



200403290141

Skagit County Auditor

3/29/2004 Page

1 of

11 10:37AM

Document Title:

Lease

Reference Number :

Grantor(s):

☐ additional grantor names on page ____

1. Cross, Joan

2.

Grantee(s):

☐ additional grantee names on page ____

1. Balance Point Physical Therapy LTD

2.

Abbreviated legal description:

☐ full legal on page(s) ____

ptn Lots 1-5 BLV Map of LaConner

Assessor Parcel / Tax ID Number:

☐ additional tax parcel number(s) on page ____

A74099

LEASE OF SPACE

This is a lease entered into this 19 day of March, 2004, by and among JOAN CROSS (hereinafter "Landlord"), and BALANCE POINT PHYSICAL THERAPY, LTD, a Washington corporation (hereinafter "Tenant").

THE PARTIES HERETO AGREE AS FOLLOWS:

- 1) **Leased Property.** Landlord does hereby lease to the Tenant and Tenant do hereby lease from the Landlord the following described real estate situated in the Town of La Conner, County of Skagit, State of Washington (hereinafter called "Premises"), commonly known as 125 East Washington Street, La Conner, Washington, and more particularly described as a portion of: MAP OF LACONNER, BLOCK V, LOTS 1 THRU 5; EXCEPT THE WEST 89 FEET THEREOF, AS MEASURED ALONG THE SOUTH LINE AND PARALLEL WITH THE WEST LINE OF SAID LOTS, and more particularly described on the attached Exhibit A.
- 2) **Initial Term.** This lease shall be for a term of sixty (60) months, commencing on March 19, 2004 and terminating March 18, 2009. Tenant shall have the right to terminate this lease upon one hundred eighty (180) days written notice to Landlord.
- 3) **Option to Renew:** Tenant shall have one option to extend the term of the Lease for an additional five years. Said option shall be exercised by providing written notice thereof to Landlord not less than three months prior to the expiration of the initial term of the lease. All terms applicable during the initial term of this lease shall remain in full force and effect during the extended term.
- 4) (a) **Rent - Base Rent -** Tenant covenant and agree to pay to Landlord as base rent the sum of One Thousand Six Hundred Seventy Five Dollars and 00/100, (\$1675.00) per month. Rental payments shall be due on the first of each month, commencing March 19, 2004, with a prorated rental amount for that month, and on the first day of each month thereafter. Payments shall be made to Landlord at such address as Landlord shall direct in writing.

If the lease term commences or expires on a day other than the first or last day of a calendar month, the monthly rental for such month shall be a pro-rated portion of the monthly rental, computed on a daily rate based on the number of days in the subject month.

(b) **Rent – Increases to Base Rent –** Base Rent shall be increased beginning with the January payment, each year, by the amount of the Consumer Price Index for Seattle (CPI-Seattle) or a



200403290141

Skagit County Auditor

minimum of two percent (2%).

(c) Rent – Additional Costs – Utilities, Taxes & Utilities. Beginning on March 1, 2005 and continuing each month thereafter, tenant shall pay to Landlord the following additional amounts for electricity, cable, heat, gas, power, garbage and any security system furnished to or consumed upon the leased Premises, real property taxes for the leased Premises & Landlord's insurance for the building as follows: The proportionate share of those utilities, taxes and insurance based upon the prior year's costs, on a monthly basis. The parties agree that Tenant's proportionate share is seventy two percent (72%) of the total building. Landlord shall prepare an annual statement for Tenant, which will include the prior year's actual costs and any adjustment amount due from or payable to Tenant, as well as the estimated costs for utilities for the following year. Tenant shall be solely responsible for any additional utilities including phone, internet, and others not provided by Landlord, as well as tenant's own insurance and any personal or business property taxes. Landlord shall not be liable for any failure or interruption of utility service to the Premises, unless such failure is caused by the negligence of Landlord, or Landlord's agents or employees.

(d) Late Payments. Tenant acknowledges that late payment by Tenant to Landlord of rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which would be extremely difficult and impractical to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any mortgage, deed of trust or other security instrument covering the Building. Therefore, in the event Tenant should fail to pay any installment of rent or any sum due hereunder when such amount is due, Tenant shall pay to Landlord as additional rent a late charge equal to 3% of any such sum then due and unpaid, together with any attorney fees or costs incurred to collect sums due or enforce the terms of this Lease.

- 5) Right of First Refusal. Landlord hereby grants to Tenant a right of first refusal on the Premises for the duration of this lease and only at such times as tenant is not in default. In the event Landlord receives and desires to accept an offer on the Premises, Landlord shall immediately give notice to Tenant of the terms of the offer whereupon Tenant shall have 20 days within which to accept or reject said terms by giving written notice to Landlord, and paying any earnest money specified in the offer. If Tenant gives such notice of his intent to accept the terms of the third party offer and pays the earnest money, then Landlord shall sell the Premises to Tenant on the terms specified in said offer. Landlord, upon receiving notice of acceptance from Tenant, shall open escrow with Land Title Company of Skagit County and Tenant must close the purchase of the Premises within 30 days.

In the event Tenant fails to give notice of his acceptance of the terms of the third party offer within 20 days after receipt from Landlord, or ten days after mailing thereof by Landlord, whichever is earlier, then this right of first refusal shall terminate and Tenant shall have no further rights hereunder. Similarly, if Tenant does give notice of his acceptance of the terms of the third party offer, but fails to close the purchase within 30 days, then this right of first refusal shall terminate and Tenant shall have no further rights hereunder.



200403290141

Skagit County Auditor

- 6) **Binding on Heirs, Successors and Assigns:** The covenants and agreements of this Lease shall be binding upon the heirs, successors and assigns of both parties hereto.
- 7) **Notices.** Any notices required to be served in accordance with the terms of this lease shall be personally served or shall be sent by registered or certified mail to the following address, or to such other address as the parties may designate in writing:

Landlord: JOAN CROSS
P.O. Box 399
La Conner, WA 98257

Tenant: BALANCE POINT PHYSICAL THERAPY, LTD.
125 East Washington
PO Box 505
La Conner, Washington 98257

- 8) **Condition of Premises/Repairs.** Tenant accept the premises in its "AS IS" condition.

Upon termination of the lease, Tenant shall leave the premises in as good condition as when received, reasonable wear and tear and damage by the elements beyond the control of the Tenant excepted.

- 9) **Tenant's Obligations.** Tenant agree as follows:

- a) To keep the premises in a clean and sanitary condition.
- b) Not to use the premises for any purpose deemed hazardous by insurance companies.
- c) To provide and maintain receptacles for garbage and trash.
- d) To properly dispose of all rubbish, garbage, and other organic or flammable waste at reasonable and regular intervals and to assume all costs of extermination and fumigation for infestation caused by Tenant.
- e) To maintain the interior of the building, including fixtures not contained within the walls or under floors.
- f) Not to intentionally or negligently destroy, deface, damage, impair or remove any part of the structure or dwelling, including the facilities, equipment, appliances of the Landlord, or permit any of Tenant's clients, invitees, licensees or any other person under Tenant's control to do so.
- g) To keep the sidewalk surrounding the premises free and clear of obstructions, snow, and ice.



200403290141

Skagit County Auditor

- h) To repair at Tenant's expense any damage to the premises caused by Tenant's acts or neglect within thirty (30) days of receipt of written notice from the Landlord requiring such repairs, or within a shorter time if made necessary by emergency.
 - i) Not to install an air conditioning unit or other major appliance or mechanical system in the premises without prior written approval of the Landlord.
 - j) Not to make any alterations, additions, painting or improvements in or to the premises without the prior written approval of the Landlord.
 - k) To notify the Landlord immediately in writing of any necessary repairs or damage to the premises. Tenant shall also make all efforts to contact Landlord immediately by telephone to notify landlord of any situation involving ongoing deterioration, damage, risk or degradation of the Premises.
 - l) To not smoke or allow any smoking in the building by any of Tenant's employees invitees, patients, officers or other parties.
 - m) Tenant shall maintain all fire extinguishers in its Premises, at its sole expense, on an annual maintenance schedule or as required by law.
 - n) Tenant shall be responsible for its share of costs related to snow removal and regular maintenance/cleaning of the parking lot. Tenant has the right to use 12 spaces, which represent 15 % of the total parking area.
 - o) Tenant shall have the right to place signage on the Building, but shall do so only with the prior consent of Landlord, and with the following standards: signage shall be designed and created by Landlord's sign artist, in a style consistent with the signage on the building, and in such size and placement as is consistent with the signage on the building. Signage must be approved by the Town of La Conner and all costs for signage shall be borne by Tenant.
 - p) Taxes Tenant shall pay promptly when due all taxes, for any personal property located at Premises.
 - q) Tenant shall have the right to use the washer and dryer in the common space in the building, along with the other tenants of the building.
- 10) Landlord's Obligations. Landlord agrees to maintain the exterior of the building, all structural aspects of the building, all pipes, ducts, electrical and other fixtures contained within walls or under floors, the outside common areas, the structural integrity of the sidewalks and parking lot, including parking lot striping and landscaping around the premises to present a professional appearance. Landlord further agrees to perform any repair or maintenance which is not the responsibility of Tenant pursuant to Section 9 of this Lease.

11) Waste. Tenant covenants not to do or suffer any waste, damage, disfigurement, or injury to



any building or improvements now or hereafter on the demised Premises, nor to the fixtures and equipment thereof, ordinary wear and tear excepted.

12) Entry and Inspection. Tenant will permit Landlord or its agents to enter the Premises at reasonable times to inspect, clean, repair, alter, or improve the Premises, or to show the Premises to prospective purchasers or Tenant. In exercising its rights under this section, Landlord will not unreasonably interfere with the conduct of Tenant's business.

13) Insurance.

Landlord and Tenant agree as follows:

(a) Accidents - Hold Harmless - Indemnity. All personal property on the premises leased shall be at the sole risk of the Tenant.

(b) Property Insurance. Landlord may obtain and keep in force during the term of this Lease a policy or policies of general liability insurance and insurance covering loss or damage to the Building improvements (but not Tenant's personal property, fixtures, equipment) in an amount not to exceed the full replacement value thereof, as the same may exist from time to time, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils ("all risk," as such term is used in the insurance) as Landlord deems insurance, if necessary, and such other insurance as Landlord deems advisable.

(c) Tenant's Liability Insurance. Tenant shall procure and maintain throughout the term of this Lease a policy or policies of insurance, at its sole costs and expense, insuring both Landlord and Tenant against all claims, demands or actions arising out of or in connection with Tenant's use or occupancy of the Building, or by the condition of the Building, the limits of such policy or policies to be in an amount not less than \$1,000,000.00 combined single limit and shall be written by insurance companies reasonable satisfactory to Landlord. Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least thirty (30) days prior to cancellation of or any material change in such policies. Such policies or duly executed certificates of insurance shall be promptly delivered to Landlord and renewals thereof as required shall be delivered to Landlord at least thirty (30) days prior to the expiration of the respective policy terms.

(d) Waiver of Subrogation. Neither Landlord nor Tenant shall be liable to the other (by way of subrogation or otherwise) or to any insurance company insuring the other party for any loss or damage to any building, structure or other tangible or intangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees if any such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required to be covered by obtaining the policies of insurance required herein. Each party shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.



200403290141

Skagit County Auditor

(e) **Exemption of Landlord from Liability.** Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant's employees, invitees, customers, or any other person in or about the Premises or the Building not caused by the sole negligence of Landlord, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, heating or air conditioning or lighting fixtures, or from any other cause whether said damage or injury results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except for uninsured injury or damage caused by a breach of Landlord's duties under this Lease. Landlord shall not be liable for any damages arising from any intentional or non-intentional act or omission whatsoever of other tenant, occupant or user or the Building.

14) **Fire and Other Casualty.** In the event the premises are destroyed or damaged by fire, earthquake, or other casualty to such an extent as to render the same untenable for the herein described business purpose in whole or in a substantial part thereof, it shall be optional with the Landlord to rebuild or repair the same, and after the happening of any such contingency, the Tenant shall give Landlord or Landlord' agents immediate notice thereof. Landlord shall have not more than fifteen (15) days after date of such notification, to notify the Tenant in writing of Landlord' intentions to rebuild or repair said premises or the part so damaged as aforesaid, and if Landlord elect to rebuild or repair said premises, Landlord shall prosecute the work of such rebuilding or repairing without unnecessary delay, and during such period the rent of said premises shall be abated in the same ratio that that portion of the premises rendered for the time being unfit for occupancy shall bear to the whole of the leased premises. If the Landlord shall fail to give the notice aforesaid Tenant shall have the right to declare this lease terminated by written notice served upon the Landlord or Landlord' agents. If Landlord shall fail to prosecute the necessary repair or rebuilding in a timely fashion, Tenant shall have the right to declare the lease terminated by written notice served upon the Landlord or Landlord' agents.

15) **Assignment and Subletting.** Tenant shall not have the right to sublet all or any portion of the property or improvements.

16) **Condemnation.**

- a) **Entire or Substantial Taking.** If the entire Premises, or so much thereof as to make the balance not reasonably adequate for the conduct of Tenant' business (notwithstanding restoration by Landlord as herein provided) shall be taken under the power of eminent domain, this lease shall automatically terminate on the date the condemning authority takes possession.
- b) **Partial Taking.** In the event of any taking under the power of eminent domain which does not so result in a termination of this lease, the monthly rental payable hereunder shall be



reduced, effective on the date the condemning authority takes possession, in the same portion as the value of the Premises after the taking relates to the value of the Premises prior to the taking. Landlord shall promptly, at its sole expense, restore the portion of the Premises not taken to as near its former condition as is reasonably possible, and this lease shall continue in full force and effect.

- c) Awards. Any award for taking of all or any part of the Premises under the power of eminent domain shall be the property of the Landlord, whether such award shall be made as compensation for diminution in value of the leasehold or for taking of the fee. Nothing herein, however, shall be deemed to preclude Tenant from obtaining, or to give Landlord any interest in, any award to Tenant for loss of or damage to or cost of removal of Tenant's trade fixtures and removable personal property, or for damages for cessation or interruption of Tenant's business.

- 17) Liens and Encumbrances. Tenant agree that they will pay all costs for work done or caused to be done by them on the Premises, and Tenant will keep the Premises free and clear of all mechanic's and other liens on account of work done for Tenant or persons claiming under Tenant. Should any claim of lien be filed against the Premises or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall promptly give the other party written notice thereof. In the event a dispute between Tenant and a third party having lien rights arising from work performed for Tenant, results in litigation to enforce such lien right in which Landlord or any party deriving rights from Landlord is named a party defendant, defense of such action shall, at Landlord's option immediately be assumed by Tenant. Tenant shall appear and defend Landlord and any parties deriving interest through Landlord or shall pay any costs or attorney's fees incurred by Landlord or parties deriving interest through Landlord in respect to their own defenses to such action and shall indemnify and hold Landlord and parties deriving interest through Landlord harmless from any judgment arising out of such litigation.

18) Surrender of Premises.

- a) Surrender of Premises. Tenant shall promptly surrender possession of the Premises to Landlord upon the expiration or prior termination of the Lease. The Premises shall be surrendered in the same condition as they were at the commencement of the lease term, normal wear and tear excepted.
- b) Holding Over. Any holding over by Tenant after the expiration or termination of the Lease shall be construed to be a tenancy for a month-to-month, on all of the terms and conditions set forth herein, to the extent not inconsistent with a month-to-month tenancy. During such tenancy, the Tenant agree to pay the rental amounts set forth herein, unless a different rate is agreed upon.

- 19) Waivers. No waiver by Landlord of any provision of this lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary the obtaining of



Landlord's consent to or approval of any subsequent act by Tenant, whether or not similar to the act so consented to or approved.

20) Construction.

a) General Provisions

- i) This Lease shall be construed and governed by the laws of the State of Washington;
 - ii) The failure of a party to insist upon strict performance of any of the covenants and agreements of this lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver but the same shall be and remain in full force and effect.
 - iii) The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions hereof;
 - iv) The Lease constitutes the entire agreement of the parties and supersedes all prior agreements or understandings between the parties with respect to the subject matter hereof;
 - v) This Lease may not be modified or amended except by written agreement signed and acknowledged by both parties;
 - vi) Time is of the essence of this Lease in each and every provision thereof; and
 - vii) Nothing contained herein shall create the relationship of principal and agent or of partnership or of joint venture between the parties hereto and no provisions contained herein shall be deemed to create any relationship other than that of landlord and Tenant.
 - viii) The Law Office of Craig E. Cammock, Inc., P.S. has represented Tenant in drafting this Lease. Landlord has had the opportunity to have this document reviewed by counsel of its choice. Landlord agrees that no interpretation or construction shall be made with respect to this document based on which party drafted the document.
- b) Successor. Subject to any limitations on assignments herein, all of the provisions of this Lease shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.
- c) Costs and Attorneys' Fees. If by reason of any breach or default on the part of either party hereto it becomes necessary for the other party hereto to employ an attorney, then the non-breaching party shall have and recover against the other party in addition to costs allowed by law, reasonable attorneys' fees and litigation-related expenses. The non-breaching party shall be entitled to recover reasonable attorneys' fees and costs and expenses, as provided above, regardless of whether litigation is actually commenced.



d) Jurisdiction and Venue. The parties hereto do hereby consent to jurisdiction and venue of the Superior Court of Skagit County, State of Washington.

IN WITNESS WHEREOF the parties have hereunto set their hand the date and year first above written.

LANDLORD

Joan K. Cross
JOAN CROSS

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

TENANT
BALANCE POINT PHYSICAL THERAPY, LTD.

MAR 29 2004

Amount Paid
Skagit Co. Treasurer
By Deputy

Lynette Cram
LYNETTE CRAM, PRESIDENT

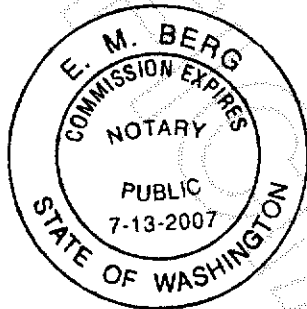


200403290141

Skagit County Auditor

State of Washington)
) ss
County of Skagit)

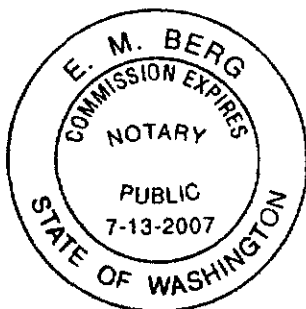
I certify that I know or have satisfactory evidence that LYNETTE CRAM is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the PRESIDENT of BALANCE POINT PHYSICAL THERAPY, LTD to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: 3-19-04
[Signature]
(Signature)
NOTARY PUBLIC
EM Berg
Print Name of Notary
My appointment expires: 7-13-07

State of Washington)
) ss
County of Skagit)

I certify that I know or have satisfactory evidence that JOAN CROSS is the person who appeared before me and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.



Dated: 3-19-04
[Signature]
(Signature)
NOTARY PUBLIC
EM Berg
Print Name of Notary
My appointment expires: 7-13-07

