



**MORGAN COUNTY BUILDING AUTHORITY AGENDA
SPECIAL CALLED MEETING**

June 20, 2023

Immediately Following the 5:00 p.m. BOC Regular Meeting

150 East Washington Street, Madison, GA

2nd Floor Board Room

Agenda Approval

Minutes

1. November 30, 2022 Special Called Building Authority Meeting

New Business

2. US LMB Holdings Lease Agreement



MORGAN COUNTY AGENDA REQUEST

Department:

Presenter(s):

Meeting Date: mm/dd/yyyy

Type of Request:

Wording for the Agenda:

Background/History/Details:

The lease with US LBM Holdings (Brand Vaughan Lumber) expires on June 30, 2023. A market analysis was reviewed in April 2023 for leased warehouse space pricing. Administration met with the president of Brand Vaughan Lumber and discussed lease options. The president agreed to the terms discussed.

The proposed lease will begin on July 1, 2023 and expire on June 30, 2028. The new rate per square foot is \$4.10 for the main warehouse space. The utility rate is \$0.45 per square foot. The additional storage area, should lessee opt to use, is \$1.63 per square foot. The escalator for rent and utilities will be 3.25% on July 1 of each year.

What action are you seeking from the Board of Commissioners?

If this item requires funding, please describe:

Has this request been considered within the past two years?

If so, when?

Is Audio-Visual Equipment Required for this Request?*

Backup Provided with Request?

*** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.**

Approved by Finance

Approved by Purchasing

Manager's Approval

Staff Notes:

LEASE – WAREHOUSE SPACE IN PUBLIC SAFETY COMPLEX

STATE OF GEORGIA
COUNTY OF MORGAN

DEFINITIONS

1. Lessor: Morgan County Building Authority (“Building Authority”).
2. Lessee: US LBM Holdings, LLC.
3. Premises: Certain warehouse space located in the Morgan County Public Safety Complex, 1100 Lions Club Road, Madison, GA 30650, more particularly identified as Exhibit A attached hereto, containing approximately 48,500 square feet, more or less.
4. Loading Area: Outdoor parking, loading, and storage area adjacent to Premises, more particularly identified in Exhibit B attached hereto.
5. Storage Area: 5,580 square feet, more or less, of storage space inside Premises, more particularly identified in Exhibit C attached hereto.

TERMS

In consideration of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

1. TERM

The initial term of this lease shall be from the date of execution until June 30, 2028. The Date of Execution shall be the date on which the last party executes this Lease.

2. RENEWAL

This lease shall not automatically renew at the end of Term, but the Parties may mutually agree upon a new lease.

3. RENT AND UTILITIES PAYMENTS

a. Base Rent

In exchange for Building Authority allowing Lessee to use Premises, Lessee shall pay Building Authority Rent in the amount of **\$16,570.00** per month (\$4.10 per square foot, per year). Rent is due and payable on or before the first day of each month.

b. Loading Area

Throughout the term of this lease Lessee shall be solely responsible for the maintenance and repair of Loading Area. At the end of Term, Loading Area must be returned to Building Authority in as good or better condition as it was on August 17, 2013.

c. Utilities

In exchange for Building Authority paying for Utilities (Section 4.a.), Lessee shall pay Building Authority **\$1819.00** per month (\$0.45 per square foot, per year) for the term of this

Lease. This payment is in addition to Rent, and shall be due each month at the same time as Rent.

d. Rental Adjustment

All amounts due as Rent and Utilities Payments pursuant to this section shall increase by 3.25% on July 1 of each year, beginning on July 1, 2024, with all monthly payments due under the initial term of this Lease as follows:

Year	Dates	Total Monthly Rental Payment
1	7/1/2023 – 6/30/2024	\$18,389
2	7/1/2024 – 6/30/2025	\$18,987
3	7/1/2025 – 6/30/2026	\$19,604
4	7/1/2026 – 6/30/2027	\$20,241
5	7/1/2027 – 6/30/2028	\$20,899

e. Storage Area

If Lessee opts to use Storage Area, it shall pay Building Authority additional rent in the amount of **\$757.95** per month (\$1.63 per square foot, per year). This amount is in ADDITION to the monthly payment set forth in subsection d. above, and is not subject to Rental Adjustment in subsection d. above. Rent for Storage Area is due and payable at the same time as regular Rent.

4. UTILITIES

In exchange for Lessee's payment set forth in Section 3.c. above, Building Authority shall be solely responsible for the cost of the following utilities: electricity, water, sewer, and natural gas. However, if Lessee's use of Premises changes in any way to materially increase its use of these utilities, Building Authority shall be entitled to increase the amount set forth in subsection c. below to reasonably account for the increase in Lessee's utility consumption. Lessee shall have the right to view all of Building Authority's records regarding Lessee's utility consumption upon reasonable request. Additionally, Building Authority may conduct an energy audit of Premises, in which case, the amount Lessee pays for Utilities under Section 3.c. above will be adjusted accordingly. Building Authority has the right to have separate meters for some or all of the utilities provided hereunder, in which case, Lessee shall be responsible for paying those actual utility costs either directly to the utility provider or to the Building Authority, whichever Building Authority directs. In the event of such separate metering, Lessee's Utility payment under Section 3.c. shall be reduced accordingly. If Building Authority elects to have separate meters installed, it shall be solely responsible for any costs incurred to install such additional metering equipment.

5. TAXES

Building Authority shall be solely responsible for ad valorem taxes on Premises.

6. TERMINATION

This Lease may be terminated for any of the following:

a. Default by Lessee

If Lessee defaults in the payment of Rent, or if Lessee shall be in default in performing any of the other terms or provisions of this lease, and fails to cure such default within THIRTY (30) days after notice of default from Building Authority, Building Authority at its option may

(but only during continuance of such default or condition), terminate this lease by notice to Lessee, whereupon this lease shall end. Upon termination due to Default, Lessee will at once surrender possession of the premises to Building Authority and remove all of Lessee's effects therefrom.

b. Default by Building Authority

If Building Authority defaults in performing any obligation set forth in this Lease, and fails to cure such default within THIRTY (30) days after notice of default from Lessee, Lessee at its option may (but only during continuance of such default or condition) do either of the following:

- i. Terminate this lease by providing notice to Building Authority, whereupon this lease shall end. Upon termination due to Default, Lessee will at once surrender possession of the premises to Building Authority and remove all of Lessee's effects therefrom; or
- ii. If Building Authority's default is due to its failure to repair or keep in good working order some portion of the Premises for which it is responsible under this Lease Agreement, Lessee may, at its option, repair that portion of Premises and submit invoices and evidence of payment for such repairs to Building Authority, which shall either reimburse Lessee for the costs of such repairs or abate Lessee's Rent in the amount of such repairs.

c. Early Termination

Lessee may terminate this lease after June 30, 2026 by: (i) providing Building Authority SIX (6) months prior notice of such early termination; and (ii) paying an early termination fee of THREE (3) times the monthly Rent. Upon Lessee satisfying these conditions, Lessee shall have no further obligations to Building Authority, except for any claims against Building Authority arising out of Lessee's use of Premises, including but not limited to any claims by Building Authority against Lessee under Section 13 Indemnity, or any claims by Building Authority against Lessee's insurer pursuant to Section 14 Insurance.

d. Negative Impairment of Bonds

Premises is financed through the issuance of revenue bonds. In the event this Lease in any way negatively affects the tax-exempt status of those bonds, or in any way impairs Building Authority's ability to repay those bonds, or in any way results in the requirement that those bonds become due and payable prior to their due date, Building Authority may, at its sole option, terminate this lease prior to the end of Term without any penalty. In such event, Building Authority will provide Lessee with six (6) months advance notice prior to such termination and will refund Lessee six (6) months Rent.

7. USE OF PREMISES

Building Authority agrees to lease Premises to Lessee to utilize as warehouse and office space for Lessee's operations. Premises shall only be used for these purposes and any related purposes. Premises shall not be used for any illegal purposes, nor in any manner to create any nuisance or trespass, nor in any manner to vitiate the insurance or increase the rate of insurance on Premises. For the Term of this Lease, Lessee shall have exclusive use of Premises. Lessee agrees not to in any way impede or restrict the various operations of the County on the property surrounding Premises, including but not limited to: detention center, fire station, courtroom, and ambulance service. Building Authority agrees not to enter into Premises, nor allow any other County personnel to do so, except as set forth below in Section 8.

8. RIGHT OF ACCESS

Building Authority may enter Premises after providing reasonable, 24-hour, advance notice to Lessee for the purposes of inspecting, repairing, and maintaining Premises. In the event of an emergency, Building Authority may enter Premises at any time to protect life and prevent damage to Premises. During the last SIX (6) months of Term, or at any time after Lessee's default, or after Lessee notifies Building Authority of its intention to exercise of its right of early termination, Building Authority may show Premises to prospective lessees or purchasers during reasonable hours. Lessee agrees to cooperate with Building Authority under such circumstances.

9. QUIET ENJOYMENT

So long as Lessee observes and performs the covenants and agreements contained in this Lease, it shall have the right of peaceable and quiet enjoyment of Premises.

10. IMPROVEMENTS/RENOVATIONS

Except as otherwise set forth herein, Lessee shall be responsible for all interior and exterior improvements and renovations after Date of Occupancy, and any such improvements and/or renovations made by Lessee must be pre-approved by Building Authority. If Lessee desires to make such improvements/renovations, Lessee shall submit to Building Authority a complete description (drawings, scope of work and contractor/vendor estimates) of the proposed work. Upon Building Authority's receipt of such documentation, Building Authority shall within 20 days thereof, either approve or reject such proposed improvements/renovations, or Building Authority may request additional information. If additional information is sought, Lessee shall respond in writing to Building Authority within 15 days thereof, and Building Authority shall within 20 days after receipt, either approve or deny such proposed work.

11. CONDITION OF PREMISES, MAINTENANCE, AND REPAIRS

Other than the Renovations/Improvements set forth above, Lessee accepts Premises in its present condition and as suited for the uses intended by Lessee. Building Authority shall, throughout the Initial Term of this Lease, at its sole expense, maintain in good order and repair Premises. Building Authority's obligations to maintain and repair Premises include the following: mechanical, electrical and plumbing systems; lighting; bulb replacement; and utility systems. However, Lessee agrees to repair any portions of Premises damaged or destroyed, other than damage or destruction caused by Building Authority. Lessee agrees to return Premises to Building Authority at the expiration, or prior termination, of this lease in as good condition and repair as when first received, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted.

12. COMPLIANCE WITH LOCAL LAWS AND CODES

Building Authority warrants that Premises is in compliance with all laws and regulations that are applicable to Building Authority and that Premises, including the improvements contained in Exhibit B, meet all applicable codes and ordinances. To the extent any laws, codes or ordinances do not apply to Building Authority, any non-compliance therewith shall not in any way invalidate this Lease or constitute default on the part of Building Authority.

13. INDEMNITY

Lessee agrees to defend, indemnify, and hold harmless Building Authority for any and all losses, damages and expenses incurred or sustained whatsoever, including attorneys' fees, from the destruction of, and/or injury or damage to life, person or property in or upon Premises subject to this Lease, or arising out of Lessee' use or occupancy of Premises.

14. INSURANCE

Building Authority will maintain property insurance covering the structures located on Premises, but Lessee shall be responsible for insuring any of its contents thereof. Lessee agrees to name Building Authority as an additional insured under Lessee's liability insurance policy(ies) for any claims against Building Authority arising out of Lessee's use and/or occupancy of Premises. Lessee further warrants that it has workers compensation insurance to provide coverage for its employees, and Lessee acknowledges that Building Authority's workers compensation insurance coverage does not include Lessee or its employees.

15. CONDEMNATION

If Premises, wholly or partially, is condemned by any legally constituted authority for any public use or purpose, then in either of said events the term hereby granted shall cease from the time when possession thereof is taken by public authorities, and rental shall be accounted for as between Building Authority and Lessee as of that date. Such termination, however, shall be without prejudice to the rights of either Building Authority or Lessee to recover compensation and damage caused by condemnation from the condemner. It is further understood and agreed that neither the Lessee nor Building Authority shall have any rights in any award made to the other by any condemnation authority.

16. DESTRUCTION OF PREMISES

If Premises is wholly destroyed, or partially destroyed in such a manner as to prevent Lessee from utilizing it for the purpose set forth herein, this Lease shall terminate as of the date of such destruction, and rental shall be accounted for between Building Authority and Lessee on prorated basis. If Premises is partially destroyed, but Lessee can still utilize it for the purposes set forth herein, albeit with some reduced efficiency or inconvenience, Building Authority shall reduce Lessee's Rent and Utilities/Improvements Payment by the percentage of the portion of Premises that is partially destroyed, until such portion of Premises is repaired.

17. REMOVAL OF PERSONAL PROPERTY AND FIXTURES

Prior to the expiration of this Lease, or any extension thereof, Lessee may remove all fixtures, equipment, and inventory which it has placed on Premises and other items of personal property not affixed to the real estate that are owned by Lessee. Any personal property on Premises owned by Building Authority shall remain Building Authority's property.

18. ASSIGNMENT

Lessee may not assign this Lease without the prior written consent of Building Authority. Building Authority may assign its rights under this Lease, but the terms of this Lease shall be binding upon the successors and assigns of Building Authority.

19. SIGNS

Lessee shall be entitled, at its sole cost and expense, to place, erect, and/or paint exterior signs and markings on Premises, subject to the prior written approval of Building Authority. Building Authority shall cooperate with Lessee and shall not unreasonably withhold its approval of sign requests by Lessee.

20. MISCELLANEOUS PROVISIONS

a. Duration and Effectiveness

This Lease and all its terms and conditions shall continue in effect until terminated.

b. Merger and Integration

This Lease constitutes the entire agreement between the parties and contains all the agreements between them with respect to the subject matter hereof. It also supersedes any and all other agreements or contracts, either oral or written, between the parties with respect to the subject matter hereof.

c. Modification

Except as otherwise specifically provided, the terms and conditions of this Lease may only be amended by mutual agreement of the parties, in writing, signed by Building Authority and Lessee and entered into the minutes of Building Authority during a meeting.

d. Severability

The invalidity or unenforceability of any particular provision of this Lease shall not affect its other provisions, and this Lease shall be construed in all respects as if such invalid or unenforceable provisions had been omitted.

e. Binding Successors

This Lease shall be binding upon Lessee and Building Authority, and their respective successors and assigns.

f. Jurisdiction, Venue, and Choice of Law

This Lease shall be construed and enforced under and in accordance with the laws of the State of Georgia. Venue and jurisdiction for all disputes arising in any way out of this Lease shall be in the Superior Court of Morgan County, Georgia, and both parties consent to jurisdiction and venue therein and waive any objections it may have, now or in the future, thereto.

g. Notice

All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered to each party at the addresses set forth below. Notice given under this Lease is deemed to have been received within five (5) days of the postmark on the letter in which it is contained, and a photocopy of the envelope in which the notice was sent, or on the date shown on any e-mail delivery receipt and such receipt shall be deemed as sufficient proof thereof. Rejection or other refusal to accept or inability to deliver because of the changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any party may from time to time and at any time change its address for notices hereunder.

BUILDING AUTHORITY

Morgan County Building Authority
Attn: Adam Mestres, County Manager
150 East Washington Street
Suite 100
Madison, GA 30650
e-mail: amestres@morgancountyga.gov

LESSEE

US LBM Holdings, LLC
Attn: Jennifer Purcell, Esq.
2150 E. Lake Cook Rd.
Suite 1010
Buffalo Grove, IL 60089
e-mail: jpurcell@uslbm.com

h. **Duty to Cooperate**

On and after the date of this Lease, both parties shall, at the request of the other, make, execute and deliver or obtain and deliver all instruments and documents and shall do or cause to be done all such other things which either party may reasonably require to effectuate the provisions and intentions of this Lease.

i. **Time of Essence**

Time is and shall be of the essence of this Lease.

j. **No Waiver**

No failure of any party to exercise any power given under this Lease or to insist upon strict compliance with any obligation specified in this Lease, and no custom or practice at variance with the terms of this Lease, shall constitute a waiver of any party's right to demand exact compliance with the terms of this Lease.

k. **Construction**

This Lease shall be construed without regard to who drafted the various provisions hereof. Each provision of this Lease shall be construed as though all the parties participated equally in its drafting. Consequently, the parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Lease.

l. **Counterparts**

This Lease may be executed in several counterparts and in duplicate originals, each of which shall constitute an executed original, and it shall not be necessary that each party execute each counterpart if each party has executed at least one counterpart of this Lease either by writing or by facsimile.

[SIGNATURES ON FOLLOWING PAGES]

FOR BUILDING AUTHORITY:

MORGAN COUNTY BUILDING AUTHORITY
Acting by and through its Board

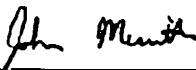
Ben M. Riden, Jr., Chairman

Attest: Leslie Brandt, County Clerk

Executed this ____ day of _____, 2023.

FOR LESSEE:

US LBM Holdings, LLC


_____[SEAL]
John Merritt
RVP

Attest:

Executed this _____ day of _____, 2023.