

LAND DISPOSITION AGREEMENT

THIS AGREEMENT is made as of the 28th day of December, 2010, by and between the **CITY OF ROCHESTER**, a municipal corporation with offices at City Hall, 30 Church Street, Rochester, New York 14614 (hereinafter "the City" or "Seller"), and **PAETEC REALTY, LLC**, for itself and on behalf of a subsidiary entity to be formed, both with an address of c/o PAETEC, One PAETEC Plaza, 600 Willow Brook Office Park, Fairport, New York 14450, (hereinafter "the Purchaser", or "Owner") and **PAETEC Communications, Inc.** (hereinafter the "Tenant").

RECITALS:

WHEREAS, the City is the owner of certain real property in the City of Rochester, New York, as shown on **Exhibit A**, Site Plan, which is labeled Midtown Redevelopment Project Base Plan prepared by LaBella Associates, P.C. dated December 2, 2010 ("Site Plan") attached hereto and known as the Midtown Site; and

WHEREAS, 245 E. Main Street, Rochester, New York, Parcel 1 as shown on Exhibit A (the "Premises") is a portion of the City owned Midtown Site; and

WHEREAS, the City is the owner of an underground parking garage (the "UPG") located on the Midtown Site; and

WHEREAS, the City is the Owner of a parking garage located at Mortimer Street ("Mortimer Street Garage"); and

WHEREAS, the City is the owner of an underground tunnel (the "Tunnel") located partially on the Midtown Site and which connects to the Premises; and

WHEREAS, the Purchaser wishes to purchase the Premises for construction of an approximately 222,400 sq. ft., three and one-half story building to house the corporate headquarters (the "Project") of its Tenant and Tenant executes this Agreement for the limited purpose to confirm that fact; and

WHEREAS, the Purchaser further wishes to utilize the UPG, Mortimer Street Garage, and the Tunnel to service the Premises once it is developed;

WHEREAS, the City believes that the Purchaser's proposed development of the Premises pursuant to this Agreement will enhance the economic well-being of the City of Rochester and the health, safety, and welfare of its residents.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions contained herein, the City and the Purchaser agree as follows:

SECTION 1. PREMISES

The City hereby agrees to sell and the Purchaser agrees to purchase, the following parcel of land located in the City of Rochester (the "Premises"):

Address

245 E. Main Street

SBL Number

121. 24-0001-28.1

The Premises is shown on the drawing attached hereto as **Exhibit A**.

Seller shall convey fee simple title to the Premises and all other improvements thereon. The title to the Premises and all improvements thereon or therein shall be good and marketable, free and clear of liens and encumbrances except for the following:

- a. applicable building and zoning laws, ordinances and regulations existing at the date of recording the Deed;
- b. restrictions, easements of record; and
- c. permitted title exceptions to which Purchaser agrees and approves ("Permitted Exceptions").

The City shall retain title or obtain title by dedication to all streets and other public rights-of-way abutting the Premises including the streets to be constructed and all streets as shown on Exhibit A Site Plan.

SECTION 2. PURCHASE PRICE

The parties agree and acknowledge that the purchase price of the Premises is \$1.00 (the "Purchase Price").

SECTION 3. CONVEYANCE OF PREMISES/GRANTING OF EASEMENTS

Seller shall convey fee simple title in and to the Premises, together with all other improvements thereon or therein, and all privileges, rights, easements, hereditaments and appurtenances thereto belonging by a warranty deed, including the trust fund provision pursuant to Section 13 of the Lien Law (the "**Deed**"). The transaction does not include any personal property. Further the Seller shall deliver the Premises in Shovel Ready Condition as set forth on the attached Exhibit B, Shovel Ready Description.

Seller also grants via this Agreement and will grant to Purchaser simultaneously with delivery of the Deed the following easements: (a) Purchaser rights to access and use Lot 5, or other suitable area within the Midtown Site as agreed to by Purchaser, of the Phase II Development Parcels during construction for the following purposes, including but not limited to, construction delivery, staging areas, parking of construction and other vehicles, storage of materials on site, protection of the Premises during construction, signage, and for the provision of temporary utilities such as water and electric for Purchaser's use during construction; (b) all other easements required for utilities access, sewer, water and others until such time as dedication and/or permanent easements as necessary; (c) Purchaser's unrestricted, exclusive, pedestrian access to and from the Premises to the UPG over the Phase II Development Parcels pursuant to designated underground walk way as shown on Site Plan; and (d) access to the Tunnel pursuant to Tunnel Agreement more specifically described in Section 6.

Shovel Ready Condition shall be as set forth on the Shovel Ready Description ("Shovel Ready Description") attached hereto as **Exhibit B**, terms of which shall not be revised or amended without the consent of the Purchaser.

SECTION 4. PARCEL NO. 2 OPTION/RIGHT OF FIRST REFUSAL

The Seller hereby grants to the Purchaser an option and a right of first refusal, the terms of which are set forth below, for the following parcel of land located in the City of Rochester (the "Parcel No. 2"):

Parcel No. 2 is shown on the Site Plan as Parcel 2 and is more particularly described on Exhibit A-1, attached hereto and made a part hereof.

A. Purchaser or a related entity, parent or affiliate of Purchaser shall have an exclusive option to purchase Parcel No. 2 ("Option") for the period commencing on the

date of full execution of this Agreement and terminating on the date which is the third anniversary of the full execution of this Agreement ("Option Term"):

- (i) Purchase price shall equal One Dollar and 00/100 (\$1.00);
- (ii) Purchaser agrees to construct a building on Parcel No. 2 having a minimum floor area ratio of 2.0 and otherwise in compliance with the Declaration defined below ("Parcel No. 2 Project"); and
- (iii) The Parcel No. 2 Project shall be eligible for all applicable benefits available at the time of exercising the Option.
- (iv) Purchaser shall exercise the Option by giving written notice to Seller at any time during the Option Term.
- (v) Seller shall convey to Purchaser fee simple title to Parcel No. 2 pursuant to the terms of Section 3 and Section 9 of this Agreement. Closing date shall be contingent on Purchaser obtaining all necessary approvals and satisfactory financing.
- (vi) Seller shall make the same representations and warranties set forth in Section 11B, 1-21 as to Parcel No. 2.
- (vii) Seller shall not transfer any interest in Parcel No. 2, except pursuant to this Section 3A during the Option Term
- (viii) A memorandum of this Option agreement shall be recorded in the Monroe County Clerk's Office including the terms of the Option.

B. Purchaser or a related entity, parent or affiliated entity shall have a Right of First Refusal ("ROFR") commencing on the date of the third anniversary of the full execution of this Agreement and terminating on the date of the seventh anniversary of full execution of this Agreement ("ROFR Term"). If the City receives a purchase and sale agreement for Parcel No. 2 at any time during the ROFR Term which it desires to accept, it shall notify the Purchaser in writing ("ROFR Notice") of the agreement and disclose the purchase price, the anticipated real estate tax benefits to be generated, the total investment required by the proposed project, and the completion date for the proposed project. The Purchaser shall have thirty (30) days from the date of its receipt of ROFR Notice to exercise its right of first refusal by providing written notice of such election to Seller. The Purchaser's written notice exercising its rights to purchase Parcel No.2 shall contain at Purchaser's sole option either that it will:

- (i) Purchase Parcel No. 2 within ninety (90) days from the date of the written notice, agree to at least match the following:
 - 1.) the price being offered for Parcel No. 2;
 - 2.) real estate tax obligations or benefits;
 - 3.) the total investment required by the proposed project; and

- 4.) the completion date for the proposed project consistent with Midtown Urban Renewal Plan, applicable Zoning regulations, and the Declaration defined below; or
- (ii) Purchase Parcel No. 2 within ninety (90) days from the date of the written notice and agree to:
 - 1.) pay for Parcel No. 2 the then appraised value (as determined by a qualified licensed appraiser to be completed within thirty (30) days from the date of the written notice;
 - 2.) commence to construct a project consistent with Midtown Urban Renewal Plan, applicable Zoning regulations, and the Declaration within one (1) year from the date of the written notice; and
 - 3.) stipulate it will pay real estate taxes in accordance with the full assessment while it owns Parcel No. 2.
- (iii) Seller shall convey to Purchaser fee simple title to Parcel No. 2 pursuant to the terms of Section 4 and Section 9 of this Agreement. Closing date shall be contingent on Purchaser obtaining all necessary approvals and satisfactory financing.
- (iv) Seller shall make the same representations and warranties set forth in Section 11B, 1-21 as to Parcel No. 2.
- (v) a memorandum of the ROFR shall be recorded in the Monroe County Clerk's Office.

C. Nothing in this section shall be deemed to prohibit the Purchaser from presenting any purchase offer to the City for the purchase of Parcel No. 2 or the Seller accepting any such purchase and sale agreement during the ROFR Term.

SECTION 5: PARKING RIGHTS

The Seller and Purchaser shall enter into a parking agreement within ninety (90) days of execution of this Agreement with the following terms ("Parking Agreement"):

- a. a term of twenty (20) years;
- b. Purchaser shall pay for each parking pass pursuant to the Parking Pass Payment Schedule attached hereto as Exhibit C;
- c. Purchaser shall be issued a number of parking passes equal to the number of employees working at the Project up to a maximum of 1,200 parking passes. Purchaser is guaranteed 1,000 parking passes for the use of the UPG and any additional parking spaces shall be for spaces located at the Mortimer Street Garage;

- 1.) The parking passes shall allow the Purchaser a total number of hours of parking each week equal to the number of parking passes assigned to the Purchaser that week multiplied by fifty (50) hours.
- d. Purchaser's unrestricted, exclusive, pedestrian access to and from the Premises to the UPG over the Phase II Development Parcels pursuant to designated underground walk way as set forth on the Site Plan;
- e. Purchaser shall have the right to assign its parking rights to the Tenant.

The Parking Agreement shall be contingent upon Seller's receipt of City Bond Counsel's favorable opinion which shall be obtained within thirty (30) days of execution of this Agreement.

The Parking Agreement shall also set forth the Sellers' obligations to maintain, and/or repair the UPG and Mortimer Street Garage and all structural components and provide for handicapped, and up to eight (8) visitor parking spaces.

The Parking Agreement is to be recorded in the Monroe County Clerk's Office, at the time of Closing.

At the end of the twenty (20) year term, the Purchaser's ability to continue to retain such passes for its exclusive use, even if at full market value, shall be contingent upon the legal and bonding requirements at that time.

SECTION 6: UNDERGROUND TUNNEL ("TUNNEL")

Purchaser and its Tenant shall be granted rights in common with others for access and use of the Tunnel. The current Tunnel location and its proposed relocation is described and shown on **Exhibit D** attached hereto labeled as Base Plan dated December 22, 2010, prepared by LaBella Associates, P.C.

The Seller shall retain ownership of the Tunnel. The Seller, Purchaser and other users of the Tunnel shall enter into a tunnel agreement in form and with terms satisfactory to Purchaser whereby the Purchaser shall have rights to use, in common with others, the Tunnel ("Tunnel Agreement"). The Tunnel Agreement shall provide:

- a. Purchaser, in common with other tunnel users, with sufficient adequate and satisfactory access for its intended use including rights to locate utilities, mutual agreement among users not to interfere with the use of the tunnel by

other users; and Obligations of Seller to maintain and/or repair the Tunnels and all structural components, utility, unrestricted access rights as set forth in the Tunnel Agreement.

- b. Purchaser/Tenant the exclusive right to use the existing loading dock servicing the former Seneca Building.
- c. The Tunnel Agreement is to be recorded in the Monroe County Clerk's Office, on or after the Closing upon full execution by all users of the tunnel.

Until the Tunnel Agreement is executed by all applicable parties, the City shall grant the Purchaser and Tenant a license to use the Tunnel pursuant to a License Agreement satisfactory to Purchaser including but not limited to the terms included in this Section 6.

SECTION 7: PHASE II DEVELOPMENT PARCELS

- A. The Seller is the owner of the remainder of the property at the Midtown Site ("Phase II Development Parcels") which is shown on **Exhibit A** attached hereto. The parties have determined it will be mutually beneficial for the Midtown Site, including the Phase II Development Parcel, to be subject to specific covenants and restrictions to be set forth in a recorded document known as a Declaration of Covenants and Restrictions (the "Declaration") which will encumber the Midtown Site, including but not limited to the Phase II Development Parcels and apply to the future development activities thereon. Purchaser's participation rights as to the development of the Phase II Developmental Parcels including shared maintenance pursuant to the terms of the Main Street Improvement Assessment District and site development controls, restrictions, rules and regulations for the development of the Phase II Development Parcels and use restrictions are set forth in the Declaration. The Declaration is attached hereto as **Exhibit E**. The Declaration is to be recorded in the Monroe County Clerk's Office on or before the Closing. The Seller shall not amend the Declaration prior to Closing Date, as defined in Section 15, without Purchaser's written consent.
- B. Seller shall make no revision to the Site Plan after the date of this Agreement except in compliance with the terms of the Declaration (zoning and uses are governed by the Declaration). Purchaser shall have representation at all Stakeholder and Advisory Committee meetings, at its option.
- C. Purchaser via ESCO, as defined below, or another affiliate shall be granted the non-exclusive right to market its services including but not limited to renewable energy

projects, such as solar, wind and geothermal, and any smart building technologies to the developer of the Phase II Development Parcels including the right to negotiate for Roof Rights for any communications, satellite or renewable energy projects in the Phase II Development Parcels and will have the right to market its telecommunication services to the Phase II Development Parcels.

SECTION 8: ACCESS TO PREMISES

From and after the date hereof, Seller shall permit Purchaser and its representatives, agents, employees, lenders, contractors, appraisers, architects and engineers access to and entry upon the Premises to examine, inspect, measure and test the Premises for any reasonable purpose in addition to the rights granted within and pursuant to the terms of the License Agreement dated March 2010, as amended ("License Agreement").

SECTION 9: TITLE REVIEW

A. Seller hereby agrees to furnish:

- 1.) a copy of the proposed deed and a copy of the proposed easements at least thirty (30) days prior to Closing; and
- 2.) within thirty (30) days of the date of executing this Agreement any abstracts of title, surveys, copies of any existing title reports or policies, court orders related to condemnation, and other related documents currently in its possession or in possession of its consultants including LaBella Associates and others.

B. Purchaser hereby agrees:

- 1.) to obtain, at its own expense, the title documents it deems necessary, including fully guaranteed tax, title, and United States District Court searches and a current certified tape location or survey map;
- 2.) pay for the continuation of all said searches to and including the time of closing; and

C. The Purchaser has ninety (90) days commencing upon the date of this Agreement, to conduct its title review. In the event that the Purchaser shall raise written objections to the Seller's title which, if valid, would render the title unmarketable, uninsurable, or if there are liens or encumbrances which would prevent

development of the Project, the Purchaser shall have the right to cancel this Agreement by giving written notice of such cancellation to the Seller, whereupon all liability of the Purchaser by reason of this Agreement shall cease. However, if Seller is able to cure the title objection on or before the Closing Date, or if the title objection is insurable and Purchaser is willing to accept insurable title, then this Agreement shall continue in force until the Closing Date, subject to the Seller curing the title objection and/or providing insurable title at Seller's expense. If Seller fails to cure the title objection on or before the Closing Date, or, if Purchaser is unwilling to accept insurable title, Purchaser may cancel this Agreement by giving written notice of cancellation to Seller.

SECTION 10: CONDITIONS PRECEDENT

Purchaser's obligation to acquire title to the Premises and to perform the terms of this Agreement, shall be contingent upon the satisfaction of the following conditions precedent for the sole benefit of Purchaser (any one or more of which may be waived in writing by Purchaser):

A. Purchaser shall as to the following items 1-10:

- 1.) within twelve (12) months of execution of this Agreement, conduct any engineering and other inspections of the Premises and be satisfied with the condition of the Premises to support its intended structure including confirmation of the structural integrity of the Tunnel to support Purchaser's Building and for its intended uses including to ensure availability of all necessary utilities required to service the Premises for its intended uses;
- 2.) within twelve (12) months of execution of this Agreement, obtain all necessary governmental, municipal and other approvals and/or permits, including re-zoning, resubdivision, site plan, SEQR, NEPA, necessary variances, special permits, curb cut approval required for Purchaser's uses at the Premises including approvals to use the rooftop for its intended improvements and business purpose and for communication purposes including antenna and satellite dishes;
- 3.) within one hundred eighty (180) days of execution of this Agreement, have come to agreement on terms with the Seller for up to two (2) separate Interest Rate Subsidy Agreements on terms and conditions satisfactory to Purchaser and Purchaser's lender and further subject to HUD approval of the waiver set forth in the application for the Section 108 Loan;

- 4.) within one hundred twenty (120) days of execution of this Agreement obtain all necessary benefit approvals including:
 - a. tax opinions regarding the QEZE tax benefit to Purchaser's satisfaction,
 - b. COMIDA, sales tax, mortgage tax, real estate taxes PILOT Agreement, and
 - c. New York State Empire Zone benefits.
- 5.) In a time frame which will comply with the NMTC transaction requirements, enter into a Fixed Price Construction Agreement, in compliance with the federal Davis Bacon Act, for the construction of the improvements on the Premises on terms satisfactory to Purchaser and with a contractor of its choice and;
- 6.) within twelve (12) months of execution of this Agreement, Purchaser shall have obtained all final financing commitments and approvals to construct the Project on terms and amounts satisfactory to Purchaser including;
 - a. Construction Loan
 - b. Permanent Loan
 - c. Section 108 Loan in the amount of \$16,500,000 (or if there is a reduction in Project Costs in excess of five percent[5%] , the amount of this loan as proportionately reduced to the reduced Project Costs)
 - d. ESD Blueprint NY Grant in the amount of \$1,200,000
 - e. NMTC Leveraged Equity.

Seller shall agree as to the Interest Rate Subsidy Agreements to enter into an intercreditor agreement(s) containing commercially reasonable terms and conditions satisfactory to Seller and Purchaser and Purchaser's Lender, if such is a condition of Purchaser's lender(s).

- 7.) within one hundred twenty (120) days of execution of this Agreement, determine that all easements and rights-of-way for Storm and Sanitary Sewer lines, water lines, drainage, and all other utilities and access easement necessary for the construction, use and maintenance operations of the Project are sufficient for its intended use;
- 8.) within one hundred twenty (120) days of execution of this Agreement, all water, sewer, gas, electric, telephone and drainage facilities and all other utilities and public or quasi-public improvements upon or adjacent to the Premises required by law and for the operation of Purchaser's uses are installed, and are able to connect under valid permits, in good working order, sufficient to service

Purchaser's intended use of the Premises and located at the lot line of the Premises;

- 9.) prior to closing, entered into a Lease Agreement with Tenant on terms satisfactory to Purchaser, Tenant and Purchaser's lenders;
- 10.) prior to closing, obtain all of its entity approvals required to carry out the terms of the Agreement, Purchaser's Board of Directors approval and approval of its corporate finance lender if necessary;
- 11.) Seller to complete all work required on the Demo Plan such that the Premises shall be in Shovel Ready Condition pursuant to Exhibit D within ten (10) months of execution of this Agreement but in any event prior to Closing. In the event a portion of the work required on the Demo Plan and Shovel Ready Condition schedule cannot be completed until after the Closing, Seller shall continue to be obligated to perform such work as quickly as practicable and shall coordinate such work with Purchaser's construction activity so as not to interfere with same.
- 12.) within sixty (60) days of execution of this Agreement, Seller will obtain duly authorized City Council Ordinances authorizing the sale of the Premises and to carry out the terms of this Agreement within the time frames set forth.
- 13.) within thirty (30) days of execution of this Agreement, Seller shall have obtained resubdivision of the Premises approved by Purchaser so that it is combined as one (1) City lot with one (1) tax identification number.
- 14.) within one hundred eighty (180) days of execution of this Agreement Seller shall have received commitment from the Rochester Police Department (RPD) to locate a police substation within the Premises on terms satisfactory to Purchaser and Tenant and Seller shall provide a form lease or sublease containing standard lease clauses and mutually agreeable terms but at no rent charge to the RPD for the substation space.
- 15.) within ninety (90) days of execution of this Agreement Seller shall have caused the permanent relocation away from the Premises of the bus stops currently located as follows (a) on the east side of Clinton Avenue just south of East Main Street and (b) on the south side of East Main Street in front of Midtown Plaza.

- 16.) within thirty (30) days of execution of this Agreement Seller shall have delivered any and all appraisals of the Premises/Project it has in its possession.
- 17.) within one hundred eighty (180) days of execution of this Agreement Seller shall have obtained HUD and other necessary approvals for the Section 108 loan, including but not limited to an approval of the waiver requested from HUD and final NEPA review;
- 18.) within one hundred eighty (180) days of execution of this Agreement Seller shall have received State approval and other necessary approvals for the ESD Blueprint NY Grant.
- 19.) within thirty (30) days of execution of this Agreement Seller shall have prepared and delivered to Purchaser true and complete copies of all architectural and engineering plans, maps, prints and drawings relating to the Project, including the UPG and Tunnel, which Seller has agreed to contract for, including, but not limited to engineering studies, any warranties on improvements, environmental reports, traffic studies, utility studies and all other reports and studies relating to the Project and a certification to Purchaser prepared by LaBella Associates PC as to the integrity of the Tunnel, the terms of which shall be satisfactory to Purchaser.
- 20.) thirty (30) days of execution of this Agreement Seller shall deliver or cause to be delivered the Phase I Environmental Audit(s) and Phase II Environmental Audit(s) it has in its possession or such backup and information which Seller has caused to be prepared by its consultants including LaBella Associates PC and/or LiRo Engineers, Inc. including a certification that the asbestos and hazardous materials abatement has been completed in compliance with all applicable laws all of which shall be certified to Purchaser and Purchaser's lender and investors, and to satisfy Purchaser's lenders and investors requirements.
- 21.) within thirty (30) days of execution of this Agreement Seller shall deliver any abstracts of title, surveys, certified subdivision map, copies of any existing title reports or policies ,court orders related to condemnation and other relevant documents in regards to the Premises it has in its possession.
- 22.) thirty (30) days prior to closing, as set forth in the Shovel Ready Description, Seller shall determine whether RGE needs to continue using the vault in the Seneca Building basement containing live electrical power and: (i) if RGE does not need

the existing vault, Seller shall deliver the space, enclosed, waterproofed and construct an inside door/entryway for Purchaser to use or (ii) if RGE needs to continue to utilize the existing vault, Seller shall arrange for easement/license agreement between RGE and Purchaser subject to review and approval of Purchaser.

- 23.) as set forth in the Shovel Ready Description, ninety (90) days prior to closing, Seller shall remove and relocate the sump pump and associated electrical located in Seneca Building basement which services the Tunnel roadway drainage and relocate them to an area not on the Premises.
- 24.) as set forth in the Shovel Ready Description (after Purchaser completes the design of the Building), one hundred eighty (180) days prior to closing, Seller shall design at Seller's expense and prior to closing construct at Seller's expense exclusive/unrestricted pedestrian Right of Way (ROW) from Premises parcel to UPG. ROW is to run north from UPG to the existing south wall of the Seneca Building (approximately 180 ft in length) and include elevator block shafts (2)/lobby subject to plans and specs approved by Purchaser. In the event the construction cannot be completed prior to closing Seller shall continue to be obligated to perform such work as quickly as practicable and shall coordinate such work with Purchaser's construction activity so as not to interfere with same.
- 25.) prior to closing, Seller shall cause to be extinguished the public walkway easement encumbering the Premises which provides access to the Chase Building via the second floor walkway and is recorded in the Monroe County Clerk's Office in liber 4206 of deeds at page 47 on January 31, 1972, as amended.
- 26.) the Parties entering into the Parking Agreement pursuant to the terms of Section 5 hereof.

C. Extension of Time:

In the event that performance or completion of any contingency condition is delayed by circumstances outside the direct control of the responsible party (e.g. a final approval has been postponed or adjourned at the request of a governmental agency), and provided that the responsible party is diligently pursuing the contingency condition, then the Purchaser shall be entitled to a sixty (60) day extension to satisfy the contingency beyond the original contingency period. In order for the extension to be

effective, the responsible party must deliver written notice of the extension to the other party prior to expiration of the original period.

D. Seller to Cooperate:

Seller agrees to cooperate with Purchaser to satisfy the Conditions Precedent in this Section 10 and to diligently satisfy the Conditions Precedent. If each of the Conditions Precedent have not been satisfied or waived by Purchaser, Purchaser has the right to terminate this Agreement upon written notice to Seller. It is understood that the Conditions Precedent are for Purchaser's benefit and may be waived by Purchaser. Seller shall also have the right to terminate this Agreement upon written notice to Purchaser after all timeframes have passed and all extensions have been exhausted for the Conditions Precedent set forth in Section 10A,4,5,6 and Purchaser has failed to satisfy or waive such Conditions Precedent.

SECTION 11: REPRESENTATIONS AND WARRANTIES

A. Purchaser warrants and represents that:

1. all representations and warranties of Purchaser appearing in other sections and subsections of this Agreement are true and correct.
2. it has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Purchaser pursuant hereto, and all required action and approvals therefor have been duly taken and obtained, and that the individuals signing the Agreement and all other documents executed or to be executed pursuant hereto on behalf of Purchaser are and shall be duly authorized to sign the same on Purchaser's behalf and to bind Purchaser thereto, and that this Agreement and all documents to be executed pursuant hereto by Purchaser are and shall be binding upon and enforceable against Purchaser in accordance with their respective terms, and the transaction contemplated hereby will not result in a breach of any of its corporate documents or obligations.
3. it shall purchase the Premises only for construction of the Project and for Tenant to occupy the Premises as its corporate headquarters.
4. All site work and construction by the Purchaser on the Premises shall comply with all applicable laws, statutes, ordinances, and regulations,

including but not limited to the federal Davis Bacon Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Architectural Barriers Act of 1968, and the Fair Housing Act in construction of the Project.

B. Seller warrants and represents that:

1. all representations and warranties of Seller appearing in other sections and subsections of this Agreement are true and correct.
2. there are no obligations in connection with the Premises or any so-called "recapture agreement" involving refunds for sewer extensions, oversizing utility lines, lighting, filling in vaults, tax abatements, or expenses or charges for work or services done upon or relating to the Premises which will bind Purchaser or the Premises from and after the Closing Date;
3. there is no agreement or undertaking or bond with any governmental agency respecting construction of any municipal improvements or private roads which will bind Purchaser or the Premises from and after the Closing Date;
4. there are no donations or payments, to or for, sidewalks, schools, parks, or public areas, fire departments or any other public entity or facilities which are required to be made by an owner of the Premises, except such as are payable as a real estate tax, or general or special assessment included in the real estate tax bills and common to the taxing district within which the Premises is located;
5. except for Seller there are no persons in possession or occupancy of the Premises or any part thereof, nor are there any persons who have possessory rights with respect to the Premises or any part thereof;
6. Upon issuance of a duly authorized City Council Ordinance authorizing the sale of the Premises and other agreements set forth in this Agreement, it will have full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Seller pursuant hereto, and that the individuals signing the Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller are and shall be duly authorized to sign the same on Seller's behalf and to bind Seller thereto, and that this Agreement and all documents to

be executed pursuant hereto by Seller are and shall be binding upon and enforceable against Seller in accordance with their respective terms, and the transaction contemplated hereby will not result in a breach of or constitute a default or permit acceleration of maturity under any indenture, mortgage, deed of trust, loan agreement or other agreement to which Seller or the Premises is subject or by which Seller or the Premises is bound. If another party must consent to the sale, such consent must be obtained by Seller within thirty (30) days after execution of this Agreement and again thirty (30) days prior to the closing;

7. there are no claims, causes of action or other litigation or proceedings pending or, to the best of Seller's knowledge, threatened in respect to the ownership or operation, transfer and/or development of the Premises (including disputes with mortgagees, governmental authorities, utilities, contractors, adjoining land owners and suppliers of goods or services) except for claims or liens which are fully insured and as to which the insurer has accepted defense without reservation;
8. it has not received any notice of any health, safety, building, pollution, environmental, zoning or other violations of law with respect to the Premises which have not been entirely corrected;
9. there is no existing, pending or, to the best of Seller's knowledge, contemplated, threatened or anticipated (A) limitation on use of streets, roads or highways abutting the Premises, (B) special tax or assessment to be levied against the Premises or any part thereof except for any charges which will result from the Premises being located in a business improvement district, or (C) change in the zoning classification of the Premises or any part thereof;
10. it shall not limit, restrict, or require Purchaser to use any particular energy service provider but shall allow Purchaser to choose its own energy service provider including Purchaser's affiliate Energy Service Company (ESCO) or another affiliate to be supplier of choice for the following unregulated energy services: electricity supply, natural gas supply and demand response to the Premises.
11. all easements are located within the rights-of-way (and located at the property line of the Premises that are required from all governmental

authorities having jurisdiction over the Premises or from private parties to make use of utilities serving the Premises and to ensure vehicular and pedestrian ingress and egress to and from the Premises and to and from the Premises to the UPG;

12. no person, firm, corporation or other entity has any right or option to acquire the Premises, or any part thereof, from Seller;
13. there are no leases or other agreements or service or maintenance or contracts or commitments or oral or written understandings in existence affecting the Premises or possession or use thereof, and that no party will have as of the Closing Date any right to possession of, or use of, any portions of the Premises for any purpose whatsoever;
14. the Premises exists in strict accordance with any and all applicable building, zoning, health, fire, safety, environmental protection, pollution control and like statutes, laws, codes, ordinances, rules, regulations, orders and decrees and that the Premises is zoned Center City District and located within the Main Street Improvement Assessment District and all requirements of SEQR have been satisfied for the Project, including Empire Zone status;
15. it shall satisfy of record any liens attaching to the Premises and that no mechanics or other liens exist or may arise subsequent to closing;
16. the warranties, representations and covenants made herein and elsewhere in this Agreement shall survive the Closing Date and delivery of the Deed and remain in full force and effect;
17. it agrees that Purchaser or an affiliate of Purchaser shall have the non-exclusive right to construct conduit as permitted by law within the Project right of ways which conduit Purchaser shall own.
18. it shall assist in the application for the New Market Tax Credit for funding of this Project.
19. it shall assist Purchaser, if Purchaser requests, in all applications for government, financial or benefit approvals and shall assign such permits,

applications, and approvals for which Seller was required to be the applicant.

20. that except as set forth in the Environmental Reports prepared by LiRo Engineers, Inc. for the Midtown Plaza having dates of November 28, 2008 and June 23, 2009 ("Environmental Reports") and the LiRo certifications set forth in Section 10A(20), that as to the Premises, no Hazardous or Toxic Material in violation of applicable laws exists on or under the surface of the Premises, or any part thereof, including the buildings and improvements thereon, or in any surface waters or ground waters on or under the Premises, or any part thereof, and no escape, seepage, spillage, discharge, emission or release of any Hazardous or Toxic Material has occurred on, under, above or has emanated from the Premises, or any part thereof, including the buildings and improvements thereon, including underground or above ground tanks and that the Premises, or any part thereof, including the buildings and improvements thereon, was not or is not now used as a sanitary landfill, dump site, industrial disposal area or storage site for Hazardous or Toxic Material or for any other similar use, on either a permanent or temporary basis, that there are no underground storage tanks and that there are no pending, anticipated suits, actions, proceedings or notices from any governmental or quasi-governmental agency with respect to the Premises, or any part thereof, including the buildings and improvements thereon, Seller or Environmental Laws, and that for purposes of this Agreement, the term "**Hazardous or Toxic Material**" shall be defined to include (A) asbestos or any material composed of or containing asbestos in any form and in any type, or (B) any hazardous, toxic or dangerous waste, substance, material, smoke, gas or particulate matter, as from time to time defined by or for purposes of the Comprehensive Environmental Response Compensation and Liability Act, and any law commonly referred to as of the date hereof as "Superfund" or "Superlien" or any successor to such laws, or any other federal, state or local environmental, health or safety statute, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards concerning or in connection with hazardous, toxic or dangerous wastes, substances, material, gas or particulate matter as now or at any time hereinafter in effect including the NYS Environmental Conservation Law and the Navigation Law (collectively, the "**Environmental Laws**") and, further, that Seller agrees to hold harmless, defend and indemnify Purchaser (and its assigns) from and against any

and all loss, damage, cost, liability or expense (including reasonable attorney fees and court costs) relating to personal, property or economic injury (including consequential damages) arising from a violation or inaccuracy of the representations, warranties and covenants contained herein. Seller also represents and warrants that it has no knowledge of any of the above existing or occurring at the Premises prior to its ownership, except as set forth in the Environmental Reports;

21. Seller shall complete all work required on the Demo Plan such that the Premises shall be in Shovel Ready Condition in accordance with the time requirements set forth in the Demo Plan as set forth herein.

SECTION 12. CONDITIONS SUBSEQUENT

A. Purchaser shall provide the following by the required dates and failure to do so shall be a default of the applicable condition subsequent:

- 1.) Upon completion of the Project, with proof it has obtained a certificate of occupancy no later than twenty four (24) months subsequent to the City conveyance of the Premises for a building having a size of approximately 222,400 square feet.

B. In the event that thirty six (36) months subsequent to the date of execution of this Agreement, the Purchaser shall default in or violate any Condition Subsequent contained herein, and any such default or violation shall not be cured, ended or remedied within twelve (12) months (or, if the default or violation cannot reasonably be cured, ended or remedied within twelve (12) months of written notice from the City to the Purchaser of a default or violation, the Purchaser has not diligently commenced to cure, end or remedy the default or violation within twelve (12) months after written demand by the City to do so), then in such event, the City shall have the right to reacquire the entire Premises and may, at its option, commence a proceeding or suit in a court of appropriate jurisdiction to regain title to the Premises and revest title in the City. If at the time of the default or violation, a hazardous environmental condition at the Premises poses a threat to the public or environment, then the City has the right, but not the obligation, to immediately secure the site.

However, such condition subsequent and any revesting of title as a result thereof in the City shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way the lien of any mortgage, security interest or assignment: (1) granted

by the Purchaser to finance the Project as set forth above, or (2) to which the City has consented in writing.

The City shall pay the Purchaser, in the event of such reacquisition, an amount equal to the Purchase Price paid by the Purchaser for the land, less (1) any cost and expense incurred by the City for the reacquisition; and (2) the amount of any unpaid County of Monroe, City of Rochester and City of Rochester School District ad valorem property taxes, special assessments, service charges and embellishment charges, and (3) the amount of any unpaid Rochester Pure Waters District assessments and charges. Revesting of the Premises will cancel any outstanding amounts of the Purchase Price not previously paid or reduced.

Promptly after the Purchaser's satisfaction of the Condition Subsequent, the City shall provide the Purchaser with a Certificate of Satisfaction and Release (the "Certificate of Release"). The Certificate of Release shall be (and it shall be so provided in the Deed and in the certification itself) conclusive determination of satisfaction and termination of the Condition Subsequent contained in this Section and the deed.

SECTION 13. PHYSICAL CONDITION

A. The Purchaser acknowledges that the Purchaser, subject to Seller's obligations in Section 8 hereof, shall be solely responsible for performing and conducting its own due diligence as to the feasibility of the Project and the physical and environmental condition of the Premises, as well as all other matters deemed relevant by the Purchaser in its sole discretion. The Purchaser acknowledges that "physical condition" includes, but is not limited to, geotechnical conditions, that portion of the service tunnel that is located within the Premises, and the condition and structural integrity of the steel framing that was left intact on the Premises from the prior demolition of the Seneca Building to accommodate the Project.

B. "As Is" Condition. Except as to Section 11B Purchaser represents that it has inspected the Premises and every part thereof; is fully acquainted with and satisfied with the condition thereof, including any and all environmental issues; and shall accept same in an "as is" condition as of the date of this Agreement. Except as set forth in Section 11B and in Section 3 the City makes no representation or warranty concerning the condition of the Premises or its fitness for any particular purpose. The City further specifically disclaims any implied warranties of condition or fitness for use, except for those explicitly set forth above.

SECTION 14. INDEMNIFICATION

- A. Seller hereby agrees to indemnify, defend and hold Purchaser harmless from and against any and all loss, damage, liability and expense (including for reasonable attorney fees) Purchaser and/or Tenant may suffer, sustain or incur as a result of any misrepresentation or breach of warranty by Seller set forth in this Agreement or any document or instrument executed or to be executed by or on behalf of Seller pursuant to this Agreement or in furtherance of the transaction contemplated hereby, both prior to and after the Closing Date.
- B. Purchaser hereby agrees to indemnify, defend and hold Seller harmless from and against any and all loss, damage, liability and expense (including reasonable attorney fees and other litigation expense) Seller may suffer, sustain or incur as a result of any misrepresentation or breach of warranty by Purchaser set forth in this Agreement or any document or instrument executed or to be executed by or on behalf of Purchaser pursuant to this Agreement or in furtherance of the transaction contemplated hereby, both prior to and after the Closing Date.

SECTION 15. TIME AND PLACE OF CLOSING/POSSESSION

The City's transfer of title to the Premises to the Purchaser shall occur at the offices of the City of Rochester Law Department, or at such other location as may be mutually determined, on or before thirty (30) days after the last Condition Precedent has been satisfied or waived, but no later than fifteen (15) months following the execution of this Agreement ("Closing Date"). Except as provided herein, possession of the Premises shall be delivered to the Purchaser at the time of closing.

SECTION 16. CLOSING ADJUSTMENTS AND EXPENSES

- A. On the Closing Date Seller shall be responsible for paying:
- 1.) the New York State Transfer Tax and any sales tax which may be assessed in connection with the conveyance of the Premises to Purchaser, including the cost of filing the required reporting forms therefor;
 - 2.) the amount of the proration of real estate taxes, if any, relating to the Premises chargeable to Seller; and
 - 3.) the recording fees for recording the Parking Agreement and Declaration.
- B. On the Closing Date Purchaser shall be responsible for paying:

- 1.) the cost of recording the Deed and any Mortgage and filing the New York State Equalization and Assessment Form;
- 2.) the payment of any mortgage tax; and
- 3.) amount of proration of real estate taxes, if any, chargeable to Purchaser.

SECTION 17. RIGHT TO PROVIDE SERVICES

Purchaser via the ESCO or another affiliate shall be granted exclusive right to determine the supplier of choice for the following unregulated energy services: electricity supply, natural gas supply and demand response to the Premises. In addition, Purchaser via ESCO or another affiliate shall be granted the non-exclusive right to market its services including but not limited to renewable energy projects, such as solar, wind and geothermal, and any smart building technologies to the developer of the Phase II Development Parcels including the right to negotiate for Roof Rights for any communications, satellite or renewable energy projects in the Phase II Development Parcels and will have the right to market its telecommunication services to the Phase II Development Parcels.

SECTION 18. FORCE MAJEURE

All dates, time limits and obligations of the parties set forth in this Agreement are and shall be subject to the rules of force majeure so that the failure to meet any date or time limit or the inability to perform any obligation shall be excused for the reasonable time duration of the causes set forth herein, where any such failure or inability is the result, in whole or in part, of causes beyond the control of either party, including shortage or inability to obtain labor, fuel, water, electricity or materials, acts of God, enemy action, civil commotion, fire or other casualty.

SECTION 19. ASSIGNABILITY

Prior to Closing Date Purchaser shall have the right to assign this Agreement to a related entity to be formed or to meet requirements for obtaining financial benefits for the Project without the consent of Seller on the condition that such assignment shall not violate the requirements of the Section 108 Loan or the Interest Rate Subsidy Agreements. Any other assignments by Purchaser shall require the consent of the City which will not be unreasonably withheld, conditioned or delayed.

SECTION 20. BROKER'S COMMISSION

The parties represent to each other that no realtor, real estate broker or salesperson was contacted, engaged or consulted in connection with the sale of the Premises or the execution of this Agreement and each party agrees to indemnify the other from any misrepresentation of fact in that regard.

SECTION 21. AGREEMENT BINDING

The terms of this instrument shall be binding upon the City and the Purchaser, and their respective successors and assigns.

SECTION 22. SEVERABILITY

If any provision of this Agreement is held invalid by a court of law, the remainder of the Agreement shall not be affected thereby, if such remainder would then continue to conform to the laws of the State of New York.

SECTION 23. PROHIBITION ON RE-SALE

This Agreement is made subject to the Purchaser agreeing not to transfer, re-sell or convey the subject Premises to a tax-exempt organization for a period of twenty (20) years from the date of the recording of the deed from the City. This covenant shall be contained in the deed from the City.

SECTION 24. DAMAGE AND DESTRUCTION

(a) If after the effective date hereof and prior to the Closing Date all or any portion of the Premises is damaged or destroyed by any cause, Purchaser may by written notice to the Seller elect to terminate and cancel this Agreement prior to the Closing Date, whereupon both parties shall be relieved and released from all further liability hereunder, and the Deposit, if any, shall be returned to Purchaser.

(b) Risk of loss or damage to the Premises by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the Premises by fire or other such casualty occurs prior to transfer, Purchaser may cancel the Contract without any further liability to Seller, and Purchaser's deposit is to be returned. If Purchaser does not cancel but elects to close, then Seller shall transfer to Purchaser any insurance proceeds or Seller's claim to insurance proceeds payable for such damages.

SECTION 25. SELLER'S DEFAULT

The obligation of Purchaser to close the transaction contemplated hereby on the Closing Date is, at Purchaser's option, subject to all representations and warranties of Seller contained in this Agreement being true and correct at and as of the Closing Date and all obligations of Seller to have been performed on or before the Closing Date or the dates set forth having been timely and duly performed. If, at or prior to the Closing Date, Seller defaults hereunder, then Purchaser may, in Purchaser's sole discretion, elect to either (a) terminate this Agreement, in which event neither party shall have any further liability hereunder and this Agreement shall be null and void, or (c) exercise any remedies available to it at law or in equity.

SECTION 26. INDEPENDENT CONTRACTORS

Nothing contained in this Agreement shall be construed to make Seller and Purchaser partners or joint venturers or to render either of said parties liable for the debts or obligations of the other, except as in this Agreement expressly provided.

SECTION 27. WAIVERS

No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

SECTION 28. REMEDIES CUMULATIVE.

All rights, privileges and remedies afforded the parties by this Agreement shall be deemed cumulative and the exercise of one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein.

SECTION 29. MODIFICATIONS.

Any alteration, change or modification hereof, in order to become effective, shall be made by written instrument or endorsed hereon and, in each such instance, executed on behalf of each party.

SECTION 30. PARTIAL INVALIDITY.

If any provisions of this Agreement or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 31. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto.

SECTION 32. FURTHER ACTS.

Each party covenants and agrees that it will at any time and from time to time do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all such further acts, documents and instruments as may reasonably be required by the other party in order to carry out fully and effectuate the transactions herein contemplated.

SECTION 33. SECTION HEADINGS, SCHEDULE OF DEFINITIONS AND EXHIBITS.

The section headings in this Agreement are for convenience and for reference only and in no way define or limit the scope or contents of this Agreement or in any way affect its provisions. Unless otherwise set forth, references in this Agreement to sections and subsections shall mean the sections and subsections of this Agreement. All exhibits attached hereto are hereby made a part of this Agreement.

SECTION 34. NOTICE

All notices, demands and requests which may be given or are required to be given by either party to the other must be in writing. All notices, demands and requests by the City or the Purchaser shall be either personally delivered or sent by nationally recognized overnight courier and sent to the respective parties at the Notice Addresses provided below. Such notice shall be considered received by the addressee on the date that the courier confirms delivery at the applicable Notice Addresses set forth below:

CITY:

Department of Neighborhood and Business Development
City Hall, Room 223B
30 Church Street
Rochester, New York 14614
Attn. Commissioner

WITH A COPY TO:

Corporation Counsel
City of Rochester – Department of Law
City Hall, Room 400A
30 Church Street
Rochester, New York 14614

PURCHASER:

PAETEC REALTY, LLC
One PAETEC Plaza
600 Willow Brook Office Park
Fairport, NY 14450

Attention: Sandra Mohrman, Manager Lease Administration

WITH A COPY TO:

ANNE DYRING RILEY LLC
674 Ridge Road
Webster, NY 14580
Attention: Anne Dyring Riley, Esq.

Notices, demands and requests given in the aforesaid manner will be deemed served or given for all purposes hereunder at the time such notice, demand or request is received.

SECTION 35. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

SECTION 36. ENTIRE CONTRACT

This Agreement embodies the entire agreement between the parties hereto and may be amended only by a document in writing signed by the parties hereto and properly acknowledged.

SECTION 37. APPLICABLE LAW

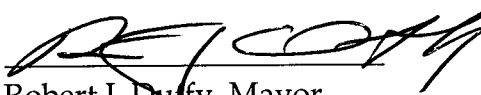
This agreement shall be governed by the laws of the State of New York. Any action or proceeding regarding this agreement shall be brought in the Supreme Court of New York State, in the Seventh Judicial District.

[Intentional End of Page – Signature Page Follows Immediately Hereafter]

IN WITNESS WHEREOF, the City and the Purchaser have executed this Agreement as of the date first above written.

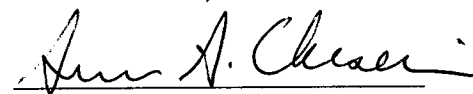
SELLER

CITY OF ROCHESTER

By: 
Robert J. Duffy, Mayor

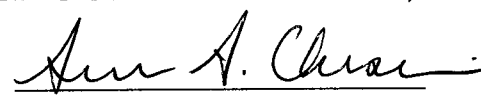
PURCHASER

PAETEC REALTY, LLC

By: 
Name:
Title:

TENANT

PAETEC COMMUNICATIONS, INC.

By: 
Name:
Title:

EXHIBITS

- PROJECT DESCRIPTION/FINAL APPROVED SITE PLAN – Exhibit A
- PREMISES DESCRIPTION – Exhibit A
- PHASE II DEVELOPMENT PARCELS DESCRIPTION(S) – Exhibit A
- PARCEL NO. 2 DESCRIPTION – Exhibit A-1
- SHOVEL READY DESCRIPTION – Exhibit B
- PARKING PASS PAYMENT SCHEDULE – Exhibit C
- TUNNEL DESCRIPTION – Exhibit D
- DECLARATION OF COVENANTS AND RESTRICTIONS – Exhibit E

EXHIBIT A SITE PLAN

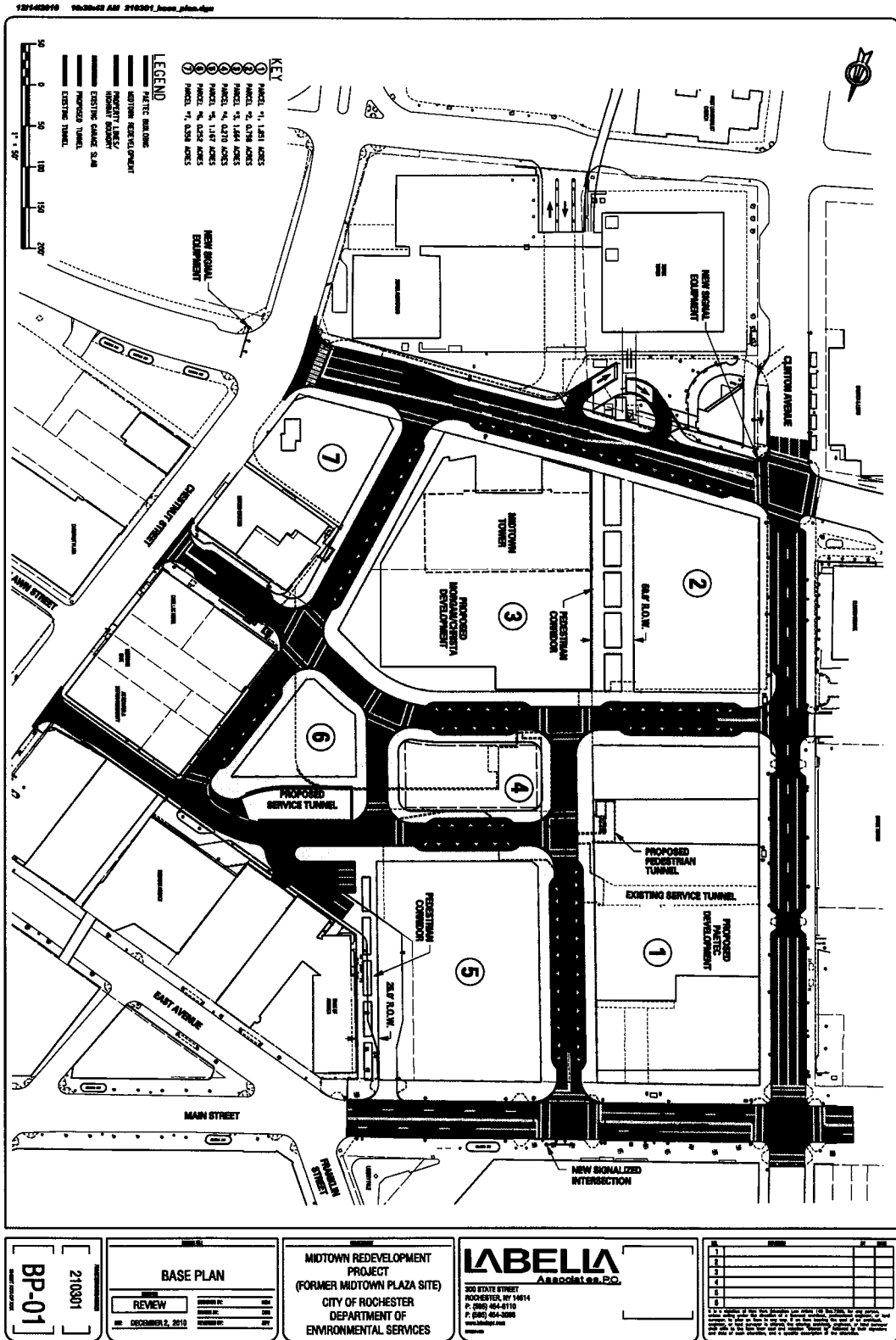


EXHIBIT A-1
PARCEL NO. 2 DESCRIPTION

Beginning At a point in the Northerly Right of Way for East Broad Street at its intersection with the Easterly Right of Way for South Clinton Avenue; thence,

- 1) N 18°17'49" W along said Easterly Right of Way a distance of 214.45 feet to a point, said point being 66.00 feet southerly as measured along said easterly Right of Way from the South Westerly Corner of Lot 1 as shown on the "Midtown Redevelopment Subdivision" filed at the Monroe County Clerk's Office; thence,
- 2) N 72°17'24" E parallel with and 66.00 feet from the southerly line of said Lot 1 a distance of 147.56 feet to a point; thence,
- 3) thence S 18°21'28" E parallel with and 50.00 feet from the Westerly boundary line of Lot 3 and Lot 4 of the said subdivision a distance of 256.49 feet to a point in the Northerly Right of Way for East Broad Street; thence,
- 4) S 88°07'03" W along said Northerly Right of Way a distance of 154.10 feet to the POINT OF BEGINNING.

The above described parcel contains 0.798 acres (34773 sq. ft.)

Intending to describe portion of Lot 2 as shown on the "Midtown Redevelopment Subdivision" filed at the Monroe County Clerk's Office

EXHIBIT B
SHOVEL READY DESCRIPTION
December _____, 2010

The City of Rochester (City) agrees to perform or cause to be performed the following which shall constitute Shovel Ready Condition.

ITEMS CURRENTLY COVERED WITHIN THE ESD MIDTOWN DEMOLITION & SITE PREPARATION PROJECT:

1. Existing demolition fencing to remain and be transferred to the City of Rochester upon completion of Demolition.
2. All asbestos removed and abated completely. Seller to provide evidence of compliance with all rules and regulations including certificate of compliance and indemnification to PAETEC related to the asbestos abatement.
3. Any known contaminated soils to be removed per the contaminated soil excavation part of the demo spec.
4. Existing 7 story Seneca building to be reduced in height to 3 ½ stories. See demo drawings D2.05 & D2.15. The entire existing 4th floor slab to be retained. A portion of the existing 5th floor slab to be retained in accordance with the demo addendum #3 issued prior to start of demolition. All exterior curtain walls and non-load bearing perimeter walls to be completely removed. All interior elements are to be demolished, as noted in demolition contract documents, except structural steel, concrete floor slabs and existing elevator shafts. Existing stairs and stair shafts are to remain within areas of the Seneca Building designated to remain. All openings on the 4th and 5th floors are to be temporarily weather tight, (review floor drainage with State), (temporary fall protection to be provided per OSHA standards) . Any and all remaining items described under Midtown Plaza Demolition & Site Preparation Specifications, Addendum #3, March 17, 2010 are to be included. Demo procedures for removal of 7th, 6th and partial 5th floors, to be reviewed with PAETEC to insure integrity of remaining structure. ESD to hold a pre-demolition meeting including PAETEC and the Demolition Contractor prior to Seneca Building demolition activities.
5. ESD to remove the existing basement concrete block building walls at the North, South, and East sides of the existing Seneca Bldg. Provide new reinforced concrete building walls, water proof, install perimeter foundation drainage systems to connect to existing drainage systems prior to back filling and compacting the basement of each demolished building. Back filling and compaction of the new South / North basement with fill material approved per Demolition specs to be reviewed with PAETEC.
6. Walkway Bridge to be removed in its entirety from the Seneca Building over Clinton Ave to Chase Tower.

7. B. Forman Building and Buildings North of Seneca Building to East Main Street to be completely demolished and debris removed off site plus backfill with approved engineered backfill material. PAETEC to review backfill material submittal prior to the start of backfilling these areas.

ITEMS TO BE ADDED TO, BUT NOT CURRENTLY COVERED WITHIN, THE ESD MIDTOWN DEMOLITION & SITE PREPARATION PROJECT:

1. ESD shall construct the foundation and sub grade walls for a stairwell along the north wall of the Seneca Building. PAETEC will provide dimensional information for location and plan dimensions of stair well. The proposed new North stair is to extend to grade level only.
2. ESD shall revise the demolition schedule for the Seneca Building leaving the entire existing exterior building envelope, including roof, in tack until April, 2011. Areas of the building envelope on the east and west walls currently open to the outside shall remain open. ESD will oversee maintenance snow and water removal such that any snow build up or ponding of water on floor slabs is removed on a daily basis, as it occurs. ESD shall repair, to the satisfaction of PAETEC, any damage to the concrete floor slabs that occurs due to winter exposure conditions.
3. ESD in coordination with PAETEC to review during demolition and prior to backfill the location of the Citizen's Bank Building west wall along Clinton Avenue. The wall may interfere with construction of PAETEC foundation structures. If such interference exists then ESD shall remove sections of wall where interference exists
4. The existing roof drainage system to be left in use. Pike and Li Ro to identify related piping to be retained at each floor level by marking with GREEN PAINT.
5. The existing concrete block interior partitions enclosing utility shaft ways are to be removed at each floor level.

ITEMS TO BE ADDRESSED WITHIN THE CITY OF ROCHESTER MIDTOWN REDEVELOPMENT PROJECT:

1. RGE vault in basement / electrical power – If RGE does not need the existing vault, City to deliver the space, free of existing mechanical equipment, enclosed, waterproofed and construct an inside door/ entryway, lighting / venting for PAETEC to use. If RGE, needs to continue to utilize the existing vault, City shall arrange for easement / license agreement between RGE and City subject to review and approval of PAETEC.
2. City to remove and relocate existing storm drainage related to service tunnel. Review with PAETEC.
3. City to design and construct at City's expense exclusive/ unrestricted pedestrian Right of Way (ROW) from Premises parcel to underground parking garage. ROW is to run north

from UPG to the existing south wall of the Seneca Building (approximately 180 ft in length), lighting / venting and include elevator block shafts (2) lobby TO GROUND FLOOR LEVEL subject to plans and specs approved by PAETEC

4. EXISTING UTILITIES: City/ State shall remove, abandon or deliver wherever applicable at closing any existing utilities including domestic water, sprinkler feed, electric power, gas, steam, telephone, data, fiber, sanitary and storm laterals, etc. at PAETEC'S discretion. PAETEC's A/E to review prior to any abandonment. This should also include any existing utilities that need to be removed or relocated if they conflict with the new proposed building footprint or infrastructure.
5. City shall provide and reserve a location within the Project for tractor trailer delivery access to the Premises for PAETEC'S use.
6. City shall provide a minimum of .5 acre staging area adjacent to SENECA BUILDING to allow for building process (location to be discussed).
7. Existing fencing transferred to the City of Rochester upon completion of Demolition shall be maintained during all phases of development. The responsibility for maintaining the construction fence directly adjacent to the PAETEC site shall be transferred to PAETEC at the start of building construction activities by PAETEC. The City shall coordinate with construction and development activities for the staged removal of construction fencing.
8. Sheet C3.00 (Site Plan North) & C4.00 (proposed Utility plan North) of the Demo Plans does not show the PAETEC, North & South additions but only the grading and drainage of these areas post demolition. The grading and drainage drawings to be revised by the City to reflect PAETEC's foundation and first floor slab construction for the NORTH and SOUTH additions. Future Midtown Redevelopment Design Drawings shall reflect the proposed PAETEC Building.
9. The existing 8" Holley Water Service and 8" Domestic Water Service from Clinton Ave to Bldg entrance be reconnected.
10. Construction of the reinforced concrete drilled shaft (caissons) foundation for the Seneca Building North and South Additions. The drilled shafts are anticipated to be constructed in a grid pattern to encompass the North and South Addition footprints.
11. Construction of the ground floor drainage, reinforced concrete grade beams and structural slabs for the North and South Additions.
12. Construction to re-level the Seneca Building first floor.
13. PAETEC and it's A/E (to be determined), CITY, STATE and ENGINEER shall conduct a walkthrough / inspection of the Premises Prior to closing for PAETEC'S acceptance or to agree on a schedule for acceptance of the Premises and enter into a Punch list

Agreement on terms agreeable to Purchase itemizing items to be completed and dates for completion. In anticipation of closing meetings shall be held regarding demolition and abandonment of utilities. These meetings shall include the City, State, PAETEC and its representatives and the Demolition Contractor and any other appropriate parties.

EXHIBIT C
PARKING PASS PAYMENT SCHEDULE

Year	Proposed Monthly Charge Per Pass
1	\$20.00
2	\$20.40
3	\$20.81
4	\$31.84
5	\$32.47
6	\$33.12
7	\$33.78
8	\$34.46
9	\$35.15
10	\$35.85
11	\$36.57
12	\$37.30
13	\$38.05
14	\$38.81
15	\$39.58
16	\$40.38
17	\$41.18
18	\$42.01
19	\$42.85
20	\$43.70

Beginning with Year 21, monthly charge per pass shall be at market rate.

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EXHIBIT E
DECLARATION OF COVENANTS AND RESTRICTIONS

DECLARATION OF COVENANTS AND RESTRICTIONS

MIDTOWN BLOCK DEVELOPMENT
CITY OF ROCHESTER, MONROE COUNTY, NEW YORK

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (the "*Declaration*") is made as of the ____ day of _____, 2011, by the CITY OF ROCHESTER, a municipal corporation organized and existing under the laws of the State of New York, having an office at City Hall, One Church Street, Rochester, New York 14614 (the "*City*" or "*Declarant*").

RECITALS

WHEREAS, the City is the fee titled owner to certain real property known as the Midtown Block Development Site as shown and described on a subdivision map ("*Subdivision Map*") filed in the Monroe County Clerk's Office in Liber 339 of Maps, Page 93 and filed on October 6, 2010 ("*Property*").

WHEREAS, it is the intent that the Property will be further subdivided resulting in parcels which shall be referred to each as a "*Development Parcel*" or collectively, as the "*Development Parcels*" all of which are shown on Exhibit A which is labeled Midtown Redevelopment Project Base Plan prepared by LaBella Associates, P.C. dated December 2, 2010 attached hereto and made a part hereof ("*Site Plan*"); and

WHEREAS, the Declarant intends to cause and/or facilitate the sale, disposition and/or development of the Development Parcels by, or in conjunction with, certain individuals, entities, and organizations; and/or public, private, and/or not-for-profit corporations or entities (each a "*Developer*") in accordance with the Charter of the City of Rochester, NY, other applicable law, and this Declaration; and

WHEREAS, it is the desire and intention of the Declarant to induce, cause and facilitate the mixed-use development of the Development Parcels, including but not limited to (i) the City's sale, transfer, assignment, conveyance, lease or other disposition of the Development Parcels, in whole or in parts, to a Developer or various Developers and (ii) the Developer's or various Developers' future construction of buildings, improvements, utilities, underground parking garages and other parking facilities, roadways, entrances, exits, landscaped areas and other improvements thereon, in accordance with the provisions set forth in this Declaration; and

WHEREAS, the Declarant is subjecting the Development Parcels to the encumbrance of this Declaration in order to make integrated use of the Development Parcels as a center city mixed-use development; and to provide for certain covenants, restrictions and agreements herein contained concerning the development of the Development Parcels.

NOW THEREFORE, the Declarant for itself, its successors and assigns, declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, and restrictions, hereinafter set forth.

Article 1. Definitions; Exhibits.

1.1 For purposes hereof:

(a) The term “Owner” or “Owners” shall mean the City and any and all successors or assigns of the City as the owner or owners of fee simple title to all or any portion of the Development Parcels encumbered hereby, whether by sale, assignment, operation of law, trustee’s sale, foreclosure or otherwise.

(b) The term “Improved Building Area” shall mean new construction and building area, and/or renovated and improved building area (i.e. renovated existing buildings), on any of the Development Parcels which has been completed in accordance with this Declaration and properly permitted for use and occupancy by unconditional certificates of occupancy from any governmental agency having jurisdiction over the same.

1.2 Attached hereto and forming a part of this Declaration are the following Exhibits:

<u>Exhibit A</u>	Site Plan
<u>Exhibit B</u>	Street Grid

Article 2. Recording Date of Declaration.

The City shall cause the recording of this Declaration in the Monroe County Clerk’s Office immediately after City Council approval. This Declaration shall terminate on the twentieth (20th) anniversary of the recording of this Declaration in the Office of the Monroe County Clerk and may be renewed in accordance with Article 9.

Article 3. Site Plan; Street Grid.

The Development Parcels shall be developed based upon and according to the Site Plan attached hereto as Exhibit A prepared by LaBella Associates, P.C. dated December 2, 2010. The Street Grid shall be one of the two alternatives depicted on the Drawings attached hereto as Exhibit B (Alternative A) labeled Alternate A Historic Elm Street dated December 22, 2010/Alternative B labeled Alternate B Cortland St. Extension dated December 22, 2010, each prepared by LaBella Associates, P.C.) (the “Street Grid”). The City represents and warrants that all of the roads set forth and depicted on the Street Grid are the roads which will be the dedicated roads for public access, ingress and egress in and throughout the Property. No amendments and/or modifications to this Declaration (including the Exhibits attached hereto) may be made except in strict accordance with Article 9 of this Declaration; however, nothing in this section shall prohibit the City from further subdividing the Development Parcels.

Article 4. Parcel 4 of the Site Plan Development and Maintenance.

4.1 Parcel 4 shall be maintained as open area, public space for the use and enjoyment of the Owners and their respective employees, residents, patrons, invitees, visitors and the public in general, in accordance with its rules and procedures for City owned open spaces.

4.2 Parcel 4 shall be illuminated in the same manner as other public spaces such as permanent plazas, parking areas and building forecourts. The illumination shall remain on each day from dusk until dawn, and shall conform to the City’s provisions and requirements for the Main Street District found in Chapter 120, Article IX Section 120-68 of the City Zoning Code as applicable on November 17, 2010.

4.3 The City shall install benches, trees, tree wells, planters, landscaping, sidewalks and defined walking paths as determined by the City’s design process for public open spaces, on Parcel 4, and shall maintain the same in a good and aesthetically pleasing manner.

4.4 Kiosks, defined as carts or temporary structures, may be utilized upon Parcel 4; however such kiosks shall be subject to the licensing requirements of the City Clerk for vendors in the Center City District.

4.5 Parcel 4 shall be subject to temporary closure and utilization for special events provided such events are organized and administered by the City in accordance with the City’s rules and procedures, including but not limited to any notice provisions, for special events.

Article 5. Covenants and Restrictions.

5.1 For the purpose of enhancing and protecting the value, attractiveness and desirability of the Development Parcels, and to maintain a consistent architectural style, compatibility and aesthetic quality in accordance with the Center City guidelines set forth in found in Chapter 120, Article 120 Sections 68 and 71 of the City Zoning Code as applicable on November 17, 2010 with respect to the Development Parcels, any and all of the Development Parcels shall be held, sold, conveyed and developed only in accordance with and subject to the covenants, conditions and restrictions set forth in this Declaration, all of which shall constitute covenants running with the land and shall be binding upon the City and the Owners succeeding to the interests of the City and having any right, title or interest in any Development Parcel, or any portion thereof, and shall inure to the benefit of each Owner thereof.

5.2 Prohibited Uses. No Development Parcel shall be used, possessed or occupied by any party as:

- (a) a manufacturing and/or industrial facility;
 - (b) a warehouse or other storage facility;
 - (c) a prison, jail, halfway house, probation office, and/or any other uses related to the temporary or indefinite imprisonment or other housing of criminals or inmates;
 - (d) a casino, off-track betting or other gambling or gaming business, game shops such as slot cars, pinball, billiard parlor, pool hall or similar uses;
 - (e) a pawn broker or pawn shop;
 - (f) any business oriented to adult entertainment, including but not limited to adult bookstores, adult entertainment cabarets, live adult entertainment, adult modeling studios, adult video stores, and/or theatres focused upon adult entertainment that customarily exclude minors;
 - (g) an automobile repair and/or body shop operation, gas station, or an automobile sales business;
 - (h) any schools, colleges, universities or other educational campus or institution exceeding fifty thousand (50,000) gross square feet (in the aggregate over any one or more of the Development Parcels); or
 - (i) temporary or permanent surface parking lots except for those located on Lot 7;
 - (j) medical clinic for non-resident patients which generate substantial pedestrian or other traffic;
 - (k) massage parlors and tattoo parlors
- (each a "*Prohibited Use*" and collectively, the "*Prohibited Uses*").

5.3 Evidence of Development Plan and Firm Financing. Prior to the commencement of any construction on any Development Parcel, the City will perform all necessary due diligence to insure a potential owner has: 1.) a suitably detailed project which will conform with this Declaration and the City's design and zoning requirements for a the Center City District, 2.) the financial capability to perform and complete the proposed project, and potential owner's/developer's proposed means for paying for/financing the costs of the proposed development (together with copies of a firm, written loan commitment or other sources of funding supporting same), and 3.) a project schedule which will minimize the impact of construction on the other Owners. The City shall require that all deeds transferring title to Owners from the City shall contain a right of reverter for the benefit of the City in the event such Owner defaults in its requirement to complete construction on its proposed development project

5.4 Interim Use Prior to Development. During the period commencing when the construction of the Street Grid is completed and continuing until such date as an Owner has completed construction of the Improved Building Area on its respective Development Parcel, such Owner shall maintain, except when good construction practice require otherwise, the Development Parcels as follows:

- (a) The Development Parcels shall be unfenced and accessible to the public;

(b) Receptacles for refuse shall be installed and maintained on the Development Parcels, and emptied on a regular basis so as not to permit the accumulation of refuse, trash, garbage, or debris on any Development Parcel;

(c) The Development Parcels shall be landscaped to include lawns, plantings and defined paths, sidewalks or walkways. The grass shall be mowed regularly and plants shall be watered, trimmed and/or replaced as necessary to maintain an attractive and inviting appearance;

(d) Temporary use for special events on any Development Parcel during the period described in this Section shall be permitted provided any such temporary use is both consistent and in conjunction with the requirements set forth in Article 4.

5.5 Street Grid; Sidewalks.

(a) The boundaries between the Development Parcels and the adjoining public rights of way shall be as depicted on the Site Plan.

(b) Sidewalks shall be constructed as public improvements within the adjoining rights of way and shall not be included within any Development Parcel.

(c) Planters, tree wells and benches, as determined appropriate by the City design process shall be included as public improvements within the rights of way. The design, placement, number and spacing of these amenities shall conform to the City's provisions and requirements for the Main Street District found in Chapter 120, Article IX Section 120-68 of the City Zoning Code as applicable on November 17, 2010.

(d) Street lighting shall be provided consistent with City standards so as to illuminate and make safe the streets, intersections, sidewalks and crosswalks and other areas within the rights-of-ways of the Midtown Block Development. Street lighting fixtures shall be decorative in nature and in keeping with the Main Street District.

(e) Plazas, open spaces, parking areas and building forecourts shall be illuminated each day from dusk until dawn. The illumination shall conform to the City's provisions and requirements for the Main Street District found in Chapter 120, Article IX Section 120-68 of the City Zoning Code as applicable on November 17, 2010.

5.6 Use, Operation and Maintenance. The Development Parcels shall be developed to accommodate a mix of uses, and the uses shall primarily be office, retail, residential and hospitality uses. The following requirements apply to the development of all of the Development Parcels, except Parcel 4:

(a) A minimum of five percent (5%) of the first 250,000 gross square footage of the Improved Building Area on any Midtown Block Development Parcel shall be utilized for retail uses and purposes.

(b) An Owner of any of Parcels 1-3, 5, and 6 may construct a parking structure in connection with its development of a Development Parcel provided that (i) no Development Parcel shall be used exclusively for purposes of parking; (ii) the parking structure must be an ancillary structure to the Improved Building Area on a Development Parcel, (iii) the parking structure shall be clad to appear as a building, consistent with applicable laws, codes, rules and regulations, and the requirements set forth in this Declaration (For purposes of illustration only, reference is made to the Sister Cities Parking Garage located in the City of Rochester, NY).

5.7 Dimensional, Facade and Site Plan Requirements.

(a) Floor-to-Area Ratios. The floor-to-area ratio for any single Development Parcel shall be at least 2.0.

(b) Elevation. There shall be no elevated platforms. The elevation of plazas, building forecourts, and building entries shall vary no more than two and one-half feet from the elevation of the adjoining sidewalk.

(d) Windows. Windows shall conform to the City's provisions and requirements for the Main Street District found in Chapter 120, Article IX Section 120-68 of the City Zoning Code as applicable on November 17, 2010.

(e) Refuse. Dumpsters shall be hidden from the street and passers by.

Article 6. No Interference.

The City and each Owner agrees to perform any construction on or about any Development Parcel so as not to interfere unreasonably with any construction work being performed on or at any other Development Parcel or with the use, occupancy or enjoyment of any other Development Parcel. If at any time after any building on any Development Parcel is open for business with the public, Developer or Developer's tenant, assignee, transferee, or successor is performing or permitting the performance of any construction work which could reasonably be deemed to constitute a hazardous condition or to detract from the appearance of any building on any other Development Parcel, the party performing the same shall erect or cause to be erected an adequate barricade or other protective device providing adequate protection to, and screening from, the public and shall maintain the same until removal would be justified under good construction practice

Article 7. Unperformed Covenants.

If any Owner or Developer fails to perform any of the covenants on its part to be performed under this Declaration, any other Owner may (but shall not be required to) pursue any remedies at law or in equity against any other Owner, person or persons failing to perform the obligations imposed hereunder, and/or violating or attempting to violate the requirements, covenants or restrictions set forth herein, whether the relief sought is an injunction or recovery of damages.

Article 8. Intentionally deleted.

Article 9. Amendments and Modifications.

This Declaration may be amended or modified, in whole or in part, the term may be extended for an additional ten (10) years or other term only by the prior written consent of no less than sixty-seven percent (67.0%) of the Owners, as evidenced by a document that has been fully executed and acknowledged by all such record owners and recorded in the Monroe County Clerk's Office.

Article 10. Right to Injunction, Specific Performance.

Any Owner shall have the right to enforce any provision of this Declaration by injunction, specific performance or otherwise. Such action or proceeding shall be commenced and tried before a court of competent jurisdiction and each party hereto specifically waives its right to trial by jury in any such action or proceeding.

Article 11. Covenants Running With the Land.

All the covenants, agreements, conditions and restrictions set forth in this Declaration are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of and enforceable by the parties hereto and their respective successors or assigns, except as herein otherwise expressly set forth.

Article 12. Waivers.

A delay or omission by any Declarant or Owner exercising any right or power accruing upon the non-compliance or failure of performance by any other Owner under the provisions of this Declaration shall not impair any such right or power or be construed to be a waiver thereof, provided that such right or power is exercised within six (6) months after the non-compliance or failure of performance has occurred. A waiver by any Owner of any of the covenants, conditions or agreements hereto to be performed by any other Owner shall not be construed to be a waiver of any subsequent violation or of any other covenant, condition or agreement herein contained.

Article 13. Remedies Cumulative.

All rights, privileges, and remedies afforded by this Declaration shall be deemed cumulative and the exercise of any one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege herein or at law or equity.

Article 14. Applicable Law.

This Declaration shall be governed by, and construed in accordance with the laws of the State of New York.

Article 15. Partial Invalidity.

If any provision of this Declaration or the application thereof, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

Article 16. Notices.

Every notice, demand, consent, request, approval or other document or instrument required or permitted to be served upon the City or any Owner (“Notice”) shall be in writing and shall be deemed to have been duly served on the date of mailing (it being agreed, however, that the time period in which a response must be given to any such Notice shall commence to run on the date on which the addressee thereof has received or has refused to receive the same), and shall be sent by reputable express courier or overnight delivery service with receipted delivery or by registered or certified United States Mail, postage prepaid, return receipt requested, addressed to the respective parties at the addresses stated below:

To the Declarant: CITY OF ROCHESTER, NY
City Hall
One Church Street
Rochester, New York 14614
Attention: Office of the Mayor

With copy to: CITY OF ROCHESTER, NY
City Hall
One Church Street
Rochester, New York 14614
Attention: Office of Corporation Counsel

To the Owner(s): Within ten (10) days of its entry into a binding agreement to acquire any Development Parcel, an Owner shall provide a notice address to each other Owner. Any party may change the place for serving of notices upon it, by ten (10) days’ prior written notice informing of the change in the address to which notices shall be sent.

Article 17. Grantee’s Acceptance.

The grantee of any Development Parcel, by acceptance of a deed conveying title thereto, or a lease or other document conveying a leasehold interest thereto, shall accept such deed or lease upon and subject to each and all of the covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for itself and its successors, assigns, heirs, and personal representatives, covenant, consent and agree to and with the other party, to keep, observe, comply with and perform the obligations and agreements set forth herein with respect to the property acquired by such

grantee. All impositions and obligations hereby imposed shall constitute covenants running with the land, and shall bind any person having at any time any interest or estate in the Development Parcels, and shall inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or lease.

Article 18. Section Headings.

The Section headings of this Declaration are for convenience and reference only and in no way define or limit the scope of or content of this Declaration or in any way affect its provisions.

Article 19. Gender.

The use herein of (i) the singular number shall be deemed to mean the plural, (ii) the masculine gender shall be deemed to mean the feminine or neuter, and (iii) the neuter gender shall be deemed to mean the masculine or feminine whenever the sense of this Declaration so requires.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year first above written.

CITY OF ROCHESTER

By: _____
Name:
Title:

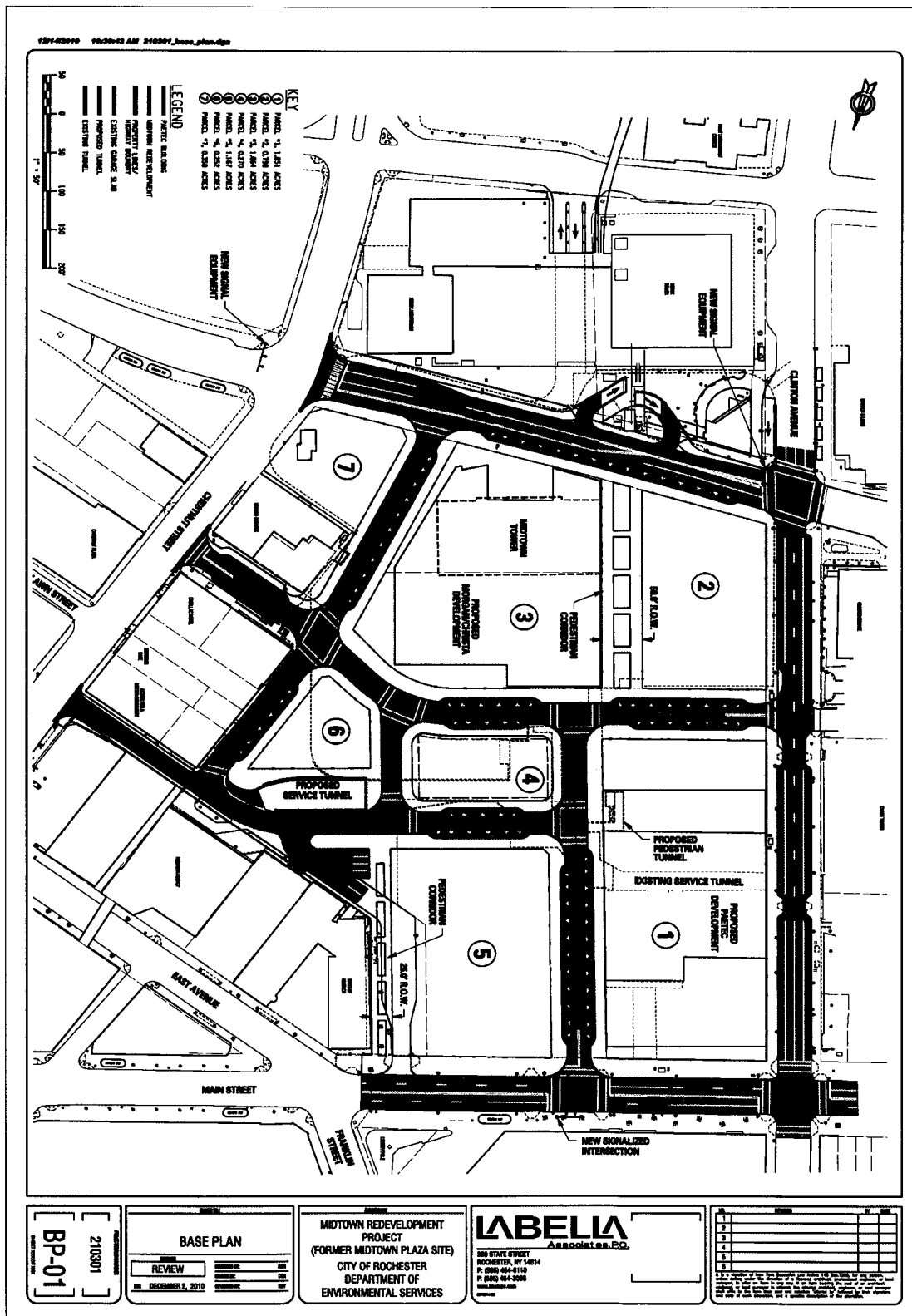
STATE OF NEW YORK)
COUNTY OF MONROE) ss:

On the ____ day of _____ in the year 2011 before me, the undersigned a notary public in and for the State of New York, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

SITE PLAN



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