

**Port of Skamania County**  
**Minutes of the Board of Commissioners**  
**April 12, 2016**  
**Regular Meeting 3:00 pm**

**Call to Order:** Commissioner Collins called the meeting to order at 3:00 pm.

**Attendance:** Commissioners Fran Breeding, Gail Collins, and Todd Kingston; Attorney Ken Woodrich, Executive Director John McSherry, Executive Assistant Julie Mayfield, Finance Manager Randy Payne, Facilities Manager Doug Bill. Guests: Paul Spencer (tenant), Jim Jordan, Thomas Meade (tenant), Sandy and Joe Bacus, Philip Watness, Sheryl Brandt (Enduris), Keller Allen (Spokane attorney), Darla Sauls (tenant) with Kate Morrison, Tina Nicklaus, Tera Andersen.

**Public Comment:**

Paul Spencer: Gave an update on his company Wind River Biomass; will be focusing on organic produce working with greenhouses in addition to the biomass activities. They are pursuing another round of funding and should know if approved soon. John noted he toured a potential tenant to the site last week and introduced them to Paul's group.

Sandy Bacus: She said the community is concerned about an attack on John McSherry by the Commission and attempts to terminate him. She said John is successful and competent in his job—and she and he are both from the East Coast and may be different in their approach than folks in the West, but they are both valid approaches. She said the Port constituents have a right to know what's going on—when you do things behind closed doors it doesn't look good.

Joe Bacus: Joe gave a brief history of his vast experience in government work as an attorney. He said he doesn't know John McSherry but he sees his good work and doesn't know why there seems to be a movement afoot to get rid of him and that John has rights. He said it isn't in the Port's best interest to do that. He said 45 years as a US HUD lawyer taught him that transparency reduces many problems and that the Port should hold less executive sessions and use more common sense. Commissioner Collins agreed.

Jim Jordan: He said Joe Bacus was the US head of HUD.

Darla Sauls: She said she's had a continuous problem for three years with the residence she leases from the Port at Wind River Business Park. She said she's suffered health issues because of issues there, and that the Port has addressed a few of the issues. She said she's been accused of not paying rent and that it's a lie. She said she refuses to pay leasehold tax. Commissioner Kingston asked her if she's ever met John McSherry and she said no, but they have talked on the phone and she said she admits she has a "big mouth" when she gets mad. John said he sent a crew to her residence and she turned them away; she said she did "slam the door in Doug's face" when he came to replace a broken window because she was mad. She said she was without hot water for a month; Doug said she had hot water, however was without the quantity of hot water that she wanted until the Port installed a new hot water heater. Discussion between Randy Payne and Commissioner Kingston concluded back rent is still due. There was discussion about the septic system; three of her caregivers with her said they have seen ongoing problems with clogged pipes. She said she apologizes to Doug. Commissioner Kingston said he will support John's decision not to send staff out to work there if she "comes out as a bear" as she noted she has done. The Commission said they will fix any issues.

Thomas Meade: He introduced himself as the owner of Skamania Acupuncture and thanked the Port for providing such a great space to be a tenant and for the Port's support [Tichenor Suite 40-ABCD].

**Meetings and Seminars:** skipped.

**Minutes Approval:**

Commissioner Kingston said he wanted the minutes changed to read that he made a motion at the March 22, 2016 regular meeting to hold a Special Meeting on March 25, 2016; he inquired of Commissioners Breeding and Collins who said they thought they had arranged it. John explained that he himself was there and there was no such motion. Julie said she had left that meeting at the beginning of the last Executive Session (which John was called into) and had reminded the group to document any action in the minutes and fill out the Executive Session form, and that Commissioner Collins had done so, writing "no decisions made" and adjournment on her minutes page.

There was a discussion about how Commissioner Kingston went about setting up the meeting, coming to the office the next morning March 23<sup>rd</sup> and directing Julie to send out the notice, without John's knowledge and therefore direction. John said he did not find out until later that day after the EDC Luncheon when Julie told him and that it was not done in a transparent manner and it was confusing for staff and himself. Commissioner Kingston said he could not contact John to let him know.

Julie asked if it is legal to make a motion in Executive Session or announce a decision in Executive Session to hold a special meeting. Ken said the Chairman of the commission can call for meetings and only notify the other commissioners any time he wants and commissioners can talk to each other for that purpose. John said there was an email saying explicitly that the decision to hold the special meeting was a product of the executive session, yet he was there for the second executive session and close of meeting and there was no mention of a special meeting, so it must have taken place in the first executive session that did not include John. Julie asked again if it is allowed in Executive Session to do this. Commissioner Kingston withdrew his request to change the minutes.

John reminded Commissioner Collins that we need documentation of Open Public Meetings Act training from him; he said he would take care of it.

*---MOTION--- Commissioner Kingston moved to approve the **March 22, 2016 Regular Meeting Minutes**. Commissioner Breeding seconded; the motion carried.*

*---MOTION--- Commissioner Collins stepped down and moved to approve the **March 25, 2016 Special Meeting Minutes**. Commissioner Kingston seconded; Commissioner Breeding abstained since she was not at the meeting; the motion carried.*

**Vouchers Approval:**

*---MOTION--- Commissioner Breeding moved to approve the **Pre-issued General Fund Vouchers numbered 17120 through 17130 in the amount of \$13,412.33 dated April 6, 2016**. Commissioner Kingston seconded; the motion carried.*

*---MOTION--- Commissioner Kingston moved to approve the **General Fund Vouchers numbered 17131 through 17158 in the amount of \$25,364.97 dated April 12, 2016.** Commissioner Breeding seconded; the motion carried.*

**Administrative Approvals:**

*---MOTION--- Commissioner Kingston moved to **ratify Lease Amendment 3 with Backwoods Brewing, including Suite 110, with terms according to the attached Lease Amendment 3 with the security deposit unchanged.** Commissioner Breeding seconded; the motion carried.*

**Staff Reports:**

- **Facilities Report:** Doug reported staff has been working at Skunk Brothers (Tichenor Suite 45) and added a security light for Sherman Industries at Wind River Business Park (WRBP), the second restroom at River Point SE (LDB Beverage) is complete; they upgraded the can lights in Tichenor's covered porch to LEDs; they've spent a lot of time at Beacon Rock Golf Course cleaning up the 39 downed trees from winter storms and he rebuilt the cart ramp; he repaired the irrigation supply line at Leavens/Cascade after Crestline's work on the street broke it and he notified the City that the road is coming apart in that area; he noted the Tour Boat season has begun at Stevenson Landing. Commissioner Kingston asked that tenant Gorge Delights be reminded that it is their responsibility to maintain the landscaping.
- **Attorney's Report:** None.

**Director's Report/Unfinished Business:**

1. *Tenants Update:* John presented pictures on the television screen of operations at Backwoods from a waterfront tenants visit he and Julie made on Friday. He also showed pictures of the remodeled Suite 110 (Tichenor) showing how Doug replaced flooring and repurposed carpet tiles from WRBP and installed them in Suite 110. He reported they visited Skamania Acupuncture and Phloem Studio also. He also showed pictures from Windy River Research's (WRR) remodeling of the old Processing Center at WRBP; they will be the PUD's largest customer. There was discussion on improvements being made—the Port is repairing certain areas of the exterior siding that are rotten and repairing a leak in the roof; WRR will manage future snow buildup on roof/sides issues with heat tape and manual removal. He noted Julie has been working with the EDC to plan a red carpet welcome event for Phloem, Backwoods, and Skamania Acupuncture, and she is updating the tenants directory sign. There was discussion on Sawnnet/Wave's trucks parked on the waterfront side of Tichenor Building; John said he is working with them on that and on transferring the lease to Wave.
2. *Bridge of the Gods Toll Increase:* John discussed the letter he presented to the Port of Cascade Locks at their board meeting April 7, 2016 on behalf of our Port. He said they would like our assistance in grant application preparation and that they plan to hold one more public meeting in Stevenson before making their final decision on toll increases. John noted the Port of Hood River is seeking letters of support for their FAST Act (Fixing America's Surface Transportation, administered by the Federal Transit Administration) grant application; the Commission agreed we should send a support letter. There is a plan for an April 21, 2016 meeting of Gorge Port Commission

presidents in Hood River.

3. *WPPA Spring Meeting at Skamania Lodge*: Washington Public Ports Association will hold its Spring meeting May 11 – 13, 2016. John and Julie will attend; a meet and greet will be held at Backwoods Brewing.
4. *Wind River Business Park*: Commissioner Kingston asked where the Windy River Research's rent funds are. Randy explained they are noted in the general fund account; there was discussion about the partnership agreement with Skamania County, which John and Ken have been working on. The value of the building at 1111 Hemlock Road (#2130) is increasing as a result of improvements being made by the tenant—the County will need to increase the insurance value after a reassessment.
5. *Executive Director Review*: John said the status of the employment agreement is that Ken needs to talk to John's attorney, who has reviewed the agreement. Commissioner Kingston said he did not know a review was on the agenda. Commissioner Collins wanted to go to Executive Session; Ken explained it is not required but if privacy issues are at stake then it is acceptable. Commissioner Collins said it's harder to be frank in public. Ken reminded it is discussion only—no decisions are to be made about salary, wages, etc.—all decisions must be made in public. Commissioner Breeding said she preferred a public review; she was outvoted and the decision was made for an executive session (and John stated it was also his preference). John asked Commissioner Kingston to recuse himself though and asked if he was aware a complaint had been filed against him. Commissioner Kingston said he had no reason to recuse himself.

**New Business:** 212 Chapman Avenue Lease Residence, WRBP

There was extensive discussion on the issues of this building. Doug said the repairs can't take place while the building is occupied. It was determined that the interior pipes should be replaced and a new septic tank should be installed. Commissioner Collins said an outside contractor should perform the work. John will provide the commission with an estimate.

**Executive Session:** John noted he was not aware of why the two representatives from the Port's Risk Pool (Enduris) were present at this meeting—he was not informed and did not know who asked them to attend. After learning they were present for an Executive Session under "i" he stated that he is responsible for the employees and should have been informed.

Commissioner Collins called for an Executive Session, with the Commission, John McSherry and Sheryl Brandt (Enduris) and Keller Allen (KellerAllen.com), from 4:54 pm to 5:14 pm for 20 minutes per RCW 42.30.110(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency; and again, with the Commission, Ken Woodrich, John McSherry, and Sheryl Brandt (Enduris) and Keller Allen (KellerAllen.com), from 5:17 pm to 5:37 pm for 20 minutes, and 5:37 to 5:47 pm for 10 minutes per RCW 42.30.110(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public.

Commissioner Kingston said he has very high expectations as a Port Commissioner and he's not going to change. Commissioner Breeding said she's over the PIP (personal improvement plan) for John, which has dragged on for 2 years now, with some dates for review being missed, and John fulfilling most of the requirements, she said she feels it is impeding progress and that it should be counted as completed. Commissioner Collins said he agrees but that we [past commission] went through a lot on this and he'd like to see it finished. Commissioner Breeding reiterated that the PIP does not have to be continued.

Ken interjected that he sees a lot of emotion between these two groups and suggested the Port participate in formal mediation and suggested we use Six Rivers Mediation. Ken said this brewing hostility makes our meetings very dysfunctional and that in his 20 years as Port attorney he's not seen it this dysfunctional in a long time; it is distracting to John; the strategic plan is critical to assist John in prioritizing projects when he's short-handed. He stressed the emotional component needs to get out of the discussion.

Commissioner Kingston said he also agreed with Commissioner Breeding but he also agreed with Commissioner Collins and said that John was told by a previous commission not to bring any cannabis lease proposals and as soon as he got a new commission he brought a cannabis proposal. He said the Commission can rip up this PIP but that they will have to create a system to evaluate the Director and this task will take time. Commissioner Breeding said the Commission cannot micro-manage John. Commissioner Kingston said the Port is ineffective and a laughing stock, to which Commissioner Collins agreed. John asked with whom? Commissioner Kingston said with the public. Commissioner Collins said we need to write down what the Commission asks him to do and follow it. Commissioner Breeding said this is creating a very negative environment in which John doesn't want to interact with us.

*---MOTION--- Commissioner Breeding moved to **Declare the Existing Personal Improvement Plan (PIP) for John McSherry as Abandoned.***

Commissioner Collins said they worked too hard on it to abandon it; he apologized for everything getting delayed in the course of the PIP review. Commissioner Kingston said that by ignoring his responsibilities John wins again. John stated he has completed the PIP. Commissioner Kingston began a talk about the potential to resolve his differences with John when Keller Allen interjected that they should complete the motion or decide to pursue mediation. He stated that the delivery of messages needs mediation to find solid ground. They returned to the motion:

*---MOTION--- Commissioner Breeding moved to **Declare the Existing Personal Improvement Plan (PIP) for John McSherry as Abandoned.** The motion died for lack of a second.*

Commissioner Kingston said after mediation he'll be comfortable abandoning the PIP. He stated no one knows what is left to be done on the PIP. John reiterated that he completed the PIP requirements.

Ken stated to Commissioner Kingston that he is the object of a complaint and asked if he wanted it discussed in public or executive session. Commissioner Kingston asked if all

procedures have been followed in filing the complaint. Keller Allen said it's still in the investigative process and doesn't have to be addressed at this meeting. Commissioner Kingston asked if he needs counsel. Ken said he is unsure at this point, that the process needs to proceed according to policy. Commissioner Kingston said that has already been broken. Sheryl Brandt said she needs to do more investigating to understand the nature of the complaint. Commissioner Kingston asked if it can be publicly talked about. Keller Allen said confidentiality will be respected. John noted the personnel manual states confidentiality cannot be guaranteed. Commissioner Kingston said how this is handled will speak volumes about how mediation will go. John noted this is not a mediation issue. Keller said mediation is voluntary and repeated that the delivery of communication is causing problems and that mediation could improve communication. Sheryl said we are all here for the benefit of the Port and thanked the commissioners for all their work. Commissioner Collins acknowledged her comment with thanks and said he doesn't know why he signed up to be a commissioner.


Commissioner Breeding said the planning workshop should be postponed. Ken said mediation can take some time and he doesn't know Six Rivers's schedule. Commissioner Kingston asked Julie if she could check into it. John said to Commissioner Kingston that if he needs something from staff to please ask John, and John can direct the appropriate staff, since it is confusing for staff to get directions from one Commissioner. Commissioner Collins agreed and John thanked him for that support. The Commission agreed to postpone the workshop.

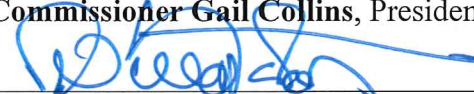
**Adjournment:** The Chairperson adjourned the meeting at 6:23 pm.

**Next Meeting:** The next regularly scheduled meeting of the Board of Port Commissioners is April 26, 2016 at 3:00 pm at the Port office conference room: 212 SW Cascade Avenue, Stevenson, Washington.

**APPROVED BY:**

  
\_\_\_\_\_  
**Commissioner Fran Breeding**, Secretary (District 1)

  
\_\_\_\_\_  
**Commissioner Gail Collins**, President (District 2)

  
\_\_\_\_\_  
**Commissioner Todd Kingston**, Vice-President (District 3)

**ATTEST:**

  
\_\_\_\_\_  
**Julie Mayfield**, Executive Assistant

**AMENDMENT 3 TO LEASE AGREEMENT  
PORT OF SKAMANIA AND BACKWOODS BREWING COMPANY  
TICHENOR BUILDING, SUITES 85, 105 AND 110**

This Amendment 3 to Lease Agreement is entered into as of April 8, 2016 and amends the Lease Agreement dated August 25, 2015 (the "Agreement") and as amended by Amendment #1 dated November 24, 2015 and Amendment #2 dated January 28, 2016 between the **Port of Skamania County and Backwoods Brewing Company**.

In consideration of the mutual promises of the parties set forth in this Amendment 3, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Amendment.** The Agreement is hereby amended Recitals, Paragraph 1 and Section Two, Terms and Conditions, Paragraph 3 as follows:

**Recitals, Paragraph 1**, currently as:

1. Lessor is the sole owner of the Premises located at 40 SW Cascade Avenue, Suites 85 and 105, Stevenson, WA, commonly known as the Tichenor Building, a multi-tenant industrial building, described in Exhibit A, attached hereto and incorporated herein by reference, hereinafter referred to as "the Premises."

**Replace new Recitals, Paragraph 1**, below:

1. Lessor is the sole owner of the Premises located at 40 SW Cascade Avenue, Suites 85, 105 and 110, Stevenson, WA, commonly known as the Tichenor Building, a multi-tenant industrial building, described in Exhibit A, attached hereto and incorporated herein by reference, hereinafter referred to as "the Premises."

**Section Two, Terms and Conditions, Paragraph 3**, as amended by Amendment 2 currently:

3. For use and occupancy of the Premises, and in consideration of the employment and economic benefits brought by Lessee's business in the community, Lessee shall pay Lessor rental according to the following schedule:
- a. Beginning on January 1, 2016 through December 31, 2017, the base rental shall be as follows:

	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>
<u>2016</u>	\$0	\$0	\$0	\$0	\$0	\$0	\$1,120	\$1,120	\$1,120	\$1,120	\$1,920	\$1,920
<u>2017</u>	\$1,920	\$1,920	\$2,720	\$2,720	\$2,720	\$2,720	\$3,520	\$3,520	\$3,520	\$3,520	\$3,520	\$3,520

All lease rates (including no cost base rate months) will be plus Washington State Leasehold Excise Tax at the rate of 12.84%, but not less than **\$451.97** per month,

due and payable on or before the first day of each month, in advance, without demand. Rent for any period shorter than one (1) month shall be prorated for that month.

**Replace with new Section Two, Terms and Conditions, Paragraph 3, below:**

3. For use and occupancy of the Premises, and in consideration of the employment and economic benefits brought by Lessee’s business in the community, Lessee shall pay Lessor rental according to the following schedule:

a. Beginning on April 1, 2016 through December 31, 2017, the base rental shall be as follows:

	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>
<u>2016</u>	\$0	\$0	\$0	\$0	\$0	\$0	\$1,445	\$1,445	\$1,445	\$1,445	\$2,570	\$2,570
<u>2017</u>	\$2,570	\$2,570	\$3,695	\$3,695	\$3,695	\$3,695	\$4,820	\$4,820	\$4,820	\$4,820	\$4,820	\$4,820

All lease rates (including no cost base rate months) will be plus Washington State Leasehold Excise Tax at the rate of 12.84%, but not less than **\$618.89** per month, due and payable on or before the first day of each month, in advance, without demand. Rent for any period shorter than one (1) month shall be prorated for that month.

**2. Miscellaneous Provisions Applicable to Amendment 3.**

2.1 This Amendment 3 will be effective as of April 1, 2016, upon execution and delivery by the parties.

2.2 This Amendment 3 may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

2.3 This Amendment 3 shall be governed by the law of the State of Washington, without reference to its choice of law rules.

2.4 This Amendment 3 supersedes any prior agreements, negotiations and communications, oral or written, with respect to this subject matter and contains the entire agreement between, and the final expression of, Lessor and Lessee with respect to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

**3. Status of Agreement.**

As amended by this Amendment 3, the Agreement continues in full force and effect in accordance with its terms. On and after the date of this Amendment 3, the Agreement shall be deemed amended by this Amendment 3 and all references in the Agreement to “this Agreement”



“herein” “hereof” and the like shall be deemed to be references to the Agreement as amended by this Amendment 3.

IN WITNESS WHEREOF, the parties have executed this Amendment 3 as of the day and year first written above.

**Port of Skamania County**

**Backwoods Brewing Company**

By: [Signature]  
Name: **John McSherry**  
Title: **Executive Director**

By: [Signature]  
Name: **Kevin Waters**  
Title: **President/CEO**

Date Signed: 4-8-16

Date Signed: 4-8-16

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAMANIA )

I certify that I know or have satisfactory evidence that **John McSherry** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Executive Director** of the **Port of Skamania County** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 8th day of April



[Signature]  
Print Julie A. Mayfield  
NOTARY PUBLIC in and for  
The State of Washington  
My commission expires 6-3-18

STATE OF WA )  
 ) ss.  
COUNTY OF Skamania )

I certify that I know or have satisfactory evidence that **Kevin Waters, President/CEO** of **Backwoods Brewing Company**, a Washington Limited Liability Company, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the **President/CEO** of **Backwoods Brewing Company** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 8th day of April

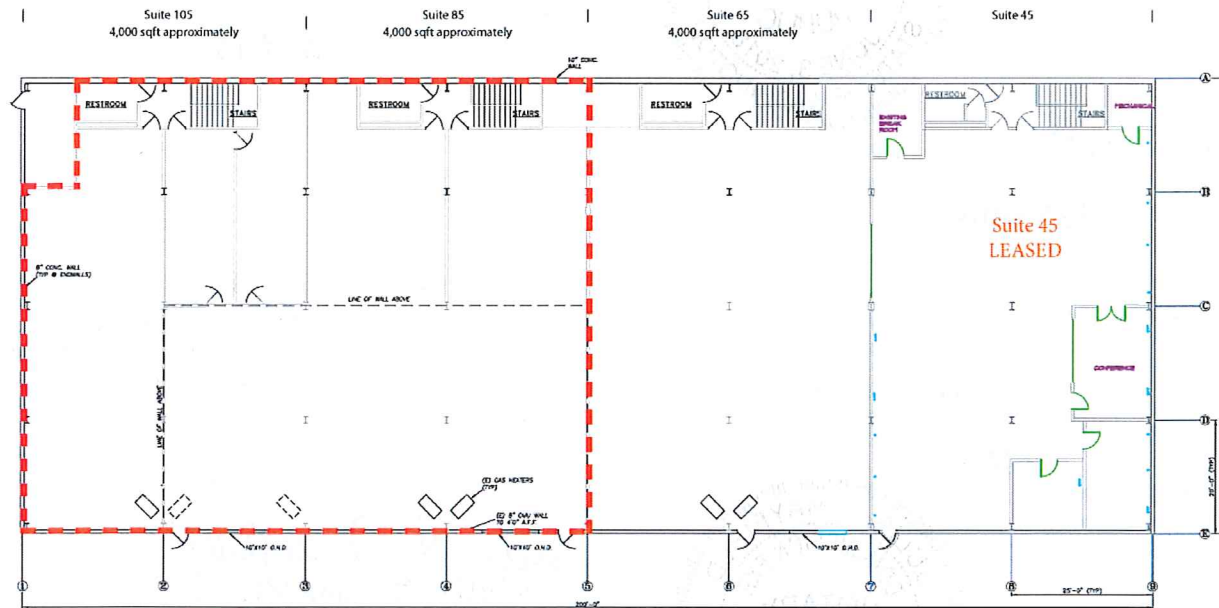
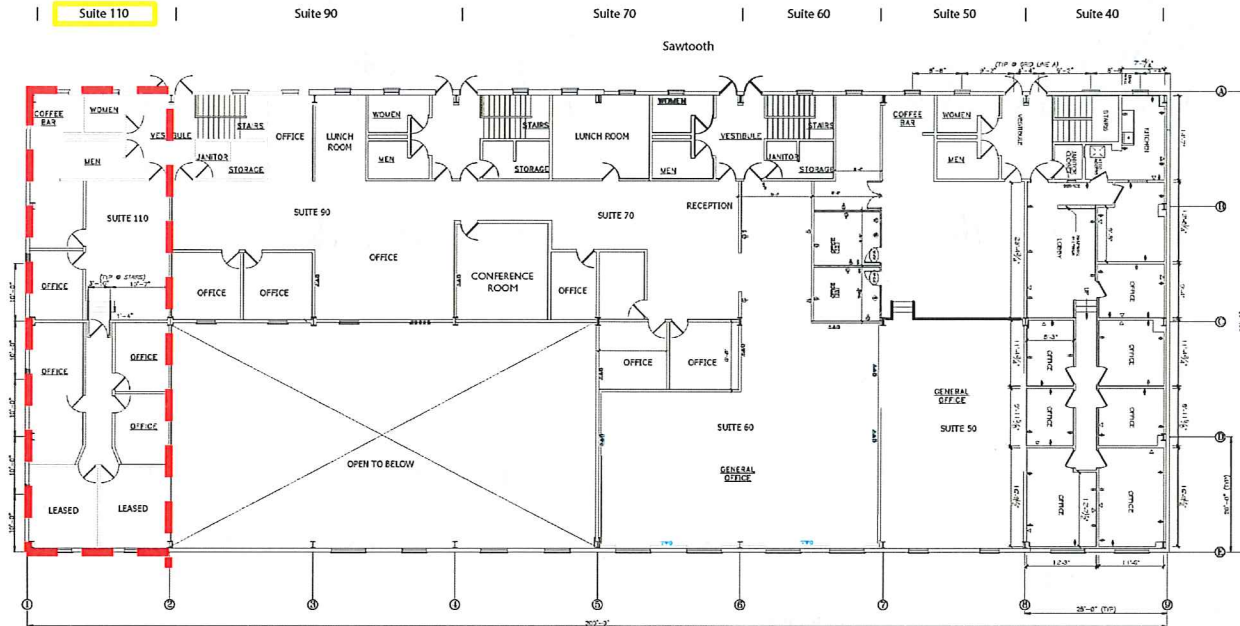


[Signature]  
Print Julie A. Mayfield  
NOTARY PUBLIC in and for  
The State of WA  
My commission expires 6-3-18

# Exhibit A—Leased Premises

40 SW Cascade Avenue, Stevenson, WA Suites 85, 105 and 110

## Tichenor Building UPPER FLOOR PLAN



= Lease Space

Port of Skamania County  
Tichenor Building Lower Floor  
Suites #65, 85 and #105  
40 SW Cascade Ave  
Stevenson, WA 98648

