

**Town of Valdese
Town Council Budget Workshop
Dinner
Valdese Town Hall
Community Room
102 Massel Avenue SW, Valdese
Thursday, April 6, 2023
6:00 P.M.**

- 1. Call Meeting to Order**
- 2. Invocation**
- 3. Pledge of Allegiance**

- 4. Utility CIP Discussion**
RJ Mozeley, McGill & Associates

- 5. Employee Health Insurance Update**
Dwayne Wilson, Dwayne Wilson Insurance & Financial Services

- 6. Community Affairs Projects**
Morrissa Angi, Community Affairs Director

- **Gateway Signs**
- **Village Park Mural**
- **Old Rock School**

- 7. FY 23-24 Proposed Rate Structure & Fee Schedules**
Bo Weichel, Assistant Town Manager/CFO

- 8. Miscellaneous Discussions**
Seth Eckard, Town Manager

- 9. Presentation from Foothills Broadband, LLC**
Zachary Chiz, Broadband, LLC
 - **ACTION ITEM:** New Lease Agreement with Foothills Broadband, LLC

- 10. Adjournment**

COUNCIL AGENDA MEMO

From: Bo Weichel, Assistant Town Manager
Agenda: 04/06/2023

REQUEST

Approve the agreement with Foothills Broadband for the lease of Town owned grounds.

BACKGROUND

Foothills Broadband, LLC is a private broadband provider. Their goal is to expand their fiber network into Valdese and surrounding areas, which would provide another option for residential and business internet access.

Foothills Broadband approached staff seeking to lease a small parcel of property to use as the central office and storage area for securing and maintaining telecommunication equipment essential for the installation, monitoring, and security of network for broadband services. They plan to install (at their sole cost and expense) a pre-fabricated building on the premises which building will, at all times, be and remain the personal property of Foothills Broadband. They will install privacy fencing along the perimeter of the leased area.

ANALYSIS

Several locations were considered in the selection process. Town staff and Foothills Broadband have agreed on the location described in Exhibit A and pictured in Exhibit B. This ground lease is comprised of 0.108 acres off Janavel Ave.

Term of the lease is for 1 year with a monthly payment of \$500 due on the 15th day each month.

**A RESOLUTION AUTHORIZING EXECUTION OF A GROUND LEASE
BETWEEN TOWN OF VALDESE AND FOOTHILLS BROADBAND, LLC
FOR TOWN OWNED PROPERTY LOCATED AT 204 JANAVEL
AVENUE SW, VALDESE, NORTH CAROLINA PURSUANT TO THE
PROVISIONS OF N.C.G.S. 160A-272**

WHEREAS, the Town of Valdese is the owner of that certain real property (the “Town Property”) situated in Lovelady Township, Burke County, North Carolina commonly known as 204 Janavel Avenue SW, Valdese, North Carolina, Parcel I.D. No.: 2733950361, which Town Property is more particularly described in Deed Book 592, Page 904, Burke County Registry; and

WHEREAS, Foothills Broadband, LLC desires to lease from the Town of Valdese and the Town of Valdese desires to lease to Foothills Broadband, LLC the Town Property pursuant to a one-year Ground Lease for use as a central office and storage area for securing and maintaining telecommunication equipment essential for the installation, monitoring, and security of network for broadband services in the Town of Valdese; and

WHEREAS, the Town Property will not be needed by the Town of Valdese for town purposes during the term of the proposed lease; and

WHEREAS, no public notice is required for leases for terms of one year or less pursuant to the provisions of N.C.G.S. 160A-272.

NOW, THEREFORE BE IT RESOLVED, by Council for the Town of Valdese that the Town Property will not be needed by the Town of Valdese during the term of the proposed lease.

BE IF FURTHER RESOLVED, by Council for the Town of Valdese that the Mayor and the Town Clerk are hereby authorized to execute the above-described Lease on behalf of the Town of Valdese with Foothills Broadband, LLC, subject to a pre-audit certificate thereon by the Town Chief Financial Officer, if applicable, and approval as to form and legality by the Town Attorney. The proposed Lease is attached hereto and incorporated herein by reference.

THIS RESOLUTION IS ADOPTED this ____ day of _____, 2023.

THE TOWN OF VALDESE,
a North Carolina Municipal Corporation

[AFFIX SEAL]

ATTEST:

By: _____
Charles Watts, Mayor

Jessica Lail, Town Clerk

STATE OF NORTH CAROLINA

GROUND LEASE

COUNTY OF BURKE

THIS GROUND LEASE (“Lease”) is made as of the ____ day of _____, 2023 by and between the **TOWN OF VALDESE**, a municipal corporation duly organized and existing under the laws of the State of North Carolina (“Lessor”), and **FOOTHILLS BROADBAND, LLC**, a North Carolina limited liability company (“Lessee”). Lessor and Lessee are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

WITNESSETH:

WHEREAS, the Lessor is the owner of that certain real property (the “Town Property”) situated in Lovelady Township, Burke County, North Carolina commonly known as 204 Janavel Avenue SW, Valdese, North Carolina, Parcel I.D. No.: 2733950361, which Town Property is more particularly described in Deed Book 592, Page 904, Burke County Registry; and

WHEREAS, Lessee is a private broadband provider or cooperative; and

WHEREAS, in accordance with North Carolina General Statute § 160A-272(c)(3), Lessee seeks to lease from Lessor and Lessor seeks to Lease to Lessee that certain area located on the Town Property described in **EXHIBIT A** attached hereto (the “Premises”), together with all rights, appurtenances, servitudes, charges, easements, rights of ingress and egress, parking, licenses, hereditaments thereto and any improvements presently located thereon, if any, for the operation and use of components of a wired or wireless network in connection with a grant received by the Town pursuant to North Carolina General Statute § 143B-1373 for a discrete and specific project located in an unserved and economically distressed area to provide broadband services to homes, businesses, and community anchor points not currently served; and

WHEREAS, to facilitate the accomplishment of their respective purposes, Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor, the Premises upon the terms, provisions and conditions hereinafter set forth in this Lease; and

WHEREAS, on _____, 2023, the Town Council authorized and approved by Resolution/Vote the Premises to be leased subject to the terms, provisions and conditions hereinafter set forth in this Lease.

NOW THEREFORE, for and in consideration of the lease of the Premises, the mutual covenants contained herein and other valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. **DEMISE**. In consideration of the rents hereinafter agreed to be paid and in consideration of the mutual covenants and agreements herein contained, and to be performed by the respective Parties hereto, Lessor does hereby lease and demise unto Lessee, its successors and assigns as hereinafter limited, and Lessee does hereby lease and take as tenant from Lessor

the Premises, together with the improvements to be constructed thereon, together with all rights, privileges and easements pertaining thereto.

2. COMMENCEMENT DATE. For purposes of this Agreement, “Commencement Date” shall mean April 15, 2023.

3. TERM. The term of this Lease shall be one (1) year, commencing on April 15, 2023 and terminating on April 14 2024 (the “Term”), unless sooner terminated hereunder.

4. USE. Lessee will use the Premises as the central office and storage area for securing and maintaining telecommunication equipment essential for the installation, monitoring, and security of network for broadband services. Subject to the advance approval of the Lessor as to design, color and material, which will not be unreasonably withheld, and subject to all applicable federal, state and local laws, rules, regulations, codes, ordinances, judgments, decrees, or orders of any state, federal or local government or agency having jurisdiction over the Town Property, the Lease Premises, or any portion thereof (“Applicable Laws”), Lessee may install, at its sole cost and expense, a pre-fabricated building on the Premises, which building will, at all times, be and remain the personal property of Lessee (“Lessee Improvements”). Lessee will also install, at the Lessor’s request, a privacy fence on the Premises, which will at all times, be and remain the personal property of Lessee.

5. DELIVERY OF PREMISES. Lessor shall deliver possession of the Premises to Lessee as of the Commencement Date. Lessee acknowledges that it has had the opportunity to inspect the Premises. Except as expressly set forth herein, the rights granted hereby by Lessor to Lessee are made and granted without any warranty or representation by Lessor whatsoever, and Lessor hereby disclaims all express and implied warranties, including, without limitation, any warranty of fitness of the Premises for the purpose of use desired by Lessee. Lessee accepts the Premises in their present “AS-IS,” “WHERE-IS,” and “WITH ALL FAULTS” condition subject to any and all: (a) taxes and assessments which may now or hereafter be assessed against the Town Property; (b) matters of record affecting the Premises or the Town Property lying outside of the Premises; (c) tenants or occupants in possession of the Town Property or any part thereof; (d) matters which would be shown by a current accurate survey of the Town Property or Premises; and (e) all Applicable Laws. Lessee, to the maximum extent permitted by North Carolina law, assumes the entire risk of all activities conducted or performed by Lessee or on behalf of Lessee on the Premises. Lessor shall have no obligation to make any repairs, alterations, or improvements to the Premises. Lessee will have the right to access the Premises via Janavel Ave SW and will have the right to use the parking lot located on the Town Property adjacent to the Premises in a manner otherwise allowed by the public in general. Lessee’s use of the parking, when permitted hereunder, shall not interfere with or obstruct the Lessor’s access and/or use of the Town Property and is subject to the absolute and sole discretion of Lessor.

6. RENT.

a. Lessee shall pay to Lessor annual rent payments in the amount of Six Thousand and 00/100 Dollars (\$6,000.00) for each year of the Term of this Lease (“Rent”). Rent shall be payable in installments of Five Hundred and 00/100 Dollars (\$500.00) per month.

b. Rent shall commence on April 15, 2023, and continue on the 15th day of each month thereafter during the Term of this Lease.

c. Payment of all Rent shall be made by check, draft or money order issued and payable to the Lessor and mailed or otherwise delivered to Lessor at the address set forth herein, or such other place as may be designated in writing by the Lessor.

7. REPAIRS AND MAINTENANCE OF LESSEE IMPROVEMENTS. Lessee shall throughout the Term of this Lease, at its own cost and without any expense to Lessor, keep and maintain the Premises in clean order, condition and repair, normal wear and tear excepted. Lessee shall comply with and abide by all Applicable Laws affecting the Town Property and Premises, or any activity conducted thereon by Lessee.

8. UTILITIES. Lessee shall contract in its own name and fully and promptly pay for all water, gas, heat, light, sewage, power, telephone service and other public utilities of every kind that Lessee desires to be furnished to the Premises throughout the Term hereof.

9. REAL ESTATE TAXES AND ASSESSMENTS. For purposes of this Lease, the term "Real Estate Taxes: shall mean all general real estate or personal property taxes and assessments and other ad valorem taxes, rates and levies paid upon or with respect to the Premises, or the Lessee Improvements, for a calendar year, or a portion thereof to any governmental agency, or authority and all charges specifically imposed in lieu of any such taxes. Lessee shall timely pay all Real Estate Taxes attributable to the Premises and Lessee Improvements. In the event Lessor is charged for any Real Estate Taxes attributable to the Premises or Lessee Improvements, Lessee shall promptly pay such Real Estate Taxes within thirty (30) days of receipt from Lessor of the tax bill, or in the alternative, reimburse Lessor upon receipt of a copy of the tax bill and a copy of Lessor's check to the appropriate governmental agency or authority evidencing Lessor's payment thereof to the taxing authority.

10. INSURANCE.

a. From and after the Commencement Date, Lessee shall, at its sole cost and expense, obtain and maintain property insurance covering the Premises and Lessee Improvements in an amount not less than the full replacement cost thereof (less the cost of foundations), with such deductibles and retentions as determined by Lessee in its sole and absolute discretion. Such insurance shall be provided by companies authorized to do business in the State of North Carolina and shall name Lessor as an additional insured.

b. From and after the Commencement Date, Lessee shall maintain with respect to the Premises and Lessee Improvements a policy of commercial general liability insurance covering bodily injury, death and property damage in a commercially reasonable amount not less than \$1,000,000.00 per each occurrence and \$2,000,000.00 in aggregate limits.

c. Lessee shall, within fifteen (15) days after receipt of written request therefor by Lessor, provide Lessor with (i) evidence of such property insurance and (ii) a

certificate of such commercial general liability insurance, each naming Lessor as an additional insured or loss payee, as applicable.

d. All insurance shall contain a provision requiring that Lessor will be given written notice of any intent to terminate within sixty (60) days by either the insured or the insurance company.

e. Lessee will provide Lessor with copies of any substantial changes to the policies. Within sixty (60) days prior to the expiration of any such policy, a signed and complete certificate of insurance coverage that has been renewed or extended shall be filed with Lessor.

f. Neither Lessor nor Lessee nor anyone claiming by, through, under or in their behalf shall have any claim, right of action or right of subrogation one against the other for or based upon liability for personal injury or any loss or damage caused by fire, explosion or other casualty relating to the Premises or to any property upon, in, or about the Premises, whether such fire, explosion or other casualty shall arise from the negligence of Lessor or Lessee, their respective agents, representatives or employees, or otherwise.

11. ASSIGNMENT. Lessee shall have the right, without Lessor's consent, to assign, transfer and encumber its interest in the Premises, including the leasehold estate created by this Lease, to (a) any lender as collateral for a loan to Lessee, or (b) any lender or a transferee pursuant to a foreclosure, deed in lieu of foreclosure or otherwise. Any other transfer shall require the written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. In the event Lessee shall be reorganized, merged or consolidated with any other corporation, limited liability company or other business entity, or shall sell all or substantially all of its assets, any resulting or surviving corporation, limited liability company or other business entity, or any other person, which shall, as a result of such reorganization, merger, consolidation or sale, succeed to substantially all of the assets or the business of Lessee, and which shall assume all of the liabilities and obligations of Lessee under this Lease, shall automatically and without the necessity of further assignment or any other act become and be Lessee under this Lease in accordance with and subject to all of the terms, provisions and conditions hereof, including the requirement of obtaining Lessor consent, if applicable. Lessee shall give Lessor notice of any transfer, such notice to include a copy of the original instrument evidencing such transfer.

12. LESSEE'S FINANCING. Subject to the provisions of this Section 12 and provided that Lessee is not in default under this Lease, Lessee shall have the right at all times during the Term, to mortgage, assign, pledge, hypothecate or otherwise encumber all or any portion of Lessee's interests in the Premises, including the leasehold estate created by this Lease, by one or more deeds of trust or other security instruments in favor of any lender, or any financing in conjunction with construction of the Lessee Improvements and the development and operation of the Premises or a sale of the Lessee Improvements or a portion of the Lessee Improvements, including, without limitation, assignments of the profits from the Premises, to secure repayment of any loans, associated obligations, and other obligations of Lessee, for the purposes of interim and long-term financing of the Premises, the construction of new buildings and improvements upon the Premises, any refinancing of any such construction or acquisition

financing whether equal to, less than, or in excess of the original financing, with notice to, but without the consent of Lessor. Any Leasehold Mortgage, as hereafter defined, as permitted hereunder and all rights of the mortgagee, beneficiary or security holder thereunder, shall in the event of any foreclosure of such Leasehold Mortgage be subject to all terms, covenants and conditions of this Lease and to all other rights and interests of Lessor under this Lease. In no event shall any Leasehold Mortgage constitute or be deemed to constitute a lien upon the fee estate of Lessor. As used in this Lease, "Leasehold Mortgage" shall mean any deed of trust or other security instrument, including, without limitation, an assignment of the rents, issues and profits from the Premises, which constitutes a lien on the leasehold estate created by this Lease, and "Lender" shall mean a beneficiary of a Leasehold Mortgage.

Notwithstanding anything herein to the contrary, the following provisions shall apply to the protection of any Lender during the continuance of any Leasehold Mortgage and until such time as the lien of any Leasehold Mortgage has been extinguished:

a. Lessor and Lessee shall not agree to any mutual termination or surrender of this Lease, nor shall they amend or modify this Lease, in any material manner, without the prior written consent of all Lenders, which consent shall not be unreasonably withheld, and any termination or surrender of, or material amendment or modification to, this Lease without such prior written consent shall be void. Unless the Lender shall otherwise expressly consent in writing, the fee title to the Premises and the leasehold estate of Lessee therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of such fee title and such leasehold estate by Lessor or by Lessee or by a third party, by purchase or otherwise.

b. Notwithstanding any default by Lessee in the performance or observance of any agreement, covenant or condition of this Lease on the part of Lessee to be performed or observed, Lessor shall have no right to terminate this Lease unless an Event of Lessee Default shall have occurred and be continuing, and Lessor shall, subject to subparagraph G. below, have given all Lenders written notice of such Event of Lessee Default, and such Lenders shall have failed to remedy such default or acquire Lessee's leasehold estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof, all as set forth in, and within the time specified by, this Section 12.

c. Any Lender shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, including, without limitation, the Real Estate Taxes, as defined above, to make any repairs and improvements, to do any act or thing required of Lessee hereunder, and which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. All payments so made and all things so done and performed by any Lender shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Lessee instead of by such Lender. Any Lender of the Premises, and any sublessee, shall not be disturbed by Lessor in the event of any default hereunder or any termination of this Lease or in the event that this Lease is subject to termination for any reason by virtue of Lessee's bankruptcy including the rejection of this Lease by Lessee or

any trustee of Lessee in bankruptcy, or by any party under Section 365 of the Bankruptcy Code or any similar Section as a result of Lessee's bankruptcy, as long as (a) such sublessee performs all sublessee's obligations binding upon sublessee under its sublease, (b) such sublessee attorns to Lessor, and (c) any defaults in the payment of any monetary obligations of Lessee under this Lease are cured by any Lender within a reasonable time period not to exceed ninety (90) days.

d. Should any Event of Lessee Default under this Lease occur, any Lender shall have ninety (90) days after receipt of notice from Lessor, subject to subparagraph g. below, setting forth the nature of such Event of Lessee Default, to remedy such default, or if such default cannot be remedied within such ninety (90) day period, within a reasonable period thereafter, provided that the remedy for such default shall have been commenced within such ninety (90) day period and shall thereafter be diligently prosecuted to completion, and if the default is such that possession of the Premises may be reasonably necessary to remedy the default, a reasonable time after the expiration of such ninety (90) period within which to remedy such default, provided that (i) the Lender shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease within such ninety (90) period and shall continue to pay currently such monetary obligations as and when the same are due and (ii) the Lender shall have acquired Lessee's leasehold estate created hereby or commenced foreclosure or other appropriate proceedings in the nature thereof within such period, or prior thereto, and is diligently prosecuting any such proceedings. All right of Lessor to terminate this Lease as the result of the occurrence of any such Event of Lessee Default shall be subject to, and conditioned upon, Lessor, subject to subparagraph g. below, having first given any Lender written notice of such default and such Lender having failed to remedy such default or acquire Lessee's leasehold estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this subparagraph d.

e. Any Event of Lessee Default under this Lease which in the nature thereof cannot be remedied by a Lender shall be deemed to be remedied if (i) within ninety (90) days after receiving written notice from Lessor, subject to subparagraph g. below, setting forth the nature of such Event of Lessee Default, or prior thereto, the Lender shall have acquired Lessee's leasehold estate created hereby or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (ii) the Lender shall diligently prosecute any such proceedings to completion, (iii) the Lender shall have fully cured any default in the payment of any monetary obligations of Lessee hereunder which do not require possession of the Premises within such ninety (90) day period and shall thereafter continue to faithfully perform all such monetary obligations which do not require possession of the Premises, and (iv) after gaining possession of the Premises, the Lender performs all other obligations of Lessee hereunder excepting however the cure or remedy of such Event of Lessee Default which in the nature thereof cannot be remedied by a Lender.

f. If a Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in subparagraphs d. and e. above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition provided that the Lender shall have fully cured, within the 90 day time

periods set forth in subparagraphs d. and e. above, any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due.

g. Lessor shall mail or deliver to any Lender of whom Lessor has received notice hereunder or has actual knowledge, a duplicate copy of any and all notices which Lessor may from time to time give to or serve upon Lessee pursuant to the provisions of this Lease, and such copy shall be mailed or delivered to such Lender simultaneously with the mailing or delivery of the same to Lessee. Lessee shall provide Lessor with written notice of the name, mailing address, street address and telephone number of any such Lender of whom Lessee has received notice under any sublease or has actual knowledge. Any Lender may directly provide such information to Lessor. Upon receipt of such information, unless otherwise actually known to Lessor, Lessor shall thereupon become and thereafter shall be bound to mail or deliver a duplicate copy of all notices to the Lessee hereunder to each such Lender; provided, however, that any failure to provide such notice shall not constitute a failure to provide notice to Lessee hereunder. All such notices shall be governed by Section 24 of this Lease.

h. Notwithstanding anything to the contrary contained herein, foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Lessee to a Lender through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof shall not require the consent or approval of Lessor or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Lessor shall recognize the Lender, or any other foreclosure sale purchaser, as Lessee hereunder. In the event the Lender becomes Lessee under this Lease or any new lease obtained pursuant to subparagraph i. below, or in the event the leasehold estate hereunder is purchased by any other party at a foreclosure sale, the Lender, or such other foreclosure sale purchaser, shall be bound to perform and satisfy the obligations of Lessee under this Lease or such new lease; provided, however, that the personal liability of the Lender, or such foreclosure sale purchaser, for the obligations of Lessee under the Lease or such new lease shall exist only with respect to obligations arising, or to be performed, during the period of time that the Lender or such other foreclosure sale purchaser remains lessee thereunder, and the Lender's or such foreclosure sale purchaser's right thereafter to assign this Lease or such new lease shall not be subject to any restriction. In the event the Lender subsequently assigns or transfers the interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new lease obtained pursuant to subparagraph i. below, and in connection with any such assignment or transfer the Lender takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to the Lender for such assignment or transfer, then such mortgage or deed of trust shall be considered a Leasehold Mortgage as contemplated under this Section 13 and the Lender shall be entitled to receive the benefit of and enforce the provisions of this Section 13 and any other provisions of this Lease regarding the holder of a Leasehold Mortgage.

13. DAMAGE OR DESTRUCTION. If any of the Lessee Improvements are damaged or destroyed by fire, earthquake, act of God, or other casualty (a "Casualty"), Lessee shall either (i) repair and restore the affected portion of the Lessee Improvements to substantially the same

condition as existed immediately prior to the Casualty, or (ii) raze the affected portions of the Lessee Improvements, remove all debris and maintain the affected area as an appropriately landscaped area. All property insurance proceeds payable with respect to Lessee Improvements shall belong to and be the exclusive property of Lessee. Notwithstanding any provision contained in this Lease to the contrary, Lessor and Lessee acknowledge and agree that the application of any and all insurance proceeds payable to Lessee as a result of any Casualty may be governed by and subject to the terms and conditions of any Leasehold Mortgage.

14. CONDEMNATION. If the whole or any part of the Premises shall be acquired or taken by eminent domain, condemnation or private purchase under threat thereof or in lieu thereof, including, without limitation, the physical occupation of the Premises, or any portion thereof, or the filing of eminent domain or condemnation papers by appropriate authorities (a "Taking"), and such Taking shall affect Lessee Improvements, Lessee shall be entitled to claim compensation from the condemning authority for (i) the value of its leasehold estate in the Premises, (ii) the unamortized costs of all leasehold improvements paid for by the Lessee and (iii) damages to Lessee Improvements occurring by reason of the Taking, and any other items to which Lessee may be entitled under applicable law. In the event of a complete Taking or a substantive Taking that would materially impede the operating of the business on the Premises, this Lease shall automatically terminate as of the effective date of such Taking. Notwithstanding any provision contained in this Lease to the contrary, Lessor and Lessee acknowledge and agree that the application of any and all proceeds payable to Lessee as a result of any Taking may be governed by and subject to the terms and conditions of any Leasehold Mortgage.

15. LEASE TERMINATION AND SURRENDER OF LAND.

a. Surrender of Land. Upon the expiration or earlier termination of this Lease, Lessee shall, at its sole cost and expense, promptly (i) return and restore the Premises and any portion of the Town Property located outside of the Premises which are damaged or disturbed by Lessee to Lessor in substantially the same condition the Premises and Town Property were in as of the Commencement Date, reasonable wear and tear excluded; and (ii) remove all Lessee Improvements and equipment kept, constructed or installed by Lessee on the Premises. Notwithstanding anything to the contrary contained herein, in the event any required restoration work is not promptly performed by Lessee, and such failure is not cured within thirty (30) days after Lessee's receipt of written notice from Lessor, Lessor shall have the right, but not the obligation, to perform such restoration work and to collect the costs and expenses of such restoration work from Lessee.

16. PROVISIONS RELATED TO WORK PERFORMED BY LESSEE.

a. General. Notwithstanding anything to the contrary set forth in this Agreement, the installation of any improvements on the Premises, including the installation of the pre-approved fabricated building and privacy fence, shall, in each and every instance, (A) be performed in a good and workmanlike manner; (B) be performed in a lien-free manner; (C) be performed in accordance with all Applicable Laws; (D) not violate any terms or provisions of this Agreement or of any other agreement or restriction affecting the Town Property or Premises; (E) be performed by qualified, licensed and insured contractors; (F) be performed only after at

least seven (7) days' prior written notice to Lessor, except in the event of an emergency (and Lessor shall have the right to have a representative of Lessor present during the performance of any such work); and (G) be performed in such a manner so as not to interfere with, interrupt, disturb, obstruct, delay, or impose any additional expense, burden, or obligation upon Lessor or the ownership, use, enjoyment, operation, or maintenance of the Town Property. Lessor already has notice that the pre-fabricated building will be installed on the Premises on or after April 18, 2023 and the privacy fence requested by Lessor will be installed on the Premises in or about June 2023.

b. Unsafe Conditions. Under no circumstance shall Lessee create or suffer any unsafe conditions on the Town Property, the Premises, or any portion thereof. If any unsafe condition is created, it shall be promptly remedied by Lessee, at Lessee's sole cost and expense, and, notwithstanding anything contained herein to the contrary, in the event Lessee fails to remedy such unsafe condition within thirty (30) days after Lessee's receipt of written notice from Lessor (except in the event of an emergency, in which no prior notice shall be required), or if such unsafe condition cannot be remedied within thirty (30) days and Lessee fails to commence the remedial work within such time period and diligently prosecute the same thereafter, Lessor shall have the right, but not the obligation, to remedy such condition and collect the costs and expenses of its work from Lessee.

c. Restoration. After the completion of all work of any kind or nature whatsoever performed under or pursuant to this Agreement, Lessee shall, at its sole cost and expense, promptly restore the Premises, any portion of the Town Property located outside of the Premises, and any site which are damaged or disturbed by such work to as near possible the condition and contour that existed immediately prior to such work. Notwithstanding anything to the contrary contained herein, in the event any required restoration work is not promptly performed by Lessee, and such failure is not cured within thirty (30) days after Lessee's receipt of written notice from Lessor (except in the event of an emergency, in which no prior notice shall be required), Lessor shall have the right, but not the obligation, to perform such restoration work and to collect the costs and expenses of such restoration work from Lessee.

d. Repair and Maintenance. Lessee, at its sole cost and expense, shall keep and maintain the Premises and all Lessee Improvements in good, operational order and repair and a safe, clean, attractive, and presentable condition, clear of trash, debris, and other obstructions. Prior to commencing any major maintenance or repair work to the exterior of the structure or the Premises (which shall be defined for purposes of this Section as any maintenance or repair work exceeding \$1,000.00), Lessee shall provide no less than seven (7) days' prior written notice of such repair or maintenance work, along with a reasonably detailed description of the repair or maintenance work and the anticipated timeframe for completion of such work, to Lessor. Notwithstanding anything to the contrary contained herein, and for the avoidance of all doubt, the Parties agree that Lessee is solely responsible for the maintenance and repair of the entirety of the Premises and Lessee Improvements and Lessor is under no duty to maintain or repair the Premises, the Lessee Improvements, or any portion thereof.

17. LESSEE'S DEFAULT.

a. Lessee shall be in default hereunder (an “Event of Lessee Default”) in the event Lessee fails to observe or perform any material provision of this Lease within sixty (60) days after Lessee’s receipt of written notice from Lessor to Lessee specifying such default and demanding that the same be cured; provided that if such default cannot with due diligence be wholly cured within such sixty (60) day period, Lessee shall have such longer period as is reasonably necessary to cure the default, so long as Lessee proceeds promptly to commence the cure of same within such sixty (60) day period and diligently prosecutes the cure to completion.

b. Upon the occurrence of an Event of Lessee Default, at Lessor’s option, in addition to any and all other remedies which it may have at law and/or in equity except as provided below, and without its actions being deemed an election of remedies or a cure of Lessee’s default, Lessor may (i) obtain specific performance, injunction, appointment of a receiver, or other equitable remedy, (ii) recover actual damages suffered by Lessor as a direct result of Lessee’s default, and (iii) subject to the provisions of Section 19 below, terminate this Lease and Lessee’s right of possession to the Premises.

c. Notwithstanding the foregoing or anything herein to the contrary, if Lessee reasonably believes that an Event of Lessee Default has not occurred, Lessee may, within the applicable cure period, request that the matter be submitted for mediation as provided in Section 19 below, and no Event of Lessee Default shall be deemed to have occurred until the Parties have been through the mediation procedure provided in Section 19 below.

18. LESSOR’S DEFAULT

a. Lessor shall be in default hereunder (an “Event of Lessor Default”) in the event Lessor fails to perform any nonmonetary obligations of Lessor hereunder within sixty (60) days after receipt of written notice from Lessee specifying such default and demanding that the same be cured; provided that if such default cannot with due diligence be wholly cured within such sixty (60) day period, Lessor shall have such longer period as is reasonably necessary to cure the default, so long as Lessor proceeds promptly to commence the cure of same within such sixty (60) day period and diligently prosecutes the cure to completion.

b. Upon the occurrence of an Event of Lessor Default, at Lessee’s option, in addition to any and all other remedies which it may have at law and/or in equity except as provided below, and without its actions being deemed an election of remedies or a cure of Lessee’s default, Lessor may pay or perform such obligations and offset Lessee’s actual cost of performance, including any and all transaction costs and attorneys’ fees actually incurred, against the Rent and any and all other amounts and charges due Lessor hereunder.

c. Notwithstanding the foregoing or anything to the contrary, if Lessor reasonably believes that an Event of Lessor Default has not occurred, Lessor may, within the applicable cure period, request that the matter be submitted for mediation as provided in Section 19 below, and no Event of Lessor Default shall be deemed to have occurred until the Parties have been through the mediation procedure provided in Section 19 below.

19. MEDIATION. Notwithstanding anything to the contrary in this Lease, following any dispute between the Parties under this Lease, the Parties agree to participate in mediation proceedings which shall be scheduled, but not necessarily occur, within thirty (30) days of such a request by either Party. The cost of the mediation will be split equally between the Parties. Such mediation shall be in accordance with the American Arbitration Association's mediation rules then in effect unless otherwise agreed to by the Parties. The Parties shall jointly pick the mediator.

20. LIENS. Should any lien of any nature, including but not limited to mechanic's and materialmen's liens, be filed against the Premises, the party on account of whose actions such lien has been filed shall, within thirty (30) days after receipt of written notice of such lien, cause such lien to be removed, or otherwise protected against execution during good faith contest, by substitution of collateral, posting a bond therefor, escrowing of adequate funds to cover the claim and related transaction costs or such other method as may be permissible under applicable title insurance regulations and reasonably acceptable to the other party hereto.

21. SURRENDER; HOLDING OVER. Upon expiration of this Lease, or its earlier termination, Lessee will surrender possession of the premises, except for the Lessee Improvements removed from the Premises in accordance with this Agreement, to Lessor in a condition as described in Section 15(b) hereof. In the event the Lessee holds over beyond the Term, such holding over shall be from month to month only, subject to the conditions of this Agreement, shall not be a renewal or extension thereof, and shall be at the monthly compensation provided herein.

22. COVENANT OF QUIET ENJOYMENT. Lessor covenants, warrants and represents that Lessee, upon paying the rent herein reserved and performing the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the premises during the Term. No third party claiming a right through Lessor has the right to prohibit Lessee's tenancy hereunder, to prohibit Lessee or its employees, customers and/or invitees from using the Premises in accordance with the terms of this Lease or to consent to or approve, excepting governmental agencies, any feature of the Premises.

23. ENVIRONMENTAL REPRESENTATIONS; WARRANTIES AND INDEMNITY.

a. Lessee shall not cause or permit any hazardous wastes, hazardous substances, toxic substances or related materials (collectively, "Hazardous Materials") to be used, generated, stored, or disposed of on, under or about, or transported to or from the Premises (collectively "Hazardous Materials Activities") except in compliance with all Applicable Laws governing such Hazardous Materials or hazardous Materials Activities, which compliance shall be at Lessee's sole expense.

b. Lessor shall not be liable to Lessee or to any other party for any Hazardous Materials Activities conducted or permitted on, under or about the Premises by Lessee or by Lessee's employees, agents, contractors, licensees, or invitees. Lessee shall indemnify and hold Lessor harmless from any claims, damages, fines, penalties, losses,

judgments, costs and liabilities arising out of or related to any Hazardous Materials Activities conducted or permitted on, or under or about the Premises by Lessee's employees, agents, contractors, licensees, or invitees, regardless of whether Lessor shall have consented to, approved of, participated in or had notice of such Hazardous Materials Activities. The provisions of this paragraph shall survive the expiration or termination of this Lease.

c. At the expiration of this Lease, Lessee shall remove from the Premises, at Lessee's sole expense, all Hazardous Materials located, stored or disposed of on, under or about the Premises which were first brought to or used, stored or disposed of on the Premises by Lessee or by Lessee's employees, agents, contractors, licensees, or invitees. Lessee shall close, remove or otherwise render safe any buildings, tanks, containers, or other facilities related to the Hazardous Materials Activities conducted or permitted on the Premises in the manner required by all Applicable Laws. Lessee shall be solely responsible for the transportation, handling, use or reuse and disposal of such Hazardous Materials after their removal from the Premises.

d. For purposes of this section, Hazardous Materials shall include all solid, liquid or gaseous material defined or regulated as wastes under any Applicable Law applicable to the Premises and shall further include all other substances defined or regulated as pollutants or as hazardous, toxic, infectious, or radioactive substances under any Applicable Law applicable to the Premises, all as amended from time to time. Without limitation to the foregoing, the term Hazardous Materials shall include used or waste oils regulated under any federal, state or local law, regulation or ordinance.

24. INDEMNIFICATION.

a. During the Term of this Lease, Lessee will protect, indemnify and save harmless Lessor from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including without limitation, attorneys' fees and expenses by reason of (i) any accident, injury to or death of persons or loss of or damage in property occurring on the Premises or any part thereof due to the negligence of Lessee, its employees or agents, (ii) any use, nonuse or condition of the Premises or any part thereof due to actions or conditions attributable to Lessee, its employees or agents or (iii) any failure on the part of the Lessee to perform or comply with any of the terms of this Lease.

b. In case any action, suit or proceeding is brought against Lessor by reason of any such occurrences, Lessee upon Lessor's request, will at Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel.

c. Such obligation of Lessee under this section which shall have occurred at the time of any termination of this Lease shall survive any such termination.

25. NOTICES. Notices under this Lease shall be in writing and shall be deemed properly served and received: (i) two (2) business days after being deposited in the United States mail, as certified or registered mail, return receipt requested, bearing adequate postage, (ii) one (1) business day after being deposited with a reputable overnight delivery carrier (e.g. Federal Express, Airborne, UPS, Express Mail) for guaranteed next day delivery with a request that the

declaration or adjudication shall not affect the other sections, paragraphs, subparagraphs, sentences, clauses or phrases of this Lease, all of which shall remain in full force and effect.

e. Recording of Memorandum of Lease. A Memorandum of Lease may be recorded in the appropriate office for filing by Lessee at Lessee's expense.

f. Headings; Gender. The section headings are for convenience and are not a part of this Lease. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so requires or indicates.

g. No Waiver. The failure of either party to insist in any one or more instances upon a strict performance of any covenant of this Lease or to exercise any option or right herein contained shall not be construed as a waiver or relinquishment for the future enforcement of such covenant, right or option, but the same shall remain in full force and effect, unless the contrary is expressed in writing by such party.

h. Force Majeure. Except as otherwise specifically contemplated in this Lease, in the event that Lessor or Lessee shall be delayed or hindered in, or prevented from, the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, delay by the other party, failure of power or unavailability of utilities, riots, insurrection, war, terrorism or other reason of a like nature not the fault of such party or not within its control (each, a "Force Majeure Event"), then performance of such act shall be excused for the period of delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, the party claiming a delay by reason of a Force Majeure Event shall notify the other party within five (5) business days following the onset of the Force Majeure Event.

i. Choice of Law. This Lease shall be construed in accordance with and governed by the laws of the State of North Carolina. Venue for any action brought pursuant to this Lease shall be placed in Burke County, North Carolina.

j. Binding Effect. This Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their respective heirs, executors, legal representatives, successors and assigns.

k. Entire Agreement; Amendment. This Lease and the attached exhibits constitute the entire agreement between Lessor and Lessee with respect to the Premises, and all negotiations, considerations, representations and understandings between Lessor and Lessee prior to the execution of this Lease are incorporated herein. This Lease shall not be amended, modified, waived, discharged or terminated except by an instrument in writing signed by the parties hereto. The Parties acknowledge and agree that on or before the Commencement Date, the Lessor will issue a written public notice via publication as required by N.C.G.S. §160A-272(a1), so that council may take up Lessee's request to amend the Term of the Lease from 1 year to 25 years at the next regular council meeting occurring at least thirty (30) days after the publication is issued.

l. Brokers. Lessee and Lessor warrant each to the other that it has had no dealings with any broker or agent in connection with this lease, and each party covenants to pay, hold harmless and indemnify the other from and against any and all costs, expenses or liability for any compensation, commissions and charges claimed by any broker or agent with respect to this Lease or the negotiation thereof.

m. Counterparts. This Lease may be executed in more than one counterpart, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**THIS SPACE WAS INTENTIONALLY LEFT BLANK. SIGNATURES AND
ACKNOWLEDGMENTS APPEARS ON THE FOLLOWING PAGES.**

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed effective as of the day and year written below.

THE TOWN OF VALDESE,
a North Carolina Municipal Corporation

CHARLES WATTS, Mayor (Seal)

ATTEST:

JESSICA LAIL, Town Clerk

This document has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

BO WEICHEL, Chief Financial Officer

Approved as to form on behalf of the Town this _____ day of _____, 2023.

TIMOTHY D. SWANSON, Attorney

STATE OF NORTH CAROLINA
COUNTY OF BURKE

I, _____ a Notary Public of said county and state, certify that Jessica Lail personally came before me this day and acknowledged that she is Town Clerk of the Town of Valdese, a North Carolina municipal corporation, and that by authority duly given and as the act of the Town Council of the Town of Valdese, the foregoing instrument was signed in its name and by its Mayor, CHARLES WATTS, sealed with its corporate seal and attested by her as its Town Clerk.

Witness my hand and notarial stamp or seal, this _____ day of _____, 2023.

Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: _____.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed effective as of the day and year written below.

FOOTHILLS BROADBAND, LLC

By: _____
Zachary Chiz
Chief Operating Officer

By _____
Jodi Chiz
Chief Executive Officer

Date: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that Zachary Chiz and Jodi Chiz personally appeared before me this day and acknowledged that they are the Chief Operating Officer and the Chief Executive Officer of Foothills Broadband, LLC, a North Carolina limited liability company, and being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein on behalf of said limited liability company.

Witness my hand and official stamp or seal this ___ day of _____, 2023.

[NOTARIAL SEAL]

Notary Public
My commission expires: _____

EXHIBIT A

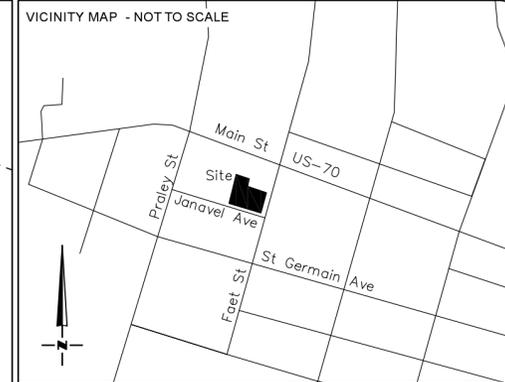
Legal Description

BEING that certain tract or parcel of land lying and being in Lovelady Township, Burke County, North Carolina more particularly described as follows:

BEGINNING at an iron pipe located in the southwest corner of the property of the Town of Valdese as shown in Deed Book 592, Page 904, Burke County Registry, and running thence South 73-19-09 East 63.64 feet; thence North 18-10-30 East 69.80 feet; thence North 70-59-10 West 68.82 feet; thence South 14-04-17 West 72.65 feet to the point of BEGINNING as surveyed by Roger D. Morgan Surveying, March 14, 2023, attached hereto for illustrative purposes only as Exhibit B, and being a portion of that property conveyed by Bertha S. Martinat to The Town of Valdese by Deed recorded in Deed Book 592, Page 904, Burke County Registry. Further being a portion of the land assigned Burke County PIN: 2733950361.

Notes:

1. Area determined by coordinate method.
2. North Carolina Geodetic Survey Monumentation not recovered within 2000'.
3. No improvements, above ground utilities or underground utilities, and infrastructure located other than shown hereon.
4. Property is subject to deeds, restrictions, right-of-ways of record and/or other legal prescription.
5. No title report was provided to the surveyor at the time of survey.
6. Deed references; DB: 592 PG: 904, in the Burke County Registry.
7. Broken lines indicate lines not surveyed.
8. All distance shown hereon are horizontal ground distances unless otherwise noted.



STATE OF NORTH CAROLINA
COUNTY OF BURKE

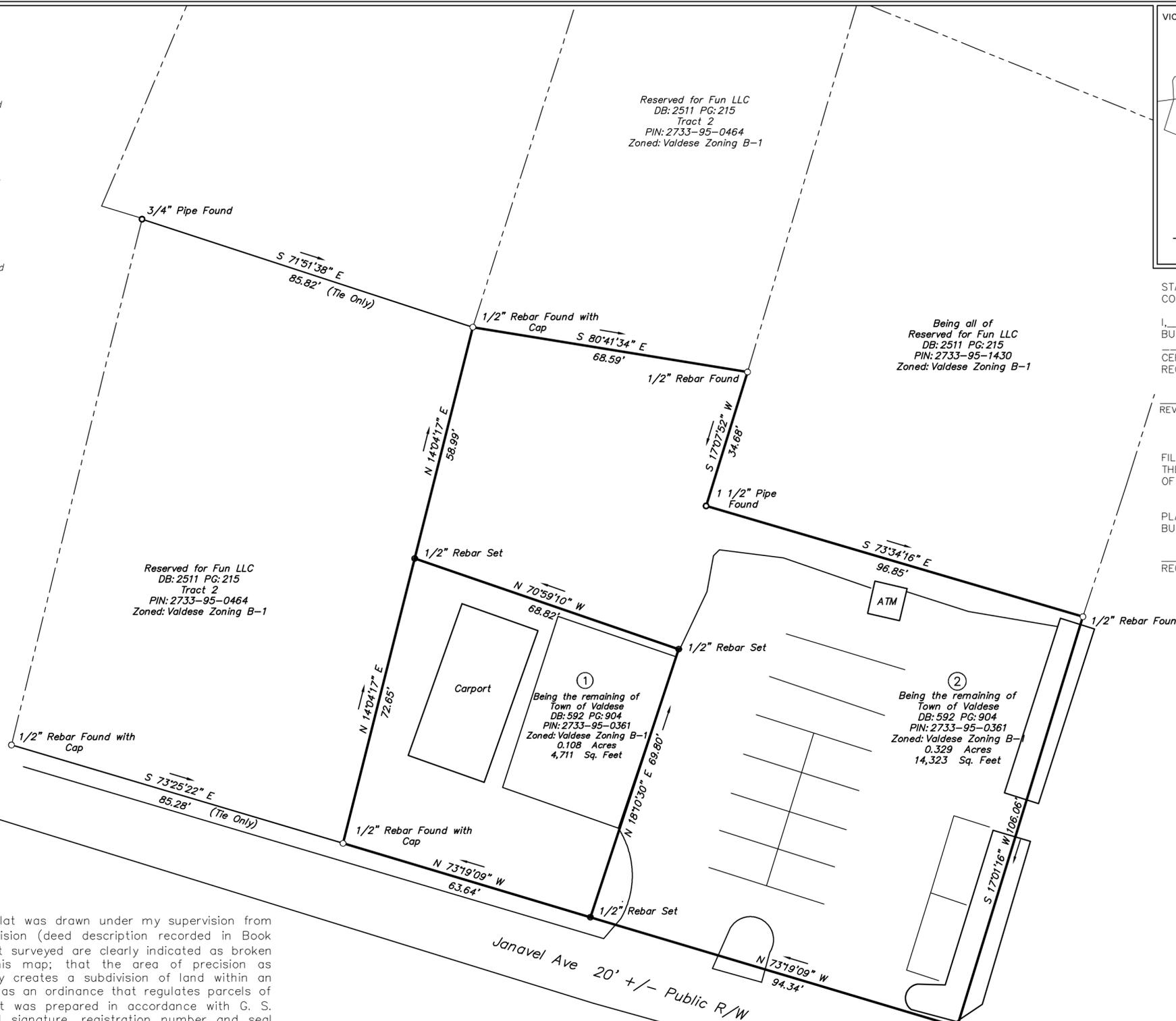
I, _____, A REVIEW OFFICER OF BURKE COUNTY, CERTIFY ON THIS _____ DAY OF _____ 2023 THAT THE MAP TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER _____

FILED FOR REGISTRATION AT _____ O'CLOCK ____M. ON THE _____ DAY OF _____ 2023. IN THE OFFICE OF THE REGISTER OF DEEDS.

PLAT BOOK _____ PAGE _____
BURKE COUNTY NORTH CAROLINA

REGISTER OF DEEDS _____



I, ROGER D. MORGAN, certify that this plat was drawn under my supervision from an actual field survey under my supervision (deed description recorded in Book 592, page 904); that the boundaries not surveyed are clearly indicated as broken lines from information as shown on this map; that the area of precision as calculated is 1:10,000+; that this survey creates a subdivision of land within an area of the county or municipality that has an ordinance that regulates parcels of land: NCGS 47-30(f)(11)a; that this plat was prepared in accordance with G. S. 47-30 as amended. Witness my original signature, registration number and seal this 14th day of March, A.D., 2023.

Preliminary
NOT FOR USE OF
RECORDATION OR SALES
FOR REVIEW ONLY

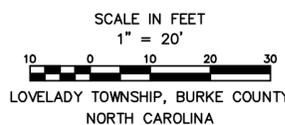
ROGER D. MORGAN
PLS L-3847

CERTIFICATE OF SURVEY AND ACCURACY

I, Roger D. Morgan, certify that this map was drawn by me from an actual survey made by me of a deed description record in Book 592 Page 904; that the ratio of precision exceeds 1:10,000; that the grid tie was made using the RTN network of NC and datum used was the NAD 83 (2011) 2012A Geoid and that the positional accuracy for the GPS survey is greater than 0.07'; and that this map meets the requirements of The Standards of Practice for Land Surveying in North Carolina (21 NCAC 56. 1600).

Witness my hand and seal this 14th day of March, A.D., 2023.

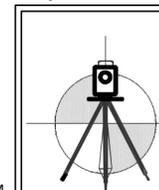
Professional Land Surveyor _____
L-3847



LEGEND

- IRON PIPE FOUND
- IRON ROD FOUND
- PK NAIL FOUND
- IRON ROD SET
- PROPERTY LINE
- - - ADJOINER PROPERTY LINE

Project # 2348



Survey for: Foothills Broadband LLC
Owner: Town of Valdese
Subdivision Survey
DB: 592 PG: 904
PIN: 2733-95-0361
204 Janavel Avenue SW Valdese 28690
LOVELADY TOWNSHIP
BURKE COUNTY, NORTH CAROLINA



- Pre-fab building on concrete slab.
- 1-year lease term
- Month-to-month thereafter.
- \$500 per month.

PB 59-81

JANAVEL AVE SW

FAET ST SW

MAIN ST W

204

141

113

145

149

127

200

80.54

62.05

90.51

(100) 23 of 23

86

109

70

(35)

(96)

(25)

50

60

73

43

(30)

(134)

(85)

133.38

(60)

133.38

20

(115)

270

105

(45)