

AN ORDINANCE BY THE CITY OF MORGANTOWN VACATING, ABANDONING, AND ANNULLING PARTS OR PORTIONS OF ENSIGN AVENUE AND ACCEPTING THE DEDICATION OF ADDITIONS TO ENSIGN AVENUE LOCATED AND SITUATE IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MORGAN DISTRICT, MONONGALIA COUNTY, WEST VIRGINIA, IN CONJUNCTION WITH THE PARTIAL REALIGNMENT AND RELOCATION OF ENSIGN AVENUE

Whereas, the Common Council ("Council") of The City of Morgantown, West Virginia ("City"), finds and makes a legislative determination that Ensign Avenue ("Street") is a publicly dedicated and accepted easement and right of way for, among other purposes, street purposes, that is shown, illustrated, and depicted on, among other maps or plats of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia ("Clerk's Office"), (a) the map or plat of Peninsula Company entitled "Plan of that Part of 'North Morgantown' Between Fifth and Ninth Streets – East of Grant Ave.," of record in the Clerk's Office in Deed Book 182, at Page 250½, (b) the map or plat of the Clyde D. Barbe Plan of Lots of record in the Clerk's Office in Deed Book 348, at Page 97A, and Deed Book 538, at Page 426A, and (c) the map or plat prepared by Gary A. Pratt, P.S. No. 907, of Landmark Surveying Company, dated May 13, 2011, of record in the Clerk's Office in Envelope No. 104B of Map Cabinet No. 5; and

Whereas, the Council finds and makes a legislative determination that the Street is located and situate within the Fourth Ward of the municipal limits of the City, in Morgan District, Monongalia County, West Virginia; and

Whereas, the Council finds and makes a legislative determination that a part or portion of the Street is adjoined on either side by property of Metro Towers LLC, a West Virginia limited liability company ("Metro"); and

Whereas, the Council finds and makes a legislative determination that Metro has petitioned and/or made application to the City to partially realign and relocate the Street in the location where the Street is adjoined on either side by the property of Metro; and

Whereas, the Council finds and makes a legislative determination that it is in the best interests of the City and the public generally that the Street be partially realigned and relocated; and

Whereas, the Council finds and makes a legislative determination that to effect the partial realignment and relocation of the Street, three (3) separate and distinct parts or portions of the Street must be vacated, abandoned, and annulled by the City; and

Whereas, the Council finds and makes a legislative determination that to effect the partial realignment and relocation of the Street, three (3) separate and distinct parts or portions of the property of Metro must be dedicated by Metro to the City and accepted by the City for, among other purposes, street purposes; and

Whereas, a map or plat prepared by Gary A. Pratt, P.S. No. 907, of Landmark Surveying Company, dated September 6, 2012, designated as Project No. 2012-1124, File No. 1124-10-12-02, a reproduction of which is appended to this Ordinance as Exhibit No. 1 and incorporated into this Ordinance by this reference ("Exhibit Plat"), shows, illustrates, and depicts (a) the three (3) separate and distinct parts or portions of the Street that must be vacated, abandoned, and annulled by the City to effect the partial realignment and relocation of the Street (collectively, "Vacated Parcels") and (b) the three (3) separate and distinct parts or portions of the property of Metro that must be dedicated by Metro to the City and accepted by the City to effect the partial realignment and relocation of the Street (collectively, "Dedicated Parcels"); and

Whereas, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, the Vacated Parcels are not presently used, useful, or needed for street purposes or any other public uses or purposes; and

Whereas, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, the Vacated Parcels shall not subsequently be used, useful, or needed for street purposes or any other public uses or purposes; and

Whereas, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, no party nor any property of any party will be injured or damaged by either the partial realignment and relocation of the Street or the vacation, abandonment, and annulment of the Vacated Parcels; and

Whereas, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, it is in the best interests of the City and the public generally that the Street be partially realigned and relocated and that the Vacated Parcels be vacated, abandoned, and annulled by the City for street purposes and any and all other public uses or purposes; and

Whereas, the Council finds and makes a legislative determination that, in conjunction with the partial realignment and relocation of the Street, it is in the best interests of the City and the public generally that the Dedicated Parcels be dedicated by Metro to the City and accepted by the City for, among other purposes, street purposes.

Now, Therefore, it is ordained by the Council, in regular session, duly and properly assembled, as follows:

Section 1. The findings and legislative determinations of the Council set forth and contained in the above recitals are incorporated and integrated into this Ordinance by this reference and adopted, confirmed, and affirmed as findings and legislative determinations of the Council.

Section 2. The Exhibit Plat is incorporated and integrated into this Ordinance by this reference.

Section 3. The Vacated Parcels are described as follows:

Parcel D: Beginning at a point in the northerly line of Sixth Street, corner to the lands of Metro Towers LLC; thence leaving said street and running with a line of Metro Towers LLC, S. 69° 22' 18" W. 43.33 feet to a point in the original line of Ensign Avenue, corner to Parcel C; thence running through Ensign Avenue, N. 74° 20' 40" W. 67.59 feet to a point in the original line of Ensign Avenue, corner to Parcel B; thence running with a line of lands of Metro Towers LLC and the original line of Ensign Avenue, N. 69° 22' 18" E. 156.55 feet to a point; thence crossing said avenue, S. 35° 06' 55" W. 71.06 feet to the place of beginning, containing 3,997.64 square feet or 0.09 acre, more or less.

Parcel E: Beginning at a point in the original line of Ensign Avenue, corner to Parcel C; thence with a line of said parcel and the lands of Metro Towers LLC, with a curve to the right having a radius of 70.15 feet, an arc length of 38.01 feet, and a chord of N. 76° 45' 16" W. 37.54 feet to a point; thence N. 61° 14' 03" W. 6.96 feet to a point, corner to Parcel A; thence running through Ensign Avenue, S. 74° 20' 40" E. 44.29 feet to the place of beginning, containing 99.22 square feet, more or less.

Parcel F: Beginning at a point in the original line of Ensign Avenue and in the southerly line of Lot 10 of Block 49 of the North Morgantown Addition; thence with two original lines of Ensign Avenue, N. 70° 45' 58" E. 44.37 feet to a point; thence S. 61° 14' 03" E. 111.88 feet to a point, corner to Parcel B; thence running through said Ensign Avenue, N. 74° 20' 40" W. 145.35 feet to the place of beginning, containing 1,844.36 square feet or 0.04 acre, more or less.

Section 4. Upon the adoption of this Ordinance, for the reasons set forth and contained in the above recitals, the easement and right of way of the City for street purposes and any and all other public uses or purposes in, of, and to the Vacated Parcels is and shall be vacated, abandoned, and annulled by the City, with the intent and effect that

from and subsequent to the date of the adoption of this Ordinance the Vacated Parcels shall cease to be a part or portion of a public easement and right of way or public street.

Section 5. Upon the adoption of this Ordinance, any and all right, title, interest, claim, and estate of the City, of any and every nature, kind, character, manner, and description, in, of, and to the Vacated Parcels is and shall be cancelled, terminated, vacated, abandoned, annulled, released, and relinquished in favor of and for the benefit of Metro and its successors and assigns.

Section 6. The City shall not keep, except, reserve, or retain any utility easements or rights of way in, on, over, upon, under, through, or across the Vacated Parcels of any nature, kind, character, manner, or description; provided, however, that neither the foregoing nor any other term or provision of this Ordinance, including, without limitation, Sections 4 and 5 of this Ordinance in particular, shall cancel, terminate, vacate, abandon, annul, release, or relinquish any (1) easements or rights of way that have been expressly granted to the City, acting by and through the Morgantown Utility Board, or its predecessors, by instruments or agreements of record in the Clerk's Office, or (2) other easements or rights of way for utility lines actually located within the Vacated Parcels as of the adoption of this Ordinance, if any.

Section 7. The dedication of the Dedicated Parcels by Metro to the City for, among other purposes, street purposes, is accepted by the City and no subsequent or further acts other than (1) the adoption of this Ordinance by the City, (2) the execution, recordation, and delivery by Metro of the Easement Declaration, and (3) the execution, recordation, and delivery by PNC and Metro of the Partial Release shall be requisite to effect such acceptance, even in the event that the Easement Declaration or the Partial Release shall be executed, delivered, or placed of record subsequent to the adoption of this Ordinance.

Section 8. Within ten (10) days of the adoption of this Ordinance, Metro shall execute and caused to be recorded in the Clerk's Office and subsequently deliver to the City an easement declaration substantially identical in form, substance, and content to the proforma easement declaration appended to this Ordinance as Exhibit No. 2 and incorporated into this Ordinance by this reference ("Easement Declaration").

Section 9. Within ten (10) days of the adoption of this Ordinance, PNC Bank, National Association ("PNC") and Metro shall execute and caused to be recorded in the Clerk's Office and subsequently deliver to the City a partial release and termination of the easements and rights of way to be granted to and dedicated in favor of and for the benefit of the City substantially identical in form, substance, and content to the proforma partial release and termination appended to this Ordinance as Exhibit No. 3 and incorporated into this Ordinance by this reference ("Partial Release").

Section 10. The Dedicated Parcels are described as follows:

Parcel A: Beginning at a point in the original southerly line of Ensign Avenue; thence running with two original lines of said avenue and the lands of Metro Towers LLC, N. 70° 45' 58" E. 40.44 feet to a point; thence S. 61° 14' 03" E. 101.97 feet to a point in the original right of way line of Ensign Avenue; thence running through the lands of Metro Towers LLC, N. 74° 20' 40" W. 132.48 feet to the place of beginning, containing 1,532.08 square feet or 0.04 acre, more or less.

Parcel B: Beginning at a point in the original right of way line of Ensign Avenue, corner to Parcel F; thence running through the lands of Metro Towers LLC, S. 74° 20' 40" E. 20.14 feet to a point in said street right of way, corner to Parcel D; thence running with two original lines of said Ensign Avenue, S. 69° 22' 18" W. 6.02 feet to a point; thence N. 61° 14' 03" W. 15.70 feet to the place of beginning, containing 35.86 square feet or 0.001 acre, more or less.

Parcel C: Beginning at a point in the original right of way line of Ensign Avenue, corner to Parcel E; thence running along two original lines of said street right of way, with a curve to the left having a radius of 70.15 feet, an arc length of 22.47 feet, and a chord bearing of N. 78° 32' 54" E. 22.37 feet to a point; thence N. 69° 22' 18" E. 33.47 feet to a point, corner to Parcel D; thence running through the lands of Metro Towers LLC, S. 74° 20' 40" E. 22.36 feet to a point in the northerly right of way line of Sixth Street; thence running with a line of said Sixth Street, S. 41° 46' 34" W. 33.41 feet to a point; thence leaving said street and running with a line through the lands of said Metro Towers LLC, N. 74° 20' 40" W. 54.54 feet to the place of beginning, containing 1,080.29 square feet or 0.03 acre, more or less.

Section 11. Upon the adoption of this Ordinance, the City Clerk shall provide a certified photocopy of this Ordinance to counsel for Metro for the purpose of such counsel admitting the same of record in the Clerk's Office as evidence of, among other matters, the vacation, abandonment, and annulment of a part or portion of the Street.

Section 12. This Ordinance shall be effective from the date of its adoption.

First Reading: _____, 2012

Mayor

Second Reading: _____, 2012

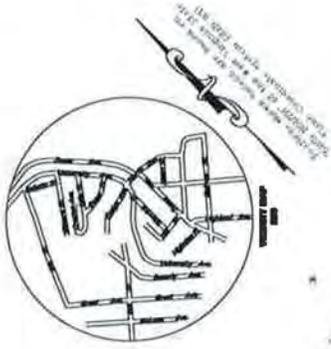
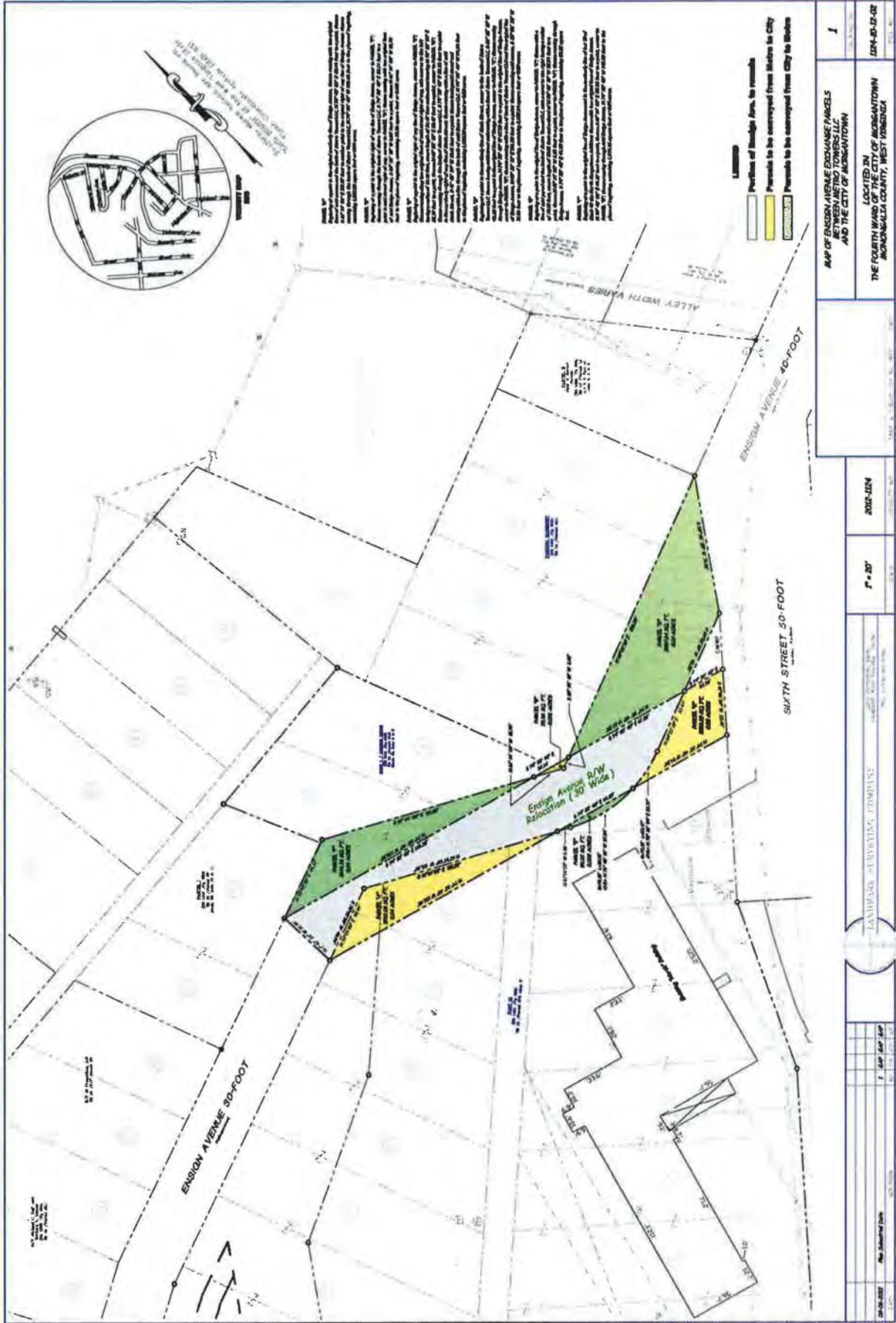
City Clerk

Adopted: _____, 2012

Filed: _____, 2012

Recorded: _____, 2012

EXHIBIT No. 1



NOTE: The map shows the proposed relocation of Ensign Avenue and the proposed easement for the proposed relocation of Ensign Avenue. The map also shows the proposed relocation of Sixth Street and the proposed easement for the proposed relocation of Sixth Street. The map also shows the proposed relocation of Alley Worth Vaines and the proposed easement for the proposed relocation of Alley Worth Vaines. The map also shows the proposed relocation of the parcels to be conveyed from the City to private entities. The map also shows the proposed relocation of the parcels to be conveyed from the City to private entities. The map also shows the proposed relocation of the parcels to be conveyed from the City to private entities.

DATE: 02/24/05	BY: [Signature]	SCALE: 1" = 20'	PROJECT: 2005-024	SHEET: 1
LAWYER: STURMUNG, COMBIST			TITLE: MAP OF ENSIGN AVENUE EXCHANGE PARCELS BETWEEN METRO TOWERS LLC AND THE CITY OF MORGANTOWN	
PROJECT: 2005-024			LOCATED IN THE FOURTH WARD OF THE CITY OF MORGANTOWN, MONROGALTA COUNTY, WEST VIRGINIA	

EXHIBIT 2

This instrument was jointly prepared by:

Stephen R. Fanok
The City of Morgantown, West Virginia
389 Spruce Street
Morgantown, West Virginia 26505

Robert Louis Shuman
Reeder & Shuman
256 High Street
Post Office Box 842
Morgantown, West Virginia 26507-0842

Easement Declaration

This Declaration is made and entered into this the _____ day of _____, 2012, by Metro in favor of and for the benefit of City.

For and in consideration of the amount of Ten Dollars (\$10.00), other good and valuable consideration, the receipt, sufficiency, and adequacy of all of which are acknowledged by Metro, and with the intent of being legally bound by and obligated under, in accordance with, and pursuant to this Declaration, Metro declares, covenants, and agrees in favor of and for the benefit of City as follows:

- (1) Definitions: For the purposes of this Declaration, the following defined terms shall have the following meanings and definitions:
 - (a) "City" shall mean The City of Morgantown, West Virginia, a municipal corporation.
 - (b) "Declaration" shall mean this easement declaration and any and all amendments, modifications, supplements, and/or restatements of and/or to the same.
 - (c) "Dedicated Parcel A" shall mean that lot, parcel, or tract located and situate in the Fourth Ward of the City, Morgan District, Monongalia County, West Virginia, described as follows: Beginning at a point in the original southerly line of Ensign Avenue; thence running with two original lines of said avenue and the lands of Metro Towers LLC, N. 70° 45' 58" E. 40.44 feet to a point; thence S. 61° 14' 03" E. 101.97 feet to a point in the original right of way line of Ensign Avenue; thence running through the lands of Metro Towers LLC, N. 74° 20' 40" W. 132.48 feet to the place of beginning, containing 1,532.08 square feet or 0.04 acre, more or less.
 - (d) "Dedicated Parcel B" shall mean that lot, parcel, or tract located and situate in the Fourth Ward of the City, Morgan District, Monongalia County, West Virginia, described as follows: Beginning at a point in the original right of way line of Ensign Avenue, corner to Parcel F; thence running through the lands of Metro Towers LLC, S. 74° 20' 40" E. 20.14 feet to a point in said street right of way, corner to Parcel D; thence running with two original lines of said Ensign Avenue, S. 69° 22' 18" W. 6.02 feet to a point; thence N. 61° 14' 03" W. 15.70 feet to the place of beginning, containing 35.86 square feet or 0.001 acre, more or less.
 - (e) "Dedicated Parcel C" shall mean that lot, parcel, or tract located and situate in the Fourth Ward of the City, Morgan District, Monongalia County, West Virginia, described as follows: Beginning at a point in the original right of way line of Ensign Avenue, corner to Parcel E; thence running along two original lines of said street right of way, with a curve to the left having a radius of 70.15 feet, an arc length of 22.47 feet, and a chord bearing of N. 78° 32' 54" E. 22.37 feet to a point; thence N. 69° 22' 18" E. 33.47 feet to a point, corner to Parcel D; thence running through the lands of Metro Towers LLC, S. 74° 20' 40" E. 22.36 feet to a point in the northerly right of way line of Sixth Street; thence running with a line of said Sixth Street, S. 41° 46' 34" W. 33.41 feet to a

point; thence leaving said street and running with a line through the lands of said Metro Towers LLC, N. 74° 20' 40" W. 54.54 feet to the place of beginning, containing 1,080.29 square feet or 0.03 acre, more or less.

- (f) "Dedicated Parcels" shall mean Dedicated Parcel A, Dedicated Parcel B, and Dedicated Parcel C.
 - (g) "Effective Date" shall mean the date of this Declaration.
 - (h) "Metro" shall mean Metro Towers LLC, a West Virginia limited liability company.
 - (i) "Plat" shall mean that plat of survey prepared by Gary A. Pratt, P.S. No. 907, of Landmark Surveying Company, dated September 6, 2012, designated as Project No. 2012-1124, File No. 1124-10-12-02.
- (2) Incorporation of the Plat: The Plat is incorporated and integrated into this Declaration by this reference.
 - (3) Dedication of the Dedicated Parcels: Metro grants, conveys, and transfers to City and creates, dedicates, and establishes in favor of and for the benefit of City, in, on, over, upon, under, through, and across the Dedicated Parcels, easements and rights of way for the purposes of building, installing, constructing, improving, extending, maintaining, operating, inspecting, repairing, removing, replacing, rebuilding, reinstalling, reconstructing, re-improving, and re-extending a public way and street, with sidewalks and related appurtenances, and otherwise generally developing and improving the Dedicated Parcels for the foregoing purposes, including, without limitation, as rights appurtenant, material, essential, and integral to such easements and rights of way and such purposes, the rights to use and enjoy the Dedicated Parcels to (a) access the Dedicated Parcels by way of other easements, rights of way, and properties of City, (b) travel and traverse the Dedicated Parcels with persons, equipment, materials, and supplies, and (c) locate, set, stage, and operate equipment and machinery on and/or from the Dedicated Parcels while City shall be using or enjoying the Dedicated Parcels for the purposes set forth, contained, and provided for in this Declaration.
 - (4) Use and Enjoyment of the Encumbered Fee Estate: Metro shall have the right, power, capacity, and authority to use and enjoy and grant or license other parties the right to use and enjoy the Dedicated Parcels for any uses or purposes that shall not unreasonably and adversely interfere with the rights of City for the purposes set forth and provided for in this Declaration and any such use, enjoyment, grant, or license by Metro shall not be and shall not be deemed or construed to be, constitute, work, or effect an over-burdening or over-encumbering of the Dedicated Parcels; provided, however, that Metro shall not install, construct, build, erect, place, set, lay, improve, or extend any improvements, barriers, or obstacles, of any nature, kind, character, or description, on or over the surface of the Dedicated Parcels.
 - (5) Rules of Construction: Rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Declaration.
 - (6) Governing Law: The laws of the State of West Virginia, without resort to its conflicts of laws principles, shall govern the validity, construction, and interpretation of this Declaration.
 - (7) Singular, Plural, and Gender: Words used and employed in this Declaration, regardless of the number and gender specifically used and employed, shall be deemed, construed, and interpreted to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context shall require.
 - (8) Headings and Captions: The headings, titles, and captions set forth, contained, and provided for in this Declaration are inserted only as a matter of convenience and for reference purposes only and shall not in any way, manner, character, or nature define, limit, restrict, confine, constrain, extend, or prescribe the scope or intent of any provision of this Declaration.

- (9) Modification: This Declaration shall not be amended, modified, supplemented, altered, changed, enlarged, and/or restated in any way, manner, character, or nature, by performance, acquiescence, course of conduct, or otherwise, except by a written instrument executed by City and Metro and/or their successors in interest.
- (10) Severability: In the event that any one or more of the provisions set forth, contained, or provided for in this Declaration, or the application thereof, in any circumstance, shall be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of such provision or provisions in any other circumstance shall not be affected or impaired thereby, and the remaining provisions set forth, contained, and provided for in this Declaration shall remain of full force and effect and be construed and interpreted as if such invalid, illegal, or unenforceable provision or provisions were never included. The provisions of this Declaration shall be severable.
- (11) Inclusion of Successors: A reference to a party in this Declaration shall be deemed to include the heirs, devisees, legatees, personal representatives, successors, and/or assigns of such party.

Declaration of Consideration or Value: Under, in accordance with, and pursuant to the provisions of Article 22 of Chapter 11 of the West Virginia Code, Metro declares that the transfer made and effected by this Declaration is exempt from the applicable excise taxes on the basis that City is a political subdivision of the State of West Virginia.

Witness the following signature.

Metro Towers LLC,
a West Virginia limited liability company

By: Biafara's Incorporated,
a West Virginia corporation
Title: Manager

By: _____
Name: Richard A. Biafara
Title: Manager

State of West Virginia,
County of Monongalia, to-wit:

The foregoing instrument was executed and acknowledged before me this the _____ day of _____, 2012, by Richard A. Biafara, in his capacity as president of Biafara's Incorporated, a West Virginia corporation, in its capacity as manager of Metro Towers LLC, a West Virginia limited liability company, for and on behalf of such limited liability company, as the act and deed of such limited liability company.

Notary Public
My Commission expires: _____