

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

OCT 7 2016

PUBLIC SERVICE  
COMMISSION

In the Matter of:

AIRVIEW UTILITIES, LLC'S NOTICE OF  
SURRENDER AND ABANDONMENT OF  
UTILITY PROPERTY

CASE NO. 2016-00207

**AIRVIEW UTILITIES, LLC'S ANSWERS TO COMMISSION STAFF'S  
SUPPLEMENTAL REQUEST FOR INFORMATION**

Comes Airview Utilities, LLC ("Airview"), by counsel, and for its Answers to the Public Service Commission's Supplemental Request for Information, states as follows:

**INFORMATION REQUEST NO. 1:** State the name and title of each witness that Airview intends to call at the October 12, 2016 hearing. If Airview does not intend to call the individual(s) who prepared or supervised the preparation of Airview's responses to requests for information, then state why the individual(s) will not be called as a witness.

**ANSWER:** Lawrence W. Smither, Member of Airview, and Martin G. Cogan, Member of Airview.

**INFORMATION REQUEST NO. 2:** Refer to Airview's response to Item 14 of the request for information contained in the Appendix to the Commission's July 29, 2016 Order. Provide a schedule containing a list of Airview's creditors and the corresponding amount owed to each creditor.

**ANSWER:** See Attachment A.

**INFORMATION REQUEST NO. 3:** Refer to Airview's response to Item 17 of the request for information contained in the Appendix to the Commission's July 29, 2016 Order. The request requires Airview to provide, among other things, all related business records that

document the process through which the members of Airview authorized the filing of the abandonment. Supply the documents requested by Item 17.

**ANSWER:** See Attachment B.

**INFORMATION REQUEST NO. 4:** Refer to Airview's response to Item 18 of the request for information contained in the Appendix to the Commission's July 29, 2016 Order. The request requires Airview to provide a copy of each deed, easement, or agreement corresponding to the real property utilized by Airview in providing utility service. Supply the documents requested by Item 18.

**ANSWER:** See Attachment C.

**INFORMATION REQUEST NO. 5:** Airview's responses to the requests contained in the Appendix to the Commission's July 29, 2016 Order were not accompanied by a signed certification of the preparer or the person supervising the preparation of the responses on behalf of Airview that the responses are true and accurate to the best of that person's knowledge, information and belief formed after a reasonable inquiry. Identify the preparer or person supervising the preparation of each response in that filing and provide the required certifications.

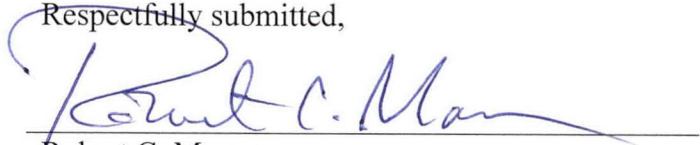
**ANSWER:** The signed certification of the person supervising the preparation of the responses, Lawrence W. Smither, was filed with the Public Service Commission on September 30, 2016.

**INFORMATION REQUEST NO. 6:** If the Commission grants the abandonment sought by Airview, provide the journal entries that Airview will record to reflect the abandonment.

**ANSWER:** To be provided.



Respectfully submitted,

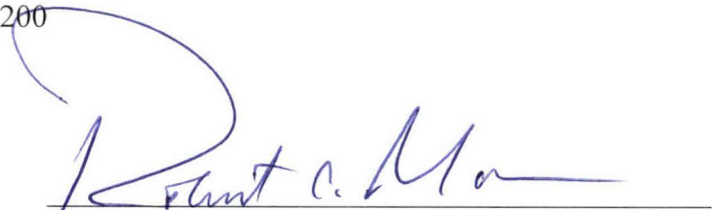


Robert C. Moore  
Katie M. Glass  
STITES & HARBISON PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, KY 40602-0634  
Telephone: (502) 223-3477  
Email: [rmoore@stites.com](mailto:rmoore@stites.com)  
Email: [kglass@stites.com](mailto:kglass@stites.com)  
COUNSEL FOR AIRVIEW UTILITIES, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing ANSWERS were served by electronic mail, on this 7th day of October, 2016 upon:

Angela M. Goad  
[angela.goad@ky.gov](mailto:angela.goad@ky.gov)  
S. Morgan Faulkner  
[Samantha.faulkner@ky.gov](mailto:Samantha.faulkner@ky.gov)  
Rebecca W. Goodman  
[Rebecca.goodman@ky.gov](mailto:Rebecca.goodman@ky.gov)  
Assistant Attorneys General  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204



Robert C. Moore

# **ATTACHMENT A**

Attachment A

4,950.00	Brocklyn Utilities – Brocklyn Utilities made loans to Airview Utilities so that Airview Utilities could continue to operate and maintain the Airview WWTP.
39,950.56	Covered Bridge Utilities – Airview Utilities owes this amount to Covered Bridge Utilities for repairs and maintenance performed at the Airview WWTP, and the remote lift station.
12,950.00	Shawn Ford – Airview Utilities owes this amount to Shawn Ford for operating the WWTP.
3,485.28	Hazelrigg & Cox, LLP – Airview Utilities owes this amount to Hazelrigg & Cox, LLP for legal work performed for the utility.
6,650.00	Murphy Excavating – Airview owes this amount to Murphy Excavating for sewer repair work, including unclogging sewer mains, property service connections and other general sewer line repair work.
4,115.00	Coolbrook Loan – Coolbrook Utilities made loans to Airview Utilities so that Airview Utilities could continue to operate and maintain the Airview WWTP.
11,400.00	Integrity Bookkeeping – Airview Utilities owes this amount to Integrity Bookkeeping for bookkeeping work done for the company, including but not limited to billing of customers and collections and payment of bills.
476.00	Hornback Plumbing – Airview Utilities owes this amount to Hornback Plumbing for sewer main repairs.
3,536.60	Stites & Harbison, PLLC - Airview Utilities owes this amount to Stites & Harbison PLLC for legal work performed for the utility.
2,400.00	Strothman & Co, CPA - Airview Utilities owes this amount to Strothman & Co for accounting work, including but not limited to the preparation and filing of tax returns.
299.66	KY State Property Tax- Airview Utilities owes this amount for 2015 property taxes.
90,213.10	Total

# **ATTACHMENT B**





# **ATTACHMENT C**

MEMORANDUM OF LEASE AGREEMENT

This memorandum of Lease Agreement is made and entered into this the 4<sup>th</sup> day of October, 2005, by and between FRED H. SCHLATTER AND RUBY SCHLATTER, husband and wife, referred to herein as "Lessor"; and AIRVIEW UTILITIES, LLC (formerly ELIZABETHTOWN UTILITIES, LLC), referred to herein as "Lessee".

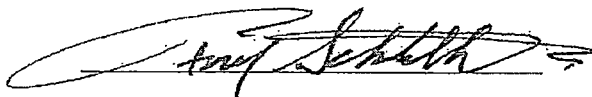
WITNESSETH:

In consideration of the premises, mutual covenants and agreements set forth in a certain Lease Agreement dated Oct. 4, 2005, by and between Lessor and Lessee, Lessor has leased to Lessee and Lessee has leased from Lessor, the following described real estate located in Hardin County, Kentucky, as described on Exhibit "A" attached hereto and made a part hereof, and commonly known as the Airview Estates wastewater treatment plant site, Hardin Kentucky (such real estate is hereby referred to as the ("Demised Premises")), for a term of fifty years beginning on October 4, 2005.

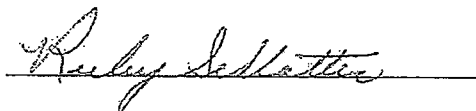
This Memorandum of Lease Agreement is executed for the purpose of giving notice of the existence of the Lease and the terms thereof. Reference is made to the Lease for the full description of the rights and duties of Lessor and Lessee with respect to the Demised Premises, and this Memorandum of Lease shall in no way affect the terms and conditions of the Lease or the interpretation of the rights and duties of Lessor and Lessee thereunder.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Memorandum of Lease to be executed on this the 4<sup>th</sup> day of October, 2005.

LESSOR  
FRED H. SCHLATTER



RUBY SCHLATTER



LESSEE  
AIRVIEW UTILITIES, LLC

BY: [Signature]  
DATE & TITLE: 10/4/05 Member

COMMONWEALTH OF KENTUCKY

COUNTY OF HARDIN

The foregoing Memorandum of Lease was acknowledged before me on the 4<sup>th</sup> day of October, 2005, by Fred H. Schlatter and Ruby Schlatter, husband and wife.

[Signature]  
NOTARY PUBLIC

My Commission expires: 08/10/2008

COMMONWEALTH OF KENTUCKY

COUNTY OF HARDIN

The foregoing Memorandum of Lease was acknowledged before me on the 4<sup>th</sup> day of October, 2005, by Larry Smither, a member of Airview Utilities, LLC.

[Signature]  
NOTARY PUBLIC

My Commission expires: 08/10/08

PREPARED BY:

[Signature]

Robert C. Moore  
HAZELRIGG & COX, LLP  
415 West Main Street  
P.O. Box 676  
Frankfort, Kentucky 40602-0676  
(502)227-2271

LEASE

This Lease is made and entered into at Louisville, Kentucky, this 4<sup>th</sup> day of October, 2005, by and between FRED H. SCHLATTER AND RUBY SCHLATTER, referred to herein as "Lessor"; and AIRVIEW UTILITIES, LLC, referred to herein as "Lessee".

For acknowledged considerations, Lessor leases to Lessee and Lessee rents from Lessor the real property located in the City of Elizabethtown, County of Hardin, State of Kentucky, which is more particularly described as follows:

See Attachment A upon which the Airview Estates Wastewater Treatment Plant is located.

Said premises to be used and occupied for the operation of a wastewater treatment plant and any related use.

SECTION 1  
TERM AND OPTION TO EXTEND TERM

1.1 The term of this Lease is fifty (50) years beginning on the 4<sup>th</sup> day of October, 2005, and ending on the 3<sup>rd</sup> day of Oct., 2054.

SECTION 2  
RENT

Lessee shall pay an annual rental of \$1.00, beginning on the 4<sup>th</sup> day of Oct., 2005, and payable in advance for each year during the term of this Lease.

SECTION 3  
UTILITIES

Lessee pays for all utilities, water, gas, electricity, sewage disposal, and heat used on the premises for the operation of the wastewater treatment plant during the term of this Lease.

SECTION 4  
TAXES

Lessee is responsible for the payment of all real estate taxes and assessments of every nature levied on or against the premises and is responsible for the payment of all license taxes or other taxes on the business activity of the Lessee and on any personal property belonging to the Lessee and situated on the premises while the property is used solely for the operation of said wastewater treatment plant. Failure to pay the taxes when due shall constitute default under the terms of this Lease.

**SECTION 5**  
**MAINTENANCE AND IMPROVEMENTS**

5.1 Lessee will, at Lessee's expense, maintain and keep in good repair the premises.

5.2 Lessee may make reasonable alterations, additions and improvements to the premises including the erection of signs at Lessee's expense.

5.3 Upon termination of this Lease, Lessee will return the premises to the Lessor in good condition, and may choose to dismantle and remove the wastewater treatment plant located on the Leased Premises.

**SECTION 6**  
**LIABILITY INSURANCE AND LIABILITY**

Lessee will, at Lessee's expense, secure and maintain liability insurance with an insurance company satisfactory to Lessor with Lessor as a named insured in the amount of \$100,000.00 per person, and \$300,000.00 per occurrence for all persons and \$100,000.00 for property damage. Lessee may, in lieu of delivering the original policies of insurance, deliver to Lessor insurance company certificates evidencing the coverage. Lessor is not liable for any injury or damage to persons or property occurring in or about the premises, and Lessee will hold Lessor harmless from responsibility for any and all such injuries and for all such damages arising from any cause whatsoever. Lessor is under no liability to Lessee arising from any discontinuance of heat or water, or both, caused by accident, breakage, strike, or otherwise; Lessor is not liable for damage of the property of the Lessor caused by rain, snow, water or steam that may leak into or flow from any part of the premises as a result of any defect in the roof or plumbing or any cause whatsoever, or for the loss or damage caused by the handling of electrical wires or lights.

**SECTION 7**  
**CASUALTY INSURANCE AND CASUALTY DAMAGE**

7.1 Lessee will secure and constantly maintain, at Lessee's expense, insurance against loss and damage by fire with an extended coverage endorsement including lightning and windstorm, having a replacement cost endorsement, upon the buildings and other improvements erected on the premises. Lessee will cause such policy to name Lessor as additional insured on the policy.

7.2 If the premises are rendered totally or substantially untenable by fire or other casualty, this Lease terminates.

7.3 If the premises are so damaged that Lessee cannot continue to occupy the same or part of the same, the rent abates pro rata and Lessee may at his option repair the damage, or in the alternative, declare the Lease terminated. In no event is Lessor required to rebuild or repair the premises.

**SECTION 8**  
**WARRANTIES OF LESSOR**

Lessor warrants and covenants that Lessor is lawfully seized and possessed of good fee simple title to the premises and that Lessee, upon payment of rent, and performance of the covenants and conditions herein contained, will have quiet and peaceful possession of the premises during the Lease term and any extensions thereof. Lessee is acquainted with the entire premises and accepts the same in its present condition. Lessee assumes responsibility for the safety of the premises and for the suitability of the premises for Lessee's use. Lessor makes no other warranties, either expressed or implied.

**SECTION 9**  
**SUB-LEASE OR ASSIGNMENT**

Lessee may sub-let or assign the benefits of this Lease, providing written consent is obtained from Lessor, which written consent will not be unreasonably withheld. In the event of a sub-lease or assignment, Lessee remains liable for any default by a sub-tenant or assignee. No assent, expressed or implied, by the Lessor to one sub-lease is deemed an approval for any succeeding sub-lease.

**SECTION 10**  
**CONDEMNATION**

If at any time a substantial part or all of the premises be taken for any public or quasi public use under any statute or by right of eminent domain or by private purchase in lieu thereof by a body vested with the power of eminent domain, this Lease continues until the date of the taking, at which time the Lease terminates and Lessee has no rights in any award or purchase price paid by reason of the taking of the real property. This provision shall not effect in any way Lessee's rights to any monies awarded for the condemnation of the wastewater treatment plant or the related assets.

**SECTION 11**  
**MECHANICS OR MATERIALMAN'S LIEN**

Lessee will not do or suffer anything to be done whereby the premises are encumbered by lien and will, whenever and as often as any lien is filed against the premises purporting to be for labor or material furnished or to be furnished to the Lessee, discharge the same of record within Thirty (30) days after the date of filing. Notice is hereby given that Lessor is not liable for any

labor or materials furnished or to be furnished to the Lessee on credit, and that no mechanics, materialman's, or other lien for any such labor or material attaches to or affects the reversionary or other estate or interest of Lessor in and to the real estate and improvements which are a part of the premises.

**SECTION 12**  
**ENTRY BY LESSOR**

Lessor may, individually or by agents, at all reasonable hours, enter and examine the premises, or show the premises to persons wishing to rent or purchase the same, during three (3) months preceding the termination of this Lease. Lessee will permit customary "for sale" or "for rent" notices or both to be exhibited on the premises during this three (3) month period.

**SECTION 13**  
**DEFAULT**

13.1 If Lessee defaults on the payment of rent and remains in default for a period of Sixty (60) days, such default, at Lessor's option, constitutes forfeiture of the Lease.

13.2 If Lessee violates any other term of this Lease and does not cease or cure the violation within Sixty (60) days after receiving written notice from the Lessor, or if Lessee abandons or vacates the premises before the end of any term of this Lease, or if Lessee is adjudicated a bankrupt or insolvent according to law, or makes an assignment for the benefit of creditors, or if a receiver, trustee or liquidator of Lessee's property is appointed and not discharged within Sixty (60) days then the occurrence of such act or omission, at Lessor's option, constitutes a forfeiture of the Lease.

13.3 If Lessee fails to perform any duties required under this Lease or make any payments as required, after receiving Sixty (60) days notice in writing, Lessor may perform Lessee's duties and the cost of performance will be added to the rent and becomes immediately due and payable.

13.4 On any forfeiture, no demand is necessary for the recovery of the possession of the premises. Lessor may enter the premises, or any part, and take possession and expel the Lessee or other occupants and their effects, without being guilty of any trespass and Lessee nevertheless is liable for all future rentals or any rentals in arrears and breaches of covenants. Acceptance of rent subsequent to any forfeiture is not a confirmation or renewal of this Lease.

13.5 The failure of the Lessor or the Lessee to declare a breach or forfeiture of this Lease for violation of any term, condition or covenant is not a waiver of the right to declare a breach or forfeiture of this Lease upon the occurrence of any subsequent act or omission.

**SECTION 14**

## OCCUPATION AFTER TERMINATION

If Lessee continues in possession, with or without the consent of the Lessor, after expiration of the term or after a forfeiture has occurred, Lessee will continue paying the amount of rent specified in this Lease and will continue to be subject to all of the terms and conditions of the Lease, except that Lessee is a tenant at the will of the Lessor and in no event a tenant from year to year or from month to month, and Lessee may be required to vacate the premises without notice and may be removed by legal process.

### SECTION 15 NOTICES

All notices or communications which this instrument requires or permits to be given will be in writing and will be mailed or delivered to the respective addresses set forth below or to such other addresses as may be designated in writing by either party:

TO LESSOR AS FOLLOWS:      Fred Schlatter and Ruby Schlatter  
   5003 Cane Run Road  
   Louisville, Kentucky 40216

TO LESSEE AS FOLLOWS:      Airview Utilities, LLC  
   1706 Bardstown Road  
   Louisville, Kentucky 40205

### SECTION 16 ENTIRE CONTRACT

This Lease contains the entire contract between the parties relating to the demise of the premises and cannot be changed or terminated orally.

### SECTION 17 BENEFIT OF LEASE

This Lease inures to the benefit of and is binding upon the heirs, Legatees, legal representatives, successors and assigns of the parties, subject to all of the terms, conditions and contingencies set forth.

### SECTION 18 APPLICABLE LAW

This Lease is construed under the Laws of the State of Kentucky and the validity and applicability of its provisions is governed by those laws.

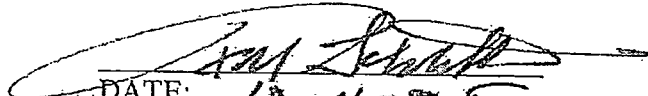


SECTION 19  
TERMINOLOGY

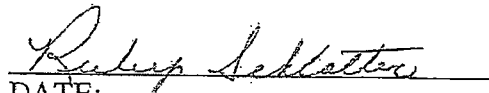
The term "Lessor" and the term "Lessee" are used to apply to the parties in the appropriate gender and number. The captions in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit, amplify, or describe the scope of this Lease or the intent of any provision.

IN WITNESS WHEREOF, Lessor and Lessee have executed the Lease this day and year first above written.

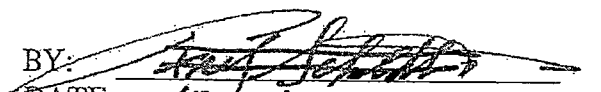
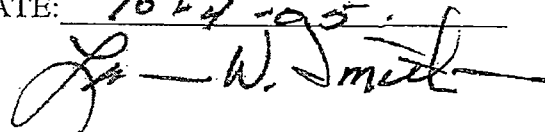
FRED SCHLATTER  
LESSOR

  
DATE: 10-4-05

RUBY SCHLATTER  
LESSOR

  
DATE: \_\_\_\_\_

AIRVIEW UTILITIES, LLC  
LESSEE

BY:   
DATE: 10-4-05  


Beginning at an iron pin, the above mentioned corner to Howard J. Pipes; thence N 25 41 36 E 248.27 feet to a point; thence S 45 01 12 E 424.69 feet to an iron pin; thence S 44 58 48 W 269.20 feet to a point; thence N 51 36 42 W 332.36 feet to a point; thence N 35 15 14 E 74.09 feet to the point of beginning, containing 2.5 acres.

Being a portion of the same property conveyed to James T. Jones and Berniece R. Jones, husband and wife, an undivided one-half interest, and Fred H. Schlatter and Ruby Schlatter, husband and wife, an undivided one-half interest, by Deed dated April 26, 1971, of record in Deed Book 232, page 241, and being a portion of the same property conveyed to Fred H. Schlatter and Ruby Schlatter, husband and wife, by Quitclaim Deed dated March 1, 1978, of record in Deed Book 337, page 185, in the Office of the Hardin County Court Clerk.