**LEASE AGREEMENT**

This LEASE AGREEMENT (this “Lease”) is entered into and effective as of the 13th day of April, 2020 (the “Commencement Date”) by and between **HANU LLC**, an Indiana limited liability company (hereinafter referred to as “Landlord”) and **UNITED WAY OF ALLEN COUNTY, INC.**, an Indiana nonprofit corporation (hereinafter referred to as “Tenant”).

This Lease is entered into under and pursuant to the Governor of Indiana’s State of Emergency Proclamation dated March 6, 2020 and Executive Order 20-02 (and subsequent executive orders), in response to COVID-19, and is directly related to that emergency and necessary for the preservation of public health and safety. Tenant has received and/or may receive commitments from the State of Indiana, through the Indiana Family and Social Services Administration, and from the Federal Emergency Management Agency of the United States Government, for funding in support of Tenant’s performance of its obligations under this Lease, and the parties acknowledge and agree that certain state and federal regulations and requirements apply to the Lease, as more particularly set forth herein.

In consideration of the promises and obligations specified in this Lease, Landlord and Tenant agree as follows:

1. **Description of Leased Premises**

Tenant agrees to lease from Landlord, and Landlord agrees to lease to Tenant, certain premises “AS IS” with appurtenances situated in the City of Fort Wayne, County of Allen, State of Indiana, and more particularly described as follows:

The entirety of the Comfort Inn hotel located at 1005 W. Washington Center Road, in the City of Fort Wayne, County of Allen, State of Indiana, as outlined on the aerial site plan attached hereto as **Exhibit A,** including, without limitation, all unoccupied, nonexclusive, unobstructed parking spaces contiguous to the subject hotel building and the said hotel building’s common facilities (collectively, the “Leased Premises”). Tenant shall have access to and use of the Leased Premises throughout the Term (as hereinafter defined) twenty-four (24) hours per day, seven (7) days per week, with no exceptions.

1. **Term of Lease**

This Lease shall commence on the Commencement Date and shall end on June 13, 2020 (the “Initial Term”), subject to the Permitted Holdover Period as described in Section 13(A) below.

1. **Rent**

Rent will be payable to Landlord in consecutive monthly installments of **$203,700.00** per calendar month (“Base Rent”). Base Rent shall accrue from the Commencement Date and shall be paid in United States dollars, without demand therefor, in the following amounts:

|  |  |
| --- | --- |
| **Period** | **Rent Payable** |
| 04/13/2020 – 05/12/2020 | $203,700.00 |
| 05/13/2020 – 06/12/2020 | $203,700.00 |

The first Base Rent payment shall be due and payable on the Commencement Date, and subsequent Base Rent payments shall be due and payable, in advance, on or before the first day of each succeeding calendar month during the Term. Base Rent and all other amounts payable by Tenant pursuant to this Lease are hereinafter collectively referred to as “Rent”.

1. **Renewal Periods**

Notwithstanding anything in this Lease to the contrary, Tenant shall have the right to extend this Lease for four (4) additional periods of seven (7) days each beyond the Initial Term (each a “Renewal Period”), upon at least three (3) days prior written notice to Landlord. Each Renewal Period will be under the same terms and conditions as this Lease, with the Rent payable to Landlord at the rate of $50,925.00 per each Renewal Period. For purposes of this Lease, the Initial Term, together with any Renewal Periods, as applicable, shall hereinafter be referred to as the “Term”.

1. **Use of the Leased Premises**

Tenant and its agents, employees, contractors, guests and invitees (including, for avoidance of doubt, physicians, medical personnel, governmental officials and social service agencies and personnel)(collectively, “Permitted Parties”) shall use the Leased Premises for the purpose of housing persons not otherwise eligible for existing shelters due to actual or suspected diagnosis or exposure to the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (the “Permitted Use”), and for other purposes ancillary thereto.

1. **Condition of Payment**

All services provided by Landlord under this Lease must be performed to Tenant’s reasonable satisfaction, as determined at the discretion of Tenant and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. Tenant shall not be required to pay for work or services found to be unsatisfactory, inconsistent with this Lease or performed in violation of federal, state, or local law.

1. **Services to be Provided by Landlord**
2. Landlord, at Landlord’s sole cost and expense, during the Term, shall provide the following services, utilities and supplies to the Leased Premises:
3. Heating, air conditioning, and ventilation, when required, for the comfortable occupancy of the Leased Premises to the following criteria:

Summer: Cool to 72 degrees.

Winter: Heat to 70 degrees.

1. Gas and electricity;
2. Water for drinking, lavatory, and rest room purposes, including a reasonable amount of hot water, and any maintenance and repair services related thereto;
3. Lighting fixtures and light bulbs adequate to serve the Leased Premises, and replacement and repair of the same, when necessary;
4. Sewage services;
5. Snow and ice removal from the parking areas and walkways to and around the Leased Premises, when necessary;
6. Smoke detectors, in adequate number and in functioning condition, to serve the Leased Premises. Landlord shall inspect, maintain, repair or replace smoke detectors as needed. Landlord shall visually inspect the smoke detectors monthly to determine that the smoke detectors work properly. The Leased Premises shall have smoke detectors spaced per applicable building codes;
7. Fire extinguishers, in adequate number and in functioning condition, to serve the Leased Premises. Landlord shall inspect, maintain, repair or replace fire extinguisher devices on a regular basis at Landlord’s own expense. All fire extinguishers shall conform to all federal, state and local statutes and regulations;
8. Pest control, when needed;
9. Trash removal (from designated dumpsters);
10. Lawn maintenance;
11. Elevator service; and
12. Such other services, utilities and supplies as are usual and customary for purposes of operating a hotel facility.
13. Except as is excused pursuant to this Lease, specifically including Sections 7(H) and 19 below, Landlord agrees to maintain the Leased Premises in a condition of safety and habitability appropriate to the needs and uses of Tenant. All maintenance, upkeep, and repair of the Leased Premises and its systems shall be the responsibility of Landlord and shall be provided at Landlord's expense. Upon notice from Tenant of any condition requiring repair or maintenance, Landlord shall promptly make the required repairs and perform the required maintenance.
14. Intentionally Deleted*.*
15. Tenant acknowledges and agrees that in order for Landlord to fulfill its obligation to maintain and repair the Leased Premises, Landlord shall have the right to enter the Leased Premises, at its risk, throughout the Term of this Lease, at times agreed to by Tenant, for the purposes of inspection and making repairs. Landlord shall be entitled to bring upon the Leased Premises workmen and materials necessary to provide maintenance and to complete repairs. However, this right shall not relieve Landlord of the responsibility for the quality of the repair work to be performed or the effects of repairs, or from liability for the actions of its agents and employees in performing the repairs. Except in the event of emergency, Landlord agrees to provide Tenant reasonable advance notice of its entry.
16. If Tenant remains in compliance with this Lease, Tenant shall have the peaceful and quiet enjoyment of the Leased Premises except as provided in Section 7(D) above.
17. Landlord acknowledges and agrees that the Leased Premises and all facilities shall, as of execution of this Lease, conform to applicable provisions of the Indiana State Fire and Building Codes, and applicable Municipal Fire and Building Codes, as applied to Landlord’s previous use of the Leased Premises as a hotel open to the general public.
18. Landlord further agrees, as of the execution of this Lease, that access and parking at the Leased Premises meet any other requirements for persons with disabilities in conformance with local, state and federal statutes and regulations, including those current laws and regulations required by the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*., as applied to Landlord’s previous use of the Leased Premises as a hotel open to the general public.
19. Without limiting the foregoing, the parties acknowledge this Lease is executed during an ongoing state of emergency related to the COVID-19 pandemic and that Landlord’s ability to perform the maintenance contemplated herein may be limited due to labor shortages, travel restrictions, or other causes. If Landlord’s performance of its maintenance obligations is delayed due to reasons beyond Landlord’s control, Landlord will be excused from the performance thereof until such time as performance is reasonably practicable. Notwithstanding the foregoing, Landlord agrees to make immediate, good faith efforts to find a way to perform said maintenance as promptly as possible.

**8. Insurance**

1. Landlord, at its cost and expense, shall maintain in full force and effect casualty and public liability insurance, with Tenant named as an additional insured, throughout the Term in accordance with the following:
2. A policy of commercial general liability insurance covering any and all claims for injury to or death of persons and damage to property occurring in or on the Leased Premises in an amount not less than $1,000,000.00 for injury to or death of any one person; $5,000,000.00 for injury to or death of more than one person in the same accident or occurrence; and $50,000.00 for damage to property arising out of any one accident or occurrence; and
3. Broad form fire and extended coverage insurance on the Leased Premises, and all fixtures, equipment, appliances and personal property located in or used in connection with the Leased Premises for their full insurable value on a replacement cost basis.

B. Landlord shall furnish to Tenant a Certificate of Insurance showing that the casualty and broad form fire and extended coverage insurance described in Section 8(A) is in full force and effect and may not be canceled or materially altered without thirty (30) days prior written notice to Tenant. Landlord shall furnish or shall cause its insurance agent to furnish to Tenant a copy of such certificate at the time Landlord receives the executed Lease from Tenant.

C. Landlord waives all rights against Tenant, its agents, directors and employees for damages arising under or related to this Lease to the extent those losses are covered by insurance required pursuant to this Lease. The policies of insurance required pursuant to this Lease shall not prohibit this waiver of subrogation.

**9. Loss of Use by Tenant**

In the event the Leased Premises are made untenable or are partially or totally destroyed by fire, explosion, or other similar casualty, provided such total or partial destruction is not caused by Tenant (however, the foregoing does not apply to the existence of the COVID-19 emergency):

1. The Leased Premises shall be repaired as speedily as possible, at Landlord's expense;
2. Either party may elect to terminate this Lease by notifying the other party in writing within ten (10) days of the casualty, and Rent shall abate and be paid only to the date of the casualty; or
3. Landlord and Tenant can agree in writing to continue this Lease for the undamaged portion of the Leased Premises at a rental rate apportioned according to the usable space available. If the Leased Premises are unusable during the restoration period, the Rent shall abate during such period.

**10. Intentionally Deleted**

**11. Assignment and Subletting**

1. Tenant shall not assign this Lease, sublet the Leased Premises, or any part thereof, or permit the use or occupancy of any part of the Leased Premises, by anyone other than Tenant and the Permitted Parties, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall propose all requests to assign or sublet the Leased Premises in writing to Landlord. Notwithstanding the foregoing, Landlord understands that third party service providers may use portions of the Leased Premises.
2. Landlord agrees to bind its successors and assignees to all the terms and conditions of this Lease. In the event of such an assignment, whether by sale or other transfer, and at the request of Landlord, the parties will enter into an amendment recognizing the substitution of party to the Lease.

**12. Abandonment of Premises**

Except as otherwise provided herein, Tenant understands and agrees that if it abandons the Leased Premises during the Term, Tenant shall not be relieved of its duties and obligations under this Lease. Notwithstanding the foregoing, Tenant’s exercise of its rights under Section 32 (Compliance with Laws), Section 33 (Funding Cancellation), or Section 36 (Termination for Convenience) of this Lease shall not constitute abandonment.

**13. Surrender and Holding Over**

1. On or before the expiration of the Term, Tenant shall vacate the Leased Premises, by removing all of its goods, fixtures and other movable personal property from the Leased Premises, and leaving the Leased Premises in the same condition as the Leased Premises were on the Commencement Date, ordinary wear and tear, and damage by the elements, excepted; provided, however, possession of the Leased Premises shall not be surrendered to Landlord, nor shall Landlord be entitled to have access to the Leased Premises, except in the performance of its duties hereunder, until the sixth (6th) calendar day following the expiration of the Term (the “Permitted Holdover Period”). For avoidance of doubt, under no circumstances will Landlord be entitled to open the hotel building to the general public during the Permitted Holdover Period.
2. In the event Tenant remains in possession of the Leased Premises after the Permitted Holdover Period, the resulting tenancy shall be construed as a tenancy from week-to-week.

**14. Memorandum of Lease**

Upon request by Tenant, a Memorandum of Lease in recordable form shall be executed by both parties and recorded in conformance with the laws of the State of Indiana.

**15. Indemnification; Waiver of Claims**

1. Landlord agrees to indemnify, defend, and hold harmless Tenant, and its agents, directors and employees from all third party claims and suits including court costs, attorney’s fees, and other expenses caused by Landlord’s breach of this Lease and/or the negligence or misconduct of Landlord, and/or its employees, contractors or subcontractors, if any, in the performance of this Lease.
2. LANDLORD FURTHER ACKNOWLEDGES THAT THE PERMITTED USE CARRIES CERTAIN RISKS, BOTH KNOWN AND UNKNOWN, AND NOTWITHSTANDING SUCH RISKS, LANDLORD HAS DETERMINED THAT THE CONSIDERATION IT HAS ACCEPTED UNDER THIS LEASE IN THE FORM OF RENT AND OTHER ACCOMMODATIONS IS SUCH THAT LANDLORD KNOWINGLY AND VOLUNTARILY ACCEPTS SUCH RISKS. FURTHERMORE, LANDLORD AGREES THAT TENANT SHALL NOT BE LIABLE FOR ANY LOSSES, DAMAGES, INJURIES, COSTS, OR EXPENSES WHATSOEVER RELATING TO THE LEASED PREMISES, BOTH DURING THE TERM HEREOF AND THEREAFTER, INCLUDING WITHOUT LIMITATION, ANY INTERRUPTION OR CESSATION OF, OR HARM TO, THE BUSINESS OF LANDLORD INCURRED AS A CONSEQUENCE OF ALLOWING THE LEASED PREMISES TO USED FOR THE PERMITTED USE. \_\_\_\_\_\_ **(LANDLORD INITIALS)**

**16. Governing Law**

This Lease shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suits, if any, must be brought in the Federal or State Courts of Allen County, Indiana.

**17. Default by Landlord**

Landlord shall be in default of this Lease for failure to perform any of its obligations under this Lease five (5) days after Tenant has notified Landlord in writing of the specific obligations not being performed, or such longer period as may be reasonably needed so long as Landlord commenced curing the default within the five-day period and diligently pursues the same. Default by Landlord shall entitle Tenant to withhold Rent until the default is cured or to terminate this Lease should Landlord fail to cure the default within thirty (30) days after Tenant has provided written notice of the default to Landlord. The rights to withhold Rent and/or to terminate this Lease as set forth in this Section 17 shall be Tenant’s sole remedies in the event of a Landlord default.

**18. Default by Tenant**

Tenant shall be in default for failure to perform any of its obligations under this Lease ten (10) days after Landlord has notified Tenant in writing of specific obligations not being performed, or such longer period as may be reasonably needed so long as Tenant commenced curing the default within the ten-day period and diligently pursues the same. Default by Tenant shall entitle Landlord any remedy afforded it by Indiana Law; provided, however, under no circumstances will Tenant’s aggregate liability under this Lease exceed what it agreed to pay in the form of Rent during the Initial Term.

**19. Force Majeure**

In the event that either party is unable to perform any of its obligations under this Lease, or to enjoy any of its benefits, because of natural disaster, pandemic or communicable disease outbreak, or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a “Force Majeure Event”), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance immediately. Upon receipt of such notice, all obligations under this Lease shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Lease. Notwithstanding the foregoing, if Landlord is unable, despite its good faith efforts, to resume performance within five (5) days, Tenant may continue its occupancy and use of the Leased Premises.

**20. Prevailing Party**

If either party to this Lease commences any action against the other, the prevailing party in any such action shall be entitled to reimbursement for its reasonable attorneys’ fees (and other costs and expenses) from the other party.

**21. Limitation of Liability**

Notwithstanding any provision in this Lease to the contrary or any general rule of law, in no event whatsoever shall any member, partner, director, officer, employee, agent, or other principal of Tenant have any personal liability whatsoever with respect to this Lease. Any liability of Tenant under this Lease shall be enforced solely against Tenant.

**22.** **Modification of Lease**

This Lease may be modified at any time upon written agreement signed by Landlord and Tenant.

**23. Miscellaneous Provisions**

1. No waiver of any condition or covenant of this Lease or failure to exercise a remedy by either Landlord or Tenant shall be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, or remedy.
2. Landlord and Tenant agree that this Lease and all acts done in compliance with this Lease shall not be deemed to create any relationship between the parties other than the relationship of landlord and tenant.
3. This Lease, upon complete execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of this Lease.
4. Upon termination, the Tenant will secure documentation from the Allen County Board of Health confirming that the Leased Premises are suitable for public occupancy.

**24. Liens**

Tenant agrees that it shall not cause any liens to be filed as a result of any work done on its behalf; however, should such a lien be filed, Tenant agrees to discharge such lien within thirty (30) days of receipt of notice of the lien.

**25. Intentionally Deleted**

**26. Hazardous Materials**

Landlord, to the best of its knowledge, represents that the Leased Premises are in environmentally sound condition at the time of the execution of this Lease. Both Landlord and Tenant agree that they shall not cause, allow, or permit any Hazardous Material to be brought upon, generated, manufactured, stored, handled, disposed of, or used at, on, about, or beneath the Leased Premises or any portion of the Leased Premises, except as is customary in the operation of a hotel and in compliance with applicable law.

**27. Notice**

All notices required to be given under this Lease will be made in writing and will be E-mailed or sent by first class U.S. mail to the parties, as follows:

Landlord: HANU LLC

1005 W. Washington Ctr Rd

Fort Wayne, IN

Attn: Alep Patel

E-mail: alap1418@yahoo.com

Copy to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tenant: UNITED WAY OF ALLEN COUNTY, INC.

324 West Berry St

Fort Wayne, IN 46802

Attn: Matthew Purkey

E-mail: mpurkey@uwacin.org

Copy to: Barrett McNagny LLP

215 E. Berry St.

Fort Wayne, Indiana 46802

Attention: H. Joseph Cohen

Email: hjc@barrettlaw.com

**28. Execution**

This Lease may be executed in counterparts, each of which shall constitute an original, and all of which when taken together, shall constitute one binding instrument once each party has signed one or more of the counterparts. The persons executing this Lease on behalf of a party hereby covenant, warrant and represent that: (a) such party is duly organized and qualified to do business in the state in which the Leased Premises is located; (b) execution of this Lease has been duly authorized by such party; and (c) the execution of this Lease and performance by such party of its obligations hereunder do not violate any provision of any corporate charter or by-laws, agreement, or other governance agreement of such party, or any other outstanding agreement, banking or otherwise, of such party with any other person or entity.

**29. Intentionally Deleted**

**30.** **Rooms**

Landlord represents to Tenant that all rooms within the Leased Premises are furnished with at least one bed, table, chair and television, and working bathroom, including toilet and shower. Further, and notwithstanding anything in this Lease to the contrary, Landlord acknowledges that any damage to the rooms shall not be the responsibility of Tenant; Landlord assumes all risk in this regard.

**31. Debarment & Suspension**

A. Landlord certifies by entering into this Lease that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Lease by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term “principal” for purposes of this Lease means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Landlord.

B. Landlord certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Lease and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. Landlord shall immediately notify Tenant if, to Landlord’s actual knowledge, any subcontractor becomes debarred or suspended, and shall, at Tenant’s request, take all steps required by Tenant to terminate its contractual relationship with the subcontractor for work to be performed under this Lease.

**32. Compliance with Laws**

A. Landlord shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Lease shall be reviewed by Tenant and Landlord to determine whether the provisions of this Lease require formal modification.

B. Landlord and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with Tenant as set forth in IC 4-2-6, et seq., IC 4-2-7, et seq. and the regulations promulgated thereunder. If Landlord has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Lease, Landlord shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Lease. If Landlord is not familiar with these ethical requirements, Landlord should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General’s website at http://www.in.gov/ig/. If Landlord or its agents violate any applicable ethical standards, Tenant may, in its sole discretion, terminate this Lease immediately upon notice to Landlord. In addition, Landlord may be subject to penalties under IC 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. Landlord certifies by entering into this Lease that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Landlord agrees that any payments currently due to the State of Indiana may be withheld from payments due to Landlord. Additionally, further work or payments may be withheld, delayed, or denied and/or this Lease suspended until Landlord is current in its payments and has submitted proof of such payment to the State of Indiana.

D. Landlord warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana, and agrees that it will immediately notify Tenant of any such actions. During the term of such actions, Landlord agrees that Tenant may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Lease.

E. If a valid dispute exists as to Landlord’s liability or guilt in any action initiated by the State of Indiana or its agencies, and Tenant decides to delay, withhold, or deny work to Landlord, Landlord may request that it be allowed to continue, or receive work, without delay. Landlord must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that Tenant may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC 5-17-5.

F. Landlord warrants that Landlord and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for Tenant. Failure to do so may be deemed a material breach of this Lease and grounds for immediate termination and denial of further work with Tenant.

G. Landlord affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC 5-22-3-7:

(1) Landlord and any principals of Landlord certify that:

(A) Landlord, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC 24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC 24-5-12 [Telephone Solicitations]; or

(iii) IC 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

(B) Landlord will not violate the terms of IC 24-4.7 for the duration of the Lease, even if IC 24-4.7 is preempted by federal law.

(2) Landlord and any principals of Landlord certify that an affiliate or principal of Landlord and any agent acting on behalf of Landlord or on behalf of an affiliate or principal of Landlord, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC 24-4.7 in the previous 365 days, even if IC 24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC 24-4.7 for the duration of the Lease, even if IC 24-4.7 is preempted by federal law.

**33. Funding Cancellation**

As required by Financial Management Circular 2007-1 and IC 5-22-17-5, when the Director of the Indiana State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of the Indiana State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive, except that such determination and corresponding termination of this Lease shall not release Tenant of any of its obligations under this Lease arising on or before such termination or which, by their terms, expressly survive termination of this Lease.

**34. Drug-Free Workplace Certification**

As required byExecutive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, Landlord hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Landlord will give written notice to Tenant within ten (10) days after receiving actual notice that Landlord, or an employee of Landlord in the State of Indiana (the “State”), has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of Lease payments, termination of this Lease and/or debarment of contracting opportunities with the State for up to 3 years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Lease is in excess of $25,000.00, Landlord certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Landlord’s workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) Landlord’s policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify Landlord of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

D. Notifying the State in writing within 10 days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within 30 days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**35. Nondiscrimination**

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, Landlord covenants that it shall not discriminate against any employee or applicant for employment relating to this Lease with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee’s or applicant’s race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law (“Protected Characteristics”). Landlord certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Lease, but nothing in this paragraph shall be construed to imply or establish an employment relationship between Tenant and any applicant or employee of Landlord or any subcontractor.

Tenant is a recipient of federal funds, and therefore, where applicable,Landlord and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

**36. Termination for Convenience**

The parties agree that Tenant may terminate this Lease during the Lease term whenever, for any reason, Tenant determines that such termination is in Tenant’s best interest, upon thirty (30) days’ prior written notice to Landlord. If Tenant fails to complete its move out within the notice period and remains in the premises, additional rent shall be paid and prorated on a thirty (30) day month, based on the actual number of days Tenant occupies the premises following the effective date of termination.

**37. Air and Water**

Landlord agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). Landlord further covenants and agrees to include or cause to be included the criteria and requirements of this paragraph in every non-exempt subcontract in excess of $150,000.00. Landlord also agrees to take such action as the federal, state or local government may direct to enforce this paragraph.

**38. Lobbying**

Landlord hereby certifies that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and

C. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly:

D. Lobbying Certification. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000.00 and not more than $100,000.00 for each such failure.

**39. Procurement of Recovered Materials**

Landlord shall, and shall cause its contractors to, comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the U.S. Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**Non-Collusion and Acceptance**

The undersigned signing on behalf of Landlord attests, subject to the penalties for perjury, that the undersigned is Landlord, or that the undersigned is the properly authorized representative, agent, member or officer of Landlord. Further, to the undersigned’s knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of Landlord, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Lease other than that which appears upon the face hereof. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Lease, Landlord attests to compliance with the disclosure requirements in IC 4-2-6-10.5.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS** to their agreement, the persons signing this lease execute it for Landlord and Tenant:

Landlord:

**HANU LLC**

By:

Name:

Title:

TENANT:

**UNITED WAY OF ALLEN COUNTY, INC.**

By:

Name:

Title:

**EXHIBIT A**

**Aerial Site Plan**