

**AN ORDINANCE OF THE COUNCIL FOR THE TOWN OF ABINGDON
AUTHORIZING AND DIRECTING THE TOWN MANAGER TO EXECUTE A
POINT OF PRESENCE LEASE AGREEMENT WITH SUNSET FIBER, LLC, a
Delaware limited liability company, FOR CERTAIN REAL PROPERTY AND
IMPROVEMENTS LOCATED AT 427 WEST MAIN STREET, ABINGDON, VIRGINIA**

Ordinance Number: _____

WHEREAS, pursuant to §15.2-1800 of the Code of Virginia, 1950, as amended, public hearings were held pursuant to said notice on Monday, August 6, 2018 and Tuesday, September 4, 2018 in the Council Chambers of the Town Hall at a regularly scheduled Town Council meeting. During said meeting the Administration of the Town of Abingdon, Virginia ("Town") recommends that the Town enter into a Point of Presence Lease Agreement with Sunset Fiber, LLC, a Delaware limited liability company, with authority to conduct business in Virginia. The Point of Presence Lease Agreement provides Sunset Fiber, LLC lease certain real property and improvements located at 427 West Main Street, Abingdon, Virginia, granting and conveying the right to construct, install, repair, maintain, replace, and rework fiber optic cable and other required appurtenances, over, across and under said premises.

WHEREAS, the Town Manager is hereby authorized and directed to execute a Point of Presence Lease Agreement pursuant to the terms, conditions and rates of the attached Point of Presence Lease Agreement. Said agreement shall be and read substantially in the form of Exhibit No. 1, attached hereto, incorporated herein by reference and made a part hereof.

WHEREAS, this Ordinance shall take effect and be in full force pursuant to The Code of the Town of Abingdon, Virginia, Division 4, Ordinances and Resolutions, Section 2.96(c).

This Ordinance was adopted on the 4th day of September 2018 to take effect on the 5th day of October 2018.



J. Wayne Craig, Mayor

CERTIFICATE

Pursuant to Section 2-100 of the Code of the Town of Abingdon, Virginia, I hereby certify that I have reviewed the foregoing proposed Ordinance authorizing the Point of Presence Lease Agreement and find it to be in the correct form this the 4th day of September 2018.



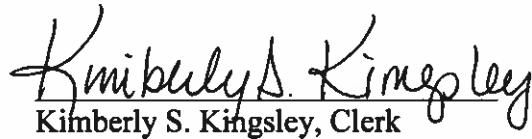
Cameron Bell, Esq.
Council for the Town of Abingdon, Virginia

The undersigned Clerk of the Town of Abingdon, Virginia (the "Town") hereby certifies that the foregoing constitutes a true and correct copy of an Ordinance duly adopted at a meeting of the Council held on August 6, 2018. I hereby further certify that such meeting was a regularly scheduled meeting and that, during the consideration of the foregoing Ordinance a quorum was present. I further certify that the minutes of such meeting reflect the attendance of the members and the voting on the foregoing Ordinance was as follows:

Members:	Attendance:	Vote:
J. Wayne Craig	Yes	Aye
Cindy Patterson	Yes	Aye
Al Bradley	Yes	Aye
Donna Quetsch	Yes	Aye
Derek Webb	Yes	Aye

WITNESS my hand and seal of the Town of Abingdon as of 4th day of September 2018.

(SEAL)



Kimberly S. Kingsley, Clerk

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 5th day of September, 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 that 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. 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.

14. 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.

15. 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.

16. 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.

17. **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
333 Fraley Avenue
Duffield, VA 24244

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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.


25. **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: Phillip A. Sunnan
Its: Town Manager - Interim

TENANT:

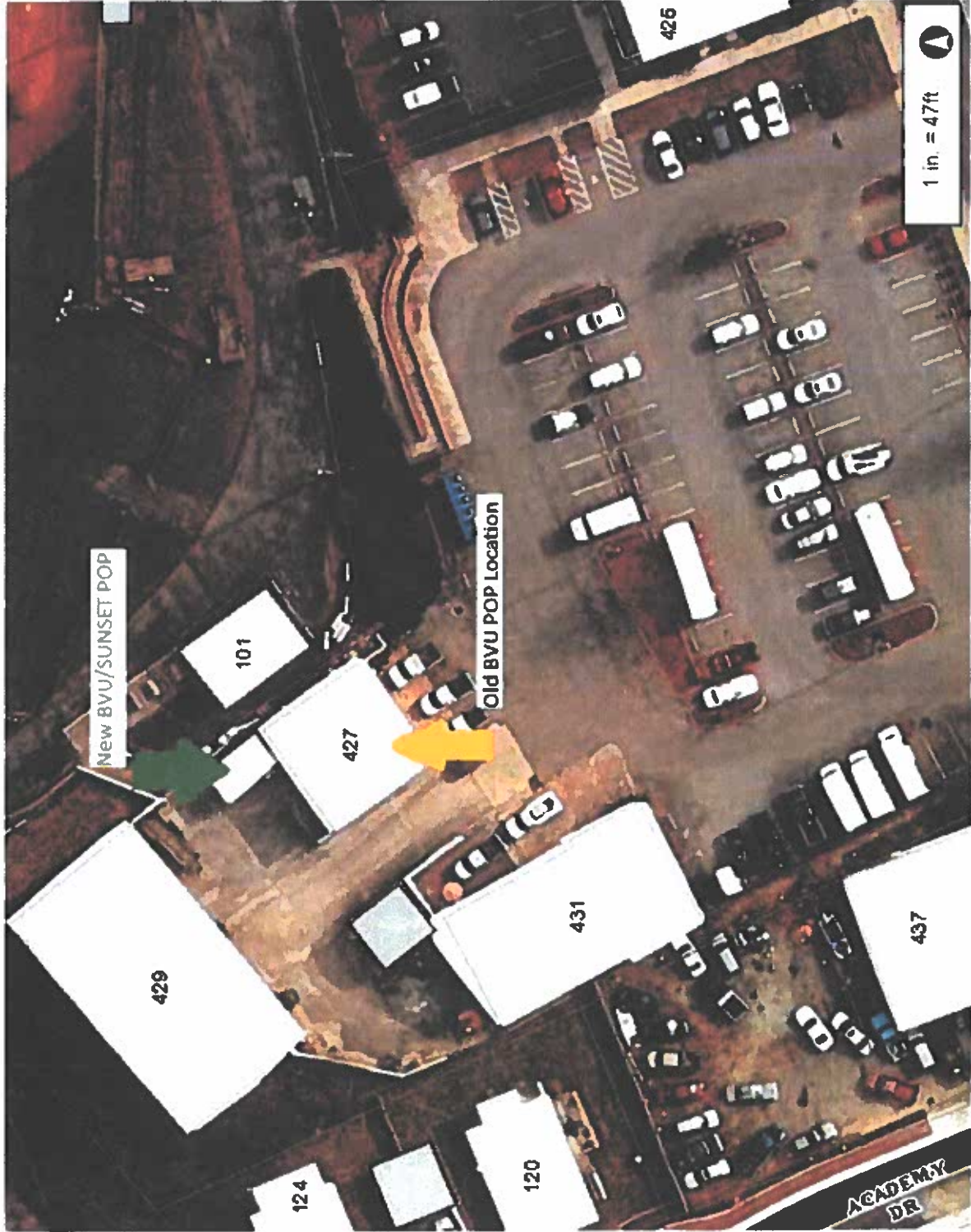
SUNSET FIBER, LLC, a Delaware limited liability company

By: _____
Print Name: _____
Its: _____

EXHIBIT A

See attached.

Abingdon, VA



Legend

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

Notes

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

94.7 Feet

47.33

0

94.7