KITTITAS COUNTY
DEPARTMENT OF PUBLIC WORKS

AGENDA STAFF REPORT

AGENDA DATE:	February 7, 2012
ACTION REQUESTED:	Approve a Resolution to Rescind the Termination of Lease with Swiftwater Cellars LLC for Airport property.
BACKGROUND:	On November 1, 2011, Swiftwater Cellars LLC entered into a 35-year lease agreement with Kittitas County. This lease agreement entailed the construction of a 10,000 sq. ft. aircraft hangar on a 40,000 sq. ft. lot(s). After Mr. Don Watts experienced difficulty in meeting the building department/code requirements he elected to pull the plug on the project and is requesting to terminate Swiftwater Cellars LLC lease with Kittitas County. Kittitas County sent the Termination of Lease to Mr. Watts and received in writing a request to not terminate his lease. He has decided to keep the lease and do some modifications in his design of the hangar to alleviate any issues with the building department.
INTERACTION:	Public Works; Swiftwater Cellars LLC
RECOMMENDATION:	Move to Approve the Resolution to Rescind the Termination of Lease on Lots H-7, H-8, and H-9 of the Kittitas County Airport Binding Site Plan within the Airport Aeronautical Area to Swiftwater Cellars LLC.
HANDLING:	Return one original to Public Works
ATTACHMENTS:	Resolution; Termination of Lease; Original Lease; Vicinity Map
LEAD STAFF:	Kelly Carlson Airport Manager

BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

RESOLUTION

NO. _____

TO RESCIND THE TERMINATION OF LEASE WITH SWIFTWATER CELLARS, LLC, FOR THE CONSTRUCTION OF A PRIVATE HANGAR

WHEREAS: A Public Hearing was held and a lease with Swiftwater Cellars, LLC, was approved by the Board of County Commissioners on October 18, 2011; and

WHEREAS: A written request from Don Watts, Swiftwater Cellars, LLC, owner, was received stating he did not want to terminate as he stated earlier; and

WHEREAS: The Public Works Department recommended signature from the Board of County Commissioners to rescind the lease termination for airport property with Swiftwater Cellars, LLC and be authorized through this resolution.

NOW, THEREFORE BE IT RESOLVED that the Board of County Commissioners, in the best interest of the public, does hereby rescind the lease termination for the Swiftwater Cellars, LLC, land lease at the Bowers Field Airport.

DATED this 7th day of February, 2012, at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

_____
Alan Crankovich, Chair

Attest:

_____
Obie O'Brien, Vice-Chair

_____
Clerk of the Board

_____
Paul Jewell, Commissioner

** TERMINATION OF LEASE**

This Termination of Lease is made and dated this 15th day of November, 2011, by and between KITTITAS COUNTY, a municipal corporation, hereinafter referred to as the Lessor, and SWIFTWATER CELLARS LLC, hereinafter referred to as the Lessee,

WITNESSETH:

That Lessor and Lessee entered into a Lease on November 1, 2011, copies of which are attached hereto and by this reference incorporated herein.

That Lessee has requested to the county to terminate the lease entered into on November 1, 2011, and be terminated as of November 15, 2011.

That Lessee is requesting termination due to the fact that he is no longer willing to build a hangar under the existing building department/code requirements.

THEREFORE, both Lessee and Lessor hereby terminate the attached lease of November 1, 2011, as of November 15, 2011, and Lessee terminates all interest in the property, which is the subject matter of said lease.

KITTITAS COUNTY
BOARD OF COUNTY COMMISSIONERS

Paul Jewell, Chair

Alan Crankovich, Vice Chair

Obie O'Brien, Commissioner

DATE SIGNED: 11/15/11

Don Watts, President
Swiftwater Cellars LLC
DATE SIGNED:

Attest:
Clerk of Board



KITTITAS COUNTY AIRPORT
DEPARTMENT OF PUBLIC WORKS

LEASE

THIS LEASE made and entered into this 1st day of November, 2011 by and between **Kittitas County**, a municipal corporation in the State of Washington, hereinafter referred to as the **LESSOR**, and **Swiftwater Cellars LLC,** hereinafter referred to as the **LESSEE**.

WITNESSETH:

The Lessor hereby agrees to lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, the following described real property (hereinafter the "Property"):

LOTS H-7; H-8; H-9 of the Kittitas County Airport Binding Site Plan

Containing 40,000 sq ft, or .92 acres more or less.

This lease is made in accordance with Chapter 2.81 KCC. This lease is subject to the provisions of Chapter 59.12 RCW as currently existing of hereafter amended.

1. TERM: The term of this lease shall be thirty-five (35) years and will commence on the 1st day of November, 2011.

2. RENT: Rent shall be paid in advance on an annual basis, with the first payment due on or before the 1st day of November of each year and continuing thereafter until termination of this lease. The rental for each year shall be as follows:

Rental Periods	Annual	
11/01/2011 – 10/31/2012	$ 4,800.00	(.12 cents sq/ft)
11/01/2012 – 10/31/2013	$ 4,800.00	
11/01/2013 – 10/31/2014	$ 4,800.00	
11/01/2014 – 10/31/2015	$ 4,800.00	
11/01/2015 – 10/31/2016	$ 4,800.00	

11/01/2016 TO BE NEGOTIATED

3. ADJUSTMENT OF RENTAL: The rental for every five year period thereafter, or part thereof, at the commencement of such period, shall be readjusted and fixed by the Board of County Commissioners;

(a) After the fifth year, the Lessor shall have the right to readjust the rent on or before November 1st of the fifth, tenth, fifteenth, twentieth, twenty-fifth, and thirtieth years of this lease for each following five year period; and the increase shall BE THE CUMULATIVE EFFECT OF THE CPI INDEX OVER THE PREVIOUS FIVE YEARS. The rent increase is at the sole discretion of the Lessor, and Lessor may elect to maintain the rent at the previous rate. It is agreed between LESSOR and LESSEE that the following CPI Index will be used for future rental increases:

"CPI – All Cities-All Items Size Class D Under 50,000."

(b) It is understood by Lessee that this lease is not for commercial purposes and that the lease rate is for a ground lease for a private Aircraft Hangar.

4. LEASEHOLD TAX: In addition to any rental herein provided, the Lessee shall pay to the Lessor the leasehold tax as set forth by the State of Washington in Chapter 61, Laws of 1976, Second Executive Session (R.C.W. 82.29A) or as amended. The tax shall be due and payable at the same time the rental charged herein is due and payable.

5. FIRE PROTECTION ASSESSMENT In addition to any rental herein provided, the Lessee shall pay a fee *which shall be in lieu of taxes for fire protection services*. The annual rate shall be based upon the annual fire assessment determined by the Kittitas County Assessor and Kittitas Valley Fire & Rescue to be calculated on January 1st of the current year. The assessment shall be pro-rated monthly, due and payable concurrently with the monthly lease payment.

6. UTILITIES: The Lessee shall pay for extension of and all utility services supplied to the premises. Any such extensions shall be subject to the advance review of the Lessor.

7. PURPOSE: It is understood by Lessee that this lease is not for commercial purposes and that the lease rate is for a ground lease for a private Aircraft Hangar. The Lessee shall utilize the premises primarily for an aircraft hangar for non-commercial aircraft storage and maintenance at least seven (7) months out of each calendar year. The land and any improvements are for non-commercial uses only, Lessee shall not conduct any type of commercial activity from said premises, without first obtaining the prior written approval of the Department of Public Works. No planes shall be allowed to be tied-down on the apron area of the leased premises. The leased premises is specifically for the private hangar.

8. RULES AND REGULATIONS: The Lessee agrees to comply with all pertinent rules and regulations of the federal, state and local governments, as well as the

rules, regulations, ordinances, and minimum standards of the Kittitas County Airport (Bowers Field), as are presently in effect and may in the future be adopted. The rules, regulations, ordinances and minimum standards of the Kittitas County Airport (Bowers Field) are made a part of this Agreement and shall have the same effect as though written herein. A copy of the Kittitas County Airport Standards is on file in the office of the Kittitas County Department of Public Works.

9. IMPROVEMENTS: Upon termination of this lease, for whatever reason and under whatever circumstances, all improvements remaining upon the leased premises become the property of Lessor, free and clear, without any liability of Lessor to Lessee. Should Lessor desire the removal of Lessee's improvements upon the date of lease termination, Lessor shall give Lessee written notice to remove all improvements and return the premises to its state as before the lease at least thirty (30) days prior to the termination date for the lease. Upon removal, the premises shall be left in a neat and orderly condition, without debris and shall be graded level. Should the premises not be left in such condition, after Lessee received such notice, Lessor may remove improvements and repair the premises and seek reimbursement from Lessee in any manner allowed by law.

   In consideration for a lease term in excess of 10 years in duration, Lessee promises and agrees to maintain the structure described on Exhibit "A" attached hereto and incorporated herein by this reference. Lessee agrees that, should Lessee fail to maintain the structure described in Exhibit "A", this lease shall automatically terminate and Lessee forfeits any and all interest in the premises. No construction may be made without prior obtaining of appropriate permits, the responsibility for which is that of Lessee.

10. REPAIRS: The maintenance and repair of the aircraft hangar structure and other improvements shall be the responsibility of the Lessee, including utilities within the leased area.

    The Lessee further agrees that it will not commit waste and that it will keep said premises in a safe, sanitary, neat, presentable, and otherwise good condition, and in general shall comply with all the applicable governmental rules, ordinances and regulations as may be required or imposed by such authorities on said premises and shall comply with any direction pursuant to law of any public officer or officers who shall be empowered to enforce local, state and federal rules, regulations and ordinances upon the Lessee with respect to the said premises or the use, occupancy, or control thereof and shall not suffer any improper or offensive use of said premises.

11. AREA MAINTENANCE: Lessee shall, during the term of this lease, maintain the area between the building and boundary line of said lease to the satisfaction of the Lessor. The area shall be kept free of all debris, weeds and brush for the term of this lease. Lessee shall reimburse the Kittitas County Weed Board or Kittitas County Department of Public Works for any costs incurred in the event that the County Weed Board or Kittitas County Department of Public Works undertakes noxious weed or vegetation control measures.

12. INSURANCE: The Lessee shall obtain and maintain in force during the term of this agreement a liability insurance policy, which provides protection for bodily injury (including death) and property damage. Said insurance shall provide coverage by the Lessee to any employees or permittees of the Lessee, and shall name the Lessor as coinsured.

(a) Liability insurance policy shall have the following provisions, at a minimum:

(i) Premises and leased area liability coverage in an amount not less than $1,000,000 - each occurrence.

(ii) Provide for not less than thirty (30) days in advance a written notice to Kittitas County regarding any material change or termination of the policy.

(b) Lessee hereby releases Lessor of and from every and all right, claim and demand that Lessee may hereafter have against Lessor, its successors or assigns, arising out of or in connection with any loss or losses occasioned by fire and such items as are included under the normal extended coverage clauses of insurance policies, and does hereby waive all rights of subrogation in favor of insurance carriers against Lessor arising out of any losses occasioned by fire and such items as are included under the normal extended coverage clauses of fire insurance policies, and sustained by Lessee in or to the said premises and leased area.
The Lessee shall provide the Lessor with a copy of said insurance policy.

13. AIRPORT TRAFFIC: It is understood and agreed that the Lessee's use of said premises and leased area shall not in any manner interfere or restrict the use of aircraft landings, take-offs, storage of aircraft, taxiing, and movement of ground vehicles. Lessee shall comply with all rules and regulations of the Federal Aviation Administration, Washington State Department of Transportation Aeronautics Division, and the Kittitas County Airport Standards.

14. HUNTING: Hunting or discharging of firearms will not be permitted on or from said premises or leased area.

15. NOTICES: Any notice given by one party to the other in connection with this agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested as follows:

(a) If to Lessor, addressed to:

Kittitas County Department of Public Works
411 N. Ruby, Suite #1
Ellensburg, Washington 98926

(b) If to Lessee, addressed to:

Swiftwater Cellars LLC
P.O. Box 492
Roslyn, WA 98941

Notice shall be deemed to have been received on the third day after the date of mailing.

Notice need be sent to but one Lessee where the Lessee is more than one person.

16. ATTORNEY FEES: In case Lessor shall bring suit to recover any rent due hereunder, or for breach of any provision of this lease, or to recover possession of the leased premises, or if Lessee shall bring any action for any relief against Lessor, declaratory or otherwise, arising out of this lease, the prevailing party shall recover reasonable attorney fees which shall be determined and taxed by the court as part of the costs of such action.

17. RIGHTS OF THE U.S. GOVERNMENT: The Lessor holds title to the Property herein leased, partially by virtue of a deed from the United States Government. A copy of said deed is available for inspection at the office of the Kittitas County Department of Public Works, hereto and made a part of this instrument as though fully set forth herein. Lessee agrees that it will do nothing which will cause the Lessor to be in violation of the terms of said deed. Lessee furthermore agrees that it has had ample opportunity to review said deed and is aware of all of the terms and conditions therein.

18. ASSIGNMENT: The Lessee shall not assign this lease nor sublet any portion thereof without first obtaining the written consent of the Lessor.

19. HOLD HARMLESS: The Lessee hereby agrees to defend, indemnify and hold harmless the Lesser from any and all claims or demands whatsoever arising out of any loss, damage, or injury to persons or property resulting from the Lessee's use or occupancy of said premises and leased area, or caused by the acts or neglect of the Lessee, his agents or employees.

20. BANKRUPTCY: It is further agreed and understood that in case of the insolvency or bankruptcy of the Lessee, or any assignment for the benefit of creditors or the appointment of a receiver for the Lessee, this lease shall be immediately forfeited and shall be of no further force and effect, and that the Trustee in Bankruptcy, Receiver, or Assignee for the benefit of creditors shall not have any rights whatsoever in the demised premises.

21. DEFAULT: In the event the Lessee shall fail to comply with any of Lessee's commitments, duties or responsibilities under this lease, or any of its conditions or terms as herein stated, the Lessor may terminate this lease by giving ten (10) days written notice of the conditions or terms being violated. If said failures are not

corrected within the ten (10) day period, this lease may be terminated and the Lessor shall be entitled to peaceably retake possession of the premises.

22. MODIFICATION OR TERMINATION: Lessee and Lessor agree that Lessor may, at Lessor's sole discretion, modify the terms of this lease in whole or in part, including but not limited to any term or condition of this lease, including cancelling the unexpired portion of this lease and re-letting the property to another tenant, in the event that any regulation governing airports or county property is amended in a way that impacts the Lessor's ability to lease, use, control, protect, or maintain the Property. For the purposes of this section, "regulation" is defined to include, but is not limited to: case law interpreting any rule or regulation; any federal rules and regulations, including Federal Aviation Administration rules and regulations; state rules and regulations; and local rules, regulations and ordinances.

In the event that Lessor shall elect to modify or terminate this lease, Lessor shall do so only upon one hundred twenty (120) days written notice, notifying Lessee, at Lessee's address of record, that the lease to which this applied is being so modified or terminated.

Upon receipt of such notification, and in the event the notification specified modification of the lease short of termination, Lessee shall have sixty (60) days in which to notify Kittitas County of Lessee's intention to continue the lease as modified or of Lessee's intention to treat the lease as terminated.

In the event that Lessee elects to treat the lease as terminated, all rents shall be pro-rated to the date Lessee shall have restored the premises to the Lessor in accordance with the terms of the lease agreement governing Lessee's duties to restore the premises to Lessor upon expiration of the lease term.

It is further agreed that neither such modification or termination of this lease nor any subsequent re-letting of the premises, in whole or in part, shall give rise to any cause of action for damages or any other form of relief by Lessee against Lessor or any successor lessee.

In the event of such modification or termination, Lessee understands that other than a refund of any unearned rent prorated to the date Lessee has restored the premises to Lessor, Lessee shall have no claim for compensation as occasioned by said modification or termination.

23. WAIVER: No assent, express or implied, by the Lessor to any breach of any of Lessee's covenants, agreements, conditions or terms hereof shall be deemed or taken to be a waiver of any succeeding breach of any covenant, agreement, condition or term hereof.

24. VENUE. In the event of any litigation between Lessor and Lessee arising out of this lease, the venue for such action shall lie in Kittitas County, notwithstanding any contrary provision of the Revised Code of Washington.

25. APPLICABILITY The covenants, agreements, terms and conditions contained in this lease shall apply to and be binding upon Lessor and Lessee and their respective heirs, executors, administrators, successor and assigns.

26. INTEGRATION Exhibits and Recitals are incorporated herein by this reference. This Lease embodies the entire agreement between the parties with respect to the subject matter herein contained. No amendments or modifications hereof shall be enforceable unless in writing, signed by the party to be charged.

The following Exhibits are incorporated by reference:
Exhibit A: Description of Property

IN WITNESS WHEREOF, the Lessor and Lessee have signed their names and affixed their seals the day and year first above written.

COUNTY COMMISSIONERS SEAL KITTITAS COUNTY WASHINGTON

ATTEST:

Clerk of the Board

LESSOR:

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

Chairperson

ABSENT

Commissioner

Commissioner

Approved as to Form:

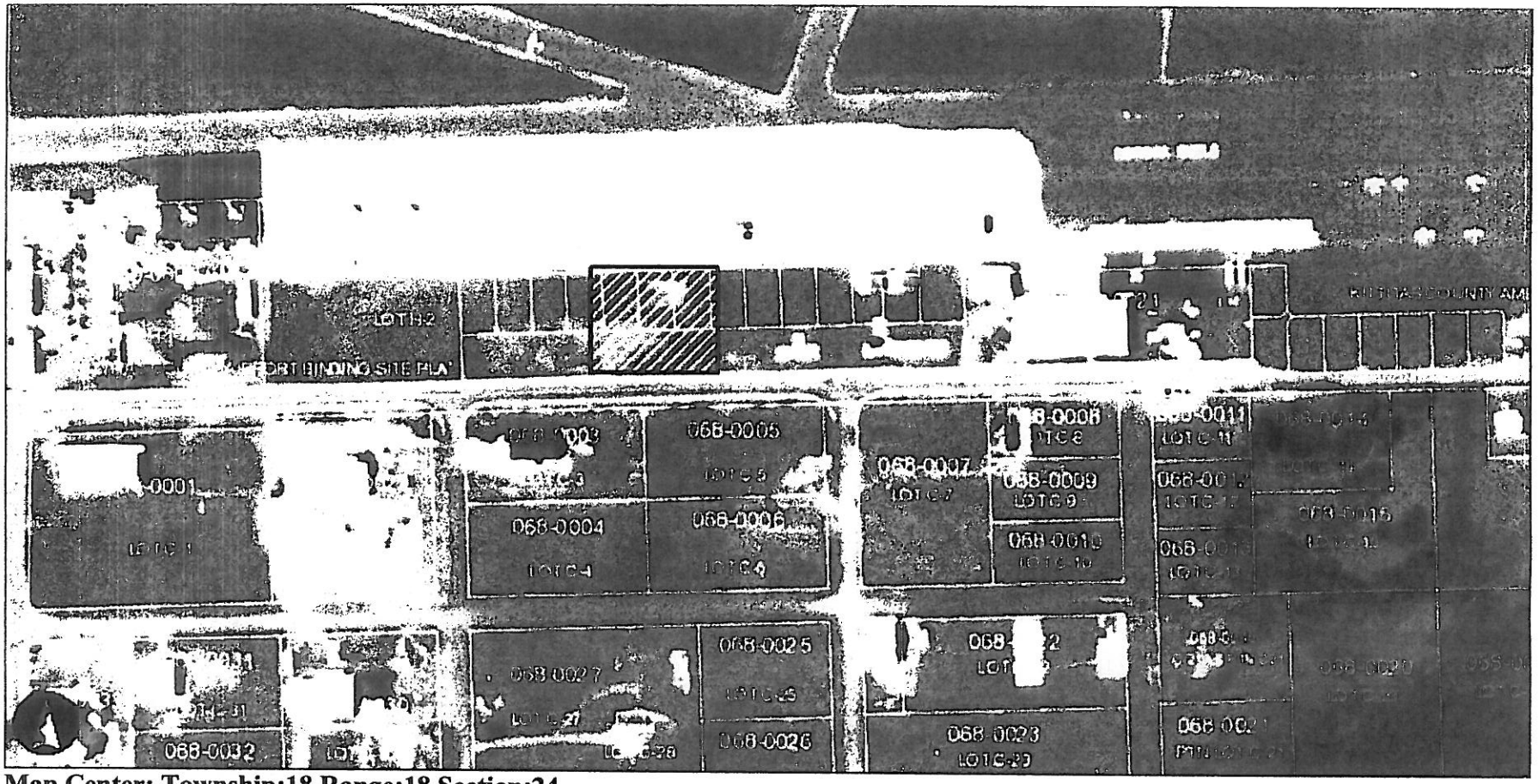
Prosecuting Attorney

LESSEE:

Swiftwater Cellars, LLC - Owner

Address:
P.O. Box 492
Roslyn, WA 98941

Watts Hangar Location



Map Center: Township:18 Range:18 Section:24

Kittitas County Disclaimer

Kittitas County makes every effort to produce and publish the most current and accurate information possible. No warranties, expressed or implied, are provided for the data, its use, or its interpretation. Kittitas County does not guarantee the accuracy of the material contained herein and is not responsible for any use, misuse or representations by others regarding this information or its derivatives.

Kelly Carlson

From: Bjorn Gjerde [bjorngjerde@swiftwatercellars.com]
Sent: Tuesday, January 24, 2012 10:03 AM
To: Kelly Carlson
Subject: RE: Lease Cancellation

Kelly-

Please do not terminate the Swiftwater Cellars lease at the airport. We are still working on designing a building that will fit our needs there. Thank you.

Bjorn Gjerde
Controller
Swiftwater Cellars/DDW/DW Management/DW Financial/DW Aviation/Garnet Ledge
Office: 509.852.7311
Cell: 509.308.1260
Fax: 509.674.6505

From: Kelly Carlson [mailto:kelly.carlson@co.kittitas.wa.us]
Sent: Tuesday, January 17, 2012 11:31 AM
To: Bjorn Gjerde
Subject: RE: Lease Cancellation

Bjorn,
Can you send me something via email or mail from Don requesting we not Terminate the Swiftwater Cellars Lease at the airport? I need to include it in my packet to the Commissioners as support for the rescinding of the Termination....
Thank you,

Kelly Carlson
Bowers Field Airport. Manager

From: Bjorn Gjerde [mailto:bjorngjerde@swiftwatercellars.com]
Sent: Friday, December 16, 2011 1:21 PM
To: Kelly Carlson
Subject: RE: Lease Cancellation

Hi Kelly-

Can you give me a call using my contact info in my signature below? Thanks.

Bjorn Gjerde
Controller
Swiftwater Cellars/DDW/DW Management/DW Financial/DW Aviation/Garnet Ledge
Office: 509.852.7311
Cell: 509.308.1260
Fax: 509.674.6505

From: Kelly Carlson [mailto:kelly.carlson@co.kittitas.wa.us]
Sent: Friday, December 16, 2011 12:33 PM
To: Bjorn Gjerde
Cc: Kirk Holmes
Subject: RE: Lease Cancellation
Importance: High

Bjorn,
If Don is planning something different he really needs to contact me. At this point, the BOCC has signed the lease termination and therefore considers the lease terminated! So if Don would still like the same parcel,lease,terms he needs to contact me immediately with his intentions. I am checking with our legal dept. now to see what action we could take on the termination if Don does not desire to terminate.
Thank you,
Kelly Carlson
Bowers Field Airport Manager

From: Bjorn Gjerde [mailto:bjorngjerde@swiftwatercellars.com]
Sent: Thursday, December 08, 2011 5:00 PM
To: Kelly Carlson
Cc: 'Don Watts'
Subject: Lease Cancellation

Kelly-

I received the lease cancellation paperwork in the mail, thanks for sending it. At this point we will not cancel our lease, but look to make some changes to the scope of the project regarding business plans. Please let me know if you have any questions. Thanks.

Bjorn Gjerde
Controller
Swiftwater Cellars/DDW/DW Management/DW Financial/DW Aviation/Garnet Ledge
Office: 509.852.7311
Cell: 509.308.1260
Fax: 509.674.6505

Notice: All email sent to this address will be received by the Kittitas County email system and may be subject to public disclosure under Chapter 42.56 RCW and to archiving and review.

message id: 38eb45916c6dcbdac24bb8719d004a14