, it is appreciably more negligent than ordinary. Here, the trial court as the finder of fact so concluded. The court heard evidence that small, relatively easy maintenance items such as: putting down sufficient sawdust to absorb urine; cleaning up manure from stalls regularly; repairing fences as needed; clearing blocked drains in paddocks; feeding and caring for the horses properly; and other minor items that if, as here, are left unattended, create a snowball effect and lead to the devastation to which many witnesses testified.

The court made specific reference to the fact that the appellants were repeatedly warned that their inaction would lead to problems. These warnings resulted in no action being taken. The court's findings were supported by substantial evidence in the record and should be upheld.

IV. ATTORNEY'S FEES

A prevailing party is entitled to fees on appeal if permitted by contract or statute.¹⁰⁸ Here, appellant is entitled to her fees on both

¹⁰⁷ *Kelley v. State*, 104 Wash.App. 328, 337, 17 P.3d 1189, 1194 (2000).

theories. First, appellants committed waste. A prevailing party in a waste action is entitled to her attorney's fees and costs under RCW 64.12.020:

...The judgment [for plaintiff in a waste action], in any event, shall include as part of the costs of the prevailing party, a reasonable attorney's fee to be fixed by the court.¹⁰⁹

Further, as found by the court, the lease under which the appellants held possession provided for attorney's fees:

Lessee shall pay all reasonable attorneys' fees necessary to enforce Lessor's rights.

If respondent prevails, she should, therefore, under RAP 18.1, be entitled to her reasonable attorneys' fees on this appeal.

V. CONCLUSION

The trial court found on substantial evidence that the individual defendants committed waste on Ms. Eastwood's property. The Court based this conclusion on the fact that Ms. Eastwood repeatedly warned the appellants that their actions would have dire consequences. In spite of these warnings, they took no action. Based on these facts the trial court

¹⁰⁸ RAP 18.1; *Bayo v Davis*, 127 Wn. 2d 256, 264, 897 P.2d 1239 (1995); RCW 4.84.330, *Tacoma Northpark, LLC v. NW, LLC* (2004) 123 Wash.App. 73, 96 P.3d 454.

¹⁰⁹ RCW 64.12.020.

found the individual defendants' waste to be an act of gross negligence.

The judgment should be affirmed.

Respectfully submitted this 18th day of June 2007.

LAW OFFICE OF
DAVID P. HORTON, INC. P.S.

A handwritten signature in black ink, appearing to read 'DPH', is written over a horizontal line.

DAVID P. HORTON WSBA No. 27123
Attorney for Respondent

APPENDIX A

REAL ESTATE LEASE

WHEREAS Linda Eastwood, d.b.a., Double KK Farm, is desirous of leasing her property located at 25874 Canyon Rd., Poulsbo, Washington, and

WHEREAS the Horse Harbor Foundation, Inc., with headquarters at 12550 Silverdale, Way, Silverdale, Washington, is desirous of leasing said property with an option to extend the lease as a location for its non-profit horse rescue and equine education programs, the two Parties to this Agreement, Linda Eastwood and the Horse Harbor Foundation, Inc., do hereby agree as follows:

I. BY THIS AGREEMENT made and entered into on 1st (day) October (month) 2003 (year), between Linda Eastwood, d.b.a. Double KK Farm, herein after referred to as Lessor, and the Horse Harbor Foundation, Inc., herein after referred to as Lessee, Lessor leases to Lessee the premises situated at 25874 Canyon Road, in the City of Poulsbo, County of Kitsap, State of Washington, and more particularly described as follows:

See Exhibit "A"

together with all appurtenances, for a term of one year, to commence on October 15, 2003, and to end on October 14, 2008. Lessee shall have the right to extend the lease one year at a time up to four consecutive years for a total of FIVE(5) years. Lessee shall give a written notice to Lessor not less than THIRTY (30) days before the expiration of any lease period that Lessee desires to extend the Lease for the next consecutive year. In the event Lessee desires not to exercise this option Lessee shall vacate the premises according to paragraph XVII.

II. Rent. Lessee agrees to pay, without demand, to Lessor as rent for the demised premises the sum of \$1,666.67 Dollars per month in advance on the fifteenth day of each calendar month beginning October 15, 2003, payable at 25874 Canyon Road, City of Poulsbo, or at such other place as Lessor may designate.

III. Quiet Enjoyment. Lessor covenants that on paying the rent and performing the covenants herein contained, Lessee shall peacefully and quietly have, hold, use, and enjoy the demised premises for the agreed term.

IV. Use of Premises. The demised premises shall be used and occupied by Lessee exclusively as a location for the care and keep of its rescue horse herd and the operation of its non-profit school of horsemanship and other activities related to equine education and neither the premises nor any part thereof shall be used at any time during the term of this lease by Lessee for any other purpose. Lessee shall comply with all the sanitary laws, ordinances, rules, and orders of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of the demised premises during the term of this lease.

V. Condition of Premises. Lessee stipulates that he has examined the demised premises, including the grounds and all buildings and improvements, and that they are, at the time of this lease, in good order, repair, and in a safe, clean, and tenable condition

DEFENDANT

- VI. **Assignment and Subletting.** Without the prior written consent of Lessor, Lessee shall not assign this lease, or sublet or grant any concession or license to use the premises or any part thereof. A consent by Lessor to one assignment, subletting, concession, or license shall not be deemed to be a consent to any subsequent assignment, subletting, concession, or license. As assignment, subletting, concession, or license without the prior written consent of Lessor, or an assignment or subletting by operation of law, shall be void and shall, at Lessor's option, terminate this lease. The Lessor does grant the Lessee right to have one contracted employee of the Lessee quartered on the property in a non-permanent motor home or travel trailer for the purpose of managing and overseeing the Lessee's horse herd and operation.
- VII. **Alterations and Improvements.** Lessee shall make no alterations to the buildings or the demised premises or construct any building or make other improvements on the demised premises without the prior written consent of Lessor. All alterations, changes, and improvements built, constructed, or placed on the demised premises by Lessee, with the exception of fixtures removable without damage to the premises and movable personal property, shall, unless otherwise provided by written agreement between Lessor and Lessee, be the property of Lessor and remain on the demised premises at the expiration or upon sooner termination of this lease.
- VIII. **Damage to Premises.** If the demised premises, or any part thereof, shall be partially damaged by fire or other casualty not due to Lessee's negligence or willful act or that of his employee, family, agent, or visitor, the premises shall be promptly repaired by Lessor and there shall be no abatement of rent corresponding with the time during which; and the extent to which the leased premises may have been untenable; but, if the leased premises should be damaged other than by Lessee's negligence or willful act or that of his employee, family, agent, or visitor to the extent that Lessor shall decide not to rebuild or repair, the term of this lease shall end and the rent shall be prorated up to the time of the damage.
- IX. **Insurance.** The Lessee agrees to maintain liability insurance coverage of no less than one million dollars, also naming the Lessor as a covered party, for its equine education program. The Lessor agrees to maintain adequate casualty insurance coverage to rebuild or repair the facilities in this agreement in the event of loss due to fire, flood or other casualty not due to Lessee's negligence or willful act or that of his employee, family, agent, or visitor.
- X. **Dangerous Materials.** Lessee shall not keep or have on the leased premises anything of a dangerous, inflammable, or explosive character that might unreasonable increase the danger of fire on the leased premises or that might be considered hazardous or extra hazardous by any responsible insurance company.
- XI. **Utilities.** The electric bill^{shall} be prorated between the Lessor and the Lessee for their respective use thereof. Lessor will provide the monthly bill to the Lessee for payment of Lessee's prorata share.
- XII. **Maintenance and Repair.** Lessee will, at his sole expense, keep and maintain the leased premises and appurtenances in good and sanitary condition and repair during the term of this lease and any renewal thereof. In particular, Lessee shall keep the fixtures on or about the leased premises on good order and repair; keep the grounds clean; keep the walks free from dirt and debris; and, at his sole expense, shall make all required repairs to plumbing, heating apparatus, and electric and gas fixtures whenever damage thereto shall have resulted from Lessee's misuse, waste, or neglect or that of his employee, family, agent, or visitor. Major maintenance and repair of the leased premises, not due to Lessee's misuse, waste, or neglect or that of his employee, family, agent, or visitor, shall be the responsibility of Lessor or his assigns. In the event the water pump system fails, Lessee agrees to pay 3/4th the cost of repairs and the lessor 1/4th the cost of the repairs.

XIII. **Right of Inspection.** Lessor and his agents shall have the right at all reasonable times during the term of this lease and renewal thereof to enter the demised premises for the purpose of inspecting the premises and all building improvements thereon.

XIV. **Display of Signs.** During the final sixty (60) days of this lease, Lessor or his agent shall have the privilege of displaying the usual "For Sale" or "For Rent" or "Vacancy" signs on the demised premises and of showing the property to prospective purchasers or tenants. Lessee agrees that no signs shall be placed or painting done on or about the leased premise by Lessee or at his direction without the prior written consent of Lessor, with the exception of one sign designating it as the Lessee's place of business at the main entrance.

XV. **Subordination of Lease.** This lease and Lessee's leasehold interest hereunder are and shall be subject, subordinate, and inferior to, any liens or encumbrances now or hereafter placed on the demised premises by Lessor, all advances made under any such liens, or encumbrances, the interest payable on any such liens or encumbrances, and any and all renewals or extensions of such liens or encumbrances.

XVI. **Holdover by Lessee.** Should Lessee remain in possession of the demised premises with the consent of Lessor after the natural expiration of this lease, a new month-to-month tenancy shall be created between Lessor and Lessee which shall be subject to all the terms and conditions hereof but shall be terminated on sixty (60) days' written notice served by either Lessor or Lessee on the other party.

XVII. **Surrender of Premises.** In the event the herein described purchase option is not exercised, at the expiration of the lease term, Lessee shall quit and surrender the premises hereby demised in as good state and condition as they were at the commencement of this lease, reasonable use and wear thereof and damages by the elements excepted.

XVIII. **Default.** If any default is made in the payment of rent, or any part thereof, at the times hereinbefore specified, or if any default is made in the performance of or compliance with any other term or condition hereof, this lease, at the option of Lessor, shall terminate and be forfeited, and Lessor may re-enter the premises and remove all persons there from. Lessee shall be given written notice of any default or breach, and termination and forfeiture of the lease shall not result if, within sixty (60) days of receipt of such notice, Lessee has corrected the default or breach or has taken action reasonably likely to effect such correction within a reasonable time. Lessee shall pay all reasonable attorneys' fees necessary to enforce Lessor's rights

XIX. **Abandonment.** If at any time during the term of this lease Lessee abandons the demised premises or any part thereof, Lessor may, at his option, enter the demised premises by any means without being liable for any prosecution therefore, and without becoming liable to Lessee for damages or for any payment of any kind whatever, and may, at his discretion, as agent for Lessee, relet the demised premises, any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Lessor's option hold Lessee liable for any difference between the rent that would have been payable under this lease during the balance of the unexpired term, if this lease had continued in force, and the net rent for such period realized by Lessor by means of such reletting. If Lessor's right of re-entry is exercised following abandonment of the premises by Lessee, then Lessor may consider any personal property belonging to Lessee and left on the premise to also have

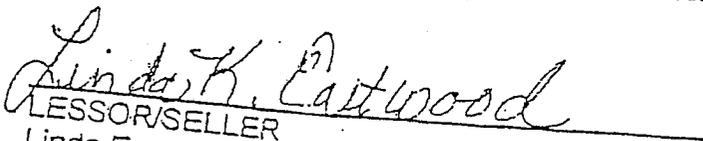
been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and is hereby relieved of all liability for doing so.

XX. **Binding Effect.** The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, and assigns of the parties hereto, and all covenants are to be construed as conditions of this lease.

XXI. **Radon Gas Disclosure.** As required by law, (Landlord) (Seller) makes the following disclosure: "Radon Gas" is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have to date not been found in any of the buildings situated upon this property.

XXII. **Lead Paint Disclosure.** *Every purchaser or Lessee of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller or Lessor of any interest in residential real estate is required to provide the buyer or lessee with any information on lead-based paint hazards from risk assessments or inspection in the seller or Lessor's possession and notify the buyer or lessee of any known lead-based paint hazards

IN WITNESS WHEREOF, the parties have executed this lease on the day and year first above written and that both parties have read the foregoing Agreement, understand the language and terms used therein completely, are in accord on all parts as herein stated and agree to abide by same. This Lease/Option Agreement is binding upon Lessor and her heirs, assigns, and successors forever. They do hereby agree by affixing their signatures as follows:


LESSOR/SELLER
Linda Eastwood
d.b.a. Double KK Farm


LESSEE/BUYER
Horse Harbor Foundation, Inc.
by Kay Daling, President

APPENDIX B

NOTICE OF DEFAULT AND TO CURE DEFAULT OR VACATE

TO: Horse Harbor Foundation
AND TO: Occupants and other persons claiming any right, title or interest in the Lease and Premises

NOTICE OF DEFAULT

1. *Notice Of Default.* You are in default under the terms of that certain Lease dated October 1, 2003 by and between Linda Eastwood d/b/a Double KK Farm as Landlord and Horse Harbor Foundation, Inc. as Tenant for the lease of the premises located at 25874 Canyon Road, Poulsbo, Washington.
2. *Description Of Default And Acts Required.* Your default and the action required to cure each default is as follows:

<u>Description of Default</u>	<u>Action Required to Cure</u>
① Lean-tos and stalls not clean, sanitary and deteriorating. Not using enough shavings to absorb urine.	Remove stall mats, clean, bring in new 3/4 minus rock, remove mud, etc., redo all flooring with sand. Replace any stall mats that are ruined. Provide adequate dry shavings to absorb urine.
② Driveways, pathways, exits and entrances to all buildings not properly maintained.	Replace and spread 3/4 minus rock
③ Infestation of entire facility with rats in the arena and mice in the barn from not disposing of garbage.	Professionally exterminate, maintain cleanliness.
④ All changes to locks, doors, etc. that have been altered without Landlord's permission.	Fix, repair or replace to original condition.
⑤ Monies owed: Manure Fork - \$29.99 April Water Bill - \$20.00 Shavings - \$36.00	Pay all monies due - \$125.99

Late Charges for December, 2003,
January, 2004, March, 2004 &
April, 2004 - \$40.00

⑥ Lighting in barns, lean-tos, arena not operating or burned out—some fixtures not operating properly.

Fix and replace any damaged fixtures not operating properly.

⑦ Ramps to lean-tos buried in mud, manure, urine and partially destroyed.

Clean, repair, replace with treated lumber.

⑧ Arena flooring not maintained.

Watered and dragged when needed. This has not been done in 5 months.

⑨ Faucets, toilets, sinks in arena not working properly.

Clean, repair and replace.

⑩ Arena, barn ground not maintained.

Pickup debris, mow lawns, weedeat, etc. on a regular basis.

⑪ White walk door to lean-tos will not close properly.

Fix door, clean and replace door and jam, if necessary.

⑫ Numerous metal gates bent and not working properly.

Fix, repair or replace.

⑬ 2 pipes including wash rack not working.

Have plumber repair.

⑭ Downspouts damaged and inoperable.

Replace.

⑮ Water sprinkling system in arena not working.

Fix, clean and replace sprinkler heads.

⑯ Septic system at arena not working properly.

Have professional come in and inspect and pump tank if necessary.

⑰ Improper disposal of manure.

Clean and dispose of properly, remove from facility.

⑱ Garbage and refuse over entire leased area.

Pick-up and dispose of properly.

(19) Paddocks flooded with mud, water, manure and urine.

Scrape off all mud from paddocks, sanitize, cover with 4 inches of sand, keep horses off until ground settles.

(20) Turnout pastures covered with mud, manure and hay.

Remove manure, hay, re-till, seed and remove all weeds.

(21) Curtain drains around entire upper barn and lean-tos need to be redone so water runs off properly. Electric fence with stancions need to be reinstalled to prevent horses from re-damaging.

Have contractor come in and fix professionally.

(22) Fences falling down, including posts, filthy.

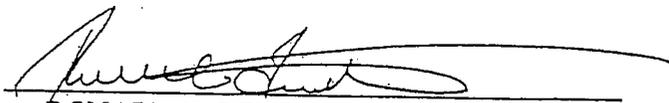
Get 4x4 posts, get rails 1x6x10 fir-needs to match facility-fix all fences and pressure wash and paint.

(23) Electric fence not working.

Repair.

3. *Consequences Of Failure To Cure Defaults.* In the event you fail to cure the defaults specified in Paragraph 2 in strict conformance with the provisions of Paragraph 2, you must forthwith vacate and surrender possession of the Premises, your right to possession will be terminated and Landlord shall pursue all remedies specified in the Lease or provided by law, all without further notice.

DATED this 20th day of April, 2004.


RONALD C. TEMPLETON
WSBA #8684
Attorney for Landlord

Matty & Templeton
3212 NW Byron Street, Suite 104
Silverdale, WA 98383
(360)692-6415

Certified Mail Nos.: 7001 2510 0005 5204 5966; 7001 2510 0005 5204 5973; 7001 2510 0005 5204 5928

APPENDIX C

ALLEN:

Oct 22, 2003

HERE IS A LIST OF THINGS WE WOULD LIKE TO SEE DONE AT THE BARN:

TRACY AND I WILL BE GONE, FRIDAY PM, SAT, AND BACK SUNDAY AFTERNOON, IF THE WEATHER IS GOOD A WORK PARTY SHOULD BE HERE TO DO THE FOLLOWING. I HAVE SOMEONE SITTING THE HOUSE, BECKY WILL DO OUR HORSES, AND THE SHOP. DO YOU STILL INTEND TO MOVE IN ON SUNDAY? IF SO THE RENT FOR THE REMAINDER OF THE MONTH WILL BE \$132.00. ALSO REQUIRE A REFUNDABLE \$150.00 CLEANING DEPOSIT. I WOULD APPRECIATE IF YOU WOULD PAY THE RENT FOR THE APARTMENT IN CASH. THE RENT OF \$650.00 IS DUE ON THE 1ST, THAT WAY I CAN PAY MY MTG AND BECKY THEN. DON'T KNOW IF YOU WILL HAVE A LOT OF TIME TO CLEAN THE APT, OPTION I HAVE A CLEANING GAL THAT COMES WEEKLY AND SHE COULD DO SOME FOR YOU ALSO, PLEASE LET ME KNOW.

~~TACK ROOM ON EAST END SWEEPED OUT MORE OFTEN, IT IS PRETTY DIRTY, AND I HAVE MY TACK IN THERE ALSO MY GRAIN.~~

~~HAY ON EAST END AND IN ALL PADDOCKS, AROUND DOORWAYS OF 24X24, ETC NEEDS TO BE RAKED UP COMPLETELY AND THROWN OUT. IT GETS HARDER WHEN IT IS STOMPED INTO THE MUD. THE RAMP SHOULD BE SWEEPED OFF DAILY TO KEEP THE MUD FROM DETERIORATING THE WOOD SURFACES. AREAS THAT ARE GETTING MUDDY WHEN YOU GET YOUR TRACTOR OVER HERE NEED 3/4 MINUS ROCK IN. WE NOTICED THAT ON THE NORTH SIDE EAST END OF BARN IT IS GETTING PRETTY MUD.~~

~~WOULD LIKE TO KNOW WHAT YOUR THOUGHTS ARE ON KEEPING BARN FLOOR AND ARENA FLOOR CLEAN AND TIDY. THIS TAKING THE TILE FLOOR OFF DAILY TO SWEEP, IN A YEAR IT WILL HAVE HOLES. THAT IS WHY WE WENT TO BLOWING. IT IS IMPOSSIBLE TO GET ALL HAY, HAIR, MUD, ETC UP WITHOUT BLOWING. WE HAD LEFT THE BLOWER OUT THERE FOR YOUR USE, BUT THERE IS NEVER ANY GAS IN IT. THE BLOWER IS THE BEST ANSWER TO KEEP PATHWAYS, ENTRY WAYS, FLOORS, ETC CLEAN, ESPECIALLY AROUND THE HAY PILES, ETC. LET'S SEE WHAT WE CAN DO ... THE ARENA AISLE WAY SHOULD BE BLOWN EVERY COUPLE OF DAYS, YOU CANNOT GET THE HAIR ETC UP WITHOUT THROWING AWAY THE ROCK ON THE FLOOR. ANOTHER OPTION, BUY THE GAS AND PAY BECKY TO KEEP THOSE AREAS CLEAN WEEKLY, THE USE OF THE BLOWER IS FREE (\$7.00 PER HOUR FOR HER DOING THIS WOULD BE A FAIR DEAL.~~

~~NOT ENOUGH SHAVINGS ARE BEING PUT DOWN IN THE STALLS, TONITE, ONE HORSE URINATED A LOT IN THE STALL, TOO LITTLE SHAVINGS AND IT IS RUNNING UNDER THE MATS. I TOOK A BUCKET OF YOUR SHAVINGS AND PUT IT ON IT. THAT IS BAD BECAUSE IT WILL SMELL AND WE DO NOT WANT THE MATS LIFTED UP TO CLEAN BECAUSE THEY WON'T GO BACK DOWN. MATS ARE ONLY GOOD WHEN YOU PUT SHAVINGS IN. ALSO THE LEANTOS DO NOT HAVE ENOUGH SHAVINGS, THE STAFF NEEDS TO COVER ALL AREAS TO SOAK UP WETTNESS AND TO PREVENT THE GROUND FROM GOING AWAY. IN OUR FIRST CONVERSATIONS ABOUT THE LEASE I HAD NO IDEA YOU GUYS WERE USING SHAVINGS MUCH, IT IS A NECESSITY HERE TO KEEP THINGS CLEAN AND IN GOOD SHAPE.~~

~~THE MANURE NEEDS TO BE DUMPED AND SPREAD OUT IN THE PASTURE, THERE ARE HUGE PILES AND NO ONE WILL BE ABLE TO SPREAD OR USE THE ROTILLER ON IT, PLEASE INFORM YOUR STAFF NOT TO EMPTY BY THE GATE AND FENCE LINE AND TO SPREAD OR KICK THE PILES DOWN WHEN DUMPING. BECKY IS SPREADING HER PILES OUT WHEN SHE DUMPS AM AND PM. IT IS A PRETTY BIG PASTURE SO WE SHOULD BE ABLE TO GET THE PILES SPREAD OUT BEFORE THEY GET ANY LARGER. FOR YOUR INFO BECKY IS TAKING BAD HAY TO OUR BURN PILE AND NOT DUMPING IT IN THE TURNOUT PASTURES..~~

~~BECAUSE WE ARE IN TO THE WET SEASON, WOULD LIKE TO SEE THE MANURE WAGONS NOT WASHED ON THE GRASS, THE RESIDUE NEEDS TO BE PICKED UP, PLEASE HAVE YOUR STAFF WASH THE WAGONS DOWN BY THE RAMP (OLD MANURE PILE, WHITE DRAIN PIPE). THE WATER WILL DRAIN DOWN THERE. IT IS GETTING TOO WET TO SPRAY THEM CLEAN AND DUMP WATER ON THE GROUND BY THE FREEZE FAUCET. I HAVE ALSO INSTRUCTED BECKY TO DO THE SAME.~~

~~RAILS IN THE PASTURE TURNOUTS ARE GETTING KNOCKED DOWN AND BROKE, NEXT MONTH YOU SHOULD ORDER SOME RAILS FROM KINGSTON LUMBER TO HAVE ON HAND, ALSO THE 4X4 POSTS IF THEY NEED TO BE REPLACED CAN ONLY BE GOTTEN AT PARKER LUMBER. I AM INTENDING TO PERMANENT FENCE THE FRONT PASTURE, WHERE DOLLY AND JOSIE GO DURING THE DAY SO WHATEVER RAILS AND POSTS ARE HERE I NEED, PLUS A LOT MORE. ALL RAILS AND POSTS SHOULD BE PAINTED WHITE BEFORE INSTALLING, IT MAKES IT EASIER. THERE IS A RAIL DOWN BY THE GATE IN THE FOUR PADDOCKS (24X24) DOWN BY ARENA, PLEASE SEE IF MIKE CAN FIX. THE ELECTRIC FENCE IS NOT WORKING, IT IS DOWN IN MANY PLACES, WE NEED TO FIGURE THIS OUT REAL QUICK, BECAUSE THE HORSES IN MY CARE WILL START TO TEAR THE FENCE DOWN AND BE DESTRUCTIVE. IF YOU FIND ANY OF YOUR HORSES CHEWING, WE USUALLY SPRAY SOME STUFF, OR BLEACH AND WATER ON IT IMMEDIATELY TO DETER THEM. ANY BAD CHEWERS WE USUALLY WILL PUT ON A MUZZLE THAT THEY CAN STILL EAT AND DRINK.~~

~~OTHER THAN THESE ITEMS, THINGS LOOK PRETTY GOOD. JUST WANT TO KEEP UP ON THINGS BEFORE THAN SNOW BALL. WITH THIS MANY HORSES, IT CAN BE REALLY LABOR INTENSIVE AND AT THE END~~

OF THE MONTH WE GO OFF DAY LIGHT SAVINGS TIME. APPRECIATE THAT MIKE IS GETTING ALONG WITH US, HE IS TRYING TO BE REALLY HELPFUL. NEXT DRY DAY, HAVE MIKE MOW THE ARENA LAWNS, THEY ARE GETTING A LITTLE LONG. DOES ANYONE IN YOUR GROUP HAVE A WALK MOWER AND WEEDWACKER, YOU WILL NEED THOSE TWO ITEMS TO KEEP THE PLACE TRIMMED UP.

WE INTEND TO PUT THE WALL HEATERS BACK IN THE ARENA ROOMS ON FRIDAY, COULD I POSSIBLY GET A KEY FROM YOU FOR YOUR OFFICE (THE BREAKROOM) SO WE COULD GET THAT DONE. AM TRULY SORRY IT HAS TAKEN SO LONG, BUT WITH TRACY GOING BACK TO WORK, NOT MUCH TIME LEFT AND HE IS WORKING 7 DAYS A WEEK FOR AWHILE.

THANKS A MILLION AND HAVE A GREAT WEEK- LINDA

APPENDIX D

DECEMBER 18, 2003

ALLEN:

I AM SORRY I DIDN'T HAVE TIME TO ACTUALLY TALK TO YOU BUT THIS IS IN REGARDS TO THE LIST ON THE BARN BOARD. I AM GONE FOR THE WEEKEND AND HAVE SOMEONE SITTING THE HOUSE, BECKY IS DOING HER AM CHORES, AND WORKING THE SHOP FOR ME.

FIRST I DO NOT WANT YOU REPAIRING ANYTHING ON THE APARTMENT THAT IS MY RESPONSIBILITY. IT IS ALMOST XMAS AND TRACY WILL FIX IT ON THE 26TH, WE HAVE THE MATERIAL AND SUPPLIES TO DO IT LIKE THE REST OF THE STAIRS. IT IS JUST THE EDGE AND FOR A FEW MORE DAYS THIS IN MY OPINION IS NOT CRITICAL. OF COURSE SAFETY IS A FACTOR BUT RIGHT NOW WITH XMAS AT HAND NEITHER OF US HAVE TIME. I FEEL THIS IS SATISFACTORY. ALSO, WHAT IS THIS ABOUT A BABY GATE ON THE UPPER DECK. MAY I REMIND YOU THAT I RENTED THAT APT TO YOU AS AN ADULT, SINGLE OCCUPANCY ONLY AND THAT IS HOW IT IS TO STAY, PLEASE. THERE WILL BE NO CHANGES WHATSOEVER DONE TO THE APT, DECK, ETC. THE APT IS NOT CHILD SAFE, THAT IS WHY IT HAS ALWAYS BEEN A SINGLE ADULT PERSON RENTING FROM ME. IT IS NOT UP TO ME TO MAKE IT CHILD SAFE -- ADDITIONAL PEOPLE IN THE APT CAUSES WEAR AND TEAR, EXTRA GARBAGE, AND EXTRA UTILITIES, I THINK YOU UNDERSTAND WHERE I AM GOING WITH THIS, RIGHT?

ALSO, WE BROUGHT UP THREE YARDS OF SHAVINGS TONITE, SO FAR WE HAVE BROUGHT UP SIX OUT OF THE 20. WE WOULD PREFER TO BRING IT UP OURSELVES, OUR TRACTOR IS THERE AND THERE IS NO WAY FOR ANYONE ELSE TO DO THIS PROPERLY. YOU SHOULD WELCOME THAT IS ONE MORE THING YOU GUYS DON'T HAVE TO DO, AND WE DON'T MIND HELPING OUT.

I CLEANED THE DRAIN OUT THE OTHER NIGHT BECAUSE SARA AND MEGAN CANNOT BE EXPECTED TO DO THAT. IT IS HARD WORK EVEN FOR AN ADULT. WE CANNOT EXPECT CHILDREN TO DO THAT KIND OF HARD LABOR AND I KNOW YOU WILL AGREE. I THOUGHT WE WERE GOING TO GET SOME ADULTS OUT ON A WORK PARTY TO DO MAINTENANCE ON THE FACILITY, I AM STILL WAITING!!!

FARM MAINTENANCE IS NEEDED WHETHER IT IS RAIN OR SHINE, WHEN THE PROBLEM ARISES SOMEONE NEEDS TO IMMEDIATELY GO OUT AND FIX IT. WAITING ONLY MAKES IT WORSE. YOU DOUBLED HORSES BACK THERE AND NOW IT IS A MESS, THAT IS WHY IT WILL TAKE A LOT MORE TO FIX. I HAD HORSES IN THOSE PADDOCKS FOR 25 YEARS AND IT NEVER ONCE WAS LIKE THAT. YOU MUST FIX THINGS WHEN THEY

FIRST NEED ATTENTION. ALSO I WOULD APPRECIATE EVERYONE TO DISCONTINUE DRIVING UP TO THE DOOR OF THE ARENA, THAT IS A MUD MESS, IT WAS NOT INTENDED TO BE A PARKING LOT. WE HAVE A PARKING LOT AND THERE IS NO REASON UNLESS UNLOADING SOMETHING ONCE AND AWHILE IT NEEDS TO BE DONE . ALSO COULD SOMEONE PLEASE EMPTY THE BUTT CAN AT THE ARENA, IT IS OVERFLOWING ON THE GROUND. ALSO BEHIND THE ARENA, EITHER FROM CARS, TRUCKS, OR TRACTOR IT IS ALL MUDDY. WE NEED NOT TO DRIVE BACK THERE UNLESS WE ABOLUTELY HAVE TO. IT ONLY MAKES MORE WORK IN THE LONG RUN TO FIX. YOU SAY YOU HAVE ROCK AT THE OTHER FARM, IT NEEDS TO BE BROUGHT HERE AND PUT IN ALL OF THESE PLACES ESPECIALLY THE PATH FROM THE BARN TO THE ARENA, IT IS REALLY GETTING BAD.

IN REGARDS TO THE STALL IN THE ARENA, IF YOU REMEMBER WHEN WE MADE THIS DEAL IN JULY, I TOLD YOU THAT I NEEDED THOSE STALLS FOR MY MDSE AND THAT I WOULD USE THEM UNTIL SPRING IF I COULD AFFORD TO PUT IN A BLDG UP HERE TO STORE THE STUFF. YOU AGREED TO THAT AT THE TIME AND NOW ONCE AGAIN THINGS HAVE CHANGED. I HAVE GIVEN YOU TWO OF THE FIVE STALLS, SO FAR WHICH IS MORE THAN YOU WERE GOING TO GET. I DO INTEND TO CLEAN THAT OTHER STALL OUT FOR YOU, BUT ONCE AGAIN UNTIL AFTER XMAS IT IS NOT GOING TO GET DONE, AND I AM SORRY BUT THAT IS THE BEST I CAN DO. I HAVE TO PRIORITIZE WHAT I AM DOING. I AM WORKING THE SHOP 7 DAYS A WEEK, DOESN'T LEAVE MUCH TIME.. WHY ARE YOU USING THAT FOR YOUR DOGS, WILL THEY GO TO THE BATHROOM IN THERE OR CHEW, I DO NOT WANT THE STALL AREA RUINED, PLEASE KEEP THAT IN MIND.

I THINK THIS COVER IT ALL, I DID NOT SEE YOU TO GIVE YOU THE KEY SO I WILL HAVE TO CATCH UP WITH YOU ON MONDAY.
THANKS A MILLION.

LINDA

APPENDIX E

Feb 4, 2004

Dear Allen:

Per our conversation on 2 February, the pro-rated rent due on the apartment from Feb 1st thru Feb 8th is \$185.20. My mfg payment is due as you know at the first of the month and would appreciate this money paid either by cash or check which ever is more convenient for you. Also left you a copy of December 2002 Puget Sound Energy bill for you to look over. As you can see it is \$83.00 over what it was last year, would appreciate \$75.00 to put towards this extra billing. Unfortunately I will not be available on Sunday when you move out due to earlier commitments. I would appreciate a mailing address left with me prior to Sunday so that the cleaning deposit (by check) may be returned after inspection.

Also per our conversation regarding the additional stall at the arena for the sole purpose of you using it for storage for Horse Harbor farm items, I have cleaned out The Equine Shoppe merchandise and moved it into my garage. As you said we do not want to clutter the barn with additional items. I have run out of storage space in the garage and The Equine Shoppe merchandise must stay in the other four stalls there for storage.

Some items I would like to discuss with you are:

1. Is the south side mercury vapor light turned off or has the bulb burned out? We should for security purposes make sure that light is working.
2. The white walk door to the lean-to is not being closed. I was in the barn yesterday afternoon to feed the horses and it was wide open. The problem is the cleaning staff is taking the heavy manure wagons over the bottom rail and it is bent so badly from the weight that the door will not close or stay closed. This should be fixed and the door should be double checked in the am after loading that is closed and tied.
3. Per our agreement the travel trailer has been moved to the campground but the north side of the arena is getting cluttered. Who does the trailer and the black vehicle belong to? Unless that is Horse Harbor Foundation property I would appreciate if it could possibly be moved to your new residence. The additional trailer that belongs to Robert in the campground I am hoping to find out from him what he wants done with that and have it moved off the property. Is the Arabian horse stored behind the arena in your way,

if so please let me know and we will move it up to the house making more room for storage for Horse Harbor farm supplies.

4. Please inform your barn staff that the west end door needs to be totally closed especially during bad weather. The dampness is coming in and ruining my hay that is stored on the west end loft.
5. Also the upper dutch door on the east end needs to be closed. Wye and the horse on the east end are fighting through the rails of the stalls and I do not want any horse to be injured. Normally I would have electric fence there to keep the horse in that paddock from being able to hang over the dutch door, but the fence has been taken down. So this is the only solution that I can come up with. Please inform your staff to keep that dutch door closed.

Appreciate your attention to this matters and if you have any questions please feel free to talk to me.

Sincerely,

Linda Eastwood
Linda Eastwood

Cc: Jeff Tolman, Attorney

APPENDIX F



SCOTT CLINDQUIST, MD, MPH, DIRECTOR
109 AUSTIN DRIVE
BREMERTON, WA 98312-1805
(360) 337-5235

NOTICE AND ORDER TO CORRECT VIOLATION

SENT REGULAR AND CERTIFIED MAIL

May 7, 2004

Ms. Linda Eastwood
25443 Pioneer Way NW
Poulsbo, WA 98370

RE: SOLID WASTE VIOLATIONS AT 25874 CANYON ROAD, POULSBO

Dear Ms. Eastwood:

Violations of Kitsap County Board of Health Ordinance 2004-2, "Solid Waste Regulations," have been identified at the above referenced property that you own and/or occupy.

As noted by the Health District, the following provisions of these regulations have been violated:

- § 025.1., "Owner Responsibility for Solid Waste"
- § 025.3.f., "Burning Prohibited"
- § 305.1., "Animal Waste"
- § 220.1.c., "Compost Handling"

The Health District hereby gives you notice to correct these violations within the specified timeframes by doing the following:

1. Immediately cease burning any solid waste other than natural vegetation. Before burning natural vegetation, contact your local fire department for burn ban and permit information.
2. Immediately, contact the Kitsap County Conservation District to schedule a technical assistance consultation with a resource conservation planner. In coordination with the Conservation District, prepare a manure management plan.
3. Immediately remove the dumped manure from the drainage ditch located behind the manure pile.
4. Immediately, arrange to have manure hauled off-site within seven (7) days of the receipt of this letter. The manure must be hauled to an appropriate location approved by the Health District.
5. Immediately prepare an approved manure storage / compost area based on Health District and Conservation District designs. The storage / compost area must be

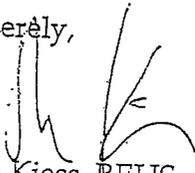
designed in such a way to prevent the run-on / run-off of stormwater, minimize odors, and prevent vector attraction (flies and rodents). The storage / compost area must be adequately sized to hold the large volume of manure produced by the animals on site.

6. Upon completion of the new storage / compost area, establish a plan to prevent exceeding the capacity of the new area. Manure must be either hauled and disposed of off site or land applied at the appropriate agronomic rate.

FAILURE TO COMPLY WITH THIS ORDER WILL RESULT IN THE ISSUANCE OF A CIVIL INFRACTION NOTICE TO YOU. THE CIVIL INFRACTION NOTICE MAY RESULT IN A FINE OF UP TO \$513.00 PER VIOLATION PER DAY TO BE ASSESSED TO YOU.

Your prompt attention to this matter is both appreciated and required. Please call me at (360) 337-5606 if you have any questions or require additional information regarding this order.

Sincerely,



John Kiess, REHS
Environmental Health Specialist
Solid and Hazardous Waste Program

cc: Horse Harbor Foundation
P.O. Box 3068
Silverdale, WA 98383

APPENDIX G

Sept 4, 2004

Horse Harbor Foundation
Attn: Kay Daling
PO Box 3068
Silverdale, Wash 98383

Dear Kay:

It was very good new to hear through the attorney's that Horse Harbor Foundation has purchased some property to have a permanent home for their program. Since summer is almost over and there is a very small window in preparing the facility for another winter I thought perhaps we could discuss the following to prevent the problems from last winter and make the property more presentable to perspective buyers. The October 29th settlement date is so far off that we should not let the remaining summer weather go by and not get these items accomplished. My major concern is that the facility is maintained for the winter. Since there is a financial backer for this new property and building venture we feel there should be monies available to repair, and maintain your current facility location.

To clean all drains boxes and to fix the curtain drains so the water runs off properly and does not flood the paddocks and ruins the treated lumber on the buildings. ~~Last winter as you remember we had 6-8 inches of water, urine, etc right up the buildings foundation and it sat in this water for months. To re-install any fence system only in the areas that protect the curtain drains from damage. This could be tied into your existing electric fencing system. If possible not to double up horses on the north side of the upper barn to prevent any further damage to the curtain drains.~~

~~To paint the departed rails and posts that you installed to prevent damage from the rain.~~

~~To fix the floor in the one stall and make the building stable from falling down.~~

~~To water-proof all Dutch doors and wood trim on upper barn, and other small buildings including the front of the arena, and outside arena walls. I have the product of which we have used to protect the wood and would be willing to supply this product.~~

~~To weed wack all the grass around the buildings and fence and prevent the dampness damaging the wood and paint. Particularly the front corral which faces my home would be most appreciated.~~

~~To bring in rock (of which Mr Allen said you had plenty stored at Central Valley location) to fill in low spots on driveways, entrances, by arena door and on the west end of the upper barn.~~

To ensure that monthly the septic system additive is being down in the arena bathrooms.

These are the primary concerns that I have for my property for the upcoming winter. The facility will not take another winter of the water damage without considerable repair in the spring.

I would also ask your permission for the following:

- * To mow and weedwack Dolly's old paddock which is adjacent to the lower building and my house.
- * Access for myself only to the arena during my business operating hours to obtain blankets and mdse to sell for the store. Restricted access is hurting my business financially and this would be most appreciated. This access would be for entering the arena and getting into the 12x12 stalls to obtain merchandise only.
- * Access to remove all firewood that is now in the campground. I need that wood moved to my side of the property so that I can get it cut and split for the winter. We could set up a time that this would be accomplished. We would have to discuss how long it would take to remove this wood so we could plan accordingly.

Thank you for your time and attention to the above items and I look forward to working with you in accomplishing these maintenance items before winter sets in.

Sincerely,

Linda Eastwood
Linda Eastwood

Cc: David Roberts, Attorney At Law

APPENDIX H



**INSPECTION REPORT ON CONDITIONS FOUND AT
THE EQUESTRIAN FACILITY BELONGING TO
MS. LINDA EASTWOOD
LOCATED AT 25443 PIONEER WAY NW
POULSBO, WA 98383**

Inspection particulars: The inspection was conducted 1/30/05 at approximately 1:30 pm. The weather was dry (no rain for the past several days) and slightly overcast.

Scope of inspection: Tasking from Ms. Eastwood was to evaluate the grounds, paddocks, fences, gates, buildings etc. on the property leased, by her, to The Horse Harbor Foundation to determine if it was apparent that proper care was being given the facility by the tenants and if the condition of the facility appeared to be conducive to the healthy boarding of horses. Further tasking requested that the tenants day-to-day management techniques be evaluated to determine if said management practices were environmentally sound and IAW guidelines established by the Kitsap County Extension Agents.

Overall first impression:

The facility looked tired, run down uncared for and unhealthy. Having been involved with this farm in capacities from horse border (1999) to prospective purchaser (2002) to conducting comparisons with my own horse farm (2003) I had never seen such disaray at the Double K as I observed 1/30/05.

It is not my desire to overwhelm the reader with a long list of specific items now wrong at this facility. Horses by nature have a genius for causing problems when kept by humans. They stomp on things. They bump into things. They urinate and deficate at will wherever they are when the urge strikes. Because of the nature of the beast, day-to-day care of a horse facility is impearitive. If this day-to-day care is not given then the small items like loose fencing, broken fence posts, clogged-curtain drains, grounded hot wires, broken gates/hardware, stall mats not properly placed, and manure not properly taken care of (all of these conditions now exist) grow into huge problems. I shall consentrate this report on the four major items I saw that as a licensed, professional property manager as well as a horse farm owner would cause me the greatest concern.

1. Destruction of the clay floor in the large 9 stall barn. Horses, when left unattended (especially when standing in filth) as in a stall, will do all sorts of strange things. Pawing the ground is one of them. They will actually dig like a dog. For that reason (as well as ease of cleanup and relief to the horses joints) stall mats are put down. The clay floors in this barn now resemble a hilly mess. Pot holes all over the place. The big problem here is you can't patch a clay barn floor. When building a horse facility, if you desire a clay floor you dig down to x depth, have the clay brought in, have it tamped or rolled and then basically build the building around the floor. The floor in this barn is now a trip hazzard for both animals and humans. From 1999 through mid 2003 this condition did not exist. I can only attribute this problem to lack of attention to detail on the part of management or a total disregard for Ms Eastwoods property. This problem did not happen overnight but rather over a period of time.

Windermere Property Management/WPM Kitsap, LLC

18804 Front Street, Suite 201B • PO Box 1090 • Poulsbo, WA 98370 • 360/779-1755 • Fax 360/779-9964 • E-mail wpmkitsap@windermere.com

Eastwood inspection pp 2

2. Destruction of the top soil in the padocks around the large 9 stall barn. The padocks on the north side of the large barn are like a dirt, manure, moss/algae milkshake (see attached photos). This condition is horribly unhealthy and unsafe for the animals. Unfortunately, in this case the milkshake padock dirt problem is really the symptom not the problem. The barns/padocks at the Double K had curtain drains around and through them to avoid this very problem. Downspouts going into the curtain drains and catch basins were required. (My farm's drain system is modeled after the Double Ks). This system does require periodic maintenance. As the water flows to the catch basin it brings mud with it. If not cleaned out (perhaps every two months at our farm if it is done correctly) eventually the basin fills up with mud and then the grate disappears, the system stops operating and standing water develops. The basin on the East end of the barn was under mud. This problem must have been identified to the tenants prior to this inspection because Ms. Eastwood asked the President of the Horse Harbor Foundation, in my presence, why the basin was not cleaned out as she had requested over a week before. The president replied we cleaned it out Thursday. Weather or not that answer was correct, the grate was again covered, water could not flow and the problem continued. When water is standing and horses weighing 1150 - 1400 pounds walk on the dirt with their small hoofs they tend to sink in. When the horse removes their hoof the hole they just made fills with water further and allows a deeper softening of the soil making it possible for the animal to sink in more the next time. Ultimately the horse sinks in far enough to reach curtain drains and they are collapsed destroying the entire system. This seems to be the case that now exists. Maintaining a system like this requires no special skills, no equipment and a minimum amount of time. I can find no other reason for a failure like this other than poor management on the part of the tenant.

3. Loss of sound animal control capabilities. (Hot wire systems, fencing, gates etc.) Horses naturally lean against things and like to rub. I noted during my inspection that the hot wires in and around the padocks by the big barn seem to be grounded, sagging and generally not where they should be. The hot wire system not working as designed/built allows the horses to get up next to the fences. Looking at the broken boards, (see attached pictures) leaning and broken fence posts, gates etc., it is obvious that the horses have been at the fences. Combine that with the problems pointed out in # 2 above (where the fence posts are sitting in mud vice dirt like they are intended to sit) and you have a situation that if not corrected immediately the badly damaged fences will fail and there will be horses running loose.

4. Manure and urine soaked stall shavings not disposed of IAW Kitsap County Extension Agents Guidelines. Between the arena and the big barn there is a padock, approximately 75' X 75' that up on a small hill full (about 3 feet high) of manure and used shavings. Some places this pile is covered with tarps and other places it is not. Rainwater run-off from this pile is environmentally, very unfriendly. Should the county elect to issue a citation this could result in very large fines. (See attached Pictures)

Summary: These problems are a result of allowing horses to be kept in a facility by people who either lack the where-with-all to keep up the property, or do not possess the management skills necessary to recognize small problems and correct them before they get to the point they are now, or simply don't care. The damage done to this point, I am sure, will cost thousands of dollars to repair, and if this property is not returned to the owner immediately irreparable damage will be done.

Sincerely,

J.E. Vajda
Broker



Windermere Property Management

APPENDIX I

September 22, 2004

I David McDonald make the following statement in regards to the condition of Ms Eastwood's leasehold property.

I visited my son Mark McDonald at his work place at Ms Eastwood's farm in the month of July and August 2003. I helped my son do various projects for Ms Eastwood including pressure washing buildings, roofs, gutters and applying roofing coating to numerous out-buildings. In general Ms Eastwood's residential and farm property was in excellent condition. All fencing was clean, in very good condition and painted. I helped my son Mark McDonald pressure wash the buildings and re-coat three of her out-buildings with roof coating. The lawns and grounds were always mowed and all of the fencing clear of weeds and grass. The barns, leantos, stalls, and turnout pastures were all perfectly clean. It was apparent Ms Eastwood had great pride in keeping her farm in this condition at all times.

I returned to visit Ms Eastwood in September 2004 and my son and I walked around the leasehold property and was appalled at how dirty and deplorable condition every area had become. All the buildings, fencing, actually the entire facility is dirty and in need of extensive repair. It is evident that Horse Harbor Foundation's horses have done a lot of damage to the post and rail fencing in the paddocks and turnout areas. Some areas of the fencing are held up by sticks. The buildings have siding damage and one small out-building from flooding water during the winter has structural damage. The paddocks and leantos are no longer built-up and have been dug out so that water does not drain to the drain box curtain system and has flooded right up to the building treated lumber structure. It smells of manure and urine in every area. It is evident that Horse Harbor Foundation has done absolutely very little to no maintenance on the facility since they took possession in October of 2003.

It is my opinion that it will take a lot of money and work to put Ms Eastwood's leasehold facility back to the condition that it was prior to Horse Harbor Foundation leasing the property.

This is my sworn statement given on September 22, 2004.

David McDonald

David McDonald

Date *9-22-04*

STATE OF WASHINGTON
COUNTY OF KITSAP

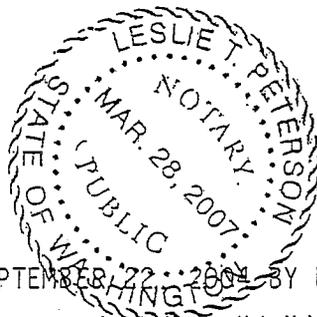
SIGNED OR ATTESTED BEFORE ME ON SEPTEMBER 22, 2004 BY DAVID MCDONALD.

David McDonald

SIGNATURE

VP/Manager

TITLE



03/28/07

MY APPOINTMENT EXPIRES

APPENDIX J

September 22, 2004

I Mark McDonald make the following statement in regards to the knowledge that I have regarding the condition of Ms Eastwood's ten acre farm property. I was employed by Ms Eastwood for 2002, and 2003 to do yard and farm maintenance. I mowed lawns, weedwacked grass on entire property, repaired fence, pressured washed buildings, roofs, gutters, pressured wash fence and painted, cleaned interior of buildings, staining of doors and walls. I brought up rock to re-do paths, driveways, and outside of stalls. I kept all the drain boxes clean and to ensure that the curtain drains worked properly. Not once during my employment did I ever see the curtain drains not work properly even during the heaviest rain, nor did I see any leanto's flood up to the building. The property in general was always kept in very good condition and no expense was ever spared in maintaining the property. Ms Eastwood had maintenance down on a daily and weekly basis so as to keep the property in pristine order. Last year prior to my leaving the area in September everything on Ms Eastwood's ten acre parcel was in perfect condition, clean, and sanitary. I returned to the area around March 2004 and worked for Ms Eastwood in maintaining her personal and farm property. Let it be noted that Ms Eastwood was having continual problems with Mr Warren and Horse Harbor Foundation in regards to maintaining the property. The property was in need of a lot of repair, filthy and unsanitary. Horse Harbor Foundation refused to do any maintenance in keeping the property in good working order. I left the area around May of 2004 and can attest to Mr Warren and Horse Harbor causing nothing but problems and harassing and threatening Ms Eastwood and anyone who did any work for her. A lot of damage was done to personal items of Ms Eastwood, ie a farm sign, her shop building window broken, garbage can stolen by Mr Warren, tacks thrown into her yard either for the pets to get into, rather I ran over them and punctured all four tires of her new Craftsman mower. He would continually harass myself, Christa Cook Ms Eastwood and Mr Heeter anytime he could. He would call and make false statements to the police, and fire dept just to get Ms Eastwood in any kind of trouble. I believe he did this out of anger in Ms Eastwood's evicting him from the property.

I was on vacation and stopped by to visit Ms Eastwood from September 15-22 2004. My father and I walked around the leasehold property and could not believe how the in general the property had deteriorated since I had last seen it in May 2004. The curtain drains are not working due to Mr Warren taking down the fence system and allowing his horses to destroy the drains, his horses have done major damage to the fencing and buildings, and in general the place is dirty, and unsanitary, smells of urine in the stalls and in the leanto areas. The fencing not only needs repair but cleaned, all the buildings and fencing is dirty. Ms Eastwood kept the fencing clean and in good condition. Most of the gates have been

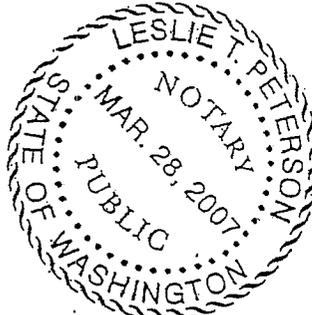
damaged by Mr Warren's horses and will need to be replaced, including some downspouts. Horse Harbor Foundation will have to do a lot of repair and maintenance to put the property back in the perfect working order that it was when they took possession in October 2003..

This is my sworn statement given on the 22 September 2004

Mark McDonald

Mark McDonald

Date 9/28/04



STATE OF WASHINGTON
COUNTY OF KITSAP

SIGNED OR ATTESTED BEFORE ME ON SEPTEMBER 22, 2004 BY MARK McDONALD.

Leslie T. Peterson

SIGNATURE

03/28/07

MY APPOINTMENT EXPIRES

VP/Manager

TITLE

APPENDIX K

RECEIVED AND FILED
IN OPEN COURT
JUN 25 2004

KITSAP COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KITSAP COUNTY

LINDA EASTWOOD dba DOUBLE KK
FARM,)

NO. 04 2 01561 0

Plaintiff,)

COMPLAINT FOR
UNLAWFUL DETAINER

vs.)

HORSE HARBOR FOUNDATION, INC.,)
a Washington Corporation, and)
OCCUPANTS,)

Defendants.)

COMES NOW the Plaintiff, and for cause of action against the Defendants, states as follows:

I.

Plaintiff is a single person residing Kitsap County, Washington. Plaintiff is the owner of the premises commonly known as 25874 Canyon Road, Poulsbo, Kitsap County, Washington. Plaintiff leased to Defendant, HORSE HARBOR FOUNDATION, INC., a portion of said premises pursuant to the terms of a Lease attached hereto as Exhibit 1.

II.

Defendant, HORSE HARBOR FOUNDATION, INC., is a Washington Corporation.

EX PARTE

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.
27.

III.

Defendant, OCCUPANTS, include any and all persons claiming any right or interest in the subject premises or tenancy by or through HORSE HARBOR FOUNDATION, INC.

IV.

The Defendants are in default under the terms of the Lease in the following particulars:

Monetary Defaults

<u>ITEM</u>	<u>AMOUNT DUE</u>
Late Charges - December, 2003, January, 2004, March, 2004 & April, 2004	\$40.00
Total Due	<u>\$40.00</u>

Defendants are in violation of the Lease in the following:

1. Lean-tos and stalls not clean, sanitary and deteriorating. Not using enough shavings to absorb urine.
2. Driveways, pathways, exists and entrances to all buildings not properly maintained.
3. Infestation of entire facility with rats in the arena and mice in the barn from not disposing of garbage.
4. All changes to locks, doors, etc. that have been altered without Landlord's permission.
5. Lighting in barns, lean-tos, arena not operating or burned out-some fixtures not operating properly.
6. Ramps to lean-tos buried in mud, manure, urine and partially destroyed.
7. Arena flooring not maintained.

1. 8. Faucets, toilets, sinks in arena not working properly.
2. 9. Arena, barn ground not maintained.
3. 10. White walk door to lean-tos will not close properly.
4. 11. Numerous metal gates bent and not working properly.
5. 12. 2-pipes including wash rack not working.
6. 13. Downspouts damaged and inoperable.
7. 14. Water sprinkling system in arena not working.
8. 15. Septic system at arena not working properly.
9. 16. Improper disposal of manure.
10. 17. Garbage and refuse over entire leased area.
11. 18. Paddocks flooded with mud, water, manure and urine.
12. 19. Turnout pastures covered with mud, manure and hay.
13. 20. Curtain drains around entire upper barn and lean-tos need to be redone so water runs off properly. Electric fence with stancions need to be reinstalled to prevent horses from re-damaging.
14. 21. Fences falling down, including posts, filthy.
15. 22. Electric fence not working.
16. 23. Failure to pay for Manure Fork and Shavings in the amount of \$65.99.

V.

On or about April 23, 2004, a Notice Of Default And To Cure Default Or Vacate (the "Default Notice") was served upon each of the Defendants herein on behalf of the Plaintiff pursuant to the Lease which required the Defendants to cure their defaults and/or otherwise fully comply with the

1. terms of their Lease or in the alternative, surrender possession of the premises to the Plaintiff. A copy
2. of the Default Notice is attached as Exhibit 2.

3.
4. VI.

5. As of June 23, 2004, Defendants had not paid the late charges due, corrected the non-
6. monetary defaults, nor vacated and surrendered the subject premises. As a consequence, Landlord
7. elected to terminate Defendants' right to possession and transmitted a Notice Of Termination Of Lease
8. And To Vacate Premises, a copy of which is attached as Exhibit 3.

9.
10. Defendants remain unlawfully in occupancy and possession of the subject premises.

11. VII.

12. As a consequence of Defendants' breach of the Lease, Plaintiff has incurred damages in
13. an amount that will be proven at the time of trial or further hearing. Plaintiff has and will incur costs
14. and attorney fees as a consequence of Defendants' breach of the Lease and is entitled to the recovery of
15. same in an amount to be proven at the time of trial or further hearing.

16.
17. VIII.

18. The current fair rental value of the Premises is \$5,000.00 per month.

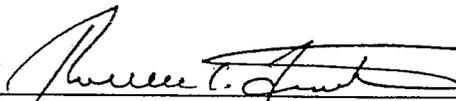
19. WHEREFORE, Plaintiff prays for relief against the Defendants, as follows:

20. 1. The entry of an Order for the issuance of a Writ of Restitution restoring the
21. subject premises to the Plaintiff;
22.
23. 2. The entry of a Decree and Order declaring the subject Lease with the Defendant,
24. HORSE HARBOR FOUNDATION, INC., to be terminated;
25.
26.
27.

1. 3. The entry of a Judgment against defendant for the charges owing, damages in an
2. amount to be proven at the time of trial or further hearing, rent at the rate of \$5,000.00 per month
3. beginning on June 23, 2004 and Plaintiff's costs and attorney fees.
4.

5. 4. For such other and further relief as the Court may deem just and proper.

6. DATED this 24th day of June, 2004.
7.

8. 
9. _____
10. RONALD C. TEMPLETON
11. WSBA #7843
12. Attorney for Plaintiff

12. STATE OF WASHINGTON)
13. : ss.
14. COUNTY OF KITSAP)

15. LINDA EASTWOOD, being first duly sworn on oath, deposes and states:

16. I am the Plaintiff in this action. I have read the foregoing Complaint For Unlawful Detainer,
17. know the contents thereof and believe the same to be true and correct.

18. 
19. _____
20. LINDA EASTWOOD

21. SUBSCRIBED AND SWORN to before me this 25th day of June, 2004.



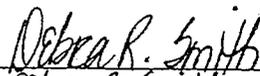
23. 
24. _____
25. Debra R. Smith
26. Print Name
27. NOTARY PUBLIC in and for the State of Washington
Residing at: Bremerton
My appointment expires: 8-16-06

EXHIBIT 1

REAL ESTATE LEASE

WHEREAS Linda Eastwood, d.b.a., Double KK Farm, is desirous of leasing her property located at 25874 Canyon Rd., Poulsbo, Washington, and

WHEREAS the Horse Harbor Foundation, Inc., with headquarters at 12550 Silverdale, Way, Silverdale, Washington, is desirous of leasing said property with an option to extend the lease as a location for its non-profit horse rescue and equine education programs, the two Parties to this Agreement, Linda Eastwood and the Horse Harbor Foundation, Inc., do hereby agree as follows:

I. BY THIS AGREEMENT made and entered into on 1st (day) October (month) 2003 (year), between Linda Eastwood, d.b.a. Double KK Farm, herein after referred to as Lessor, and the Horse Harbor Foundation, Inc., herein after referred to as Lessee, Lessor leases to Lessee the premises situated at 25874 Canyon Road, in the City of Poulsbo, County of Kitsap, State of Washington, and more particularly described as follows:

See Exhibit "A"
Renewable

together with all appurtenances, for a term of one year, to commence on October 15, 2003, and to end on October 14, 2008. Lessee shall have the right to extend the lease one year at a time up to four consecutive years for a total of FIVE(5) years. Lessee shall give a written notice to Lessor not less than THIRTY (30) days before the expiration of any lease period that Lessee desires to extend the Lease for the next consecutive year. In the event Lessee desires not to exercise this option Lessee shall vacate the premises according to paragraph XVII.

II. **Rent.** Lessee agrees to pay, without demand, to Lessor as rent for the demised premises the sum of \$1,666.67 Dollars per month in advance on the fifteenth day of each calendar month beginning October 15, 2003, payable at 25874 Canyon Road, City of Poulsbo, or at such other place as Lessor may designate.

III. **Quiet Enjoyment.** Lessor covenants that on paying the rent and performing the covenants herein contained, Lessee shall peacefully and quietly have, hold, use, and enjoy the demised premises for the agreed term.

IV. **Use of Premises.** The demised premises shall be used and occupied by Lessee exclusively as a location for the care and keep of its rescue horse herd and the operation of its non-profit school of horsemanship and other activities related to equine education and neither the premises nor any part thereof shall be used at any time during the term of this lease by Lessee for any other purpose. Lessee shall comply with all the sanitary laws, ordinances, rules, and orders of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of the demised premises during the term of this lease.

V. **Condition of Premises.** Lessee stipulates that he has examined the demised premises, including the grounds and all buildings and improvements, and that they are, at the time of this

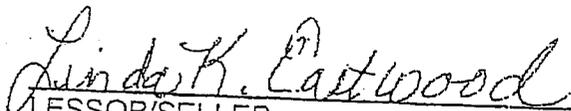
- VI. **Assignment and Subletting.** Without the prior written consent of Lessor, Lessee shall not assign this lease, or sublet or grant any concession or license to use the premises or any part thereof. A consent by Lessor to one assignment, subletting, concession, or license shall not be deemed to be a consent to any subsequent assignment, subletting, concession, or license. As assignment, subletting, concession, or license without the prior written consent of Lessor, or an assignment or subletting by operation of law, shall be void and shall, at Lessor's option, terminate this lease. The Lessor does grant the Lessee right to have one contracted employee of the Lessee quartered on the property in a non-permanent motor home or travel trailer for the purpose of managing and overseeing the Lessee's horse herd and operation.
- VII. **Alterations and Improvements.** Lessee shall make no alterations to the buildings or the demised premises or construct any building or make other improvements on the demised premises without the prior written consent of Lessor. All alterations, changes, and improvements built, constructed, or placed on the demised premises by Lessee, with the exception of fixtures removable without damage to the premises and movable personal property, shall, unless otherwise provided by written agreement between Lessor and Lessee, be the property of Lessor and remain on the demised premises at the expiration or upon sooner termination of this lease.
- VIII. **Damage to Premises.** If the demised premises, or any part thereof, shall be partially damaged by fire or other casualty not due to Lessee's negligence or willful act or that of his employee, family, agent, or visitor, the premises shall be promptly repaired by Lessor and there shall be no abatement of rent corresponding with the time during which, and the extent to which the leased premises may have been untenable; but, if the leased premises should be damaged other than by Lessee's negligence or willful act or that of his employee, family, agent, or visitor to the extent that Lessor shall decide not to rebuild or repair, the term of this lease shall end and the rent shall be prorated up to the time of the damage.
- IX. **Insurance.** The Lessee agrees to maintain liability insurance coverage of no less than one million dollars, also naming the Lessor as a covered party, for its equine education program. The Lessor agrees to maintain adequate casualty insurance coverage to rebuild or repair the facilities in this agreement in the event of loss due to fire, flood or other casualty not due to Lessee's negligence or willful act or that of his employee, family, agent, or visitor.
- X. **Dangerous Materials.** Lessee shall not keep or have on the leased premises anything of a dangerous, inflammable, or explosive character that might unreasonable increase the danger of fire on the leased premises or that might be considered hazardous or extra hazardous by any responsible insurance company.
- XI. **Utilities.** The electric bill^{shall} be prorated between the Lessor and the Lessee for their respective use thereof. Lessor will provide the monthly bill to the Lessee for payment of Lessee's prorata share.
- XII. **Maintenance and Repair.** Lessee will, at his sole expense, keep and maintain the leased premises and appurtenances in good and sanitary condition and repair during the term of this lease and any renewal thereof. In particular, Lessee shall keep the fixtures on or about the leased premises in good order and repair; keep the grounds clean; keep the walks free from dirt and debris; and, at his sole expense, shall make all required repairs to plumbing, heating apparatus, and electric and gas fixtures whenever damage thereto shall have resulted from Lessee's misuse, waste, or neglect or that of his employee, family, agent, or visitor. Major maintenance and repair of the leased premises, not due to Lessee's misuse, waste, or neglect or that of his employee, family, agent, or visitor, shall be the responsibility of Lessor or his assigns. In the event the water pump system fails, Lessee agrees to pay 3/4th the cost of repairs and the lessor 1/4th the cost of the repairs.

- XIII. **Right of Inspection.** Lessor and his agents shall have the right at all reasonable times during the term of this lease and renewal thereof to enter the demised premises for the purpose of inspecting the premises and all building improvements thereon.
- XIV. **Display of Signs.** During the final sixty (60) days of this lease, Lessor or his agent shall have the privilege of displaying the usual "For Sale" or "For Rent" or "Vacancy" signs on the demised premises and of showing the property to prospective purchasers or tenants. Lessee agrees that no signs shall be placed or painting done on or about the leased premise by Lessee or at his direction without the prior written consent of Lessor, with the exception of one sign designating it as the Lessee's place of business at the main entrance.
- XV. **Subordination of Lease.** This lease and Lessee's leasehold interest hereunder are and shall be subject, subordinate, and inferior to, any liens or encumbrances now or hereafter placed on the demised premises by Lessor, all advances made under any such liens, or encumbrances, the interest payable on any such liens or encumbrances, and any and all renewals or extensions of such liens or encumbrances.
- XVI. **Holdover by Lessee.** Should Lessee remain in possession of the demised premises with the consent of Lessor after the natural expiration of this lease, a new month-to-month tenancy shall be created between Lessor and Lessee which shall be subject to all the terms and conditions hereof but shall be terminated on sixty (60) days' written notice served by either Lessor or Lessee on the other party.
- XVII. **Surrender of Premises.** In the event the herein described purchase option is not exercised, at the expiration of the lease term, Lessee shall quit and surrender the premises hereby demised in as good state and condition as they were at the commencement of this lease, reasonable use and wear thereof and damages by the elements excepted.
- XVIII. **Default.** If any default is made in the payment of rent, or any part thereof, at the times hereinbefore specified, or if any default is made in the performance of or compliance with any other term or condition hereof, this lease, at the option of Lessor, shall terminate and be forfeited, and Lessor may re-enter the premises and remove all persons there from. Lessee shall be given written notice of any default or breach, and termination and forfeiture of the lease shall not result if, within sixty (60) days of receipt of such notice, Lessee has corrected the default or breach or has taken action reasonably likely to effect such correction within a reasonable time. Lessee shall pay all reasonable attorneys' fees necessary to enforce Lessor's rights
- XIX. **Abandonment.** If at any time during the term of this lease Lessee abandons the demised premises or any part thereof, Lessor may, at his option, enter the demised premises by any means without being liable for any prosecution therefore, and without becoming liable to Lessee for damages or for any payment of any kind whatever, and may, at his discretion, as agent for Lessee, relet the demised premises, any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Lessor's option hold Lessee liable for any difference between the rent that would have been payable under this lease during the balance of the unexpired term, if this lease had continued in force, and the net rent for such period realized by Lessor by means of such reletting. If Lessor's right of re-entry is exercised following abandonment of the premises by Lessee, then Lessor may consider any personal property belonging to Lessee and left on the premise to also have

been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and is hereby relieved of all liability for doing so.

- XX. **Binding Effect.** The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, and assigns of the parties hereto, and all covenants are to be construed as conditions of this lease.
- XXI. **Radon Gas Disclosure.** As required by law, (Landlord) (Seller) makes the following disclosure: "Radon Gas" is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have to date not been found in any of the buildings situated upon this property.
- XXII. **Lead Paint Disclosure.** "Every purchaser or Lessee of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller or Lessor of any interest in residential real estate is required to provide the buyer or lessee with any information on lead-based paint hazards from risk assessments or inspection in the seller or Lessor's possession and notify the buyer or lessee of any known lead-based paint hazards

IN WITNESS WHEREOF, the parties have executed this lease on the day and year first above written and that both parties have read the foregoing Agreement, understand the language and terms used therein completely, are in accord on all parts as herein stated and agree to abide by same. This Lease/Option Agreement is binding upon Lessor and her heirs, assigns, and successors forever. They do hereby agree by affixing their signatures as follows:


LESSOR/SELLER
Linda Eastwood
d.b.a. Double KK Farm

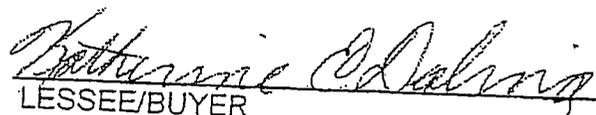

LESSEE/BUYER
Horse Harbor Foundation, Inc.
by Kay Daling, President

EXHIBIT 2

NOTICE OF DEFAULT AND TO CURE DEFAULT OR VACATE

TO: Horse Harbor Foundation
AND TO: Occupants and other persons claiming any right, title or interest in the Lease and Premises

NOTICE OF DEFAULT

1. *Notice Of Default.* You are in default under the terms of that certain Lease dated October 1, 2003 by and between Linda Eastwood d/b/a Double KK Farm as Landlord and Horse Harbor Foundation, Inc. as Tenant for the lease of the premises located at 25874 Canyon Road, Poulsbo, Washington.
2. *Description Of Default And Acts Required.* Your default and the action required to cure each default is as follows:

Description of Default

Action Required to Cure

Lean-tos and stalls not clean, sanitary and deteriorating. Not using enough shavings to absorb urine.

Remove stall mats, clean, bring in new 3/4 minus rock, remove mud, etc., redo all flooring with sand. Replace any stall mats that are ruined. Provide adequate dry shavings to absorb urine.

Driveways, pathways, exits and entrances to all buildings not properly maintained.

Replace and spread 3/4 minus rock

Infestation of entire facility with rats in the arena and mice in the barn from not disposing of garbage.

Professionally exterminate, maintain cleanliness.

All changes to locks, doors, etc. that have been altered without Landlord's permission.

Fix, repair or replace to original condition.

Monies owed:

Manure Fork - \$29.99
April Water Bill - \$20.00
Shavings - \$36.00

Pay all monies due - \$125.99

NOTICE OF DEFAULT AND TO CURE DEFAULT OR VACATE - 1

Late Charges for December, 2003,
January, 2004, March, 2004 &
April, 2004 - \$40.00

Lighting in barns, lean-tos, arena not operating or burned out—some fixtures not operating properly.

Fix and replace any damaged fixtures not operating properly.

Ramps to lean-tos buried in mud, manure, urine and partially destroyed.

Clean, repair, replace with treated lumber.

Arena flooring not maintained.

Watered and dragged when needed. This has not been done in 5 months.

Faucets, toilets, sinks in arena not working properly.

Clean, repair and replace.

Arena, barn ground not maintained.

Pickup debris, mow lawns, weedeat, etc. on a regular basis.

White walk door to lean-tos will not close properly.

Fix door, clean and replace door and jam, if necessary.

Numerous metal gates bent and not working properly.

Fix, repair or replace.

2 pipes including wash rack not working.

Have plumber repair.

Downspouts damaged and inoperable.

Replace.

Water sprinkling system in arena not working.

Fix, clean and replace sprinkler heads.

Septic system at arena not working properly.

Have professional come in and inspect and pump tank if necessary.

Improper disposal of manure.

Clean and dispose of properly, remove from facility.

Garbage and refuse over entire leased area.

Pick-up and dispose of properly.

Paddocks flooded with mud, water, manure and urine.

Scrape off all mud from paddocks, sanitize, cover with 4 inches of sand, keep horses off until ground settles.

Turnout pastures covered with mud, manure and hay.

Remove manure, hay, re-till, seed and remove all weeds.

Curtain drains around entire upper barn and lean-tos need to be redone so water runs off properly. Electric fence with stancions need to be reinstalled to prevent horses from re-damaging.

Have contractor come in and fix professionally.

Fences falling down, including posts, filthy.

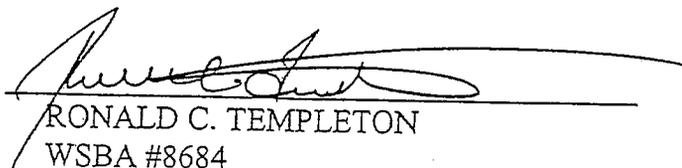
Get 4x4 posts, get rails 1x6x10 fir-needs to match facility-fix all fences and pressure wash and paint.

Electric fence not working.

Repair.

3. *Consequences Of Failure To Cure Defaults.* In the event you fail to cure the defaults specified in Paragraph 2 in strict conformance with the provisions of Paragraph 2, you must forthwith vacate and surrender possession of the Premises, your right to possession will be terminated and Landlord shall pursue all remedies specified in the Lease or provided by law, all without further notice.

DATED this 20th day of April, 2004.



RONALD C. TEMPLETON

WSBA #8684

Attorney for Landlord

Matty & Templeton
3212 NW Byron Street, Suite 104
Silverdale, WA 98383
(360)692-6415

Certified Mail Nos.: 7001 2510 0005 5204 5966; 7001 2510 0005 5204 5973; 7001 2510 0005 5204 5928

NOTICE OF DEFAULT AND TO CURE DEFAULT OR VACATE - 3

EXHIBIT 2 to COMPLAINT FOR UNLAWFUL DETAINER - 3

EXHIBIT 3

NOTICE OF TERMINATION OF TENANCY
And
TO VACATE PREMISES

TO: Horse Harbor Foundation
P.O. Box 3068
Poulsbo, WA 98370

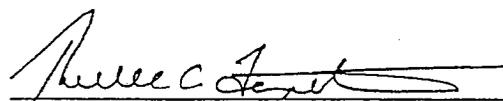
Horse Harbor Foundation
c/o Katherine Daling
P.O. Box 2492
Silverdale, WA 98383

Horse Harbor Foundation
25874 Canyon Road
Poulsbo, WA 98370

AND TO: Any other persons claiming any interest in the premises. YOU ARE HEREBY
NOTIFIED AND INFORMED AS FOLLOWS:

1. You have failed to cure all the defaults specified in the Notice of Default and to Cure Default or Vacate dated April 20, 2004 and served on you on April 23, 2004.
2. The landlord has elected to terminate your tenancy effective June 23, 2004.
3. You are hereby required to forthwith vacate and surrender possession of the premises. Further occupancy constitutes unlawful detainer and subjects you to double damages, costs and attorney fees.

DATED this 23rd day of June, 2004.



RONALD C. TEMPLETON
WSBA #8684

Attorney for Landlord
Matty & Templeton
3212 NW Byron Street, Suite 104
Silverdale, WA 98383
(360) 692-6415

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

APPENDIX L

FILED
KITSAP COUNTY CLERK
2005 MAR -2 PM 1:47
DAVID W. PETERSON

1
2
3
4
5
6
7
8
9
10 IN THE SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

11 LINDA EASTWOOD, dba
12 DOUBLE KK FARM

13 Plaintiff,

14 vs.

15 HORSE HARBOR FOUNDATION, INC.,
16 a Washington Corporation, and
OCCUPANTS,

17 Defendants.

NO. 04-2-01561-0

STIPULATION AND
ORDER OF CONTINUANCE

18 **STIPULATION**

19 **COMES NOW** the parties by and through their respective attorneys and
20 stipulate as follows:

21 Whereas, Plaintiff, LINDA EASTWOOD, has leased certain property located at
22 25874 Canyon Road, Poulsbo, Washington to Defendant, HORSE HARBOR
23 FOUNDATION, INC., and disputes have arisen between the parties with regard to
24 the terms of the written lease, the terms of oral agreements, the parties compliance
25 with the terms of written and oral agreements, the validity of the lease, and whether
26 and to what extent HORSE HARBOR FOUNDATION, INC., has damaged the
premises that are now the subject of this lawsuit.

ORIGINAL

55

1 Whereas, Plaintiff desires to have a date certain upon which she can reclaim
2 exclusive possession of the leasehold, and the Defendant desires to have a date
3 certain to which they may occupy the leasehold estate, and the parties, at this time,
4 desire to leave all other issues for litigation and or subject to future settlement; now,
5 therefore, the parties agree and stipulate as follows:

- 6 1. Plaintiff guarantees HORSE HARBOR FOUNDATION, INC.'s tenancy upon the
7 subject premises until June 1, 2005, conditioned on the defendant's timely
8 payment of rent as specified in section 4 *infra*. HORSE HARBOR
9 FOUNDATION, INC., shall remove all horses from the premises by June 1, 2005.
10 2. Employees, volunteers, agents, and contractors of HORSE HARBOR
11 FOUNDATION, INC., shall be allowed full access to the premises until June 7,
12 2005, for the purpose of cleaning and repairing the premises.
13 3. Should HORSE HARBOR FOUNDATION, INC., fail to remove all of its horses
14 from the leasehold premises by 11:59 p.m., June 1, 2005, Plaintiff shall be
15 entitled to an immediate order issuing a Writ of Restitution without notice, ex
16 parte, time being of the essence. Should HORSE HARBOR FOUNDATION,
17 INC., fail to fully vacate the leasehold premises by 6:00 p.m., June 8, 2005, they
18 will be trespassing and Plaintiff shall be entitled to an immediate order issuing a
19 Writ of Restitution without notice, ex parte, time being of the essence.
20 4. HORSE HARBOR FOUNDATION, INC., shall continue to pay rent to Plaintiff as
21 follows:

PAYMENT DUE DATE	FOR RENTAL PERIOD	AMOUNT
03/15/05	March 1 to March 31, 2005	\$ 1,666.67
04/15/05	April 1 to April 30, 2005	\$ 1,666.67
05/15/05	May 1 to May 31, 2005	\$ 444.45*
	June 1 to June 8, 2005	\$ 0

22 * HORSE HARBOR FOUNDATION, INC., paid the last month's rent at the
23 beginning of its tenancy, and the rent from June 1 to June 8, 2005, is prorated for
24 the shortened month. Thus, the total amount of rent owing for May 1, 2005 to
25 June 8, 2005 is \$444.45. HORSE HARBOR FOUNDATION, INC., shall pay Ms.
26 EASTWOOD for the water-utility at the rate of \$30.00 per month, with this utility
bill prorated to \$8.00 for June 1, 2005 through June 8, 2005. HORSE HARBOR

1 FOUNDATION, INC., remains responsible for other utility bills in its name (Puget
2 Sound Energy) through June 8, 2005.

3 5. During the period of HORSE HARBOR FOUNDATION, INC.'s remaining
4 tenancy, Plaintiff's inspections of the premises shall be limited to one inspection
5 in March, one inspection in April, and one inspection in May. These inspections
6 will be on a Saturday, between the hours of 3:00 pm and 5:00 pm, subject to
7 seven days written notice from Plaintiff to Defendants. Plaintiff shall be limited to
8 three accompanying persons per inspection. Either party may photograph
9 and/or videotape these inspections. Ms. EASTWOOD continues to have access
10 to the leasehold premises to address specific time-sensitive problems that may
11 arise where, due to the circumstances, it is impracticable to wait for defendant to
12 address the issue or for plaintiff to obtain prior consent from defendant prior to
13 entry onto to the premises to address the problem. This access will be limited to
14 the circumstance at issue and will not become a free-roaming inspection. Ms.
15 EASTWOOD also continues to have access to her personal property and equine
16 store inventory that remains on the leasehold premises at reasonable times upon
17 prior reasonable notice. Ms. EASTWOOD shall indemnify and hold harmless
18 HORSE HARBOR, INC., for any accident, damage, death or injury, that is not
19 due to the negligence or fault of HORSE HARBOR, INC., that may occur during
20 the course of said inspections or entry upon the leased premises.

21 6. During HORSE HARBOR FOUNDATION, INC.'s remaining tenancy, Plaintiff and
22 her agents and representatives shall refrain from calling and/or summoning the
23 county health department or other governmental agencies to inspect the
24 premises or HORSE HARBOR FOUNDATION, INC.'s operations. In the event
25 that from this day forward, there is a complaint/referral from Plaintiff or her
26 agents to county/governmental agencies requiring inspection of the premises or
27 HORSE HARBOR FOUNDATION, INC.'s operations which, in the opinion of the
28 agency, was unfounded, then any subsequent complaints/referrals lodged by
29 Plaintiff or her agents regarding the leasehold premises or HORSE HARBOR
30 FOUNDATION, INC.'s operations will be presumptively unjustified.

- 1 7. HORSE HARBOR FOUNDATION, INC., shall have full and exclusive access to
2 the premises on June 8, 2005, between the hours of 9:00 am and 6:00 pm for the
3 purpose of inspecting, photographing, videotaping the premises. HORSE
4 HARBOR FOUNDATION, INC., is allowed to perform this inspection with as
5 many persons as it deems necessary for its purposes. Commencing June 8,
6 2005, at ~~8~~⁹:01 pm, any and all employees, volunteers, or agents of HORSE
7 HARBOR FOUNDATION, INC., shall be restrained from coming on the subject
8 leasehold premises and shall be deemed trespassers unless their entry on the
9 leasehold premises is previously approved in writing or by court order.
10 8. The foregoing shall constitute a full and final settlement of the issue of
11 possession only.
12 9. Due to time constraints, the Parties agree that a signature affixed hereto via
13 facsimile will have the same force and affect as the original.

14 I have read and I approve the above stipulation and request the court to approve
15 and order the same.

16 Dated this 17th day of February 2005

17 
18 LINDA EASTWOOD
19 Plaintiff

20 I have read and I approve the above stipulation and request the court to approve
21 and order the same.

22 Dated this 18 day of February 2005

23 
24 Facsimile Signature
25 KAY DALING
26 As President of the Board of Directors
of Horse Harbor Foundation, Inc.
Defendant

ORDER

The above stipulations are hereby approved by the court and incorporated into this order by this reference. The trial currently scheduled for February 22, 2005, is continued to a date in September of 2005. The attorneys for both parties in consultation of the court scheduler shall pick a new trial date that is mutually agreeable to the parties and the court scheduler.

DONE in open court this 3rd day of March 2005.



JUDGE/COURT COMMISSIONER

Presented by:



GREG S. MEMOVICH, WSBA# 13588
Attorney for Plaintiff

Approved for entry:

see attached facsimile signature

DAVID A. ROBERTS, WSBA# 24247
Attorney for Defendants

Handwritten initials

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

7. HORSE HARBOR FOUNDATION, INC., shall have full and exclusive access to the premises on June 8, 2005, between the hours of 9.00 am and 6.00 pm for the purpose of inspecting, photographing, videotaping the premises. HORSE HARBOR FOUNDATION, INC., is allowed to perform this inspection with as many persons as it deems necessary for its purposes. Commencing June 8, 2005, at 8:01 pm, any and all employees, volunteers, or agents of HORSE HARBOR FOUNDATION, INC., shall be restrained from coming on the subject leasehold premises and shall be deemed trespassers unless their entry on the leasehold premises is previously approved in writing or by court order.

8. The foregoing shall constitute a full and final settlement of the issue of possession only.

9. Due to time constraints, the Parties agree that a signature affixed hereto via facsimile will have the same force and affect as the original.

I have read and I approve the above stipulation and request the court to approve and order the same.

Dated this 17th day of February 2005

Linda Eastwood
LINDA EASTWOOD
Plaintiff

I have read and I approve the above stipulation and request the court to approve and order the same.

Dated this 18 day of February 2005

Katherine Daling
KAY DALING
As President of the Board of Directors
of Horse Harbor Foundation, Inc.
Defendant

STIPULATION AND ORDER OF CONTINUANCE - 4

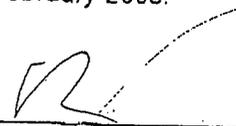
LAW OFFICES OF GREG S. MEMOVICH
5301 Linden Way NW, Suite 201
Silverdale, WA 98383
(360) 307-8534

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORDER

The above stipulations are hereby approved by the court and incorporated into this order by this reference. The trial currently scheduled for February 22, 2005, is continued to a date in September of 2005. The attorneys for both parties in consultation of the court scheduler shall pick a new trial date that is mutually agreeable to the parties and the court scheduler.

DONE in open court this 2 day of March February 2005.

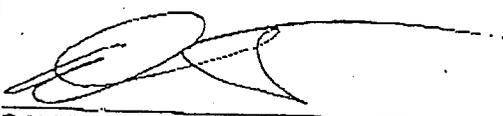


JUDGE/COURT COMMISSIONER

Presented by:

GREG S. MEMOVICH, WSBA# 13588
Attorney for Plaintiff

Approved for entry:



DAVID A ROBERTS, WSBA# 24247
Attorney for Defendants

STIPULATION AND ORDER OF CONTINUANCE- 5

LAW OFFICES OF GREG S. MEMOVICH
9301 Linder Way NW, Suite 201
Silverdale, WA 98383
(360) 307-8534

APPENDIX M

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

**LINDA EASTWOOD, d/b/a DOUBLE
KK RANCH,**

Plaintiff,

vs.

**HORSE HARBOR FOUNDATION, Inc.,
a Washington non profit corporation;
AKLEN WARREN, a single man; and,
MICHAEL DALING AND KATHERINE
DALING, husband and wife, and their
marital community,**

Defendants.

NO. 04 2 01561 0

**OBJECTIONS TO PLAINTIFF'S
FINDINGS OF FACT AND
CONCLUSIONS**

PLEASE TAKE NOTICE that the defendants herein object to the plaintiff's proposed Findings of Fact and Conclusions of Law as follows:

6. While it is true that Horse Harbor Foundation, Inc. proposed the lease, the testimony is that it was adapted from a stationer's boilerplate lease.

Defendants object to the finding that the reasonable rental value of the leasehold is \$2,500.00. Up until Linda Eastwood found tenants for the Double KK Ranch, the operation of the ranch was costing her as much as \$20,000.00 per year. (Exhibits I14,

**OBJECTION TO FINDINGS OF FACT
AND CONCLUSIONS OF LAW - I**

**Michael E. Alvarado, Jr.
Attorney at Law
P.O. Box 1425
Poulsbo, WA 98370
Tel. 360-779-3266
Fax. 360-598-3788**

1 115, 116 and 117) The ranch had not previously been rented. The best indication of the
2 fair rental value of the ranch was the agreed rent.

3 7. The word "pristine" is not part of the vocabulary of the man on the street. It is
4 unsettling to have Linda Eastwood use the word and then be followed by her witnesses
5 using the same word. Pristine means untouched. Double KK Ranch was an aged horse
6 ranch.

7
8 8. Defendants object to the this Finding as contrary to the evidence. Allen Warren
9 testified that he discussed finances with the plaintiff prior to signing the lease. Michael
10 Daling also testified that he discussed Horse Harbor Foundation, Inc.'s budget with the
11 plaintiff.

12
13 9. Defendants object to this Finding as contrary to the evidence. Linda Eastwood, in
14 her letter admitted as Exhibit 109, agreed to supply waterproofing materials if Horse
15 Harbor Foundation, Inc. would do the waterproofing of wood trim and doors. No
16 waterproofing materials were provided. Finally, plaintiff agreed that defendants could
17 use the gasoline blower in the barn. They used the blower and plaintiff charged them
18 \$5.00 for a pint of gas.

19
20 11. Defendants object to this Finding of Fact on the basis that plaintiff, who describes
21 herself as "completely anal"; who testifies that she keeps the floor of the barn so clean
22 that "you could eat off of it"; and, who knew three weeks into the lease that the pristine,
23 never before muddy pastures would need ¾ minus rock to prevent muddiness, is not
24

25
26 **OBJECTION TO FINDINGS OF FACT
AND CONCLUSIONS OF LAW - 2**

27 Michael E. Alvarado, Jr.
28 Attorney at Law
P.O. Box 1425
Poulsbo, WA 98370
Tel. 360-779-3266
Fax. 360-598-3788

1 permitting the quiet enjoyment of the premises. Defendant knew of the water and
2 muddiness and it was her duty to make improvements, not the duty of the defendants.

3 14. Defendants object to this Finding of Fact as contrary to the evidence. Plaintiff's
4 letter dated October 22, 2003, and subsequent letters, are directed to Allen Warren.
5 Exhibit 102 is dated May 1, 2004, which is eight (8) months after the inception of the
6 lease.
7

8 15. Defendants object to this Finding of Fact. See 14 above.

9 16. Defendants object to this Finding of Fact on the basis that the letter from the
10 County Health Department dated May 7, 2004, was sent to plaintiff, Linda Eastwood.
11 The letter from the County Health Department dated June 15, 2004, to Horse Harbor
12 Foundation, Inc. sets forth that Horse Harbor Foundation, Inc. is in compliance with the
13 County Board of Health Regulations on Solid Waste.
14

15 18. Defendants object to this Finding of Fact because it misstates the lease provision,
16 that is, Section XVII. Surrender of premises. In the event ... Lessee shall quit and
17 surrender the premises hereby demised in as good state and condition as they were at the
18 commencement of this lease, reasonable use and wear thereof and damages by the
19 elements excepted. Plaintiff and her witness, Jim Vadja, testified that horses cause
20 damage. The damage to the paddocks was caused in part by the rain. Although plaintiff
21 took hundreds of pictures prior to Horse Harbor Foundation, Inc. vacating the premises,
22 no pictures were taken after Horse Harbor Foundation, Inc. vacated the premises.
23
24

25 **OBJECTION TO FINDINGS OF FACT**
26 **AND CONCLUSIONS OF LAW - 3**

Michael E. Alvarado, Jr.
Attorney at Law
P.O. Box 1425
Poulsbo, WA 98370
Tel. 360-779-3266
Fax. 360-598-3788

1 19. Defendants object to this Finding of Fact. The Horse care and maintenance
2 programs employed by Horse Harbor Foundation, Inc. were developed by Allen Warren
3 in consultation with the plaintiff. Allen Warren then developed a horse care program that
4 included each element of the agreement. The testimony of the defendants was that the
5 stalls were left open and the horses spent most of their time in the paddocks.

6
7 20. Defendants object to this Finding of Fact. The facts testified to at trial do not
8 support a finding that the mucking program was inconsistent.

9 21. Defendants object to this Finding of Fact. The witness, Michael Blake, was a
10 member of Horse Harbor Foundation, Inc., in charge of the students doing the mucking.
11 His job was to provide training and to supervise. He was at the leasehold for a brief six
12 weeks at the beginning of the tenancy and had no knowledge of ongoing practices. The
13 evidence presented showed that the students did muck the stalls and signed off on the
14 mucking station checklist daily. No contrary evidence was presented.

15
16 22. Defendants object to this Finding of Fact. The witness, Jim Vadja testified that
17 horses are big, dumb animals that cause damage. All horses crib to some degree. The
18 photograph of the paddocks used exclusively by the plaintiff show cribbing.

19
20 23. Defendant objects to this Finding of Fact. One witness, Julie Rothwell, testified
21 to one instance when she observed that Allen Warren had not done the morning feeding.
22 Julie Rothwell had attended a a few months at a horse tech school was qualified by the
23 Court as an expert witness. Allen Warren, who has spent his life in horse riding, training
24

25 **OBJECTION TO FINDINGS OF FACT**
26 **AND CONCLUSIONS OF LAW - 4**

27 **Michael E. Alvarado, Jr.**
28 **Attorney at Law**
P.O. Box 1425
Poulsbo, WA 98370
Tel. 360-779-3266
Fax. 360-598-3788

1 and caring was not so qualified.

2 24. Defendant objects to this Finding of Fact. A well designed drainage system would
3 not begin to back up and fail within weeks of the commencement of rain. The
4 photographs all show the drain covers. The two drain basins in front of the barn were
5 inadequate. The finding that the horses were up to their knees in muck is hyperbole and
6 inconsistent with plaintiff's letter of September 4, 2004.
7

8 A portion of the replaced drain was under the ramp and/or outside of the fence.
9 The video taken by Horse Harbor Foundation, Inc. shows clean grates and drain boxes.

10 26. Defendants object to this Finding of Fact. A barn has barn smells. The barn smell
11 are generated by animals. The animals defecate and urinate right where they are
12 standing. The mucking of the barn and arena cleaned this material up daily. Plaintiff's
13 complaints about the condition of the floor and walkways were unfounded. Defendants
14 testified that they made repairs to the floors and walkways. Contrary to the testimony of
15 the plaintiff and Tracy Heeter, the video taken by Horse Harbor Foundation, Inc. clearly
16 shows walkways and floors to be level and clear. The video also shows, and fortuitously
17 so, that their were fourteen undamaged gates that were replaced by the plaintiff.
18

19 28. Defendants object to Finding of Fact 28. The only testimony regarding the
20 sprinklers by the plaintiff was that they were used to abate dust. Defendants testified that
21 the wet hog fuel used in the arena caused the horses to slip. Martha Wightman testified
22 that she cleaned the bathroom and kitchen. This was confirmed by the video.
23
24

25 **OBJECTION TO FINDINGS OF FACT**
26 **AND CONCLUSIONS OF LAW - 5**

27 **Michael E. Alvarado, Jr.**
28 **Attorney at Law**
P.O. Box 1425
Poulsbo, WA 98370
Tel. 360-779-3266
Fax. 360-598-3788

1 29. Defendants object to this Finding of Fact. The lease does not require Horse
2 Harbor Foundation, Inc. to inspect the fences daily. Plaintiff agreed to supply fencing for
3 repair of the fences. When Allen Warren used some of plaintiff's existing fencing,
4 plaintiff became upset with him and demanded that the fencing be replaced. Thereafter,
5 Horse Harbor Foundation, Inc., when it had the resources to do so, bought fencing and
6 made repairs.
7

8 30. Defendants object to this Finding of Fact on the same basis and for the same
9 reasons as noted above.

10 31. Defendants object to this Finding of Fact. Horses graze on grass. It is
11 unnecessary to mow pastures. The video shows some of the fencing.
12

13 32. Defendants object to this Finding of Fact as contrary to the evidence.

14 33. Defendants object to this Finding of Fact as requiring a duty of the defendants
15 which exceeds their contract and the law.

16 34. Defendant objects to this Finding of Fact. Both the testimony of Allen Warren and
17 the video taken by Horse Harbor Foundation, Inc. on June 8, 2005, show the arena floor
18 to be level. The testimony of Kay Daling and the video show the arena stalls to be clean
19 and the arena aisle floor to be clear of any urine, manure or divots. The testimony of
20 Martha Wightman and the video show the kitchen and bathrooms to be clean, as was the
21 student's meeting room.
22

23
24
25
26 **OBJECTION TO FINDINGS OF FACT
AND CONCLUSIONS OF LAW - 6**

Michael E. Alvarado, Jr.
Attorney at Law
P.O. Box 1425
Poulsbo, WA 98370
Tel. 360-779-3266
Fax. 360-598-3788

1 36. Defendants object to this Finding of Fact. It is unreasonable to believe that a
2 twenty year old barn that has housed horses was untouched and unmarked when Horse
3 Harbor Foundation, Inc. took possession. Defendants agree that the appearance of the
4 Double KK Ranch was very good, but it was not pristine. Kay Daling testified that the
5 stalls were cleaner than they were when Horse Harbor Foundation, Inc. took possession.
6 The video of the repaired ramp provides the best visual evidence that the claims of the
7 plaintiff regarding the cleaning and repairs are more hyperbole than fact.
8

9 37. Defendants object to this Finding of Fact. Michael Daling testified that the
10 leaking faucet at the washrack had been repaired. Other than a general allegation,
11 plaintiff points to no damage which flow directly from the leak.
12

13 38. Defendants object to this Finding of Fact. The video shows that the paddock
14 drains were open on the date it was taken.

15 39. Defendants object to this Finding of Fact. The manure spread on Pasture A was
16 spread there at the direction of the plaintiff. (Exhibit 103) the manure stored on the
17 ground was stored there in compliance with County Health Board regulations. (Exhibit
18 151)

19 40. Defendants object to this Finding of Fact. The testimony of the defendants was
20 that except for the sections of fence taken down for access to Paddock H for manure
21 removal, no fence posts and only one fence rail was down or needed paint. Plaintiff, who
22 had taken hundreds of pictures during the tenancy did not have a single frame showing
23
24

25
26 **OBJECTION TO FINDINGS OF FACT**
27 **AND CONCLUSIONS OF LAW - 7**
28

Michael E. Alvarado, Jr.
Attorney at Law
P.O. Box 1425
Poulsbo, WA 98370
Tel. 360-779-3266
Fax. 360-598-3788

1 leaning or broken fencing.

2 41. Defendants object to this Finding of Fact. Plaintiff's claim regarding the path has
3 some minor merit as there was damage to the very end at the arena where the truck
4 picking up manure caused some damage. The horses did not use the arena aisle except
5 for the very end to exit to the barn. The pathway had no rock on it when Horse Harbor
6 Foundation, Inc. took possession. The new rock on these surfaces, especially the
7 driveways, constitute an improvement and not a repair or maintenance. Perhaps 10% of
8 the rock went to repair damage caused by defendants.

9
10 42. Defendants object to this Finding of Fact. The video shows dents on two gates.
11 The rest of the gates are shown as undamaged. The gates did not need replacing.

12 43. Defendants object to this Finding of Fact. The testimony of the defendants and
13 the video do not show the damage as found by the Court.

14
15 44. Defendants object to this Finding of Fact. The defendant's objection to the scope
16 of defendant's duty under the lease has been previously set forth.

17 45. Defendants object to this Finding of Fact. The total found by the Court for
18 materials includes a category, "Equipment use". That is the use of the Kubota tractor, a
19 piece of equipment purchased by plaintiff for use at Double KK Ranch, and operated by
20 Tracy Heeter. The total found by the Court for labor includes the employment of
21 numerous laborers who built new fence, repaired old fence and painted all fences,
22 whether or not already painted.
23
24

25
26 **OBJECTION TO FINDINGS OF FACT
AND CONCLUSIONS OF LAW - 8**

27 **Michael E. Alvarado, Jr.**
28 **Attorney at Law**
P.O. Box 1425
Poulsbo, WA 98370
Tel. 360-779-3266
Fax. 360-598-3788

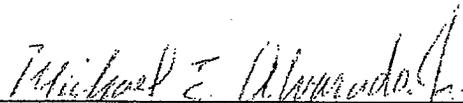
1 Defendant proposes the following Findings of Fact:

2 46. Damage flowing from negligence is fifty (50%) percent of total damages.

3 47. Damage flowing from gross negligence is fifty (50%) percent of total damages.

4 48. Attorney fees, if any, should be allocated on the same basis as damages.

5 DATED: April 6, 2006

6
7 
8 Michael E. Alvarado, Jr., WSBA #6731
9 Attorney for Defendants

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 **OBJECTION TO FINDINGS OF FACT
AND CONCLUSIONS OF LAW - 9**

27 Michael E. Alvarado, Jr.
Attorney at Law
P.O. Box 1425
Poulsbo, WA 98370
Tel. 360-779-3266
Fax. 360-598-3788

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED
COURT OF APPEALS
DIVISION II
07 JUN 20 PM 12:38
STATE OF WASHINGTON
BY _____
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

LINDA EASTWOOD,
dba DOUBLE KK FARM
Respondents,

WASHINGTON STATE COURT OF
APPEALS DIVISION II

No. 34995-7-II

vs.

DECLARATION OF SERVICE

HORSE HARBOR FOUNDATION, INC.,
a Washington Corporation, and MAURICE
ALLEN WARREN, a single person;
KATHERINE DALING AND MICHAEL
DALING, a husband and wife and the marital
community composed thereof,
Appellants.

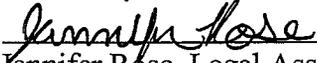
I am the Legal Assistant for the Law Office of David P. Horton, Inc. P.S. on the 18th
day of June, 2007, and in the manner indicated below, I caused a copy of the Amended Brief
of Respondent and a copy of this Declaration of Service, to be mailed to:

Leslie C. Terry III
8420 Dayton Avenue North
Seattle, WA 98103

By First Class Mail

I declare under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct.

Executed at Silverdale, Washington this 18th day of June, 2007.



Jannifer Rose, Legal Assistant

ORIGINAL