

## Commercial Lease Agreement

This Commercial Lease Agreement is between ACT Real Estate, LLC, an Indiana limited liability company ("Lessor") and the Board of County Commissioners of Montgomery County, Indiana, as Lessee ("County").

### Background

- Lessor agrees to lease to the County, and the County agrees to lease from Lessor designated storage space comprising of approximately 4,740 square feet, of the structure located on the third floor of the McGaughey Building, located at 127 East Main Street, Crawfordsville, Indiana 47933 ("Leased Premises"). A copy of the building plan is attached as "Exhibit A."
- County intends to use these leased premises for its Public Defender Office and for storage.

### Terms and Conditions

1. **Term.** The term of this lease will be for five years, beginning on October 1, 2024 or when the construction of the leased premises is completed, if the completion date is later than October 1, 2024 and ending on the fifth anniversary of the commencement date. Either party may terminate this lease after August 1, 2027 by providing to the other party written notice thereof at least six months prior to the effective date of the termination. In the event of an early termination, as allowed by this paragraph, the County will owe rent only until the effective date of the termination.
2. **Rent.** The monthly rental amount will \$2,000 per month, payable on or before the 1<sup>st</sup> day of each month during the terms of the lease. The County may prepay rent. Rent includes charges for electricity, water and natural gas provided to the leased premises, and Lessor will pay the charges for electricity and natural gas. This agreement is expressly conditioned upon the County Council appropriating sufficient funds for the rent, the approvals of the County Council and the Board of County Commissioners of the lease, and the County's compliance with the procedures contained in Indiana Code §36-1-10.
3. **Security Deposit.** The County paid a \$1,000 security deposit during a previous lease for this premises. The parties agree that the Lessor will be allowed to retain the existing security deposit during the term of this lease. If the County fully performs its obligations under the terms and conditions of this lease, the Lessor will return this deposit to the County within 30 days of the end of the lease term or within thirty (30) days of any early termination, as provided for in paragraph one. If the County fails to fully perform its obligations, the Lessor may retain the part of the security deposit

for unpaid rent or damage to the leased premises and return the balance of the security deposit to the County within the time periods provided for in this paragraph.

4. **Late Fee on Unpaid Rent.** If any installment of Rent, or portion thereof, is not paid by the 5<sup>th</sup> day of the month, then the County must pay a penalty of \$10 per day.
5. **Possession.** County has possession of the Leased Premises and will retain possession until the termination of this lease. The County will be entitled to continued, uninterrupted possession provided County pays the rent when due and County keeps all the remaining terms and conditions of this Lease, until the end of this lease. County may not sublet or assign its interest in this Lease to any third party without the Lessor's prior written consent.
6. **County's Premises Use**
  - a. **Use and Condition.** County will keep the Leased Premises in good condition, while ordinary wear and tear is expected. County will not commit waste on the Leased Premises. County will not make alterations or improvements to the Leased Premises without obtaining the prior written consent of Lessor, which will not be unreasonably withheld. County will use the Premises exclusively for the operation of its Public Defender Office and storage.
  - b. **Premises Damaged Beyond Use.** If the Leased Premises are damaged through no fault of County and to an extent the County cannot continue its stated use, then this Lease may be terminated by either party upon presentation of written request. Any prepayments of rent will be pro-rated to termination and returned to the County within ten business days; provided however, that if insurance proceeds restore the Leased Premises to a satisfactory condition for County to continue its stated operation of business at the Leased Premises and County agrees to continue the Lease after the Leased Premises are restored to a satisfactory condition. County's lease payments will abate for the time that County cannot occupy the Leased Premises for its stated purpose and the lease term will be extended for a period of time equal to the abatement period.
7. **Property Loss.** County acknowledges that Lessor is not responsible for any damage to County's property or the property of County's invitees, licensees or agents caused by any act or omission of County or County' clients and not caused by Lessor.
8. **Maintenance of Premises.** Lessor will maintain the interior and exterior of the Leased Premises including the building, common areas and restroom. Lessor is responsible for repairs to the Leased Premises not directly caused by County and will maintain all ceiling light fixtures, ballasts and fixtures.
9. **County Expenses.** The rent includes the utility costs for electricity, water and natural gas provided to the leased premises. County is responsible for its telephone, internet, video conferencing, computer system or any other form of utility services, other than

electricity, water and natural gas. County at its own expense may run necessary wiring or cabling for the support of County's telephone, computer, video conferencing, internet other equipment systems. Location of wiring or cabling must be approved by Lessor.

10. **Access by Lessor.** The Lessor may enter and examine the Leased Premises in order to make any repairs, additions, or alterations as deemed necessary for the safety, comfort, or preservation equipment, or of the building.
11. **Lessor Property Interest.** Lessor represents that it owns a fee simple interest in and to the land on which the structure is to be improved or remodeled and the structure that is to be improved or remodeled.

## 12. Insurance

- a. **Property Insurance.** Lessor will maintain a policy of insurance to protect the Leased Premises against fire and extended perils. Lessor may, at its option, secure public liability insurance covering Lessor's risk only and any such other insurance coverage as it may desire for Lessor's sole benefit and protection.
- b. **Liability Insurance.** County agrees to secure liability insurance prior to occupying the Leased Premises and carry said insurance for the entire term of this Lease. Insurance must be secured from a reputable company, properly licensed to provide insurance in the State of Indiana and include any extensions, public liability insurance for \$1,000,000 per occurrence for the loss from an accident resulting in bodily injury or death, and \$250,000 for loss from an accident resulting in damage to or destruction of property. This insurance must inure to the benefit of both Montgomery County and Lessor. Lessor must be specifically named as an additional insured on such policy or policies of insurance. County must immediately provide Lessor written proof of the insurance coverage, and County must promptly make a claim for any covered loss. County may obtain and maintain any other insurance that County desires on the Leased Premises or on the personal property at County's sole option and expense.
- c. **Non-Coverage.** It is understood that Lessor's insurance will cover none of the County's personal property maintained on the Leased Premises.
- d. **Waiver of Subrogation.** To the extent permitted by law, the County hereby releases Lessor, its elected and appointed officials, members, managers, employees and others working on behalf of Lessor from any and all liability or responsibility to the County or anyone claiming through the County by way of subrogation or otherwise, for any loss or damage to property caused by fire or other casualty, even if such fire or casualty shall have been caused by the fault or negligence of Lessor, its elected or appointed officials,

members, managers, employees or others working on behalf of Lessor. This provision shall be applicable and in full force and effect only with respect to loss or damages occurring during the time of the County's occupancy or use, and the County's insurance policies shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of the County to recover thereunder.

13. **Indemnification.** County agrees to release, defend, indemnify, and hold Lessor harmless from liability resulting from damage, or injury or death to those persons who are invitees, licensees, employees, agents or guests of County while they are at or near the Leased Premises.
14. **Improvements.** County agrees that any improvements made to the Leased Premises will remain in the Leased Premises unless County obtains prior written approval from Lessor to remove the improvements.
15. **Plans, Specifications, and Estimates.** Lessor will not make improvements to the leased premises prior to the beginning of the term of this agreement.
16. **Default and Remedies**
  - a. **Time is of the essence to perform this Lease.**
  - b. **Event of County's Default.** The following events are an "Event of Default" under this lease agreement:
    - i. Failure by County to pay the rent when due;
    - ii. Failure of County to observe or perform one or more of the other terms, conditions, covenants or agreements (non-rent matters) of this Lease for five business days after written notice specifying such failure has been delivered to County;
    - iii. County's abandonment of the Leased Premises;
    - iv. If this Lease of the County is transferred to or assigned to or subleased to or passes to or devolves upon any person or entity except in a manner permitted; or
    - v. If a levy under execution or attachment is be made against County or County's assets and such execution or attachment is not immediately vacated or removed by court order or decree.
  - c. **Event of Lessor's Default:** in the event of Lessor's breaches of any term or condition of this lease, County will provide notice of this default to Lessor. Lessor will have ten days to cure this default. If Lessor fails to cure the default, County has the right to terminate the lease and will be entitled to a refund of the pro-rata portion of rent which represents the remaining term of the lease

at the time of termination. Lessor will refund this pro-rata amount to the county within ten days or receipt of the notice of termination.

- d. **County's Right to Cure.** If any default is made as specified in subsection b. or if any default in performing or complying with any other lease term or condition, this lease agreement, at LESSOR's option may be immediately terminated and be forfeited. LESSOR may re-enter the Leased Premises and request that all persons vacate the Leased Premises. LESSOR, however, must give the County written notice of any default or breach and LESSOR's termination and forfeiture will not result if, within 30 calendar days of receipt of such notice, County has corrected the default or breach or has taken reasonable action to rectify the situation within a reasonable time period. If Lessee fails to cure its default, Lessor may retain all pre-paid rent and will not be under an obligation to return to the County any portion of pre-paid rent.
  - e. **Attorneys' Fees and Court Costs.** If either party must seek the services of legal counsel, or court intervention, to encourage the defaulting party to comply with this Lease, the defaulting party must pay the non-defaulting party's legal expenses, including court costs and reasonable attorney's fees.
17. **Notices.** All notices under this Lease, or which may be given by either party to the other, will be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties:

**IF to Montgomery County**

John Frey, President  
Montgomery County  
Board of Commissioners  
1580 Constitution Row  
Crawfordsville, Indiana 47933

**IF to Lessor:**

Melissa Meade  
ACT Real Estate, LLC  
[Melissa.meade@actil.net](mailto:Melissa.meade@actil.net)

And

Daniel L. Taylor  
County Attorney  
105 N. Washington St.  
Crawfordsville, Indiana 47933  
[dtaylor@tmsclaw.com](mailto:dtaylor@tmsclaw.com)

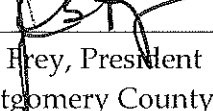
18. **Waiver of Breach.** No failure by either party to insist upon the strict performance of this Lease or any term or condition contained, will be a waiver of any subsequent insistence of strict performance.

19. **Termination.** At the expiration of the term of this Lease, County will peacefully surrender possession of the Leased Premises. County may remove all of its equipment, furniture, personal property, cabinets and trade fixtures. Any damage caused by the removal of possessions will be returned to original state at the County's expense.
20. **Nepotism.** By signing this Agreement, Lessor certifies that:
- a. None of the owners of Lessor is a spouse, parent, stepparent, child, adopted child, stepchild, brother, sister, stepbrother, stepsister, brother by the half blood, sister by the half blood, niece, nephew, aunt, uncle, daughter-in-law or son-in-law of a member of the Montgomery County Board of Commissioners; and
  - b. If during the term of this contract a person is elected who is a relative of any company owner, Lessor will make a written disclosure of the relationship to the Board of Commissioners.
21. **Engaging in Activities with Iran.** By signing this Agreement, Lessor certifies it is not engaged in investment activities in the Country of Iran as described in I.C. § 5-22-16.5.
22. **Nondiscrimination**
- a. Lessor agrees that in hiring of employees for performing work under this Agreement or any subcontract, no Lessor employee or subcontractor, nor any person acting on behalf of Lessor or any subcontractor, may for race, religion, color, sex, immigration status, national origin or ancestry, discriminate against any citizen of the State of Indiana qualified and available to perform the work to which the employment relates.
  - b. Lessor agrees that no subcontractor, nor any person on its behalf, will in any manner, discriminate against or intimidate any employee hired for performing work under this lease agreement for race, religion, color, sex, immigration status, national origin or ancestry. Lessor agrees that if it violates the terms or conditions of this Section, then the County may cancel or terminate this lease agreement and all money due, or to become due, will be forfeited.
23. **Entire Agreement.** This Agreement represents the entire agreement between the County and Lessor. There are no other written or oral agreements between the County and Lessor relating to this Agreement. No waiver, modification, or amendment of any Agreement term, condition, or provision will be valid or have any force or effect unless made in writing and signed by the parties to this Agreement.
24. **Applicable Law.** This Agreement is governed by and interpreted under the laws of the State of Indiana without giving effect to the provisions, policies, or principles relating to choice of law or conflicts of law.

25. **No Assignment.** Neither party may assign this Agreement without the other party's prior written consent, which will not be unreasonably withheld. A party's contracting with subcontractor is not considered an assignment.
26. **Successors and Representatives.** This Agreement binds and inures to the benefit of the County and Lessor and their respective heirs, personal representatives, successors, and (where permitted) assignees.
27. **"Including."** Unless the context requires otherwise, the term "including" means "including but not limited to."
28. **Headings.** Headings are for convenience only and do not affect interpreting this Agreement.
29. **Severability.** If any part of this Agreement is held to be unenforceable, the rest of it remains fully enforceable.
30. **Effectiveness; Date.** This Agreement will become effective when both the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this Agreement.
31. **Annual Appropriations.** This lease is subject to annual appropriation by the Montgomery County Council.
32. **Filing and Recording.** The Montgomery County Board of Commissioners must make a copy of this lease and keep the lease filed with the Montgomery County Auditor for public inspection. This Lease will be recorded in the Montgomery County Recorder's office.

Montgomery County, Indiana

ACT Real Estate, LLC

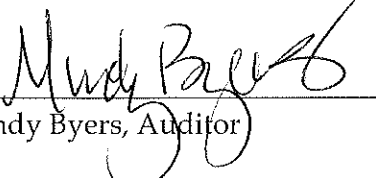
By:   
 \_\_\_\_\_  
 John Frey, President  
 Montgomery County  
 Board of Commissioners

By: \_\_\_\_\_  
 Melissa Meade, Manager

Date: 10-14-2024

Date: \_\_\_\_\_

Attest:

  
 \_\_\_\_\_  
 Mindy Byers, Auditor

I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT I HAVE TAKEN REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW. Daniel L. Taylor