

RESOLUTION NO. 5-2024

**RESOLUTION OF THE TOWN OF LAPEL
AUTHORIZING THE PRESIDENT OF THE LAPEL TOWN COUNCIL
TO EXECUTE A CERTAIN LEASE AGREEMENT WITH FIBERHAWK**

WHEREAS, the Town of Lapel owns a parcel of real estate commonly known as 12 W. 7th Street, Lapel, Indiana 46051 (the “Real Estate”); and

WHEREAS, Swayzee Telephone Company, Inc. d/b/a Fiberhawk (“Fiberhawk”) has requested permission to construct and maintain a Fiber Communication System (the “Fiber System”) on the Real Estate; and

WHEREAS, the Appraised Valuation of the Real Estate is Two Thousand Five Hundred Dollars (\$2,500.00) per year for a Commercial Lease; and

WHEREAS, the Lapel Town Board believes the Fiber System would be a benefit to the Citizens of Lapel, and Fiberhawk has agreed to pay the Appraised Rental Value of the Real Estate.

NOW THEREFORE BE IT RESOLVED, that the Lapel Town Board now adopts this Resolution for the purpose of authorizing the President of the Lapel to execute a Lease Agreement with Fiberhawk for a Lease Term of 25 years, with a Rental Rate of \$2,500.00 per year, a copy of which is attached hereto as Exhibit “A”.

SO RESOLVED this _____ day of _____, 2024.

Lapel Town Board

BY: _____
Chad Blake, President

ATTEST

Teresa Retherford, Clerk-Treasurer

Prepared By:

MICHAEL E. FARRER/#6784-49
GRAHAM, FARRER & WILSON, P.C.
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LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this _____ day of _____, 2024 by and between the Town of Lapel, Indiana ("Lapel" or "Lessor") and Swayzee Telephone Company, Inc. d/b/a Fiberhawk ("Fiberhawk" or "Lessee").

Lessor hereby demises, lets and leases to Lessee, and Lessee hereby leases from Lessor, for the purpose hereinafter set forth only, and for no other purposes, the following described real estate located in Lapel, Madison County, Indiana as shown on Exhibit "A" attached hereto and incorporated by reference herein to-wit:

Approximately 4,060 square feet (0.0932 acres)
Commonly known as 12 W. 7th Street Lapel, Indiana 46051
Parcel No. 48-10-28-104-112.00-032

1. **Leased Premises.** In addition to the approximately 4,060 square feet of real property (the "Property"), Lessor grants Lessee a non-exclusive right of ingress and egress (the "Right of Way" and together with the Property, the "Leased Premises") for installation and maintenance of a Fiber System.

2. **Permitted Use.** The Leased Premises may be used by Lessee only for the construction, installation, operation, maintenance, repair, removal or replacement of a Fiber System (the "Fiber System") and related facilities, including a small 12' x 8' building (the "Hut") and related activities, as approved by Lessor. A drawing of the proposed facility is attached as Exhibit "B" and the Hut is attached as Exhibit "C".

3. **Term.** The initial term of this Lease Agreement shall be twenty-five (25) years commencing on the date of execution hereof ("Initial Term" and with any Renewal Terms, the "Term").

4. **The Term and any Renewal Terms.** Provided Lessee is not in default under the terms of this Lease Agreement, Lessee shall have the right to extend the Term for one (1) additional five-year term (the "Renewal Term") on the terms and conditions as may be agreed by the parties at the time of Renewal.

5. **Rent.** Lessee shall pay Lessor, as Rent, the sum Two Thousand Five Hundred Dollars (\$2,500.00) per year ("Rent"). All Rent shall be paid to Lessor at 825 North Main Street Lapel, Indiana 46051, or to such other address as collected on Lessor writing on the First Day of each month during the Term. The Rent shall be subject to an Increase Adjustment of 3% per year term.

6. **Compliance with Laws.** Lessee shall fully comply with all applicable laws, statutes, ordinances, rules and regulations pertaining to Lessee's operation at the Leased Premises, the improvements constructed, used or maintained by Lessee, including without limitation of all State, Federal, County and Local Regulations.

7. **Improvements; Utilities; Access.**

(a) Lessee shall have the right, at its expense, to locate the Hut on the Leased Premises together with the personal property and facilities necessary to operate the Fiber System. All such improvements are to be made on the basis of drawings approved by Lessor and referenced in Exhibits "B" and "C". The Hut and other parts of the Fiber System shall remain the exclusive property of Lessee and shall not be considered fixtures. Lessee shall remove the Hut including concrete footings, upon the expiration or termination of this Lease Agreement, at Lessee's own cost.

(b) Lessee shall be responsible for the installation and/or extension of all utilities necessary for the operation of the Fiber System, and all charges for the Utilities utilized by Lessee.

8. **Termination.** Except as otherwise provided herein, this Lease Agreement may be terminated by Lessor as follows upon thirty (30) days: if Lessee fails to cure a default for payment of amounts due hereunder, within thirty (30) days of Notice.

9. **Default and Right to Cure.** Notwithstanding contained herein to the contrary, and without waiving any other rights granted at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease Agreement on written notice, if the other party fails to perform any covenant or commits a breach of this Lease Agreement and fails to diligently pursue a cure there to the noticing party's satisfaction after thirty (30) days written notice of default.

10. **Taxes.** Lessee shall pay when due all taxes assessed for the Leased Premises, including any personal property tax, real property tax or any other tax or fee which is attributable to the presence or installation of the Hut or the operation of the Fiber System.

11. **Insurance and Subrogation and Indemnification.**

(a) Lessee will maintain Commercial General Liability Insurance in the amounts of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate which shall remain in full force and effect immediately upon the execution hereof and throughout the entire Term, and until all equipment and structures of Lessee have been removed. Lessor shall be named as an Additional Insured on such policies. Proof of such insurance is attached hereto as Exhibit "D".

(b) Lessee releases Lessor, and its successors or assigns, from liability and waives all rights of recovery against Lessor for any loss or damage whether covered by Lessee's insurance or not. Lessee's insurance policy shall contain a waiver or subrogation in Lessor's favor.

(c) Lessee agrees to and does hereby indemnify, defend and hold harmless Lessor from and against any and all claims, damages, costs and expenses, including a reasonable attorney fees, to the extent caused by or arising out any hazardous substances brought onto the Property by Lessee' and of the negligent acts or omissions or willful misconduct in the operations or activities on the Leased Premises by Lessee and the employees, agents, contractors, licenses, tenants and/or subtenants of Lessee, or a breach of any obligation of Lessee hereunder.

12. Notices. All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Lessor or Lessee may from time to time designate any other address for this purpose by providing written notice to the other party.

To Lessee Swayzee Telephone Co., Inc.
214 South Washington Street
P.O. Box 97
Swayzee, Indiana 46986

Copies to: _____

To Lessor Town of Lapel
825 N. Main Street
Lapel, Indiana 46051
Attn: President of Town Board

Copies to: Graham, Farrer & Wilson, P.C.
P.O. Box 494
Elwood, Indiana 46036

13. Quiet Enjoyment, Title and Authority. Lessor covenants and warrants to Lessee that (i) Lessor has full right, power and authority to execute this Lease Agreement, (ii) has good and unencumbered title to the Leased Premises free and clear of any liens or mortgages; and (iii) execution and performance of this Lease Agreement will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Lessor; provided, however, that nothing herein shall be deemed to be a representation that the Leased Premises are suitable for Lessor's purposes. The Leased Premises has been previously zoned by Lessor for Lessee's purposes.

14. Assignment and Subleasing. Neither may assign this Lease Agreement without written approval of the other, which approval shall not be unreasonably or denied. In the event of such assignment, Lessee shall not be released from any liabilities or obligations hereunder without the express prior written consent of Lessor. Provided, however, Lessor may assign this Lease Agreement and/or the Leased Premises to a Division or Commission of the Town.

15. Miscellaneous.

(a) This Lease Agreement constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements with respect to the subject matter and property covered by this Lease Agreement. Any amendments to the Lease Agreement shall be in writing and executed by both parties hereto.

(b) Lessor shall cooperate with Lessee in executing any documents necessary to protect Lessee's rights in and use of the Leased Premises, including a Memorandum of Lease which may be recorded by Lessee.

(c) This Lease Agreement shall be construed in accordance with the laws of the State of Indiana, and enforced with the Courts of Madison County.

(d) If any term of this Lease Agreement is found to be void or invalid, the remaining terms hereof shall continue in full force and effect. No provision of this Lease Agreement will be deemed waived by either party unless expressly waived in writing by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this hereof shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

(e) The persons executing this Lease Agreement represent and warrant that they are duly authorized to execute in their individual or representative capacities.

(f) This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed as original, but all of which together shall constitute a single instrument.

The effective date of this Lease Agreement is the date of execution by the last party to sign (the "Effective Date").

IN WITNESS WHEREOF, the parties have executed this Lease Agreement by their duly authorized officials, as of the dates set forth below.

Swayzee Telephone Co., Inc.
d/b/a Fiberhawk

Town of Lapel, Indiana

BY: _____

BY: _____

ITS: _____

ITS: President of Town Board

DATE: _____

DATE: _____

This Instrument Prepared by:

MICHAEL E. FARRER/#6784-49
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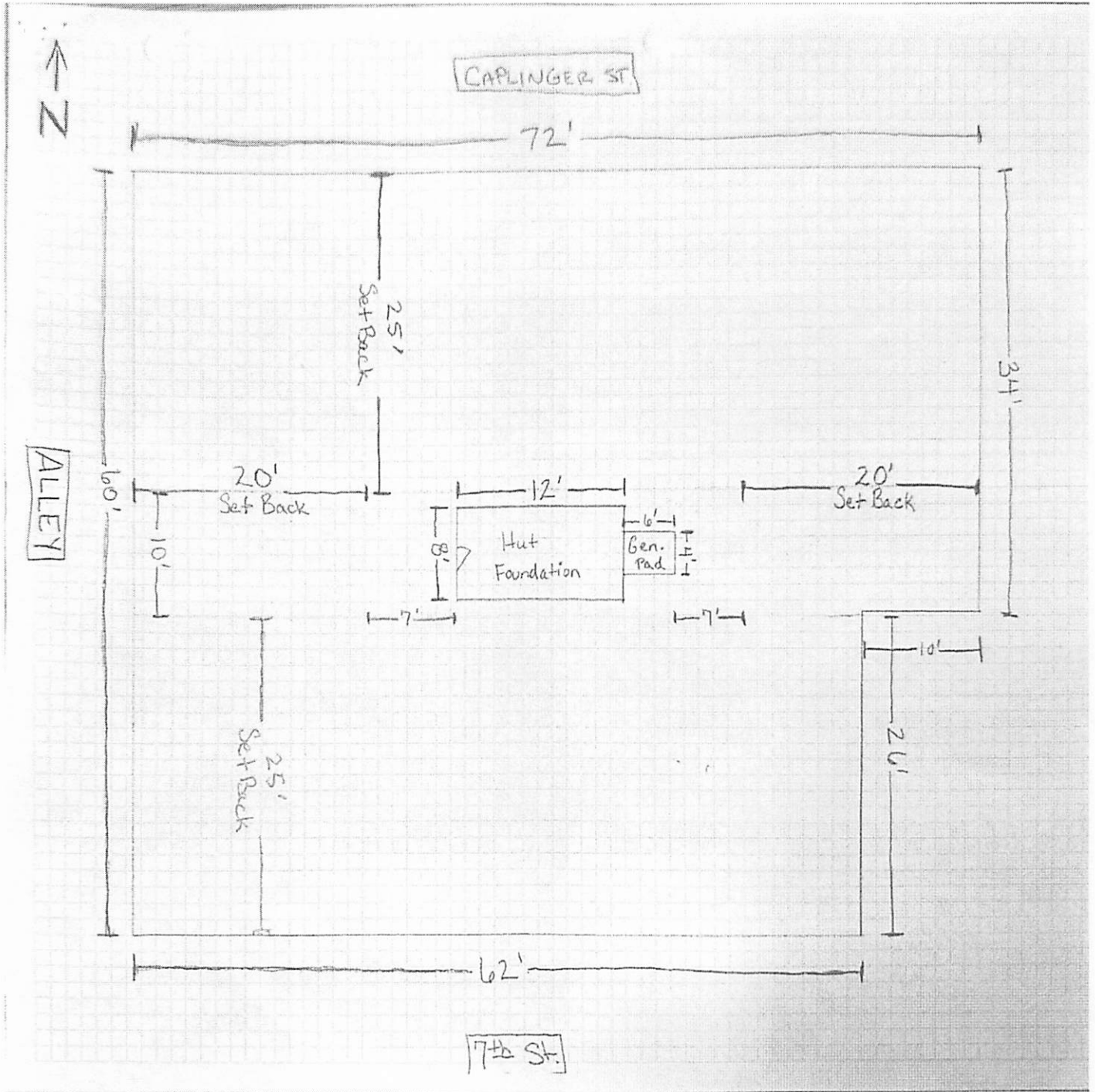
EXECUTIVE SUMMARY:



4,060 +/- SF Site
12 W. 7th Street
Lapel, IN 46051

Parcel #:	48-10-28-104-112.000-032
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A



B



C-1



C-2





