WEST SENECA TOWN OFFICES
1250 Union Road
West Seneca, NY 14224

TOWN BOARD PROCEEDINGS
Minutes #2018-19
September 24, 2018

Supervisor Sheila M. Meegan called the meeting to order at 7:00 P.M. with 30 seconds of silent prayer followed by the Pledge of Allegiance led by Town Engineer Steven Tanner.

ROLL CALL:	Present -	Sheila M. Meegan	Supervisor
		Eugene P. Hart	Councilman
		William P. Hanley, Jr.	Councilman
	Absent -	None	

Supervisor Meegan read the Fire Prevention Code instructing the public where to exit in case of a fire or an emergency.

The meeting was dedicated to the memory of Catherine Celotto & Brian Strobele.

19-A MINUTES TO BE APPROVED

- Motion by Supervisor Meegan, seconded by Councilman Hanley, to approve minutes from the September 10, 2018 work session.

Ayes: All   Noes: None   Motion Carried

- Motion by Supervisor Meegan, seconded by Councilman Hanley, to approve Minutes #2018-18 of September 10, 2018.

Ayes: All   Noes: None   Motion Carried

19-B LEGAL NOTICES

1. Proofs of publication and posting of legal notice: "OF THE ADOPTED REFUNDING BOND RESOLUTION OF THE TOWN OF WEST SENECA IN THE COUNTY OF ERIE, NEW YORK, AUTHORIZING THE REFUNDING OF ALL OR A PORTION OF CERTAIN OUTSTANDING SERIAL BONDS OF SAID TOWN, STATING THE PLAN OF REFUNDING, APPROPRIATING AN AMOUNT NOT TO EXCEED $3,800,000 THEREFOR, AUTHORIZING THE ISSUANCE OF $3,800,000 REFUNDING BONDS OF SAID TOWN OR SO MUCH THEREOF AS MAY BE NECESSARY TO FINANCE SAID APPROPRIATION, AND MAKING CERTAIN DETERMINATIONS ALL RELATIVE THERETO" in the Town of West Seneca, received and filed.

Ayes: All   Noes: None   Motion Carried

19-C PUBLIC COMMENTS ON COMMUNICATIONS

No comments were received.

19-E COMMUNICATIONS

8. Director of Finance re Budget amendment – Pave NY

Motion by Supervisor Meegan, seconded by Councilman Hart, to adopt the following resolution authorizing a budget amendment for PAVE - NY:

WHEREAS, the 2018 Blacktop Paving – PAVE NY has an original budget amount of $55,064; and

WHEREAS, the town received an award letter from the Department of Transportation dated July 16, 2018 stating the 2018 PAVE NY award amount is $65,295.03, $10,231.03 higher than the 2018 original budget amount; and

WHEREAS, the cash received from this grant will be recognized as revenue in the Highway Fund as State Aid – PAVE NY; now, therefore, be it

RESOLVED, the Town Board does hereby authorize a budget amendment to increase Highway Fund State Aid – PAVE NY 2.2.3502 for the excess award amount of $10,231.03 and General Repairs Blacktop Paving – PAVE NY 2.5110.497.1 in the amount of $10,231.03 for the cost of the project.

Ayes: All Noes: None Motion Carried

9. Town Justices re JCAP application

Motion by Supervisor Meegan, seconded by Councilman Hanley, to authorize submission of the JCAP (Justice Court Assistance Program) Grant application for up to $30,000 for purchase of required equipment for the court and authorize the court clerk to complete the necessary application and submit to the NYS Unified Court System.

Ayes: All Noes: None Motion Carried

10. Recreation Supervisor re Section VI, NYSPHSAA Hockey - Ice rink use

Motion by Supervisor Meegan, seconded by Councilman Hanley, to authorize the Supervisor to execute the necessary documents to enter into an agreement with Section VI, NYSPHSAA Hockey (New York State Public High School Athletic Association) located at 365 Harlem Road, West Seneca, for use of the West Seneca Ice Rink.

Ayes: All Noes: None Motion Carried

19-E COMMUNICATIONS

11. Recreation Supervisor re Bishop Timon St. Jude High School – Ice rink use

Motion by Supervisor Meegan, seconded by Councilman Hanley, to authorize the Supervisor to execute the necessary documents to enter into an agreement with Brothers of Christian Schools & Affiliates Local #1186177, Bishop Timon – Saint Jude High School, for use of the West Seneca Ice Rink.

Ayes: All   Noes: None   Motion Carried

12. Recreation Supervisor re Learn to Slate program – Ice rink use

Motion by Supervisor Meegan, seconded by Councilman Hanley, to authorize the Supervisor to execute the necessary documents to enter into an agreement with Joan Disbrow on behalf of Learn to Skate located at 171 Villa Ave, Buffalo, for use of the West Seneca Ice Rink.

Ayes: All   Noes: None   Motion Carried

13. Recreation Supervisor re Appointments for fall/winter programs

Motion by Supervisor Meegan, seconded by Councilman Hanley, to appoint the attached list of individuals to the corresponding positions and rates of pay effective October 1, 2018 – May 31, 2019, noting the positions will be paid from Salary of Laborers – part time account line 001.7140.0149 and authorize the Supervisor to complete and sign the necessary forms for Erie County Personnel.

Ayes: All   Noes: None   Motion Carried
APPENDICES

14. Recreation Supervisor re Fall/winter events

Motion by Supervisor Meegan, seconded by Councilman Hanley, to approve the Enchanted Path to be held on October 26, 2018 and Breakfast with Santa to be held on December 2, 2018.

Ayes: All   Noes: None   Motion Carried

19-F REPORTS

- Jeffrey Schieber, Code Enforcement Officer's, building & plumbing report for August 2018 received and filed.

19-G APPROVAL OF WARRANT

Motion by Supervisor Meegan, seconded by Councilman Hanley, to approve the vouchers submitted for audit, chargeable to the respective funds as follows: General Fund - $216,224.47; Highway Fund - $129,165.42; Special Districts - $5109.74; Capital Fund - $1614.85 (vouchers 106919 - 107270) Trust - $297,866.82 (vouchers 106509 - 107154)

Ayes: All Noes: None Motion Carried

ISSUES OF THE PUBLIC

- An Indian Church Road resident commented/questioned the following:
  - ✓ Requested the street light at Mineral Springs Road and Harlem Road that was knocked down be fixed – Highway Supt. Matthew English stated the town is working with NYSEG to have the pole replaced as well as energizing other poles in the area that are not functioning.
  - ✓ Status of coffee shop – Supervisor Meegan responded that Spot Coffee is completing their own finishing work. They met this morning and the project will be starting in the next couple of days with a December 15th opening anticipated. The Code Enforcement Office will be overseeing the required inspections.
- A Singer Drive resident commented on street poles/lights that are not working and questioned why the town purchased them from NYSEG. Town Engineer Steven Tanner commented on the annual savings to the town by taking ownership and stated other than self-inflicted damage, broken poles are covered by insurance. Town electricians can fix many of the lights, but they will not touch poles with transformers because they are not certified. Highway Supt. Matthew English stated town electricians do not work on anything high voltage.
- A Harwood Road resident questioned/commented on the following:
  - ✓ Some trees on her street need to be trimmed so the stop signs are more visible
  - ✓ Status of basement inspections and questioned if residents receive an approval letter from the town - Town Engineer Steven Tanner explained they are checking gutters and sump pumps to ensure they are not connected to the sanitary system. Verbal approval is given to the homeowner as opposed to a letter.
- James Manley of the West Seneca Veterans Committee questioned/commented on the following:
  - ✓ Time frame for replacement of the learning stations in the Walkway of Freedom – Highway Supt. Matthew English responded he will try to have the work done in October.
  - ✓ Requested the Korean War Memorial be stored at the Highway Department over the winter
  - ✓ Veteran's bricks are on sale until February 15, 2019 at a cost of $90; applications are available in the Town Clerk's Office, Assessor's Office, American Legion Post #735, West Seneca Library and online at wsvets.org.

PRESENTATION OF COMMUNICATIONS BY BOARD MEMBERS AND DEPARTMENT HEADS

SUPERVISOR MEEGAN

- 2019 Budget hearing will be held Monday, October 15, 2018 at 6 P.M. at West Seneca West High School, 3330 Seneca Street

RECREATION SUPERVISOR LAUREN MASSET

- Open interviews for the Recreation Department will take place October 4th from 3:00 P.M. – 4:00 P.M.

COUNCILMAN HART

- A celebration was held on the saving of WNY Psychiatric Center. This past spring Governor Cuomo announced the facility will remain open and a certificate was presented to the Town Board in recognition of their efforts.

EXECUTIVE SESSION

Motion by Supervisor Meegan, seconded by Councilman Hart, to recess to executive session at 7:40 P.M. to discuss a real estate matter.

Ayes: All Noes: None Motion Carried

The board members returned from executive session at 8:40 P.M.

ADJOURNMENT

Motion by Supervisor Meegan, seconded by Councilman Hart, to adjourn the meeting at 8:40 P.M.

Ayes: All Noes: None Motion Carried

JACQUELINE A FELSER, TOWN CLERK

TOWN OF WEST SENECA

JOHN FENZ
TOWN ATTORNEY
jfenz@twsny.org

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

To: The Honorable Town Board

From: John J. Fenz, Esq.
Town Attorney

Date: September 14, 2018

Re: Easement Agreement With SBA Wireless
Part of SBL 134.05-2-5.11 (the "Property")

Kindly adopt a Resolution subject to permissive referendum:

1.) Determining that the Property is no longer required for the Town's purposes and is not held for public use;

2.) Authorizing the Supervisor to execute attached Option Agreement with SBA Towers II, LLC, for an option to enter into an exclusive, perpetual communications easement with the Town of West Seneca over the Property currently leased by SBA from the Town together with an assignment of the corresponding ground lease pursuant to an agreement in recordable form

3.) That based upon an examination of the Short Environmental Assessment Form the Town determines that the proposed action is not anticipated to result in any significant negative effect of the environment and a Negative Declaration is hereby issued; and

4.) Take other further necessary actions to perform the agreement.

If this Resolution is adopted, SBA shall then have a period of 90 days to inspect the property and determine whether it will exercise its option. If SBA elects to exercise the option the Town would grant SBA an exclusive perpetual communications easement at the site in exchange for $382,704.00. Please be advised that the purchase price amount has been verified to be "adequate consideration" by the Town's third party real property appraiser.

July 19, 2018

VIA EMAIL

Town of West Seneca
Attn: John Fenz
1250 Union Road
West Seneca, NY 14224
(716) 603-3253
jfenz@twsny.org

Re: Easement Agreement / Site ID: NY13809-A Site Name: West Seneca

Dear Ground Owner:

SBA Towers II LLC, a Florida limited liability company, or an affiliate ("SBA"), proposes that it be granted the option to enter into an exclusive, perpetual communications easement with the Town of West Seneca ("Owner") over real property currently leased by SBA from Owner ("Property") together with an assignment of the corresponding ground lease pursuant to an agreement in recordable form provided by SBA ("Easement"). A sample form Easement is attached hereto as **Exhibit "A"**. SBA proposes the following terms applicable to this transaction, in addition to the Easement:

Option Payment:	Within 14 days after full execution of this option agreement ("Agreement"), SBA will pay the Owner the sum of One-Hundred Dollars ($100.00).
Option Period:	SBA shall have a period of ninety (90) days from full execution of this Agreement to inspect the Property and contact governmental authorities regarding the Easement ("Option Period"). If SBA elects not to exercise the option, it will send Owner notice of termination prior to the expiration of the Option Period. If notice is not sent prior to the expiration of the Option Period, SBA shall deliver the Easement and other documents necessary for closing ("Closing Documents") within fourteen (14) days of the expiration of the Option Period.
Purchase Price:	One-time payment in the sum of Three Hundred Eighty-Two Thousand Seven Hundred Four and No/100 Dollars ($382,704.00), less any payments made to Owner in advance for ground rent or other rent ("Purchase Price") attributable to any period subsequent to the closing date. Accordingly, no additional consideration shall be due during the term of the Easement.
Closing:	Owner shall execute and deliver to SBA the executed Easement and other Closing Documents, including, but not limited to, an owner's affidavit, closing statement and documents required by SBA's title company to issue an owner's title policy in favor of SBA insuring the exclusive Easement within seven (7) days of receipt. SBA will deliver Owner's closing proceeds, within two (2) business days

following full execution of the Closing Documents by check or wire transfer ("Closing") in accordance with written instructions provided by Owner. The Closing will occur as soon as the conditions set forth on **Exhibit "B"** hereto are satisfied to SBA's satisfaction.

Confidentiality: Owner acknowledges that the terms expressed in this Agreement are confidential, and agrees not to disclose any information regarding this transaction, whether written or oral, to any third party without SBA's written consent. From the date of this Agreement until Closing, Owner agrees not to directly or indirectly solicit, initiate or encourage offers or proposals for the sale of the Property in whole or in part.

Cooperation: Owner will cooperate with SBA in obtaining any consents or approvals from governmental authorities necessary to effectuate and create the Easement.

By executing this Agreement below, Owner agrees to each of its terms and the terms of **Exhibit "A"**. Owner represents that it is the fee simple owner of the Property, with full authority to enter into this Agreement, the assignment at closing to SBA of the landlord's interest in the existing ground lease, and the Easement. This Agreement will be binding upon, and will inure to the benefit of, the Owner, SBA, and their respective successors and assigns. In the event of a breach of this Agreement, in addition to other remedies, the parties are entitled to seek damages including, but not limited to, costs incurred for investigations and inspections done relating to this Agreement. The effective date of this Agreement (and the Option Period shall begin) on the last date this Agreement is executed by the parties. Owner shall deliver the executed Agreement by (1) overnight courier or U.S. mail at the address below, (2) by facsimile to 561-322-2893, or (3) electronic mail to landinfo@sbasite.com. If Owner does not accept the terms of this Agreement within forty (40) days of its date, it shall terminate and shall be of no further force or effect.

We appreciate your cooperation and attention to this matter. If you have any questions, please feel free to call Stephen Davis at 800-799-4722 x 7534.

Sincerely,

SBA Towers II LLC

By: ______________________________
Martin Aljovin
Vice President, Asset Optimization
Date: ________________________

OWNER AGREES TO THE TERMS OF THIS AGREEMENT:

Town of West Seneca

By:______________________________
Print Name:______________________
Title:___________________________
Date: ___________________________

EXHIBIT "A"

SAMPLE EASEMENT AGREEMENT

Prepared by and Return to:
SBA Network Services, LLC
Attn: ____________________
8051 Congress Avenue
Boca Raton, FL 33487
561.226-__________

[Recorder's Use Above This Line]

STATE OF ________________

COUNTY OF ______________

Tax ID Number:

EASEMENT AGREEMENT

By and between ____________________________ ("Grantor") with an address of ________________________________

and

_______________________________________, a ______________________________ ("Grantee") with an address of 8051 Congress Avenue, Boca Raton, FL 33487

By initialing below, the Grantor does hereby acknowledge that the Grantor has received, reviewed and approved this Easement Agreement in which the Easement described herein is granted from Grantor to Grantee. Grantor initial(s) here: _________________________

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") dated effective ______________________, 201__ ("Effective Date") by and between __________________, with an address at ________________ ("Grantor") and ______________________________, a ______________________________, with an address of 8051 Congress Avenue, Boca Raton, FL 33487 ("Grantee").

BACKGROUND

Grantor is the owner of the real property described on **Exhibit 'A'** attached hereto (the "Premises"). Grantor desires to grant to Grantee certain easement rights with respect to the Premises, as more particularly described below, and subject to the terms and conditions of this Agreement.

AGREEMENTS

For and in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easements. Grantor, for itself and its heirs, personal representatives, successors and assigns, hereby grants and conveys unto Grantee, its tenants, lessees, sublessees, licensees, agents, successors and assigns: (i) a perpetual, exclusive easement (the "Exclusive Easement") in and to that portion of the Premises more particularly described on **Exhibit 'B'** hereto; and (ii) a perpetual, non-exclusive easement in and to that portion of the Premises more particularly described on **Exhibit 'C'** hereto (the "Access and Utility Easement") (the Exclusive Easement and the Access and Utility Easement being collectively referred to herein as the "Easements").

2. Private Easement. Nothing in this Agreement shall be deemed to be a dedication of any area for public use. All rights, easements, and interests herein created are private and do not constitute a grant for public use or benefit.

3. Successors Bound. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, lessees, successors and assigns. It is the intention of the parties hereto that all of the various rights, obligations, restrictions, and easements created in this Agreement shall run with the affected lands and shall inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming under them.

4. Duration. The duration of the Easements granted herein (the "Term") shall be perpetual, unless Grantee provides written, recordable notice of its intent to terminate this

Agreement, in which event this Agreement and all obligations of Grantee hereunder shall terminate upon Grantee's recordation of any such notice. Grantor may not terminate this Agreement.

5. Easement Consideration. Grantor hereby acknowledges the receipt, contemporaneous with the execution hereof, of all consideration due hereunder. Accordingly, no additional consideration shall be due during the Term of this Agreement.

6. Use of Easement Areas.

(a) Exclusive Easement. Grantee and its designated customers, lessees, sublessees, licensees, agents, successors and assigns shall have the unrestricted right to use the Exclusive Easement for installing, constructing, maintaining, operating, modifying, repairing and replacing improvements and equipment, which may be located on the Exclusive Easement from time to time, for the facilitation of communications related uses in connection therewith. Grantee may make improvements, alterations or modifications on or to the Easements as are deemed appropriate by Grantee, in its commercially reasonable discretion and are related to the permitted uses. At all times during the term of this Agreement, Grantee shall have the exclusive right to use, and shall have free access to, the Easements seven (7) days a week, twenty-four (24) hours a day. Grantee shall have the exclusive right to lease, sublease, license, or sublicense any structure or equipment on the Exclusive Easement and shall also have the right to license, lease or sublease to third parties any portion of the Exclusive Easement, but no such lease, sublease or license shall relieve or release Grantee from its obligations under this Agreement. Grantor shall not have the right to use the Exclusive Easement for any reason and shall not disturb Grantee's right to use the Exclusive Easement in any manner. Grantor and Grantee acknowledge that Grantee shall have the right to construct a fence around all or part of the Exclusive Easement, and shall have the right to prohibit anyone, including Grantor, from entry into such Exclusive Easement.

(b) Access and Utility Easement. The Access and Utility Easement shall be used by Grantee, its tenants, lessees, sublessees, licensees, agents, successors and assigns for ingress and egress from and to the Exclusive Easement, as well as the construction, installation, operation and maintenance of overhead and underground electric, water, gas, sewer, telephone, data transmission and other utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment) with the right to construct, reconstruct, improve, add to, enlarge, change and remove such facilities, and to connect the same to utility lines located in a publicly dedicated right of way. Grantor shall not in any manner prevent access to, and use of, the Access and Utility Easement by Grantee or its tenants, lessees, sublessees, licensees, agents, successors and assigns and Grantor shall not utilize the Access and Utility Easement in any manner that interferes with Grantee's or its tenants', lessees', sublessees', licensees', agents', successors' and assigns' use of such area. Grantee shall not in any manner prevent access to, and use of, the Access and Utility Easement by Grantor or its tenants.

7. Equipment and Fixtures. Grantee's equipment, structures, fixtures and other personal property now or in the future on the Easements shall not be deemed to be part of the Premises, but shall remain the property of Grantee or its licensees and customers. At any time during the Term and within 180 days after termination hereof, Grantee or its customers shall have

the right to remove their equipment, structures, fixtures and other personal property from the Easements.

8. Assignment. Grantee may freely assign this Agreement, including the Exclusive Easement and the Access and Utility Easement and the rights granted herein, in whole or in part, to any person or entity (including but not limited to an affiliate of Grantee) at any time without the prior written consent of Grantor. If any such assignee agrees to assume all of the obligations of Grantee under this Agreement, then Grantee will be relieved of all responsibility hereunder.

9. Covenants and Agreements.

(a) Grantor represents and warrants that it is the owner in fee simple of the Premises, free and clear of all liens and encumbrances and that it alone has full right to grant the Easements and assign the Lease (as such term is defined in Section 25 hereof). Grantor further represents and warrants that Grantee shall peaceably and quietly hold and enjoy the Easements for the Term.

(b) During the Term, Grantor shall pay when due all real property taxes and all other fees and assessments attributable to the Premises. If Grantor fails to pay when due any taxes affecting the Premises, Grantee shall have the right but not the obligation to pay such taxes and demand payment therefore from Grantor, which payment Grantor shall make within ten (10) days of such demand by Grantee. The provisions of the foregoing sentence shall survive the termination or expiration of this Agreement.

(c) Grantor shall not cause the area comprising the Easements to be legally or otherwise subdivided from any master tract of which it is a part in such a way that the remaining tract containing the Easements is substantially the only use of the tract, nor shall Grantor cause the area comprising the Easements to be separately assessed for tax purposes. If it is determined by Grantee that the transfer of the Easements set forth herein requires or shall require the subdivision of the Premises, and if Grantee, in its sole judgment, determines that it desires to seek subdivision approval, then Grantor agrees to cooperate with Grantee, at Grantee's expense, in obtaining all necessary approvals for such subdivision.

(d) Grantor shall not grant, create, or suffer any claim, lien, encumbrance, easement, restriction or other charge or exception to title to the Premises that would adversely affect Grantee's use of the Easements. Grantor has granted no outstanding options to purchase or rights of first refusal with respect to all or any part of the Premises and has entered into no outstanding contracts with others for the sale, mortgage, pledge, hypothecation, assignment, lease or other transfer of all or any part of the Premises and there are no leases, written or oral, affecting the lands underlying the Easements except for the Lease.

(e) Grantor has and will comply with all environmental, health and safety laws with respect to the Premises.

(f) Grantor has not received notice of condemnation of all or any part of the Premises, notice of any assessment for public improvements, or notices with respect to any zoning ordinance or other law, order, regulation or requirement relating to the use or ownership of such lands and there exists no violation of any such governmental law, order, regulation or requirement and there is no litigation pending or threatened, which in any manner affects the Easements.

(g) Grantor reaffirms and restates the representations contained in the Lease (as defined in Section 25) as though they were set forth in this Agreement. The representations and warranties made hereunder shall survive the Closing. Grantor agrees to indemnify, defend and hold harmless Grantee and its officers, directors, shareholders, agents and attorneys for, from, and against all damages asserted against or incurred by any of them by reason of or resulting from a breach by Grantor of any representation, warranty or covenant of Grantor contained herein, in the Lease, or in any agreement executed in connection herewith.

10. Non-Disturbance. During the Term, Grantor will not improve or grant any other easement, ground lease, lease, license, sale or other similar interest of or upon the Premises if such improvement or interest would interfere with Grantee's use of the Easements nor shall Grantor during the Term enter into any other lease, license or other agreement for a similar purpose as set forth herein, on or adjacent to the Premises. Grantee and its tenants, lessees, sublessees, licensees, agents, successors, and assigns are currently utilizing the Exclusive Easement for the non-exclusive purpose of transmitting and receiving telecommunication signals. Grantor and Grantee recognize the Grantee's use of the easement rights set forth in this Agreement would be frustrated if the telecommunications signals were blocked, if an obstruction were built that would cause interference with such transmission, if access and/or utilities to and from the Exclusive Easement were partially and/or completely inhibited, or if Grantee's use was otherwise materially interfered with or prevented. Grantor, for itself, its successors and assigns, hereby agrees to use its best efforts to prevent the occurrence of any of the foregoing, and shall promptly undertake any remedial action necessary to do so. Grantee shall have the express right to seek an injunction to prevent any of the activity prohibited by this Section 10.

11. Access and Utilities. To the extent not otherwise addressed herein, (or to the extent any access and utility easement specifically referenced herein, including but not limited to the Access and Utility Easement or the Exclusive Easement, if applicable, cannot, does not, or will not fully accommodate the access and utility needs of the Exclusive Easement at any time), Grantor hereby grants and conveys unto Grantee, its tenants, lessees, sublessees, licensees, agents, successors and assigns, full, complete, uninterrupted and unconditional access to and from the Exclusive Easement, seven days a week, 24 hours a day, over and across any adjacent property now or hereafter owned by Grantor, for, without limitation, ingress and egress to and from the Exclusive Easement, as well as the construction, installation, location, maintenance, relocation and repair of overhead and/or underground utility connections, including electric, telephone, gas, water, sewer, and any other utility connection, provided that Grantee shall repair any damages to the Premises caused by such access. This easement, and the rights granted herein, shall be assignable by Grantee to any public or private utility company to further effect this provision. Grantor agrees to maintain all access roadways from the nearest public right of way to the Exclusive Easement in a manner sufficient to allow for pedestrian and vehicular access to the Exclusive Easement at all times. If it is reasonably determined by Grantor or Grantee that any utilities that currently serve the Exclusive Easement are not encompassed within the description of the Access and Utility Easement set forth herein, then Grantor and Grantee agree to amend the

description of the Access and Utility Easement set forth herein to include the description of such areas. If it becomes necessary to relocate any of the utility lines that serve the Exclusive Easement, Grantor hereby consents to the reasonable relocation for such utility lines upon the premises for no additional consideration, and hereby agrees to reasonably cooperate with Grantee to create a revised legal description for Access and Utility Easement that will reflect such relocation.

12. Mortgagees' Continuation Rights and Notice and Cure. Grantee may from time to time grant to certain lenders selected by Grantee and its affiliates (the "Lender") a lien on and security interest in Grantee's interest in this Agreement and all assets and personal property of Grantee located on the Easements, including, but not limited to, all accounts receivable, inventory, goods, machinery and equipment owned by Grantee ("Personal Property") as collateral security for the repayment of any indebtedness to the Lender. Should Lender exercise any rights of Grantee under this Agreement, Grantor agrees to accept such exercise of rights by Lender as if same had been exercised by Grantee. If there shall be a monetary default by Grantee under the Agreement, Grantor shall accept the cure thereof by Lender within fifteen (15) days after the expiration of any grace period provided to Grantee under this Agreement to cure such default, prior to terminating this Agreement (if permitted by the terms hereof). If there shall be a non-monetary default by Grantee under this Agreement, Grantor shall accept the cure thereof by Lender within thirty (30) days after the expiration of any grace period provided to Grantee under this Agreement to cure such default, prior to terminating this Agreement (if permitted by the terms hereof). Hereafter, this Agreement may not be amended in any respect which would be reasonably likely to have a material adverse effect on Lender's interest therein or surrendered, terminated or cancelled, without the prior written consent of Lender. If the Agreement is terminated or is rejected in any bankruptcy proceeding, Grantor will enter into a new easement agreement with Lender or its designee on the same terms as this Agreement within 15 days of Lender's request made within 30 days of notice of such termination or rejection, provided Lender pays all past due amounts under the Agreement, if any. The foregoing is not applicable to normal expirations of this Agreement. Grantor hereby agrees to subordinate any security interest, lien, claim or other similar right, including, without limitation, rights of levy or distraint for rent, Grantor may have in or on the Personal Property, whether arising by agreement or by law, to the liens and/or security interests in favor of the Lender, whether currently existing or arising in the future. Nothing contained herein shall be construed to grant a lien upon or security interest in any of Grantor's assets. Simultaneous with any notice of default given to Grantee under the terms of this Agreement, Grantor shall deliver of copy of such notice to Lender at an address to be provided by Grantee.

13. Notices. All notices required to be given by any of the provisions of this Agreement, unless otherwise stated, shall be in writing and delivered in person or by a national overnight delivery service (and shall be effective when received, when refused or when the same cannot be delivered) to the appropriate party at the address set forth below (or at such other address designated in writing pursuant to the terms hereof):

To Grantor: ____________________

To Grantee: ________________________________
8051 Congress Avenue

Boca Raton, FL 33487
Attn: Legal Dept.

14. Force Majeure. The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be.

15. Recording. This Agreement shall be recorded at either Grantor's or Grantee's option.

16. Miscellaneous. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth where the Premises are located.

17. Captions and Headings. The captions and headings in this Agreement are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of or the scope or intent of this Agreement.

18. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee by this Agreement, or by any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to Grantee.

19. Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

20. Severability. If any provision of this Agreement is deemed unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the sale of the Easements herein either void or voidable, Grantor agrees that upon the written request of Grantee, the grant of the Easements shall convert to a ground lease between Grantor, as lessor, and Grantee, as lessee, (with the Exclusive Easement area being the leased premises therein, and the Access and Utility Easement area remaining a non-exclusive easement for access and utility purposes) for uses consistent with those set forth in Section 6 hereof, and containing other terms and conditions acceptable to both parties; provided that Grantee shall not be required to obtain the consent of Grantor to enter into

any sublease or license of any portion of the Exclusive Easement or to permit sublessees or licensees to utilize the Access and Utility Easement; nor shall Grantor be entitled to any additional consideration in connection with such subleases and licenses; and provided that the delivery of the consideration paid by Grantee to Grantor for the Easements at the execution of this Agreement shall constitute the prepayment of rent under such ground lease for an extended term of 99 years, or as long as permitted by applicable law.

21. Attorney's Fees. If there is any legal action or proceeding between Grantor or Grantee arising from or based on this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorney's fees and disbursements shall be included in and as a part of such judgment.

22. Entire Understanding and Amendment. This Agreement and the closing documents executed in connection therewith, constitute the entire understanding between the parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressed herein. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement and signed by each of the parties hereto.

23. Zoning. To the extent any improvements, whether now or in the future existing, upon the Exclusive Easement do not meet zoning or other land-use requirements, or to the extent such improvements may otherwise have to be constructed and/or relocated, Grantor hereby consents to the reasonable construction and/or relocation of such improvements to accommodate such requirements and agrees to reasonably cooperate with Grantee to create a revised legal description for the Exclusive Easement and the Access and Utility Easement. Grantor hereby covenants and agrees that neither Grantor nor an affiliate of Grantor shall at anytime file an opposition to a zoning or land use application of Grantee or in any way publicly oppose Grantee at a zoning hearing or other land use proceedings in connection with the Premises and the Easements; and that Grantor shall promptly cooperate with Grantee in making application for obtaining all licenses, permits, and any other necessary approvals that may be required for Grantee's intended use of the Easements.

24. Rule Against Perpetuities. If the rule against perpetuities or any other rule of law would invalidate the Easements or any portion or provision hereof or would limit the time during which the Easements or any portion or provision hereof shall be effective due to the potential failure of an interest in property created herein to vest within a particular time, then each such interest in property shall be effective only from the date hereof until the passing of twenty (20) years after the death of the last survivor of the members of Congress of the United States of America (including the House of Representatives and the Senate) representing the state in which the Premises is located who are serving on the date hereof, but each such interest in property shall be extinguished after such time, and all other interests in property created herein and all other provisions hereof shall remain valid and effective without modification.

25. Assignment of Ground Lease. The parties hereby recognize and agree that the Premises is currently subject to that certain _____________, dated ______, originally by and between Grantor and ___________________, and assigned to Grantee, as amended and assigned from time to time (collectively, the "Lease"). It is the intention of the parties that the interest created by this Agreement, including the Lease, shall not merge into any other interest now or hereafter held by Grantee and such interests shall remain a separate and distinct interest in the underlying real property. Grantor hereby acknowledges that there currently exists no default under the Lease and no conditions that, with the passage of time, would constitute defaults under the Lease. Grantor hereby assigns, transfers, sets over and delivers to Grantee, all of its rights, title and interests under the Lease arising or accruing on or after the date of this Agreement and Grantee hereby accepts, assumes and agrees to be bound by all the terms and conditions which are the responsibility of the landlord under the Lease. Grantor hereby releases and forever discharges Grantee from all claims arising under the Lease. Grantor hereby agrees to indemnify and agrees to hold Grantee harmless with respect to any demands, claims, actions, causes of action, assessments, expenses, costs, damages, losses, and liabilities (including reasonable attorneys' fees and costs) under the Lease which relate to costs or actions first arising on or before the date of this Agreement. Grantee hereby agrees to indemnify and agrees to hold Grantor harmless with respect to any demands, claims, actions, causes of action, assessments, expenses, costs, damages, losses, and liabilities (including reasonable attorneys' fees and costs) under the Lease which relate to costs or actions first arising after the date of this Agreement.

26. Cure Period; Default. No party to this Agreement shall be in default of the terms thereof until thirty (30) days following the date of the defaulting party's receipt of notice of default from the non-defaulting party. In the event such default is not reasonably capable of cure within such thirty (30) day period and such defaulting party promptly and diligently pursues the cure of such default during such cure period, such cure period shall be extended for so long as the defaulting party diligently pursues such cure for a maximum of ninety (90) additional days. In no event shall Grantor be entitled to terminate this Agreement as a result of or remedy for any breach or default thereunder by Grantee. In the event Grantor fails to comply with the terms of this Agreement, Grantee may, in its sole and absolute discretion, cure any such default, and to the extent Grantee incurs any expenses in connection with such cure (including but not limited to the amount of any real property taxes Grantee pays on behalf of Grantor), Grantor agrees to promptly reimburse Grantee for such expenses incured and hereby grants Grantee a security interest and lien in the Premises and the parent parcel in which it is located, if any, to secure Grantor's obligation to repay such amounts to Grantee.

27. Right of First Refusal/Exclusivity. If at any time during term of this Agreement, Grantor receives a bona fide written offer from a third person (the "Offer") to sell, assign, convey, lease or otherwise transfer or create any interest in the Easements and/or Premises, or any portion thereof, which Grantor desires to accept, Grantor shall first give Grantee written notice (including a copy of the proposed contract) of such Offer prior to becoming obligated under such Offer, with such notice giving Grantee the right to purchase the Easements for a pro-rata price based on the size that the Easements are to the portion of the Premises described in the Offer. Grantee shall have a period of thirty (30) days after receipt of Grantor's notice and terms to accept the Offer or exercise Grantee's right to purchase the Easements and exercise this right of first refusal by notifying Grantor in writing. If Grantee has not accepted the Offer or exercised its right to

purchase the Easements in writing to Grantor within such thirty (30) day period, the Offer will be deemed rejected. In addition to the above, Grantor shall not, at any time during the term of this Agreement, grant any interest in any portion of the Premises (other than the conveyance of fee simple title to the entire Premises) to any third party without the prior written consent of Grantee, in Grantee's sole and absolute discretion.

As part of Grantee's right to the undisturbed use and enjoyment of the Easements, Grantor shall not, at any time during the term of this Agreement (i) use or suffer or permit another person to use any portion of the Premises or any adjacent parcel of land now or hereafter owned, leased or managed by Grantor for the uses permitted herein or other uses similar thereto, or (ii) grant any interest or an option to acquire any interest in any portion of the Premises that permits (either during the term of this Agreement and/or after the term hereof) any of the uses permitted under this Agreement without the prior written consent of Grantee, in Grantee's sole discretion. Grantor may not assign any Easement Payment or this Agreement or any rights hereunder, except in connection with conveyance of fee simple title to the Premises, without the prior written consent of Grantee, in Grantee's sole and absolute discretion.

28. Further Acts; Attorney-In-Fact. Grantor shall cooperate with Grantee in executing any documents necessary to protect Grantee's rights under this Agreement or Grantee's use of the Easements and to take such action as Grantee may reasonably require to effect the intent of this Agreement. Grantor hereby irrevocably appoints Grantee as Grantor's attorney-in-fact coupled with an interest to prepare, execute and deliver land-use and zoning applications, and any other documents that a municipality may require, concerning the tower or the tower facilities, on behalf of Grantor with federal, state and local governmental authorities, and upon request, will sign a separate power of attorney to such effect.

[The remainder of this page is intentionally left blank. Signatures to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates written below.

WITNESSES:

____
Print Name: ______________________

____
Print Name: ______________________

GRANTOR:

By: ____________________________
Print Name: _____________________
Title: __________________________

STATE OF ____________

COUNTY OF __________

INSERT CORRECT STATE NOTARY

____
Notary Public
Print Name: ____________________
My Commission Expires: _________

(NOTARY SEAL)

WITNESSES:

GRANTEE:

______________________________, a
____

____
Print Name: ______________________

By: ______________________________
Thomas P. Hunt
Executive Vice President & General Counsel

____
Print Name: ______________________

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of ________________, 201___ by Thomas P. Hunt, the Executive Vice President & General of Counsel ______________________________, a __________________________, on behalf of the company, who is personally known to me.

____
Notary Public
Print Name: ______________________
My Commission Expires: ____________

(NOTARY SEAL)

EXHIBIT 'A'

Premises
Legal description to be incorporated upon receipt of final survey.

EXHIBIT 'B'

Exclusive Easement
Legal description to be incorporated upon receipt of final survey.

EXHIBIT 'C'

Access and Utility Easement
Legal description to be incorporated upon receipt of final survey.

EXHIBIT "B"

CONDITIONS TO CLOSING

1. Receipt by SBA of a title insurance commitment for the subject transaction stating that Owner has good, indefeasible and marketable fee simple title to the Property, free and clear of all liens and encumbrances except such matters as may be acceptable to SBA.

2. Receipt by SBA of a survey in form satisfactory to SBA revealing no encumbrances, which shall be provided to Owner in advance of the Closing. The legal descriptions from the survey shall be used to complete the descriptions of the exclusive, perpetual communications easement on the final executed, recordable Easement.

3. The execution and delivery by Owner of all forms required by applicable taxing authorities and any documents required by SBA's title insurer evidencing the authority of the party executing such documents on Owner's behalf.

4. Owner will obtain an executed, recordable subordination and a non-disturbance agreement ("SNDA") for all mortgages, deeds of trust or any other liens against the Property prior to Closing. If Owner is unable to obtain any required SNDA, SBA reserves the right, in its sole discretion, to reduce the Purchase Price by ten percent (10%), in each instance, and elect to close without such SNDA or elect not to close.

5. The use of the Easements by SBA and the financial transaction contemplated herein is satisfactory to SBA (this determination being made in SBA's sole discretion).

Short Environmental Assessment Form
Part 1 - Project Information

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information
Town of West Seneca

Name of Action or Project:
Grant of an exclusive, perpetual communications easement

Project Location (describe, and attach a location map):
See Attached Exhibit A.

Brief Description of Proposed Action:
1.) The Town Board determination that the Property is no longer required for the Town's purposes and is not held for public use;
2.) Authorizing the Supervisor to execute attached Option Agreement with SBA Towers II, LLC, for an option to enter into an exclusive, perpetual communications easement with the Town of West Seneca over the Property currently leased by SBA from the Town together with an assignment of the corresponding ground lease pursuant to an agreement in recordable form.

Name of Applicant or Sponsor: Town of West Seneca	Telephone: (716) 674-5600
	E-Mail: jfenz@twsny.org

Address:
1250 Union Road

City/PO: West Seneca	State: NY	Zip Code: 14224

	NO	YES
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	☑	☐
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:	☑	☐

3.a. Total acreage of the site of the proposed action? .04 acres
b. Total acreage to be physically disturbed? 0 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? .4 acres

4. Check all land uses that occur on, adjoining and near the proposed action.
☐ Urban ☐ Rural (non-agriculture) ☐ Industrial ☑ Commercial ☐ Residential (suburban)
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): ____________
☐ Parkland

	NO	YES	N/A
5. Is the proposed action,			
a. A permitted use under the zoning regulations?	☐	☑	☐
b. Consistent with the adopted comprehensive plan?	☐	☑	☐
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	☐	☑	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: ____________	☑	☐	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	☑	☐	
b. Are public transportation service(s) available at or near the site of the proposed action?	☐	☑	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	☑	☐	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: ____________	☑	☐	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: ____________	☑	☐	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: ____________	☑	☐	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	☑	☐	
b. Is the proposed action located in an archeological sensitive area?	☑	☐	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	☑	☐	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: ____________	☑	☐	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: ☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☐ Wetland ☐ Urban ☑ Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	☑	☐	
16. Is the project site located in the 100 year flood plain?	☑	☐	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	☑	☐	
a. Will storm water discharges flow to adjacent properties? ☐ NO ☐ YES			
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? ☐ NO ☐ YES If Yes, briefly describe: ____________			

	NO	YES
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: ____________	☑	☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: ____________	☑	☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: ____________	☑	☐

I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: Town of West Seneca   Date: 9/20/2018

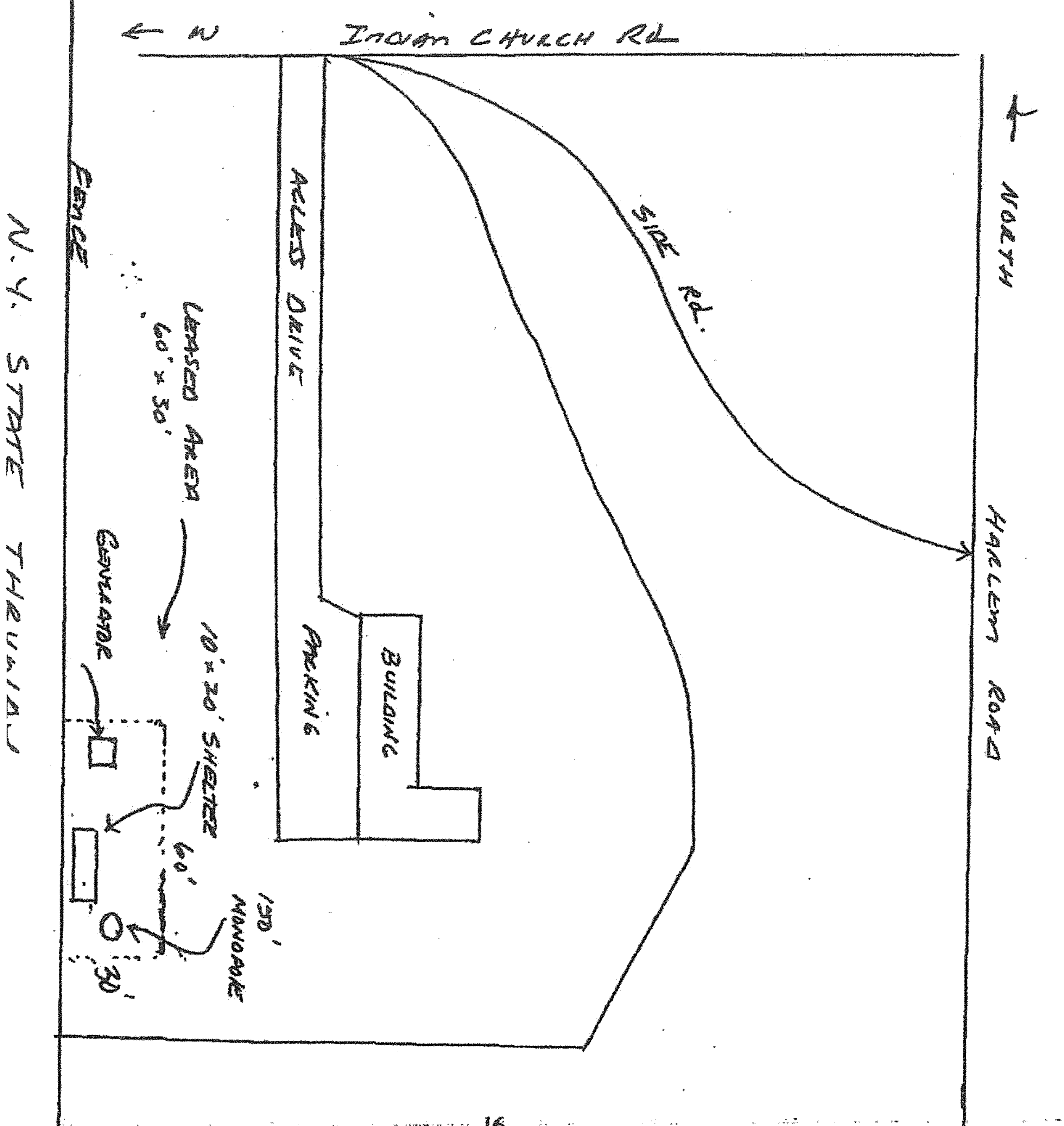
Signature: ____________

PRINT FORM

EXHIBIT A

Site Name: West Seneca NW
Site No: 6256

Site Sketch



TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY

LAUREN J. MASSET
RECREATION SUPERVISOR

Last Name	First Name	Rate of Pay	Title – REGULAR PART TIME ONLY	New/Reappointment
Cruz	Michael	**$12.25/hour**	Recreation Attendant (Part Time)	New
Damian	Paul	**$13.00/hour**	Recreation Attendant (Part Time)	New
Drajem	Joseph	**$12.50/hour**	Recreation Attendant (Part Time)	Reappointment
Elaine	Corey	**12.25/hour**	Recreation Attendant (Part Time)	Reappointment
Cislo	EmmaKay	**$12.00/hour**	Recreation Attendant (Part Time)	New
Feneziani	Sam	**$12.50/hour**	Recreation Attendant (Part Time)	Reappointment
Glawatz	Lauren	**$13.50/hour**	Recreation Attendant (Part Time)	Reappointment
Gorman	Brian	**$12.00/hour**	Recreation Attendant (Part Time)	New
Gorman	Joseph	**$12.00/hour**	Recreation Attendant (Part Time)	New
Hill	Abby	**$12.00/hour**	Recreation Attendant (Part Time)	New
Nikander	Zachary	**12.25/hour**	Recreation Attendant (Part Time)	Reappointment
Stoklosa	Nicole	**$12.00/hour**	Recreation Attendant (Part Time)	New
Strawder	Nicole	**$12.50/hour**	Recreation Attendant (Part Time)	Reappointment
Sullivan	Justin	**$12.00/hour**	Recreation Attendant (Part Time)	New
Talluto	Michael	**$13.50/hour**	Recreation Supervisor (Part Time)	Reappointment
Urbanczyk	Felicia-Ann	**$13.50/hour**	Recreation Attendant (Part Time)	Reappointment