

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

10-581

SAP Number

Real Estate Services Department

Department Contract Representative
Telephone Number

Terry W. Thompson, Director
(909) 387-5252

Contractor

CCI Club SB LLC, a Colorado
limited liability company

Contractor Representative
Telephone Number
Contract Term

William Rothacker Jr.

(720) 493-5100

Commencing June 16, 2020 and
continuing month-to-month,
terminable by either party on not
less than 30 days prior written
notice

Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center
GRC/PROJ/JOB No.
Internal Order No.

\$0.00

-

\$0.00

Briefly describe the general nature of the contract: This Use Permit is for the County of San Bernardino's use of approximately 4,900 square feet of vacant warehouse space identified as Suite B located at 295 E. Caroline Street, San Bernardino, CA. The use period of this Use Permit shall commence on June 16, 2020 and shall be on a month-to-month basis, terminable by either party on not less than thirty (30) days prior written notice. The use fee payable by the County of San Bernardino under this Use Permit shall be \$0.00.

FOR COUNTY USE ONLY

Approved as to Legal Form

SEE SIGNATURE PAGE

Agnes Cheng, Deputy County Counsel

Date

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

Jim Miller, Real Property Manager, RESD

Date

6-16-2020

USE PERMIT

1. **PARTIES:** CCI Club SB LLC, hereinafter referred to as PERMITTOR, hereby permits the County of San Bernardino hereinafter referred to as PERMITTEE, to use approximately 4,900 square feet of vacant warehouse space, identified as Suite B ("Use Area") located at 295 E. Caroline Street, San Bernardino, CA ("Property"), as the Use Area is shown on Exhibit "A" attached hereto and incorporated herein by reference. This Use Permit shall commence on June 16, 2020 and shall be on a month-to-month basis, terminable by either party on not less than thirty (30) days prior written notice. ("Use Period").

2. **USE:** PERMITTEE shall use the Use Area during the Use Period for only the following purpose: temporary space for storing COVID-19 related supplies and equipment in the Use Area. PERMITTEE must not use the Use Area for any other purpose. Unless otherwise provided in this Use Permit, PERMITTEE acknowledges, and understands that PERMITTEE accepts the Use Area is provided in "AS IS" condition without any representations or warranties by PERMITTOR.

3. **FEES:** There are no use fees nor utilities payable by PERMITTEE for the Use Area during the Use Period. At the end of the Use Period, the Use Area will be inspected by the parties for damage caused by PERMITTEE and PERMITTEE will be solely responsible, at its expense, for any cleanup of trash and debris and any reasonably required repairs to the Use Area that have been caused by the PERMITTEE to return Use Area to as good a condition as existed immediately prior to the commencement of the Use Period, reasonable wear and tear excluded.

4. **INDEMNIFICATION:**

A. PERMITTOR agrees to indemnify, defend (with counsel reasonably approved by PERMITTEE) and hold harmless PERMITTEE and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages, liability and/or for any costs or expenses (including reasonable attorneys' fees) incurred by the PERMITTEE arising out of: (i) any improvements constructed by PERMITTOR pursuant to the Use Permit; (ii) the PERMITTOR's acts and omissions in connection with its ownership of the Property; (iii) the use and operation of the common areas and occupied or leased spaces other than the Use Area; and (iv) Hazardous Substance, toxic waste, and environmental contamination not resulting from PERMITTEE's use of the Use Area, except where such indemnification is prohibited by law. PERMITTOR's indemnification obligation applies to PERMITTEE's "active" as well as "passive" negligence but does not apply to PERMITTEE's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. PERMITTOR's indemnification obligations set forth herein shall survive the expiration or earlier termination of the Use Permit. The insurance provisions in Paragraph 5 INSURANCE REQUIREMENTS AND SPECIFICATIONS shall not be interpreted in a manner that limits the indemnification obligation.

B. PERMITTEE agrees to indemnify and hold harmless PERMITTOR and its officers, employees, agents, and volunteers from any and all damages for injury to persons and damage to property incurred by PERMITTOR arising out of the sole negligence of PERMITTEE, its officers, employees, agents, or volunteers in connection with this Use Permit.

C. In the event the PERMITTEE and/or the PERMITTOR is found to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under the Use Permit, the PERMITTEE and/or the PERMITTOR shall indemnify the other to the extent of their comparative fault.

D. Furthermore, if the PERMITTEE or the PERMITTOR attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the PERMITTEE and the PERMITTOR agree that any alleged negligence of the employee shall not be construed against the employer of that employee.

5. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

A. PERMITTEE is a self-insured public entity for purposes of general liability and workers' compensation

B. PERMITTOR agrees to provide insurance set forth in accordance with the requirements herein. If PERMITTOR uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, PERMITTOR agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, PERMITTOR shall secure and maintain throughout the Use Period the following types of insurance with limits as shown:

i. Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of PERMITTOR and all risks to such persons under the Use Permit.

If PERMITTOR has no employees, it may certify or warrant to PERMITTEE that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by PERMITTEE's Director of Risk Management.

If PERMITTOR is a non-profit corporation, organized under California or Federal law, volunteers for PERMITTOR are required to be covered by Workers' Compensation insurance.

ii. Commercial General Liability Insurance – PERMITTOR shall carry Commercial General Liability Insurance covering all operations performed by or on behalf of PERMITTOR providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

iii. Commercial Property Insurance – providing all risk coverage for the Use Area, the building, fixtures, equipment and all property constituting a part of the Use Area, but excluding PERMITTEE's fixtures, equipment and other personal property. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost with commercially reasonable deductibles.

iv. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If PERMITTOR is transporting one or more non-employee passengers in relation to the Use Permit, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If PERMITTOR owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

v. Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

C. If PERMITTOR performs any construction of the Use Area on behalf of PERMITTEE, PERMITTOR shall also procure and maintain coverages as follows:

i. For construction contracts for projects over One Million Dollars (\$1,000,000) and less than Three Million Dollars (\$3,000,000) require limits of not less than Three Million Dollars (\$3,000,000) in General Liability and Auto Liability coverage.

ii. For construction contracts for projects over Three Million Dollars (\$3,000,000) and less than Five Million Dollars (\$5,000,000) require limits of not less than Five Million Dollars (\$5,000,000) in General Liability and Auto Liability coverage.

iii. For construction contracts for projects over Five Million Dollars (\$5,000,000) and less than Ten Million Dollars (\$10,000,000) require limits of not less than Ten Million Dollars (10,000,000) in General Liability and Auto Liability coverage.

iv. PERMITTOR agrees to require all subcontractors, or other parties including, but not limited to, architects, it hires or contracts with in relation to the Use Permit to provide insurance covering the contracted operations with the requirements in this Paragraph 5 (including, but not limited to, waiver of subrogation rights) and naming PERMITTEE as an additional insured. PERMITTOR agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

v. Course of Construction/Installation (Builder's Risk) property insurance providing all risk, including theft coverage for all property and materials to be used on the construction project in the Use Area. The insurance policy shall not have any coinsurance penalty.

D. Additional Insured – All liability policies obtained by PERMITTOR, except for the Workers' Compensation, shall contain endorsements naming PERMITTEE and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of use of the common area of the Property. The additional insured endorsements shall not limit the scope of coverage for PERMITTEE to vicarious liability but shall allow coverage for PERMITTEE to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

E. Waiver of Subrogation Rights – PERMITTOR shall require the carriers of required coverages to waive all rights of subrogation against PERMITTEE, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit PERMITTOR and PERMITTOR's employees or agents from waiving the right of subrogation prior to a loss or claim. PERMITTOR hereby waives all rights of subrogation against PERMITTEE.

F. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by PERMITTEE.

G. Severability of Interests – PERMITTOR agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between PERMITTOR and PERMITTEE or between PERMITTEE and any other insured or additional insured under the policy.

H. Proof of Coverage – PERMITTOR shall furnish Certificates of Insurance to PERMITTEE's RESD administering the Use Permit evidencing the insurance coverage, including endorsements, as required, prior to the commencement of the Use Permit, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to PERMITTEE's RESD, and PERMITTOR shall maintain such insurance from the time the Use Permit is executed until the expiration or earlier termination of the Use Permit. Within fifteen (15) days of the commencement of this Use Permit, PERMITTOR shall furnish a copy of the declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request in the event a claim is made against PERMITTOR's policy.

I. Acceptability of Insurance Carrier – Unless otherwise approved by PERMITTEE's Director of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VIII".

J. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$25,000 shall be declared to and approved by PERMITTEE's Director of Risk Management, such approval not to be unreasonably withheld, conditioned or delayed.

K. Failure to Procure Coverage – All insurance required must be maintained in force at all times by PERMITTOR. In the event that any policy of insurance required under the Use Permit does not comply with the requirements, is not procured, or is canceled and not replaced, and such insurance is not procured or reinstated, as applicable, within ten (10) days of written notice from PERMITTEE to PERMITTOR, PERMITTEE has the right but not the obligation or duty to cancel the Use Permit or obtain insurance if it deems necessary and any premiums paid by PERMITTEE will be promptly reimbursed by PERMITTOR upon demand but only for the pro-rata period of non-compliance.

L. Insurance Review – Insurance requirements are subject to periodic review by PERMITTEE's Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever PERMITTEE's Director of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of PERMITTEE. In addition, if PERMITTEE's Director of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, PERMITTEE's Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against PERMITTEE, inflation, or any other item reasonably related to PERMITTEE's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to the Use Permit. PERMITTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of PERMITTEE's RESD or PERMITTEE to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of PERMITTEE's RESD or PERMITTEE.

M. PERMITTEE shall have no liability for any premiums charged for such coverage(s). The inclusion of PERMITTEE as additional named insured is not intended to and shall not make a partner or joint venturer with PERMITTOR in PERMITTOR's operations.

N. PERMITTOR agrees to require all subcontractors or other parties it hires or contracts with in relation to the Use Permit to provide insurance covering the contracted operation with the requirements in this Paragraph 5 (including, but not limited to, waiver of subrogation rights) and naming PERMITTEE as an additional insured

6. **DAMAGE PROVISIONS:** PERMITTEE must repair the Use Area (or any portion thereof) and/or any improvements on the Use Area that are damaged by PERMITTEE and its employees, contractors, and agents to return the Use Area and any improvements thereon to as good a condition as existed immediately prior to the commencement of the Use Period, reasonable wear and tear excluded.

7. **ATTORNEY'S FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and attorneys' fees. This paragraph will not apply to those costs and attorneys' fees directly arising from any third party legal action against PERMITTEE, including such attorneys' fees and costs payable under Paragraph 4, INDEMNIFICATION, Paragraph 5, INSURANCE REQUIREMENTS AND SPECIFICATIONS, and Paragraph 15, PUBLIC RECORDS DISCLOSURE.

8. **CONDUCT OF EMPLOYEES:** PERMITTEE is responsible for the conduct of its employees, contractors, and agents on the Use Area.

9. **TERMINATION:** In the event that either party is in default of any of the terms and conditions of this Use Permit, the non-defaulting party may give written notice to the defaulting party of specific violations. If, within three (3) business days after written notice and demand, the defaulting party has not corrected such default, the non-defaulting party shall have the right to terminate this Use Permit.

10. **RESERVED.**

11. **PERMITS AND LICENSES/COMPLIANCE WITH LAWS:** Prior to the commencement of this Use Permit, PERMITTEE shall obtain any and all permits and/or licenses required by any and all local, state, and/or federal authorities for the PERMITTEE's use of the Use Area and shall maintain such permits and/or licenses in effect for the duration of the Use Period. PERMITTEE and its employees, contractors, and agents comply with all written rules and regulations established by the PERMITTOR for the Use Area and with all applicable ordinances, statutes, and laws of the County of San Bernardino, State of California, the United States of America, and all other governmental or regulatory agencies having jurisdiction over PERMITTEE's use and the Use Area.

12. **NO INTEREST OR ESTATE:** PERMITTEE agrees that it does not have and will not claim at any time any interest or estate of any kind or extend whatsoever in the Use Area and the entire property of which the Use Area is part, by virtue of this Use Permit or its use hereunder.

13. **RESERVED.**

14. **ASSIGNMENT AND TRANSFER:** This Use Permit is personal to the PERMITTEE and PERMITTEE shall not have any right to assign or otherwise transfer this Use Permit to any other person or entity.

15. **PUBLIC RECORDS DISCLOSURE:** PERMITTOR acknowledges and agrees that all information received by PERMITTEE from PERMITTOR or any source concerning the Use Permit, including the Use Permit itself, may be treated by PERMITTEE as public information, subject to disclosure under the provisions of the California Public Records Act (Government Code Section 6250 et seq.), the Ralph M Brown Act, or any other open records laws ("Public Records Laws"). PERMITTOR further acknowledges and agrees that, although all information received by PERMITTEE in connection with the Use Permit are intended for the exclusive use of PERMITTEE, such information is potentially subject to disclosure under Public Records Laws. In the event PERMITTOR, at the time any information is provided to PERMITTEE, has reasonably requested in writing that certain information as to the Use Permit be held in confidence and a request for disclosure of such information is thereafter received by PERMITTEE, PERMITTEE shall endeavor to notify PERMITTOR of said request and shall thereafter disclose the requested information unless PERMITTOR, within five (5) days of PERMITTEE's notice of such disclosure request: (i) requests that the information not be disclosed; (ii) provides a legally sound basis for nondisclosure (as determined in PERMITTEE's sole discretion); and (iii) agrees in writing to indemnify, defend (with counsel reasonably approved by PERMITTEE), and hold harmless PERMITTEE and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of or related the required disclosure. Notwithstanding anything to the contrary in the Use Permit, if PERMITTEE does not notify PERMITTOR of such disclosure request or if PERMITTEE does not deem PERMITTOR's basis for nondisclosure to be legally sufficient, as determined by PERMITTEE in its sole discretion, PERMITTEE shall not be liable for any claims for damages, lost profits, or other injuries of any and all kinds and PERMITTOR waives any and all such claims against PERMITTEE. PERMITTOR's indemnity obligation shall survive the expiration or earlier termination of the Use Permit.

16. **FORMER PERMITTEE OFFICIALS:** PERMITTOR has set forth on Exhibit "B" of the Use Permit certain information on former PERMITTEE administrative officials (as defined below) who are employed by or represent PERMITTOR. The information provided includes a list of the full names of former PERMITTEE administrative officials who terminated PERMITTEE employment within the last five (5) years and who are now officers, principals, partners, associates or members of PERMITTOR. The information should also include the title/description of the official's last position with PERMITTEE, the date the official terminated PERMITTEE employment, the official's current employment and/or representative capacity with PERMITTOR, and the date the official entered PERMITTOR's employment and/or representation. For purposes of this provision,

"PERMITTEE administrative official" is defined as a member of the Board of Supervisors or such officer's staff, PERMITTEE Administrative Officer or member of such officer's staff, PERMITTEE department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. PERMITTOR hereby certifies the information it has provided in Exhibit "B," which is attached hereto and incorporated herein by reference, is true, complete, and accurate

17. **RESERVED.**

18. **RESERVED.**

19. **RESERVED.**

20. **SECURITY:** PERMITTEE understands and agrees that the PERMITTOR is not required to provide, nor shall PERMITTOR provide, any security for the personal property and/or the person of PERMITTEE or its employees, volunteers, agents, members, invitees, or guests using the Use Area. PERMITTEE shall provide at its sole cost sufficient security personnel to secure the Use Area during the Use Period.

21. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party under the provisions of this Use Permit shall be in writing and shall be served personally, delivered by reputable overnight courier service, or sent by United States mail, postage prepaid, certified, or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party, shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered and effective upon the earlier of (i) actual receipt or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by reputable overnight courier service or United States mail, postage prepaid, certified or registered, return receipt requested. Any notices received after 5:00 pm local time on a business day shall be deemed effective on the following business day.

PERMITTEE: County of San Bernardino
Attn: Real Estate
385 N. Arrowhead Ave
San Bernardino, CA 92415

PERMITTOR: CCI Club SB LLC, a Colorado limited liability company
William Rothacker, Jr. and Drew Willock
6400 S. Fiddlers Green Circle, Suite 1820
Greenwood Village, CO. 80111

22. **SURRENDER:** PERMITTEE agrees that it will, upon any termination of this Use Permit, return the Use Area in a clean and tidy condition with all trash and debris caused by the PERMITTEE removed and all damages caused by the PERMITTEE repaired or restored to as good a condition as existed immediately prior to the commencement of the Use Period, reasonable wear and tear excluded.

23. **VENUE:** The parties acknowledge and agree that this Use Permit was entered into and intended to be performed in the County of San Bernardino, California. The parties agree that the venue for any action or claim brought by any party to this Use Permit will be the Superior Court of the State of California, County of San Bernardino. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Use Permit is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of the State of California, County of San Bernardino.

24. **LAW:** This Use Permit shall be construed and interpreted in accordance with the laws of the State of California.

25. **SEVERABILITY:** If any word, phrase, clause, sentence, paragraph, section, article, part or portion of this Use Permit is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this Use Permit or any other portion thereof.

26. **SURVIVAL:** The obligations of the parties that, by their nature, continue beyond the Use Period, will survive the termination of this Use Permit.

27. **AUTHORIZED SIGNATORS:** The parties to this Use Permit represent for itself that its respective signators executing this document are fully authorized to enter into this Use Permit.

28. **ENTIRE AGREEMENT:** This Use Permit constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. No modifications or waiver will be binding unless made in writing and signed by both parties.

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CCI Club SB LLC, a Colorado limited liability company

By: _____

David B. Runberg
CFO

Date: _____

6-16-20

COUNTY OF SAN BERNARDINO

By: _____

(name) **Gary McBride**

Title: **Chief Executive Officer**

Date: _____

6/23/20

Approved as to Legal Form:

**MICHELLE D. BLAKEMORE, County Counsel
San Bernardino County, California**

By: _____

Agnes Cheng, Deputy County Counsel

Date: _____

6/15/2020

EXHIBIT "A"
USE AREA
(Outlined in dashed red lines)

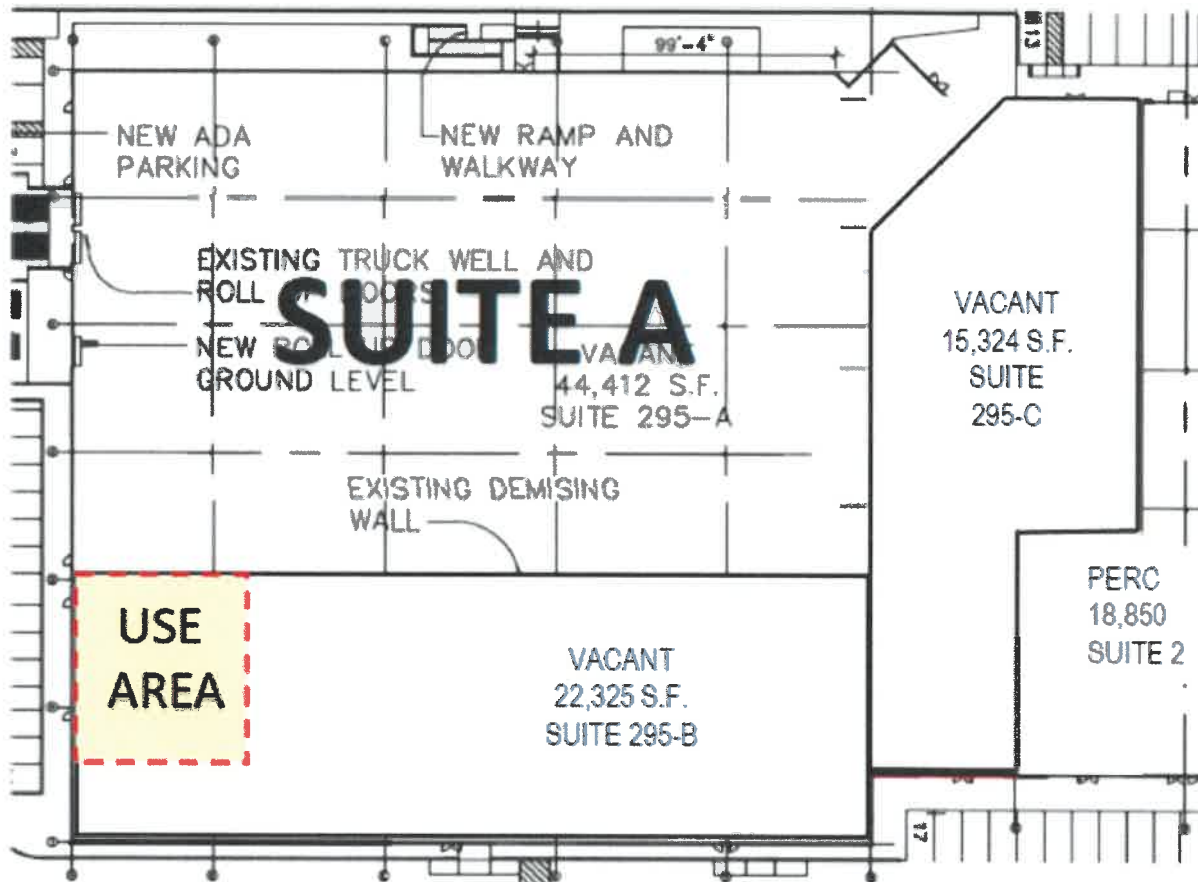


EXHIBIT "B"

LIST OF FORMER COUNTY OFFICIALS

INSTRUCTIONS: List the full names of former PERMITTEE Administrative Officials, the title/description of the Official's last position with PERMITTEE, the date the Official terminated PERMITTEE employment, the Official's current employment and/or representative capacity with PERMITTOR, and the date the Official entered PERMITTOR's employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION

None