



**TOWN OF ABINGDON, VIRGINIA
WORK SESSION
THURSDAY, JULY 26, 2018 – 7:00 pm
ARTHUR CAMPBELL ROOM
MUNICIPAL BUILDING**

WORK SESSION

- A. WELCOME – *Mayor Craig***
- B. ROLL CALL – *Kim Kingsley, Town Clerk***
- C. DISCUSSION WITH PUBLIC/PUBLIC COMMENTS –**
- D. PRESENTATION FROM DAVENPORT & ASSOCIATES – *David Rose***
- E. DISCUSSION REGARDING FREEDOM OF INFORMATION ACT FEE SCHEDULE – *Floyd Bailey – FOIA Officer***
- F. DISCUSSION REGARDING COLLEGE AND CHURCH STREETS ONE-WAY OPTIONS – *Tony Sullivan, Interim Town Manager***
- G. DISCUSSION REGARDING GROUND LEASE AGREEMENT WITH SUNSET FIBER, LLC - *Tony Sullivan, Interim Town Manager***
- H. DISCUSSION REGARDING THE POTENTIAL SALE/LEASE OF SUMMERS LAW OFFICE – *Tony Sullivan, Interim Town Manger***
- I. DISCUSSION REGARDING THE FIELDS-PENN HOUSE – *Tony Sullivan, Interim Town Manager***
- J. DISCUSSION REGARDING RENEWING THE LEASE REGARDING THE FAIRVIEW PROPERTY – *Tony Sullivan, Interim Town Manager***
- K. DISCUSSION REGARDING PURCHASE OF BLAZERS, ETC. FOR COUNCIL – *Tony Sullivan, Interim Town Manager***

L. DISCUSSION REGARDING NEWLY APPOINTED CLERK SALARY – *Tony Sullivan, Interim Town Manager*

M. ADJOURNMENT

GROUND LEASE AGREEMENT
(Certain property at and near 427 West Main Street, Abingdon, Virginia)

THIS GROUND LEASE AGREEMENT (“Agreement”), made and entered into effective as of the ____ day of _____, 2018, by and between the TOWN OF ABINGDON, a Virginia municipality (hereinafter called the “Landlord”), and SUNSET FIBER, LLC, a Delaware limited liability company authorized to do business in the Commonwealth of Virginia (hereinafter called the “Tenant”).

WITNESSETH:

Subject to all the terms, provisions and conditions herein contained, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord all of the certain real property underlying the building described on Exhibit A as “New BVU/Sunset POP” attached hereto and commonly known as the Abingdon Point of Presence (“POP”) building, located to the north of Building B of the Latture Field Annex, Abingdon, Virginia 24210, consisting of approximately 230 square feet, more or less (the “Land”).

1. **Term.** The term of this Lease shall be for five (5) years from the effective date first set forth above (the “Term”), which effective date shall also be known as the “Commencement Date”, unless sooner terminated in accordance with the terms hereof. Provided Tenant is not in default hereunder, Tenant may, at its option, renew this Agreement for five (5) successive one (1) year periods (each a “Renewal Term”), commencing immediately upon the expiration of the initial Term or the first Renewal Term, respectively, upon all terms, conditions and obligations set forth herein. Tenant shall provide Landlord with written notice at least one hundred and thirty (130) days before the expiration of the initial Term of this Agreement or any subsequent Renewal Term, as applicable, if it desires to exercise its option to extend the Term for any one or more of the Renewal Terms. If Tenant fails to provide notice of its intent to exercise its option for a Renewal Term, this Agreement will terminate at the conclusion of the initial Term or first Renewal Term, as applicable. As used in this Agreement, the “Term” shall include the initial Term and any and all Renewal Terms.

2. **Rent.**

(a) Tenant shall pay as rent to Landlord during each year of the Term the annual sum of Five Thousand and no/100 Dollars (\$5,000.00). The first payment of rent shall be made on the Commencement Date with each subsequent annual payment of rent being due and payable on or before the anniversary of the Commencement Date thereafter until the Lease is terminated or expires.

(b) Payments shall be made by delivering or mailing to the Landlord at the address set forth in Paragraph 17 hereof. All rentals shall be paid without deduction, offset or abatement whatsoever, except as provided for herein, and Tenant will pay, when due, as rent, all other amounts to be paid by Tenant under this Lease.

3. **Maintenance and Repairs.** It is understood and agreed that Tenant owns certain surface structures and infrastructure (collectively the "Structures") existing on the Land. Tenant shall at all times and in all respects, at its own cost and expense, maintain and keep the Structures existing on the Land in a good and safe condition. In addition, Tenant shall at all times and in all respects, at its own cost and expense, maintain and keep the Land in a good and safe condition, suitable for its present and intended uses. The obligations of Tenant herein include all costs for landscaping, mowing, snow removal, etc.

4. **Taxes.** As the Landlord is a municipality, no State or local taxes shall be levied or assessed against the Land. However, Landlord makes no representations to Tenant as to whether Tenant's Structures existing on the Land will result in a State or local tax assessment to Tenant. Tenant shall be solely and exclusively responsible for any State or local taxes related to Tenant's Structures existing on the Land.

5. **Acceptance of the Land by Tenant.** Tenant represents that it has fully investigated the Land sufficient to satisfy Tenant as to the current condition of the Land, and has determined in its discretion that the Land is acceptable and suitable for Tenant's current and intended use. Tenant shall not construct any additional structures or conduct any significant earth moving activities on the Land without the prior written consent of Landlord, which consent may be unreasonably withheld.

6. **Services and Utilities.** Tenant shall pay or make arrangements for the payment of the cost of utilities provided to the Land, including but not limited to water, gas, electricity, heat and air-conditioning, telephone and other communication or similar service. Landlord shall not be liable to Tenant for any discontinuance of these utilities caused by accident, breakage, strike or any other cause whatsoever.

7. **Insurance.** Tenant, at its sole cost and expense, unless otherwise arranged for, but for the mutual benefit of Landlord and Tenant, shall also maintain or make arrangements for the maintenance of: (i) personal injury and property damage liability insurance against claims for bodily injury, death or property damage, occurring on, in or about the Land and on, in or about the adjoining streets, property and passageways, such insurance to afford minimum protection, during the Term of this Lease, of not less than One Million and no/100 Dollars (\$1,000,000.00) in respect of bodily injury or death to any one person or property damage, and of not less than Two Million and no/100 Dollars (\$2,000,000.00) in the aggregate; (ii) insurance covering all property of any kind of Tenant that may at any time be used, left or placed on the Land during the Term of this Lease, including contents and fixtures coverage, at commercially reasonable levels, and (iii) such other insurance, and in such amounts, as may from time to time be reasonably required by Landlord, against other insurable hazards which at the time are commonly insured against in the case of Land similarly situated, due regard being, or to be, given to the height and type of building, its construction, use and occupancy.

8. **Liability and Indemnification.**

Tenant hereby agrees to release and discharge Landlord from any liability for loss or damage to the property of Tenant, including its Structures, caused by fire or other risks, even if

such fire or other casualty shall be brought about by the fault or negligence of Landlord, his agents or employees; provided, however, that this release shall be in effect only if it does not contravene any law with respect to exculpatory agreements.

Tenant does hereby agree to indemnify and save the Landlord harmless from any and all liability, loss, damage and expense, including without limitation court costs and reasonable attorney's fees, sustained by, imposed upon or assessed against the Landlord because of suits, claims, demands or actions for personal injury, including death, and property damage, caused by, resulting from or in any way contributed to or by any breach, violation or nonperformance of any obligation by the Tenant under this Lease; or any act or omission of the Tenant, its agents, employees, contractors, invitees, assignees or sublessee. The Tenant agrees to defend all said suits, claims, demands and actions without expense to the Landlord and to pay all judgments rendered thereon.

9. Default.

(a) If Tenant fails to keep or perform any covenant or provision of this Lease (except payment of any installment of rent or other charge or money obligation herein required to be paid by Tenant which obligations shall be paid within five (5) days of notice of delinquency or such late payment shall constitute a default) or violates any such covenant or provision and such failure or violation shall continue for a period of twenty (20) days after written notice by Landlord, or, in case of a failure or violation which cannot with due diligence be cured within a period of twenty (20) days, if Tenant fails to commence to cure such failure or violation promptly after such notice and pursue said cure with all due diligence, Landlord may terminate this Lease effective immediately or, in its discretion, Landlord may, without waiving any rights or remedies, in addition to any other remedies at law or in equity or elsewhere in this Lease provided, cure or prosecute the curing of such failure or violation at reasonable expense, which expense shall be paid to Landlord by Tenant on demand. Tenant agrees that in the event of any failure or violation covered by this Paragraph and Landlord's failure to give notice or to exercise any rights under this Paragraph, all rights of Landlord under this Paragraph 9 may be exercised by persons acting on behalf of Landlord, under authority granted by Landlord, with full right of reimbursement as provided hereunder.

(b) The occurrence of any of the following is deemed to be an event of default under this Lease: (i) The making by Tenant of an assignment for the benefit of its creditors; (ii) the levying of a writ of execution or attachment on or against the property of Tenant, with the same not being released or discharged within sixty (60) days thereafter; provided, however, if Tenant institutes steps necessary to discharge the levy or attachment and diligently pursues the action, Tenant shall not be in default; (iii) the institution of proceedings for the reorganization, liquidation or involuntary dissolution of Tenant, or for its adjudication as a bankrupt or insolvent, or for the appointment of a receiver of the property of Tenant, with said proceedings not being dismissed, and with any receiver, trustee or liquidator appointed therein not being discharged within thirty (30) days after the institution of such proceedings; (iv) the doing, or permitting to be done, of any act by Tenant which creates a claim or a lien therefor against the Land or any part thereof and the same not being released or otherwise provided for by indemnification satisfactory to Landlord, in Landlord's sole determination, within thirty (30) days thereafter; and (v) failure of

Tenant to pay any installment of rent or other charge or money obligation herein required to be paid by Tenant within five (5) days after notice from Landlord to Tenant of such delinquency, or to comply with any other covenant or provision of this Lease within twenty (20) days after written notice of such failure is given by Landlord pursuant to the provisions of Paragraph 9(a).

(c) In the event Tenant believes that Landlord has failed to perform or violated any of his duties and responsibilities hereunder, and such failure or violation shall continue for a period of twenty (20) days after written notice by Tenant, or, in case of a failure or violation which could not with due diligence be cured within twenty (20) days, if Landlord fails to commence to cure such failure or violation promptly after such notice and pursue such cure with all due diligence, Tenant may terminate this Lease effective immediately.

(d) If any event of default occurs, after any applicable cure period, Landlord may pursue any remedy at law or in equity. Any and all delinquent payments due to Landlord from Tenant under this Lease shall accrue interest at the rate of six percent (6%) per annum beginning from the date that any applicable cure periods herein have expired. Landlord, however, agrees to use commercially reasonable efforts in order to mitigate its damages following any default by Tenant under the Lease; provided, however, that Tenant shall be liable for the costs of all such commercially reasonable efforts to mitigate following any default by Tenant.

(e) Upon default by either party, the non-defaulting party shall be entitled to receive from the defaulting party payment of the reasonable attorney's fees and costs incurred by the non-defaulting party in pursuing its remedies.

10. Condemnation. If at any time during the Term of this Lease the whole or any part of the Land shall be taken for any public or quasi-public purposes by any lawful power or authority by the exercise of the right of condemnation or eminent domain, or private purchase in lieu thereof by a public body vested with the power of eminent domain, Landlord shall be entitled to, and shall receive, any and all awards that may be made in any such proceedings, which are based upon the value of the Land, and Tenant shall be entitled to make a separate claim for any payment based upon the value of Tenant's Structures and leasehold interest or upon the unamortized value of any alterations to the Land paid for by Tenant, provided such a claim does not negatively affect Landlord's claim or reduce Landlord's award. If such proceedings shall result in the taking of the whole or substantially all of the Land, this Lease and the Term hereof shall terminate and expire on the date of such taking, and the net rent and other sums or charges provided in this Lease to be paid by Tenant shall be apportioned and paid to the date of such taking. For the purpose of this Paragraph, "substantially all of the Land" shall be deemed to have been taken if the portion of the Land not so taken does not constitute a complete plot usable by Tenant for the proper conduct of its current and intended business.

11. Assignment and Subletting. Tenant shall not assign or transfer this Lease or any part thereof or sublet the Land or any part thereof without first obtaining Landlord's written consent. Notwithstanding the foregoing, Tenant shall have the right to assign this Lease at any time (i) to any subsidiary or affiliate of Tenant, or (ii) to a corporation or other business entity with which Tenant may merge, amalgamate or consolidate. This Lease shall contain no

provision restricting, purporting to restrict or referring in any manner to a change in control or change in shareholders, directors, management or organization of Tenant, or any subsidiary or affiliate of Tenant, or to the issuance, sale, purchase, public offering, disposition or re-capitalization of the ownership of Tenant, or any subsidiary or affiliate of Tenant. Upon any assignment or transfer of this Lease or any part thereof by Tenant, Tenant shall not be released and shall remain liable for any of Tenant's payment obligations herein. Nothing in this Lease or otherwise shall prevent or inhibit Landlord's right to transfer or assign this Lease or its rights thereunder.

12. Use of Land. Tenant, its successors and assigns, shall use and occupy the Land for telecommunications equipment and related activities and business uses and for no other purpose. Tenant shall not use or occupy or permit the Land to be used or occupied, nor do or permit anything to be done in or on the Land or any part thereof in a manner which will cause or be likely to cause damage to the Land or any part thereof, or which will constitute a public or private nuisance.

13. Special Provision Regarding Ninety (90) Days Space. It is understood and agreed by Landlord and Tenant that Tenant and/or its predecessor in title to certain personal property, prior to and as of the effective date of this Agreement, have used/use a portion of that certain property of Landlord at 427 West Main Street commonly known as the upper floor of Building B of the Latture Field Annex inside Lab 3, shown on Exhibit A as "Old BVU POP location" (the "Ninety (90) Days Space") to store said personal property. Landlord agrees to allow Tenant to use said Ninety (90) Days Space for ninety (90) days from the effective date of this Agreement for storage of said personal property at no additional cost to Tenant. However, at the end of said ninety (90) day period, Tenant covenants and agrees that it shall immediately vacate the Ninety (90) Days Space.

14. Compliance with Laws.

(a) In the use and occupancy of the Land, Tenant shall comply with all laws and ordinances and all valid rules and regulations of the United States, the Commonwealth of Virginia and any other applicable governmental agency thereof.

(b) Tenant warrants and represents that it will not store on the Land any hazardous waste or material as defined or established by any environmental law. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease. As used herein, the term "environmental law" shall mean any Federal, State or local statute, ordinance, rule or regulation including, without limiting the generality of the foregoing, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Toxic Substance Control Act of 1976, and any Federal, State or local so-called super-fund or super-lien law or ordinance relating to the emission, discharge or release of any pollutant, contaminant, chemical, hazardous, toxic or dangerous waste, substance or other material.

15. Quiet Enjoyment. Tenant, upon the payment of the rent herein described, and upon the performance of all of the terms of this Lease, shall at all times during the Term of this

Lease quietly enjoy the Land without any disturbance from Landlord or from any person claiming through Landlord; subject, however, to the terms and conditions of this Lease.

16. Surrender. At the expiration or termination of the Term of this Lease, Tenant shall surrender the Land to Landlord in the same or similar condition as it was in at the beginning of the Term. Upon surrender of the premises, title in the Structures and fixtures shall be conveyed to Landlord.

17. Performance of Tenant's Obligations. If Tenant shall default in the performance of any covenant or condition in this Lease required to be performed by Tenant, Landlord may, after thirty (30) days' notice to Tenant, or without notice if in Landlord's opinion an emergency exists, perform such covenant or condition for the account and at the expense of Tenant. If Landlord shall incur any expense, including reasonable attorney's fees, in instituting, prosecuting, or defending any action or proceeding instituted by reason of any default of Tenant, Tenant shall reimburse Landlord for the amount of such expense. If Tenant, pursuant to this Lease, becomes obligated to reimburse or otherwise pay Landlord any sum of money in addition to the specific rent, the amount thereof shall be deemed additional rent and may, at the option of Landlord, be added to any subsequent installment of the specific rent due and payable under this Lease, in which event Landlord shall have the remedies for default in the payment thereof provided by this Lease.

18. Notice. Any notice by either party to the other shall be in writing and shall be deemed to be duly given if delivered personally or mailed by registered or certified mail in a postpaid envelope addressed to the other party as follows:

if to Landlord:

Town of Abingdon
Town Manager
P.O. Box 789
Abingdon VA 24212

if to Tenant:

Sunset Fiber, LLC

or such other address as any party may from time to time designate in writing. All such notices shall be effective when postmarked if sent by mail or when delivered if delivered personally.

19. Inspection. Landlord or Landlord's agents or servants shall have the right to enter the Land during reasonable business hours for the purposes of examination and inspection.

20. Waiver. No failure of either party to exercise any rights whatsoever given either party hereunder, or to insist upon strict compliance by either party with its obligations hereunder,

and no customary practice of the parties that is at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms of this Lease.

21. **Memorandum of Lease.** Landlord and Tenant hereby agree that this Lease shall not be recorded; however, simultaneously with the execution of this Lease, or upon the request of either party, the parties may execute a Memorandum of Lease, in recordable form and in form and substance satisfactory to Landlord and Tenant, wherein a legal description of the Land, the Term of this Lease and certain other terms and provisions hereof, excepting however, the provisions hereof relating to the amount payable hereunder, shall be set forth. The Memorandum of Lease shall be filed for record in the Washington County, Virginia, Office of the Circuit Court Clerk.

22. **Severability.** If any provision hereof shall be deemed or declared unenforceable, invalid, or void, the same shall not impair any of the other provisions contained herein which shall be enforced in accordance with their respective terms.

23. **Entire Contract.** This written Lease and the documents incorporated herein is the entire and complete final and binding expression of the parties' contract and agreement and is a complete and all inclusive statement of the terms thereof and supersedes all prior negotiations, representations and agreements. This Lease can be modified, amended or supplemented only by written instrument signed by the authorized representatives of the parties hereto.

24. **Controlling Law and Forum for Disputes.** This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to conflict of law provisions. Any claim or dispute relating to this agreement must be resolved solely and exclusively in the Circuit Court of Washington County, Virginia, except as otherwise agreed to by the parties in writing. The parties agree to submit to the personal jurisdiction of the Circuit Court of Washington County, Virginia for the purposes of litigating all such claims or disputes.

25. **Counterparts.** This agreement shall be executed in two or more counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

26. **Survival.** Those provisions of this Lease which by their terms are intended to survive the expiration of the Term or earlier termination of this Lease, shall so survive the expiration of the Term or earlier termination of this Lease.

[Signatures on Following Page]

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

LANDLORD:

TOWN OF ABINGDON

By: _____
Print Name: _____
Its: _____

TENANT:

SUNSET FIBER, LLC, a Delaware limited liability company

By: _____
Print Name: _____
Its: _____

EXHIBIT A

Abingdon, VA











1 in. = 47ft.

94.7 0 47.33 94.7 Feet

This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries.
THIS MAP IS NOT TO BE USED FOR NAVIGATION



Legend

-  Unaddressed
-  Structures
-  Parcels
-  Corporate Limits
-  Roads
-  Railroad
-  Creeper Trail
-  Urban Pathway

Notes



TOWN OF ABINGDON

OFFICE OF TOWN ATTORNEY

425 West Main Street

P. O. Box 789

Abingdon, Virginia 24212-0789

Telephone: (276) 525-1195

Fax: (276) 623-5679

E-mail: dicenhour@abingdon.com

Deborah C. Icenhour
Assistant Town Attorney

December 5, 2008

James D. Moore, Jr.
Judith S. Moore
P. O. Box 1192
Abingdon, Virginia 24212-1192

RE: Lease Agreement by/between James D. Moore, Jr. Family Limited Partnership
And The Town of Abingdon, Virginia

Dear Mr. and Mrs. Moore:

Enclosed please find an executed copy of the foregoing Lease Agreement for your records.

Please feel free to contact me should you have any questions.

I remain,

Very truly yours,

Deborah C. Icenhour, Esq.
Assistant Town Attorney

DCI:ksk
Enclosure

Exempted from recordation taxes
and fees under Sections 58.1-
811(A)(3), 58.1-811(C)(5), 58.1-
3315, 25.1-418, 42.1-70, 17.1-266
and 17.1-279(E)

LEASE AGREEMENT
by and between
JAMES D. MOORE, JR. FAMILY LIMITED PARTNERSHIP
and
The TOWN OF ABINGDON, VIRGINIA

THIS LEASE AGREEMENT ("Agreement"), is made and entered into this 11th day of February, 2008, between the **JAMES D. MOORE, JR. FAMILY LIMITED PARTNERSHIP**, (hereinafter referred to as "**LESSOR**") and the **TOWN OF ABINGDON, VIRGINIA**, a municipality organized under the laws of the Commonwealth of Virginia, (hereinafter referred to as "**LESSEE**").

WITNESSETH:

For and in consideration of One Dollar (\$1.00) paid by LESSEE to LESSOR, and in further consideration of the mutual terms and conditions contained herein, the Parties agree as follows:

1. **LEASE OF PREMISES.** LESSOR leases to LESSEE and LESSEE leases from LESSOR a portion of property located at 908 Hillman Highway, Abingdon, Virginia and being a portion of Tax Map No. 106-5-4, consisting of 22.1 (+) acres more or less (hereinafter referred to as the "Premises") as is depicted as the area outlined in red on GIS plat and indicated in surveyor's work plat, attached hereto as schedule "A" and "B" respectively.
2. **TERM.** The term of this Agreement shall be for a period of Ten (10) years commencing on the date of this Lease Agreement. LESSEE shall have five (5) options to renew this Agreement upon

the same terms and conditions provided herein for five (5) additional successive terms of ten (10) years, commencing on the expiration of the original term, which shall be exercised by written notice to LESSOR given at least one (1) month prior to the expiration of the first ten (10) year term.

3. **RENT.** LESSEE'S obligations set forth herein shall be deemed LESSEE'S rental for the Premises.
4. **LESSEE'S USE OF PREMISES.** Subject to the provisions set forth below in Paragraph five (5), LESSEE shall occupy and use the Premises for general purposes to allow the Fairview in Abingdon Foundation, Inc. to engage in the preservation and reconstruction of historic buildings and/or other structures, along with historically appropriate gardening and farming operations and operation of a museum and for no other purposes without prior written consent of LESSOR. LESSEE'S use of the Premises shall not in any event violate any laws, statutes, ordinances, order, regulations or requirements of any federal, state or local government, public or quasi-public authorities, which may be applicable to or in any way affect the Premises.
5. **CONDITION OF PREMISES.** LESSEE shall accept the Premises in its "as is" condition as of the time of the execution of this Agreement.

6. INSURANCE. Prior to its occupancy of the Premises, LESSEE shall, at its own expense, obtain and maintain in full force and effect during the term of this Agreement the following insurance: (i) such insurance as may be necessary to insure the value of LESSEE'S personal property and fixtures located on or about the Premises; and (ii) general liability insurance for the personal injury and/or property damage with limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) per aggregate. Such insurance shall be carried in favor of LESSEE and LESSOR as their respective interest may appear and LESSEE'S insurance company must be acceptable to LESSOR. LESSEE shall provide to LESSOR from time to time upon LESSOR'S request a certificate from LESSEE'S insurance company evidencing that such insurance is in effect.

7. INDEMNIFICATION. LESSEE covenants and agrees to indemnify, protect, defend and forever hold harmless LESSOR and its agents, and each of them, from and against any and all damages (including, not limited to consequential damages), losses, injuries, liabilities, costs, expenses (including but not limited to, reasonable attorney's fees), claims, actions and liabilities whatsoever, arising from or growing out of, in whole or in part, directly, indirectly or otherwise, this Agreement, and/or any and all exercise(s) of the

rights assumed in connection herewith. The foregoing indemnity obligations are in addition to, and not in lieu of, LESSEE'S other agreements, covenants and obligations hereunder and shall survive cancellation, termination or expiration of this Agreement.

8. DAMAGE BY CASUALTY. If during the term of this Agreement, the Premises are damaged by fire, water, explosion, the elements, or other casualty, so that the same is thereby wholly or partially destroyed, so as to be rendered unfit for use by LESSEE, and it appears the same cannot with reasonable diligence be repaired and made fit for such use within ninety (90) days from the happening of any such event, then this Agreement may be terminated by either LESSOR or LESSEE, provided notice of such termination be given by the one so terminating this Agreement to the other, as soon as it appears that the Premises cannot with reasonable diligence be repaired and made fit for such use and occupancy within said period of ninety (90) days.
9. UTILITIES. LESSEE shall promptly pay and be solely responsible for all electricity, telephone, water and all other utility bills and charges for all such services supplied to the Premises, if any. LESSOR shall not be liable for any interruption or failure in the supply of any utility to the Premises.

10. MAINTENANCE AND REPAIRS. Unless specified otherwise in this Agreement, LESSEE shall maintain the Premises and keep the same in reasonably good condition and repair during the term of this Agreement

11. IMPROVEMENTS. As a part of its consideration in this Lease Agreement, LESSEE hereby agrees to assist LESSOR'S Tenant (of the contiguous pasture acreage, lying south west of the Premises as marked on schedules "A" & "B") in relocating an electric fence to the points parallel to Rt. 609 that best designate the boundaries of the 22.1 acres (±) described herein. Lessee agrees to provide this assistance within a reasonable and practical amount of time. Notwithstanding the foregoing, LESSEE shall make no alterations, additions, modifications or improvements (hereinafter referred to as "improvements") to the Premises without prior written consent of LESSOR during the term(s) of this Agreement. To the extent made, LESSEE agrees that all such improvements shall be done in a prudent and workmanlike manner and that LESSEE shall be responsible for all costs in connection therewith. LESSEE shall also keep the Premises free and clear of all liens arising from work performed and materials furnished for such improvements. Any such improvements which are temporary in nature, and which can be removed from the

Premises without affecting the structural stability and/or causing defacement of the Premises, may be removed by LESSEE at its expense, within thirty (30) days, upon termination (at whatsoever time and for whatsoever reason) of this Agreement. And such improvements that cannot be removed shall become the property of LESSOR and shall remain in and upon the Premises at the termination of this Agreement without LESSOR in any way compensating LESSEE for the same. The provisions of this Paragraph Eleven (11) are, however, subject to the provisions set forth below in Paragraph Twelve (12) regarding LESSEE'S right to remove its trade fixtures.

12. REMOVAL OF TRADE FIXTURES. Trade Fixtures, if any, that LESSEE may have installed, added to or put in or on the Premises, subsequent to the execution of this Agreement, may be removed by LESSEE, at its expense, within thirty (30) days, upon termination (at whatever time and for whatever reason) of this Agreement, provided the same can be removed without injury to or defacement of the Premises, or provided LESSEE can and does at the time of such removal repair the premises to the same or as good condition as the same was prior to the installation or addition thereof, reasonable wear, tear and deterioration excepted.

13. SIGNS. LESSEE shall have the right to display any sign(s) on the Premises identifying LESSEE, subject to any and all laws and governmental regulations regarding such signage.
14. LESSOR'S EASEMENT BY RESERVATION. Lessor hereby reserves an easement across premises to facilitate full access to any/all acreage lying south west of the premises. Lessor or his tenants/assigns of said acreage lying south west of the aforementioned premises, shall access respective properties and/or leaseholds by way of existing driveway in its present location on premises, namely perpendicular to Hillman Highway and on the west boundary line of the 2.00 acre parcel depicted on schedule "A".
15. SURRENDER OF PREMISES. Subject to the other provisions of this Agreement, LESSEE shall peaceably and quietly surrender the Premises at the termination of this Agreement with all of LESSEE'S signs removed, and in as good condition as received at the inception of this Agreement, reasonable wear, tear, and deterioration excepted.
16. LESSOR'S RIGHT TO EXAMINE PREMISES. Subject to LESSEE'S right of use of the Premises as set forth above in Paragraph Four (4), LESSOR shall have, upon reasonable notice and at reasonable times during LESSEE'S normal business hours, free access to the

Premises for the purpose of examining the same in connection with this Agreement. LESSOR reserves the right to access any remaining unused or uncultivated acreage for its personal use unless and until LESSEE requires said acreage for use by Fairview.

17. DEFAULT. LESSEE shall be deemed to be in default hereunder if LESSEE shall fail to keep or perform any term, condition or covenant of this Agreement to be kept or performed by LESSEE, within thirty (30) days after written notice thereof from LESSOR. In the event LESSEE is in default, LESSEE'S right to possession shall thereupon cease and LESSOR shall be entitled to the possession of the Premises and to re-enter the same with out demand for possession. LESSOR may proceed forthwith to recover possession of the Premises by process of law, any notice to quit or of intention to exercise such option or to re-enter said premises being hereby EXPRESSLY WAIVED BY LESSEE. LESSEE will be liable to LESSOR for all court costs and reasonable attorney's fees in the event LESSEE shall become in default and LESSOR incurs court costs and attorney's fees in obtaining possession of the Premises or in the enforcement of any covenant, condition or agreement herein contained, whether through legal proceedings or otherwise, and whether or not any such legal proceedings be prosecuted to a final judgment.

18. ASSIGNMENT/SUBLEASE OF PREMISES. LESSEE shall not assign this Agreement or sublease the Premises to any third party, in whole or in part, without LESSOR'S prior written consent. Should such written consent be given, no such assignment or sublease shall in any way release or relieve LESSEE from any of its obligations herein contained, and LESSEE shall in all cases remain liable under this Agreement during the term thereof.

19. CONDEMNATION. In the event the Premises shall be acquired or condemned by any public or quasi-public authority under the power of condemnation, eminent domain or appropriation, this Agreement shall terminate as of the date of possession shall be taken by such authority.

20. NON-WAIVER. Failure, or delay of either Party to exercise any of its rights, remedies or defenses upon and pertaining to the default, nonperformance, malperformance and/or the otherwise defective performance of the other Party of any term, provision, condition, covenant, agreement and/or stipulation herein contained shall not be construed as a waiver of either Party's rights, remedies, and/or defenses, in whole or in part. Nor shall the acceptance or waiver by either Party of the default, nonperformance, malperformance and/or the otherwise defective performance (in whole or in part) of any herein contained term,

provision, condition, covenant, agreement and/or stipulation upon the part of the other Party to be construed as a waiver of either Party's rights, remedies and/or defenses, in whole or in part, as to any subsequent hereunder occurring default, nonperformance, malperformance and/or otherwise defective performance (in whole or in part) of any herein contained term, provision, condition, covenant, agreement and/or stipulation (whether or not similar) upon the part of the other Party.

21. CUMULATIVE REMEDIES. In addition to their rights, remedies and defenses herein provided, the Parties hereto, respectively, shall have the right to pursue and exert any and all rights, defenses and remedies it may have under the law of the Commonwealth of Virginia or otherwise concerning any violation and/or default by the other Party of any term, provision, condition, covenant, agreement or stipulation hereof to the effect that all of LESSOR'S and LESSEE'S respective rights, defenses and remedies shall be cumulative and not exclusive.

22. MODIFICATION OF AGREEMENT. No modification, alteration, waiver, supplement or amendment to this Agreement, or any part hereof, shall be valid and binding upon the Parties unless it is in writing and fully executed by the Parties. No evidence of any such modification, alteration, waiver, supplement or amendment of

this Agreement, or any part hereof, shall be received in any controversy arising out of or pursuant to same unless it is written and executed as aforesaid.

23. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement between the parties relative to the Premises, and there are no promises, oral or written, express or implied, between them other than herein set forth.

24. GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia.

25. PARAGRAPH HEADINGS. The titles of the paragraphs of this Agreement are solely for the convenience of the Parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

26. DUPLICATE EXECUTION. This Agreement may be executed in duplicate, each of which shall be deemed to be an original but both of which together shall constitute but one and the same instrument.

IN TESTIMONY WHEREOF, each Party to this Agreement has caused it to be executed on the date first above written.

(Signatures and certificates appear on page 12.)

LESSOR:

James D. Moore, Jr. Family Limited Partnership

James D. Moore, Jr.

By: JAMES D. MOORE, JR.
GENERAL PARTNER

Judith S. Moore

By: JUDITH S. MOORE
GENERAL PARTNER

LESSEE:

Town of Abingdon, Virginia, municipality

Gregory W. Kelly

By: GREGORY W. KELLY
TOWN MANAGER

COMMONWEALTH OF VIRGINIA:
COUNTY OF WASHINGTON, to wit:

The foregoing was acknowledged before me this 3rd day of ~~February~~ ^{November}, 2008, by James D. Moore, Jr., General Partner and Judith S. Moore, General Partner on behalf of the James D. Moore, Jr. Family Limited Partnership.

Deborah C. Igenhour
NOTARY PUBLIC

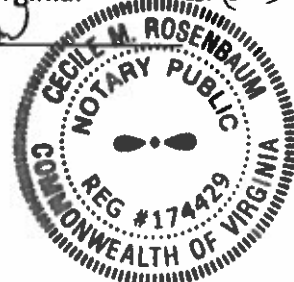
My Commission expires: May 31, 2012

COMMONWEALTH OF VIRGINIA:
COUNTY OF WASHINGTON, to wit:

The foregoing was acknowledged before me this 4th day of ~~February~~ ^{November}, 2008, by Gregory W. Kelly, Town Manager for the Town of Abingdon, Virginia. ~~February~~ ^{December} (one)

Cecile M. Rosenbaum
NOTARY PUBLIC

My Commission expires: 12/31/2009





SCHEDULE
"A"

HILLMAN HWY

2.00 AC.

AEP

22.1 (APPROX.)

FAIRVIEW

16.5 (APPROX.)

200

Feet



SCHEDULE
"A"

HILLMAN HWY

2.00 AC.

AEP

22.1 (APPROX.)

FAIRVIEW

16.5 (APPROX.)

200 Feet