

**APRIL 21, 2010
REGULAR TOWN BOARD MEETING**

Town Hall

7:00 P.M.

Patti Michalak, Councilwoman led the pledge to the flag.

Roll Call

Present: Supervisor Post
Deputy Supervisor Underhill
Councilman Lang
Councilwoman Michalak
Councilman Gerace

Others

Present: Town Clerk Morasco
John Riley
Roger Muehlig, Daily News Reporter

The Supervisor called the meeting to order at 7:05 P.M.

March 17, 2010 Regular Town Board Meeting: Motion Councilman Lang, second Councilman Gerace to approve the minutes as written.

Ayes: Lang, Gerace, Underhill, Michalak, Post
MOTION CARRIED by unanimous vote (5-0)

RESOLUTION NO. 63:

Councilman Lang offered the following:

MAINTENANCE AGREEMENT WITH REL COMM, INC.

WHEREAS, Rel-Comm, Inc. installed the telecommunications systems upgrade in the Town Hall and Highway Facility in 2009; and

WHEREAS, a Maintenance Agreement is required to be executed between the Town of Batavia and Rel Comm, Inc. (agreement attached) to maintain the system at a cost of \$96.50 per month starting May 1, 2010.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to execute the Maintenance Agreement between the Town of Batavia and Rel Comm, Inc. at a cost of \$96.50 per month, annual cost of \$1,158.00 starting May 1, 2010 to maintain the telecommunications system.

Second by: Councilwoman Michalak

Ayes: Lang, Michalak, Gerace, Underhill, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 64:

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Deputy Supervisor Underhill offered the following:

**MITEL/INTER-TEL 5000 TELECOMMUNICATION SYSTEM
SOFTWARE ASSURANCE PACKAGE**

WHEREAS, Rel-Comm, Inc. installed the Mitel CS 5000 telecommunications system upgrade in the Town Hall and Highway Facility in 2009, which also included enrollment in the Software Assurance Program; and

WHEREAS, Mitel is offering customers an opportunity to purchase a software assurance package for up to an additional four (4) years on guaranteed software upgrades (pricing attached).

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board authorizes the purchase of a Two (2) Year Software Assurance Package at a cost of \$600.00.

Second by: Councilman Lang
Ayes: Underhill, Lang, Michalak, Gerace, Post
APPROVED by unanimous vote (5-0)

RESOLUTION NO. 65:

Supervisor Post offered the following:

**ADDENDUM TO AGREEMENT BETWEEN EBS-RMSCO, INCORPORATED HEALTH
INSURANCE
NON-BARGAINING EMPLOYEES-HRA**

WHEREAS, on December 17, 2008 the Town Board passed resolution #198 for the Town of Batavia to enter into an agreement with EBS-RMSCO, Incorporated for the Health Reimbursement Arrangement program for non-bargaining employees; and

WHEREAS, the attached addendum hereby modifies the Agreement to comply with recent changes to the Health Insurance Portability and Accountability Act (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HITECH Act) and regulations and other guidance issued to date by the Department of Health and Human Services.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to execute the Addendum to Agreement between the Town of Batavia and EBS-RMSCO, Incorporated.

Second by: Councilman Gerace
Ayes: Post, Gerace, Lang, Underhill, Michalak
APPROVED by unanimous vote (5-0)

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RESOLUTION NO.66:

Councilwoman Michalak offered the following:

ESTABLISH LINE ITEMS
FOR CAPITAL PROJECT

RESOLVED, the Batavia Town Board hereby establishes the following line items:

HR – PARK ROAD RECONSTRUCTION

HR 1380.400 Fiscal Agent - Contractual
HR 1420.400 Legal Expense - Contractual
HR 1440.100 Engineering – Personal Services
HR 1440.110 Engineering – Personal Svc – Water
HR 1440.120 Engineering – Personal Svc – Sewer
HR 1440.130 Engineering – Personal Svc – Drainage
HR 1440.140 Engineering – Personal Svc – Roadway
HR 1440.200 Engineering - Equipment
HR 1440.400 Engineering – Contractual - Supplies and Materials
HR 1440.410 Engineering – Contractual – Consultant A
HR 1440.411 Engineering – Contractual – Consultant B
HR 1440.412 Engineering – Contractual – Consultant C
HR 1440.430 Engineering – Rental Equipment
HR 1440.440 Engineering - Miscellaneous
HR 1989.400 Advertising - Contractual
HR 5110.400 Maintenance of Roads – Contractual - Construction
HR 8340.400 Transmission/Distribution – Contractual – Construction
HR 8340.410 Transmission/Distribution – Contractual – Other
HR 8340.420 Transmission/Distribution – Contractual – Archeological
HR 9730.600 BAN – Principle
HR 9730.700 BAN – Interest
HR 9901.900 Transfers To Other Funds
HR 2401 Interest & Earnings
HR 2770 Miscellaneous Revenues
HR 3591 State Aid Highway
HR 4589 Federal Aid Highway
HR 4991 Water Capital Grants
HR 5031 Interfund Transfers
HR 5710 Serial Bonds
HR 5730 BAN Proceeds
HR 5731 BAN Redeemed From Appropriations

Second by: Deputy Supervisor Underhill

Ayes: Michalak, Underhill, Gerace, Lang, Post

APPROVED by unanimous vote (5-0)

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RESOLUTION NO. 67:

Councilman Gerace offered the following:

**PITNEY BOWES
POSTAGE METER RENEWAL RENTAL AGREEMENT**

WHEREAS, on May 17, 2006 the Town entered into a Postage Meter Rental agreement for 51 months at a cost of \$109.00 per month; and

WHEREAS, the agreement is said to expire in August 2010; and

WHEREAS, the Town received a new quote from Pitney Bowes to replace and renew the current agreement, which reflects New York State Contract pricing (Contract #PC61730 Award #19594-E, expires April 30, 2010), at a cost of \$106.00 per month.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby authorizes the renewal of the Postage Meter Rental Agreement (DM200 Postage Meter) from Pitney Bowes in the amount of one hundred six dollars (\$106.00) per month, effective June 30, 2010 for 51 months; and be it

FURTHER RESOLVED, the Town Supervisor is hereby authorized to execute the agreement (attached).

Second by: Deputy Supervisor Underhill

Ayes: Gerace, Underhill, Michalak, Lang, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 68:

Councilman Lang offered the following:

**SUBSURFACE INVESTIGATION SERVICES
PARK ROAD RECONSTRUCTION PROJECT**

WHEREAS, the Town of Batavia has received authorization from the U.S. Department of Transportation in the amount of \$513,000 to fund the design of the Park Road Project from NYS Route 98 to NYS Route 63 in the Town of Batavia (Project number 4754.861); and

WHEREAS, the use of these funds requires that the Town of Batavia utilize the New York State Locally Administered Federal Aid Project Manual to design and administer the project. This manual requires that a subsurface investigation be conducted for the project area; and

WHEREAS, the Assistant Town Engineer requested proposals from 3 firms in the Western New York area to conduct subsurface investigations for the Park Road Project; and

WHEREAS, the Assistant Town Engineer received proposals from two firms; and

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WHEREAS, the Assistant Town Engineer evaluated the proposals based upon 1) Qualifications/ Experience of the Firm, 2) Understanding of scope of work, 3) Technical Approach, 4) Ability to meet the project schedule 5) Cost; and

WHEREAS, Empire Geo Services, Inc. submitted the lowest cost proposal at a cost not to exceed two thousand, nine hundred, fifty dollars (\$2,950.00) and met the requirements of the scope of work to be completed (proposal agreement attached); and

WHEREAS, the Assistant Town Engineer is recommending to the Town Board to award the subsurface investigation of the Park Road Project to Empire Geo Services, Inc.; and

NOW, THEREFORE, BE IT RESOLVED, the Batavia Town Board authorizes the Supervisor to retain Empire Geo Services, Inc. to conduct subsurface investigations on Park Road Project at a cost not to exceed two thousand, nine hundred, fifty dollars (\$2,950.00) and to execute the attached proposal agreement between the Town of Batavia and Empire Geo Services, Inc.

Second by: Councilman Gerace

Ayes: Lang, Gerace, Underhill, Michalak, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 69:

Deputy Supervisor Underhill offered the following:

**RESOLUTION TO ACCEPT THREE SEPARATE
PURCHASE OPTION AGREEMENTS**

WHEREAS, the Town Board desires to investigate the use of certain parcels of land located on portions of Galloway, Harloff and Kiefer Roads in the Town of Batavia, as more fully described herein, and

WHEREAS, the Town Board desires to enter into Purchase Option Agreements with three (3) separate land owners for an initial period of two (2) years, with the further option to extend this period for two (2) years thereafter, and

WHEREAS, the owners of said premises have reviewed the proposed Purchase Option Agreements and are satisfied with the terms and conditions therein.

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Batavia, New York, that the terms and conditions of three (3) separate Purchase Option Agreements as set forth herein, along with a "Purchase and Sale Contract for Lots and Vacant Land" attached to each one, copies of which are annexed and made a part of the Town Board Minutes; are hereby approved, and the Town Supervisor is authorized and directed to execute these Purchase Option Agreements and any other related necessary

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documents, as follows:

1. With Richard G. Bauer, residing at 3936 Cookson Road, Batavia, New York 14020, for premises consisting of the following:
 - A. Approximately 40.6 acres of vacant land located on Galloway Road, Tax Map No. 2-1-16.
 - B. Approximately 36.9 acres of vacant land located on Harloff Road, Tax Map No. 2-1-20.
 - C. Approximately 27.7 acres of vacant land located on Galloway Road, Tax Map No. 2-1-25.

2. With John A. Riley and Marcia Riley, residing at 2982 Galloway Road, Batavia, New York 14020, for premises consisting of the following:
 - A. Approximately 12.5 acres of vacant land located on Galloway Road, being a portion of Tax Map No. 2-1-8.1, located in the southeast corner of this parcel.

3. With Joseph Fenton and Elizabeth Fenton, residing at 2889 Pratt Road, Batavia, New York 14020, for premises consisting of the following:
 - A. Approximately 33.0 acres of vacant land located on Kiefer Road, being the north portion of Tax Map No. 2-1-24.

BE IT FURTHER RESOLVED that payment is hereby authorized to said Richard G. Bauer in the amount of Nine Thousand Five Hundred Dollars (\$9,500.00) for the Purchase Option Agreement as outlined in Subparagraph 1 herein, and

BE IT FURTHER RESOLVED that payment is hereby authorized to said John A. Riley and Marcia Riley in the amount of One Thousand Two Hundred Dollars (\$1,200.00) for the Purchase Option Agreement as outlined in Subparagraph 2 herein, and

BE IT FURTHER RESOLVED that payment is hereby authorized to said Joseph Fenton and Elizabeth Fenton in the amount of Three Thousand Dollars (\$3,000.00) for the Purchase Option Agreement as outlined in Subparagraph 3 herein, and

BE IT FURTHER RESOLVED that the payments as authorized herein for each Purchase Option Agreement shall be contingent upon execution of all three (3) Purchase Option Agreements by the respective land owners, and no payment shall be made to any individual land owner until all three (3) Purchase Option Agreements have been fully executed.

Dated: April 21, 2010

Second by: Councilman Lang

Ayes: Underhill, Lang, Michalak, Gerace, Post

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APPROVED by unanimous vote (5-0)

PURCHASE OPTION AGREEMENT

THIS AGREEMENT, made the ____ day of _____, 2010, by and between the **TOWN OF BATAVIA**, a municipal corporation with its offices located at 3833 West Main Road, Batavia, New York 14020 (hereinafter referred to as “Buyer”), and **RICHARD G. BAUER**, residing at 3936 Cookson Road, Batavia, New York 14020 (hereinafter referred to as “Seller”).

WITNESSETH:

WHEREAS, the Buyer intends to investigate the use of a portion of Seller’s land as hereinafter described for potential uses as a park and/or recreational activities, and

WHEREAS, Buyer desires to have an exclusive Option to purchase this property during the period that it will need to investigate funding and other steps necessary to accomplishing this development, and Seller agrees to grant this Option.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

1. In consideration of the sum of NINE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$9,500.00), paid by the Buyer to the Seller, receipt whereof is hereby acknowledged, the Seller does hereby grant to the Buyer the exclusive Option to purchase a certain portion of Seller’s property located in the Town of Batavia, County of Genesee and State of New York, and more particularly being described as follows (hereinafter referred to as “Premises”):

- A. Approximately 40.6 acres of vacant land located on Galloway Road, tax map number 2-1-16.
- B. Approximately 36.9 acres of vacant land located on Harloff Road, tax map number 2-1-20.
- C. Approximately 27.7 acres of vacant land located on Galloway Road, tax map number 2-1-25.

2. This Option shall expire two years from the date of this Agreement. The Buyer shall have the exclusive Option at its sole discretion to extend and renew this Option Agreement for an additional period of two years, upon payment of the same Option price of an additional \$9,500.00, provided that Buyer gives written notice to Seller prior to the expiration of the initial Option term.

3. This Option is to be exercised by the Buyer by dating and signing a “Purchase and Sale Contract for Lots and Vacant Land”, in the form as annexed hereto, and personally returning and delivering it to the Seller at the address set forth above, prior to the expiration date of this Option or the one renewal thereof.

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4. If the Buyer exercises this Option, then it will be responsible to prepare a survey of the Premises, and the purchase price shall be paid at the rate of ONE THOUSAND EIGHT HUNDRED AND 00/100 DOLLARS (\$1,800.00) per acre, based upon the acreage as surveyed.

5. In the event that the Buyer exercises the Option, any payments for the Option and renewal thereof by the Buyer to the Seller shall be considered as a down payment to be deducted from the purchase price at closing.

6. If this Option is exercised as herein provided, the Buyer and Seller will perform all of the obligations set forth in the annexed "Purchase and Sale Contract for Lots and Vacant Land" to be performed as respective Buyer and Seller as set forth therein.

7. In the event that the Buyer does not exercise this Option during the initial time period or during the renewal period thereof, then this Option shall be declared terminated, cancelled and null and void, without further obligation by either party to the other. In such event the Seller shall retain any payments made by the Buyer in consideration for this Purchase Option Agreement.

8. The Seller shall pay all taxes and assessments due upon the Premises until the termination of the Option period(s) or until the closing hereunder.

9. This Purchase Option Agreement shall not be assigned by either party without the express prior written consent of the other.

10. This Agreement and the terms and conditions thereof shall be binding and inure to the benefit of both the Buyer and Seller, and their respective heirs, successors and permitted assigns, and this Purchase Option Agreement shall run with the land upon the Premises described herein.

11. At any time after execution of this Purchase Option Agreement, Buyer shall have the right to inspect, survey, examine and/or test the Premises and conduct such tests thereon as it deems appropriate, by agents or otherwise. Buyer and/or its agents or employees shall have access to the Premises at any reasonable time for purposes of making the foregoing inspections. Buyer shall pay all costs associated with the foregoing inspection of the Premises performed or conducted by Buyer, or at the request of Buyer, by its agents or otherwise. Buyer agrees to indemnify, defend and hold Seller harmless from all actual suits, causes of action, losses, payments and expenses arising from any personal injury or property damage caused by Buyer's negligence during the inspection of the Premises. Buyer agrees to return the Premises in as near as possible to its condition prior to Buyer's entry thereon.

12. During the term of the Option period or the renewal thereof, the Seller shall have the right to enter upon the Premises to conduct proper forestry maintenance upon any wooded areas located upon the Premises. The Seller agrees to indemnify, defend and hold Buyer harmless from all actual suits, causes of action, losses, payments and expenses arising from any personal injury or property damage caused by any maintenance activities conducted by the Seller or its agents on the Premises.

13. This Purchase Offer Agreement constitutes the entire Agreement and understanding between the parties relating to the Premises and supersedes all prior or other Agreements and representations in connection with said sale and purchase. It shall not be changed except by an instrument in writing signed by the Buyer and Seller or person authorized to act on their behalf.

14. This Agreement shall be governed and construed according to the Laws of the State of New York, and any and all disputes or causes of action that shall arise in relation to this Agreement shall be solely brought and venued in Genesee County, New York.

IN WITNESS WHEREOF the parties have last signed this Agreement the day and year first written above, which will be the effective date of this Agreement.

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The Town of Batavia

Richard G. Bauer

**By: Gregory H. Post
Supervisor**

State of New York }
County of Genesee }ss:

On this _____ day of _____, 2010, before me, the undersigned, personally appeared Richard G. Bauer, 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

State of New York }
County of Genesee }ss:

On this _____ day of _____, 2010, before me, the undersigned, personally appeared Gregory H. Post, 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

**PURCHASE AND SALE CONTRACT
FOR LOTS AND VACANT LAND**

When signed, this document becomes a binding contract. Buyer or Seller may wish to consult their own attorney.

TO: RICHARD G. BAUER (Seller)
(Buyer)

FROM: THE TOWN OF BATAVIA

OFFER TO PURCHASE

Buyer offers to purchase the property described below from Seller on the following terms:

1. **Property Description.** Property known as vacant land on Galloway and Harloff Roads in the Town

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of Batavia _____, State of New York, also known as Tax No.'s 2-1-16, 2-1-20 and 2-1-25 including all buildings, and any other improvements and all rights which the Seller has in or with the property. Approximate Lot Size: 105.20 acres
Description: (Include specific inclusions and exclusions) _____
_____.

2. Price: Amount and How it will be Paid. The purchase price is: (Check and complete applicable provisions)

(A) _____ Dollars (\$ _____).

(B) One Thousand Eight Hundred Dollars (\$ 1,800.00) per acre,

exclusive inclusive of area within the right-of-way, as determined by instrument survey.

Buyer shall receive credit at closing for any deposit pursuant to the annexed Purchase Option Agreement.. The balance of the purchase price shall be paid as follows: (Check and complete applicable provisions.)

(A) By official bank draft or certified check at closing.

(B) By Buyer delivering a purchase money bond and mortgage to Seller at closing. This purchase money bond and mortgage shall be in the amount of \$_____, shall be amortized over a term of ___ years, and all due and payable in ___ years from the date of closing, shall bear interest at the rate of ___ % per year, and shall be paid in (monthly) installments of \$_____, including principal and interest. The mortgage shall contain the statutory clauses as to payment, insurance, acceleration on default of 30 days, taxes, assessments, and water rates and also shall provide for late charges of 2% of any monthly payment which is not paid within 15 days after it is due and for recovery of reasonable attorney's fees if the mortgage is in default. The mortgage shall allow Buyer to prepay all or part of the mortgage without penalty at any time but shall also provide that the mortgage be paid in full if Buyer sells the property, unless Seller consents in writing to assumption of the mortgage debt. The balance of the purchase price will be paid at closing by official bank draft or certified check.

(C) Mortgage Assumption pursuant to the terms and conditions of the Mortgage Assumption Addendum.

3. Contingencies. Buyer makes this offer subject to the following contingencies. If any of these contingencies is not satisfied by the dates specified, then either Buyer or Seller may cancel this contract by written notice to the other. With reasonable notice, Seller agrees to allow Buyer and/or its Agents or Employees access to the property for the purpose of satisfying these contingencies: (Check and complete applicable provisions.)

(A) **Development Approvals.** This offer is contingent upon Buyer obtaining all requisite approvals from any governing body having jurisdiction for construction or development of the property as _____. Buyer is to have until _____ to obtain approval in final, nonappealable form, upon conditions acceptable to Buyer and Seller. Buyer and Seller agree to make joint application by _____ and diligently pursue the application.

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[](B) **Subdivision Approval.** This offer is contingent upon Buyer Seller obtaining all requisite approvals from any governing body having jurisdiction for subdivision approval of the property. Buyer and Seller agree to make joint application for subdivision approval by _____ and diligently pursue the application. The final approval, upon conditions acceptable to Buyer and Seller, shall be obtained on or before _____.

[](C) **Percolation and Subsurface Tests.** The Buyer shall have permission to enter the property for the purpose of conducting percolation and subsurface tests. If the percolation rates are unsatisfactory or if subsurface conditions are revealed which would result in unusual site development expense in the opinion of the Buyer, then the Buyer shall have the option of canceling this contract by written notice to the Seller without further liability on the part of either party. Buyer shall make such determination within _____ days of acceptance, otherwise this contingency is waived. Buyer shall restore the ground to the same condition as found.

[](D) **Water Availability.** The Buyer shall have permission to enter the property for the purpose of drilling a well for water at Buyer's expense provided that Buyer shall deposit as security in Seller's attorney's trust account an amount sufficient to cover the maximum expense of well drilling shown on a written estimate provided to Buyer's well driller. If the water supply is unsatisfactory in the opinion of the Buyer, then the Buyer shall have the option of canceling this contract by written notice to the Seller without further liability on the part of either party. Buyer shall make such determination within _____ days of acceptance, otherwise this contingency is waived. Buyer shall restore the ground to the same condition as found.

[](E) **Mortgage Contingency.** This offer is subject to Buyer obtaining and accepting a _____ mortgage loan commitment in an amount not to exceed \$_____ at an interest rate not to exceed _____% for a term of _____ years. Buyer shall immediately apply for this loan and shall have until _____, 20__ to obtain and accept a written mortgage commitment. The conditions of any such mortgage commitment shall not be deemed contingencies of this contract but shall be the sole responsibility of Buyer. Acceptance of a written mortgage commitment by Buyer shall be deemed a waiver and satisfaction of this contingency.

[](F) **Sale and Transfer of Title Contingency.** This offer is contingent upon the sale and transfer of title of Buyer's existing property pursuant to the terms and conditions of the Sale and Transfer of Title Contingency Addendum attached to and made a part of this offer.

[X](G) **Attorney Approval.** This contract is subject to the written approval of attorneys for Buyer and Seller within (10) calendar days, excluding Sundays and public holidays, from date of acceptance (the "Approval Period"). If either attorney (i) does not provide written approval within the Approval Period or (ii) makes written objection to or conditionally approves (collectively, the "Objection") the contract within the Approval Period and the Objection is not cured by written approval by both attorneys and all of the parties within the Approval Period, then (A) either Buyer or Seller may cancel this contract by written notice to the other and any deposit shall be returned to the Buyer or (B) the approving attorney may notify the other party (with a copy to any attorney listed below) in writing that no approval has been received and that the noticed party has five (5) calendar days, inclusive of Sundays and public holidays, from receipt of

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the notice ("Grace Period") to provide written attorney approval or disapproval of the contract. The approving attorney shall provide to the noticed party (with a copy to any attorney listed below) a copy of the approving attorney's approval letter, whether conditional or not, along with the written notice of the Grace Period. If written attorney approval or disapproval is not provided to the approving attorney within the Grace Period, then this Attorney Approval contingency shall be deemed waived by the noticed party and any conditions in the approving attorney's approval letter shall be deemed accepted by the noticed party.

(H) **Waiver of Attorney Approval.** This offer is not subject to the Buyer's attorney approval.

(I) **Environmental Audit.** This offer is subject to an environmental audit at the Buyer's expense, within 45 days of acceptance, satisfactory in the Buyer's sole discretion.

(J) **Other Contingencies.** _____ The terms and conditions of the Purchase Option Agreement
dated _____, 2010

4. **Closing Date, Place and Possession.** Transfer of title shall take place at the Genesee
County Clerk's Office on or before _____, 2010. Possession to be at time of closing.

5. **Title and Related Documents.** Seller shall provide the following documents in connection with the sale:

A. **Deed.** Seller will deliver to Buyer at closing a properly signed and notarized Warranty Deed with lien covenant (or Executor's Deed, Administrator's Deed or Trustee's Deed, if Seller holds title as such).

B. **Abstract, Bankruptcy and Tax Searches.** Seller will furnish and pay for and deliver to Buyer or Buyer's attorney at least 15 calendar days prior to the date of closing, fully guaranteed tax, title and United States Court Searches dated or redated after the date of this contract with a local tax certificate for Village or City taxes, if any. Seller will pay for continuing searches to and including the day of closing.

C. **Instrument Survey Map.** The Buyer Seller shall furnish and pay for an instrument survey of the property being purchased and shall have markers placed on the angle points and pins on the corners. The map shall be prepared by a licensed surveyor and dated or redated after the date of this contract. The map shall show acreage inclusive exclusive of the rights of way. The map shall be furnished to the parties and their attorneys 20 days after removal of all contingencies. The map shall be certified to meet the standard requirements of the Genesee County Bar Association, Buyer's mortgage lender and, if applicable, meet the filing standards for subdivision as set forth by the responsible agency of the county in which the property is located.

6. **Marketability of Title.** The Deed and other documents delivered by Seller shall be sufficient to convey good marketable title to the property in fee simple, free and clear of all liens and encumbrances. However, Buyer agrees to accept title to the property subject to restrictive covenants of record common to the tract or subdivision of which the property is a part, provided these restrictions have not been violated, or if they have been violated, that the time for anyone to complain of the violations has expired. Buyer also agrees to accept the title of the property subject to public utility easements along lot lines as long as

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those easements do not interfere with any buildings now on the property or with any improvements Buyer may construct in compliance with all present restrictive covenants of record and zoning and building codes applicable to the property. Buyer also agrees to accept title to the property subject to fence encroachments of less than one foot onto the property, as long as the fence placement does not (i) impair access to the property from a public or private right of way and/or (ii) render the property in violation of: (a) any applicable building, zoning and/or subdivision requirements and/or (b) any easements, agreement or restrictive covenants of record. Seller agrees to furnish any documents required by federal or state laws for transfer of title to real property.

7. Objection to Title. If Buyer raises a valid written objection to Seller's title which indicates that the title to the property is unmarketable, Seller may cancel this contract by giving prompt written notice of cancellation to Buyer and Buyer's deposit shall be returned. However, if Seller is able to cure the title objection on or before the closing date, or if the title objection is insurable and Buyer is willing to accept insurable title, then this contract 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 Buyer is unwilling to accept insurable title, Buyer may cancel this contract by giving prompt written notice of cancellation to Seller and Buyer's deposit shall be returned.

8. Recording Costs, Mortgage Tax, Transfer Taxes and Closing Adjustments. Seller will pay the real property transfer tax and special additional mortgage recording tax, if applicable. Buyer will pay mortgage assumption charges, if any, and will pay for recording the deed and the mortgage, and for the entire mortgage tax. The parties agree to cooperate in the execution and timely filing of all necessary documentation to determine any real property transfer gains tax. The following, as applicable, will be prorated and adjusted between Seller and Buyer as of the date of closing, excluding any delinquent items, interest and penalties: current taxes computed on a fiscal year basis, rent payments, fuel oil on the property, water charges, pure water charges, sewer charges, mortgage interest, current common charges or assessments. If there is a water meter at the property, Seller shall furnish an actual reading to a date not more than 10 days before the closing date set forth in this contract. At closing, the water charges and any sewer rent shall be apportioned on the basis of such actual reading.

9. Zoning. Seller represents that the property is zoned Agricultural – Residential District

10. Risk of Loss. Risk of loss or damage to the property by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the property by fire or such other casualty occurs prior to transfer, Buyer may cancel this contract without any further liability to Seller and Buyer's deposit is to be returned. If Buyer does not cancel but elects to close, then Seller shall transfer to Buyer any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

11. Services. The Seller represents that the following services are available at the property line: [] Public Water, [] Public Sewers, [] Natural Gas, [] Electric Service, [] Cable T.V., [] Telephone.

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12. **Deposit to Listing Broker.** Buyer has deposited will deposit upon acceptance \$ N/A in the form of a _____ with _____ (Escrow Agency) _____, which deposit is to become part of the purchase price or returned if not accepted or if this contract thereafter fails to close for any reason not the fault of Buyer. If Buyer fails to complete Buyer's part of this contract, Seller is allowed to retain the deposit to be applied to Seller's damages, and may also pursue other legal rights Seller has against the Buyer, including but not limited to a lawsuit for any real estate brokerage commission paid by the Seller.

13. **Real Estate Broker.**

(A) The parties agree that _____ brought about this purchase and sale.

(B) It is understood and agreed by both Buyer and Seller that no broker brought about this purchase and sale.

14. **Life of Offer.** This offer shall expire on _____, 2010 at _____ P.M.

15. **Responsibility of Persons Under this Contract; Assignability.** If more than one person signs this contract as Buyer, each person and any party who takes over that person's legal position, will be responsible for keeping the promises made by Buyer in this contract. If more than one person signs this contract as Seller, each person or any party who takes over that person's legal position, will be fully responsible for keeping the promises made by Seller. However, this contract is personal to the parties and may not be assigned by either without the other's consent.

16. **Entire Contract.** This contract when signed by both Buyer and Seller will be the record of the complete agreement between the Buyer and Seller concerning the purchase of the property. No verbal agreements or promises will be binding.

17. **Notices.** All notices under this contract shall be in writing and deemed delivered upon receipt. Any notices relating to this contract may be given by the attorneys for the parties.

18. Addenda. The following Addenda are incorporated into this contract: All Parties Agreement Services Sale and Transfer of Title Contingency Mediation Electric Availability Utility Surcharge Agricultural District/Farming Activity Disclosure Other _____

Dated: _____ BUYER _____

Witness: _____ BUYER _____

**APRIL 21, 2010
REGULAR TOWN BOARD MEETING**

ACCEPTANCE OF OFFER BY SELLER

COUNTER OFFER BY SELLER

Seller certifies that Seller owns the property and has the power to sell the property. Seller accepts the offer and agrees to sell on the terms and conditions set forth above.

Waiver of Seller's attorney approval. This offer is not subject to Seller's attorney approval.

Dated: _____ SELLER _____

Witness: _____ SELLER _____

BUYER: Town of Batavia

SELLER: Richard G. Bauer

Address: 3833 West Main Street Road

Address: 3936 Cookson Road

City: Batavia, NY

City: Batavia, NY

Phone: (H) _____ (W) 343-1729

Phone: _____ (W) _____

Attorney: Kevin D. Earl, Esq.

Attorney: _____

Address: 216 East Main Street, Suite 20, Batavia, NY 14020

Address: _____

Phone: 343-6320 Fax: 343-6602

Phone: _____

Fax: _____

PURCHASE OPTION AGREEMENT

APRIL 21, 2010
REGULAR TOWN BOARD MEETING

THIS AGREEMENT, made the ____ day of _____, 2010, by and between the **TOWN OF BATAVIA**, a municipal corporation with its offices located at 3833 West Main Road, Batavia, New York 14020 (hereinafter referred to as “Buyer”), and **JOSEPH FENTON** and **ELIZABETH FENTON**, residing at 2889 Pratt Road, Batavia, New York 14020 (hereinafter referred to as “Sellers”).

WITNESSETH:

WHEREAS, the Buyer intends to investigate the use of a portion of Sellers’ land as hereinafter described for potential uses as a park and/or recreational activities, and

WHEREAS, Buyer desires to have an exclusive Option to purchase this property during the period that it will need to investigate funding and other steps necessary to accomplishing this development, and Sellers agree to grant this Option.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

15. In consideration of the sum of **THREE THOUSAND AND 00/100 DOLLARS** (\$3,000.00), paid by the Buyer to the Sellers, receipt whereof is hereby acknowledged, the Sellers do hereby grant to the Buyer the exclusive Option to purchase a certain portion of Sellers’ property located in the Town of Batavia, County of Genesee and State of New York, and more particularly being described as follows (hereinafter referred to as “Premises”):

D. Approximately 33.0 acres of vacant land located on Kiefer Road, being the north portion of tax map number 2-1-24.

16. This Option shall expire two years from the date of this Agreement. The Buyer shall have the exclusive Option at its sole discretion to extend and renew this Option Agreement for an additional period of two years, upon payment of the same Option price of an additional \$3,000.00, provided that Buyer gives written notice to Sellers prior to the expiration of the initial Option term.

17. This Option is to be exercised by the Buyer by dating and signing a “Purchase and Sale Contract for Lots and Vacant Land”, in the form as annexed hereto, and personally returning and delivering it to the Sellers at the address set forth above, prior to the expiration date of this Option or the one renewal thereof.

18. If the Buyer exercises this Option, then it will be responsible to prepare a survey of the Premises, and the purchase price shall be paid based upon the acreage as surveyed at the rates as follows:

A. **ONE THOUSAND EIGHT HUNDRED AND 00/100 DOLLARS** (\$1,800.00) per acre for non-tillable acreage.

B. The fair market value to be established by an appraisal to determine the per acre price for tillable acreage.

19. In the event that the Buyer exercises the Option, any payments for the Option and renewal thereof by the Buyer to the Sellers shall be considered as a down payment to be deducted from the purchase price at closing.

20. If this Option is exercised as herein provided, the Buyer and Sellers will perform all of the obligations set forth in the annexed “Purchase and Sale Contract for Lots and Vacant Land” to be performed as respective Buyer and Sellers as set forth therein.

APRIL 21, 2010
REGULAR TOWN BOARD MEETING

21. In the event that the Buyer does not exercise this Option during the initial time period or during the renewal period thereof, then this Option shall be declared terminated, cancelled and null and void, without further obligation by either party to the other. In such event the Sellers shall retain any payments made by the Buyer in consideration for this Purchase Option Agreement.

22. The Sellers shall pay all taxes and assessments due upon the Premises until the termination of the Option period(s) or until the closing hereunder.

23. This Purchase Option Agreement shall not be assigned by either party without the express prior written consent of the other.

24. This Agreement and the terms and conditions thereof shall be binding and inure to the benefit of both the Buyer and Sellers, and their respective heirs, successors and permitted assigns, and this Purchase Option Agreement shall run with the land upon the Premises described herein.

25. At any time after execution of this Purchase Option Agreement, Buyer shall have the right to inspect, survey, examine and/or test the Premises and conduct such tests thereon as it deems appropriate, by agents or otherwise. Buyer and/or its agents or employees shall have access to the Premises at any reasonable time for purposes of making the foregoing inspections. Buyer shall pay all costs associated with the foregoing inspection of the Premises performed or conducted by Buyer, or at the request of Buyer, by its agents or otherwise. Buyer agrees to indemnify, defend and hold Sellers harmless from all actual suits, causes of action, losses, payments and expenses arising from any personal injury or property damage caused by Buyer's negligence during the inspection of the Premises. Buyer agrees to return the Premises in as near as possible to its condition prior to Buyer's entry thereon.

26. During the term of the Option period or the renewal thereof, the Sellers shall have the right to enter upon the Premises to conduct proper forestry maintenance upon any wooded areas located upon the Premises. The Sellers agree to indemnify, defend and hold Buyer harmless from all actual suits, causes of action, losses, payments and expenses arising from any personal injury or property damage caused by any maintenance activities conducted by the Sellers or their agents on the Premises.

27. This Purchase Offer Agreement constitutes the entire Agreement and understanding between the parties relating to the Premises and supersedes all prior or other Agreements and representations in connection with said sale and purchase. It shall not be changed except by an instrument in writing signed by the Buyer and Sellers or person authorized to act on their behalf.

28. This Agreement shall be governed and construed according to the Laws of the State of New York, and any and all disputes or causes of action that shall arise in relation to this Agreement shall be solely brought and venued in Genesee County, New York.

IN WITNESS WHEREOF the parties have last signed this Agreement the day and year first written above, which will be the effective date of this Agreement.

The Town of Batavia

Joseph Fenton

By: Gregory H. Post
Supervisor

APRIL 21, 2010
REGULAR TOWN BOARD MEETING

Elizabeth Fenton

State of New York }

County of Genesee }ss:

On this _____ day of _____, 2010, before me, the undersigned, personally appeared Joseph Fenton, 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

State of New York }

County of Genesee }ss:

On this _____ day of _____, 2010, before me, the undersigned, personally appeared Elizabeth Fenton, 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

State of New York }

County of Genesee }ss:

On this _____ day of _____, 2010, before me, the undersigned, personally appeared Gregory H. Post, 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

PURCHASE AND SALE CONTRACT

FOR LOTS AND VACANT LAND

When signed, this document becomes a binding contract. Buyer or Seller may wish to consult their own attorney.

TO: Joseph and Elizabeth Fenton (Seller)
(Buyer)

FROM: THE TOWN OF BATAVIA

OFFER TO PURCHASE

Buyer offers to purchase the property described below from Seller on the following terms:

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REGULAR TOWN BOARD MEETING

1. **Property Description.** Property known as vacant land on Kiefer Road in the Town of Batavia, State of New York, also known as Tax No.'s Part of 2-1-24 including all buildings, and any other improvements and all rights which the Seller has in or with the property. Approximate Lot Size: 33.0 acres

Description: (Include specific inclusions and exclusions) Located in the north portion of this parcel

2. **Price: Amount and How it will be Paid.** The purchase price is: (Check and complete applicable provisions)

(A) _____ Dollars (\$ _____).

(B) One Thousand Eight Hundred Dollars (\$ 1,800.00) per acre for non-tillable acreage.

exclusive inclusive of area within the right-of-way, as determined by instrument survey.

(C) The fair market value to be established by an appraisal to determine the per acre price for tillable acreage.

Buyer shall receive credit at closing for any deposit pursuant to the annexed Purchase Option Agreement.. The balance of the purchase price shall be paid as follows: (Check and complete applicable provisions.)

(A) By official bank draft or certified check at closing.

(B) By Buyer delivering a purchase money bond and mortgage to Seller at closing. This purchase money bond and mortgage shall be in the amount of \$_____, shall be amortized over a term of ___ years, and all due and payable in ___ years from the date of closing, shall bear interest at the rate of ___ % per year, and shall be paid in (monthly) installments of \$_____, including principal and interest. The mortgage shall contain the statutory clauses as to payment, insurance, acceleration on default of 30 days, taxes, assessments, and water rates and also shall provide for late charges of 2% of any monthly payment which is not paid within 15 days after it is due and for recovery of reasonable attorney's fees if the mortgage is in default. The mortgage shall allow Buyer to prepay all or part of the mortgage without penalty at any time but shall also provide that the mortgage be paid in full if Buyer sells the property, unless Seller consents in writing to assumption of the mortgage debt. The balance of the purchase price will be paid at closing by official bank draft or certified check.

(C) Mortgage Assumption pursuant to the terms and conditions of the Mortgage Assumption Addendum.

3. **Contingencies.** Buyer makes this offer subject to the following contingencies. If any of these contingencies is not satisfied by the dates specified, then either Buyer or Seller may cancel this contract by written notice to the other. With reasonable notice, Seller agrees to allow Buyer and/or its Agents or Employees access to the property for the purpose of satisfying these contingencies: (Check and complete applicable provisions.)

(A) **Development Approvals.** This offer is contingent upon Buyer obtaining all requisite approvals from any governing body having jurisdiction for construction or development of the property as _____. Buyer is to have until _____ to obtain approval in final,

APRIL 21, 2010
REGULAR TOWN BOARD MEETING

non-appealable form, upon conditions acceptable to Buyer and Seller. Buyer and Seller agree to make joint application by _____ and diligently pursue the application.

[](B) **Subdivision Approval.** This offer is contingent upon Buyer Seller obtaining all requisite approvals from any governing body having jurisdiction for subdivision approval of the property. Buyer and Seller agree to make joint application for subdivision approval by _____ and diligently pursue the application. The final approval, upon conditions acceptable to Buyer and Seller, shall be obtained on or before _____.

[](C) **Percolation and Subsurface Tests.** The Buyer shall have permission to enter the property for the purpose of conducting percolation and subsurface tests. If the percolation rates are unsatisfactory or if subsurface conditions are revealed which would result in unusual site development expense in the opinion of the Buyer, then the Buyer shall have the option of canceling this contract by written notice to the Seller without further liability on the part of either party. Buyer shall make such determination within _____ days of acceptance, otherwise this contingency is waived. Buyer shall restore the ground to the same condition as found.

[](D) **Water Availability.** The Buyer shall have permission to enter the property for the purpose of drilling a well for water at Buyer's expense provided that Buyer shall deposit as security in Seller's attorney's trust account an amount sufficient to cover the maximum expense of well drilling shown on a written estimate provided to Buyer's well driller. If the water supply is unsatisfactory in the opinion of the Buyer, then the Buyer shall have the option of canceling this contract by written notice to the Seller without further liability on the part of either party. Buyer shall make such determination within _____ days of acceptance, otherwise this contingency is waived. Buyer shall restore the ground to the same condition as found.

[](E) **Mortgage Contingency.** This offer is subject to Buyer obtaining and accepting a _____ mortgage loan commitment in an amount not to exceed \$_____ at an interest rate not to exceed _____% for a term of _____ years. Buyer shall immediately apply for this loan and shall have until _____, 20__ to obtain and accept a written mortgage commitment. The conditions of any such mortgage commitment shall not be deemed contingencies of this contract but shall be the sole responsibility of Buyer. Acceptance of a written mortgage commitment by Buyer shall be deemed a waiver and satisfaction of this contingency.

[](F) **Sale and Transfer of Title Contingency.** This offer is contingent upon the sale and transfer of title of Buyer's existing property pursuant to the terms and conditions of the Sale and Transfer of Title Contingency Addendum attached to and made a part of this offer.

[X](G) **Attorney Approval.** This contract is subject to the written approval of attorneys for Buyer and Seller within 10 calendar days, excluding Sundays and public holidays, from date of acceptance (the "Approval Period"). If either attorney (i) does not provide written approval within the Approval Period or (ii) makes written objection to or conditionally approves (collectively, the "Objection") the contract within the Approval Period and the Objection is not cured by written approval by both attorneys and all of the parties within the Approval Period, then (A) either Buyer or Seller may cancel this contract by written

APRIL 21, 2010
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notice to the other and any deposit shall be returned to the Buyer or (B) the approving attorney may notify the other party (with a copy to any attorney listed below) in writing that no approval has been received and that the noticed party has five (5) calendar days, inclusive of Sundays and public holidays, from receipt of the notice ("Grace Period") to provide written attorney approval or disapproval of the contract. The approving attorney shall provide to the noticed party (with a copy to any attorney listed below) a copy of the approving attorney's approval letter, whether conditional or not, along with the written notice of the Grace Period. If written attorney approval or disapproval is not provided to the approving attorney within the Grace Period, then this Attorney Approval contingency shall be deemed waived by the noticed party and any conditions in the approving attorney's approval letter shall be deemed accepted by the noticed party.

(H) **Waiver of Attorney Approval.** This offer is not subject to the Buyer's attorney approval.

(I) **Environmental Audit.** This offer is subject to an environmental audit at the Buyer's expense, within 45 days of acceptance, satisfactory in the Buyer's sole discretion.

(J) **Other Contingencies.** _____ The terms and conditions of the Purchase Option Agreement dated _____, 2010

4. **Closing Date, Place and Possession.** Transfer of title shall take place at the Genesee County Clerk's Office on or before _____, 2010. Possession to be at time of closing.

5. **Title and Related Documents.** Seller shall provide the following documents in connection with the sale:

A. **Deed.** Seller will deliver to Buyer at closing a properly signed and notarized Warranty Deed with lien covenant (or Executor's Deed, Administrator's Deed or Trustee's Deed, if Seller holds title as such).

B. **Abstract, Bankruptcy and Tax Searches.** Seller will furnish and pay for and deliver to Buyer or Buyer's attorney at least 15 calendar days prior to the date of closing, fully guaranteed tax, title and United States Court Searches dated or redated after the date of this contract with a local tax certificate for Village or City taxes, if any. Seller will pay for continuing searches to and including the day of closing.

C. **Instrument Survey Map.** The Buyer Seller shall furnish and pay for an instrument survey of the property being purchased and shall have markers placed on the angle points and pins on the corners. The map shall be prepared by a licensed surveyor and dated or redated after the date of this contract. The map shall show acreage inclusive exclusive of the rights of way. The map shall be furnished to the parties and their attorneys 20 days after removal of all contingencies. The map shall be certified to meet the standard requirements of the Genesee County Bar Association, Buyer's mortgage lender and, if applicable, meet the filing standards for subdivision as set forth by the responsible agency of the county in which the property is located.

6. **Marketability of Title.** The Deed and other documents delivered by Seller shall be sufficient to convey good marketable title to the property in fee simple, free and clear of all liens and encumbrances.

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However, Buyer agrees to accept title to the property subject to restrictive covenants of record common to the tract or subdivision of which the property is a part, provided these restrictions have not been violated, or if they have been violated, that the time for anyone to complain of the violations has expired. Buyer also agrees to accept the title of the property subject to public utility easements along lot lines as long as those easements do not interfere with any buildings now on the property or with any improvements Buyer may construct in compliance with all present restrictive covenants of record and zoning and building codes applicable to the property. Buyer also agrees to accept title to the property subject to fence encroachments of less than one foot onto the property, as long as the fence placement does not (i) impair access to the property from a public or private right of way and/or (ii) render the property in violation of: (a) any applicable building, zoning and/or subdivision requirements and/or (b) any easements, agreement or restrictive covenants of record. Seller agrees to furnish any documents required by federal or state laws for transfer of title to real property.

7. Objection to Title. If Buyer raises a valid written objection to Seller's title which indicates that the title to the property is unmarketable, Seller may cancel this contract by giving prompt written notice of cancellation to Buyer and Buyer's deposit shall be returned. However, if Seller is able to cure the title objection on or before the closing date, or if the title objection is insurable and Buyer is willing to accept insurable title, then this contract 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 Buyer is unwilling to accept insurable title, Buyer may cancel this contract by giving prompt written notice of cancellation to Seller and Buyer's deposit shall be returned.

8. Recording Costs, Mortgage Tax, Transfer Taxes and Closing Adjustments. Seller will pay the real property transfer tax and special additional mortgage recording tax, if applicable. Buyer will pay mortgage assumption charges, if any, and will pay for recording the deed and the mortgage, and for the entire mortgage tax. The parties agree to cooperate in the execution and timely filing of all necessary documentation to determine any real property transfer gains tax. The following, as applicable, will be prorated and adjusted between Seller and Buyer as of the date of closing, excluding any delinquent items, interest and penalties: current taxes computed on a fiscal year basis, rent payments, fuel oil on the property, water charges, pure water charges, sewer charges, mortgage interest, current common charges or assessments. If there is a water meter at the property, Seller shall furnish an actual reading to a date not more than 10 days before the closing date set forth in this contract. At closing, the water charges and any sewer rent shall be apportioned on the basis of such actual reading.

9. Zoning. Seller represents that the property is zoned Agricultural – Residential District
_____.

10. Risk of Loss. Risk of loss or damage to the property by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the property by fire or such other casualty occurs prior to transfer, Buyer may cancel this contract without any further liability to Seller and Buyer's deposit is to be returned. If Buyer does not cancel but elects to close, then Seller shall transfer to Buyer any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

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11. **Services.** The Seller represents that the following services are available at the property line: Public Water, Public Sewers, Natural Gas, Electric Service, Cable T.V., Telephone.

12. **Deposit to Listing Broker.** Buyer has deposited will deposit upon acceptance \$ N/A _____ in the form of a _____ with _____ (Escrow Agency) _____, which deposit is to become part of the purchase price or returned if not accepted or if this contract thereafter fails to close for any reason not the fault of Buyer. If Buyer fails to complete Buyer's part of this contract, Seller is allowed to retain the deposit to be applied to Seller's damages, and may also pursue other legal rights Seller has against the Buyer, including but not limited to a lawsuit for any real estate brokerage commission paid by the Seller.

13. **Real Estate Broker.**

(A) The parties agree that _____ brought about this purchase and sale.

(B) It is understood and agreed by both Buyer and Seller that no broker brought about this purchase and sale.

14. **Life of Offer.** This offer shall expire on _____, 2010 at _____ P.M.

15. **Responsibility of Persons Under this Contract; Assignability.** If more than one person signs this contract as Buyer, each person and any party who takes over that person's legal position, will be responsible for keeping the promises made by Buyer in this contract. If more than one person signs this contract as Seller, each person or any party who takes over that person's legal position, will be fully responsible for keeping the promises made by Seller. However, this contract is personal to the parties and may not be assigned by either without the other's consent.

16. **Entire Contract.** This contract when signed by both Buyer and Seller will be the record of the complete agreement between the Buyer and Seller concerning the purchase of the property. No verbal agreements or promises will be binding.

17. **Notices.** All notices under this contract shall be in writing and deemed delivered upon receipt. Any notices relating to this contract may be given by the attorneys for the parties.

18. **Addenda.** The following Addenda are incorporated into this contract: All Parties Agreement Services Sale and Transfer of Title Contingency Mediation Electric Availability Utility Surcharge Agricultural District/Farming Activity Disclosure Other _____

Dated: _____ BUYER _____

**APRIL 21, 2010
REGULAR TOWN BOARD MEETING**

Witness: _____ BUYER _____

[] **ACCEPTANCE OF OFFER BY SELLER** [] **COUNTER OFFER BY SELLER**

Seller certifies that Seller owns the property and has the power to sell the property. Seller accepts the offer and agrees to sell on the terms and conditions set forth above.

[X] Waiver of Seller's attorney approval. This offer is not subject to Seller's attorney approval.

Dated: _____ SELLER _____

Witness: _____ SELLER _____

BUYER: Town of Batavia
Address: 3833 West Main Street Road
City: Batavia, NY
Phone: (H) _____ (W) 343-1729

SELLER: Joseph and Elizabeth Fenton
Address: 2889 Pratt Road
City: Batavia, NY
Phone: _____ (W) _____

Attorney: Kevin D. Earl, Esq.

Attorney: _____

Address: 216 East Main Street, Suite 20, Batavia, NY 14020

Address: _____

Phone: 343-6320

Fax: 343-6602

Phone: _____

Fax: _____

PURCHASE OPTION AGREEMENT

THIS AGREEMENT, made the ____ day of _____, 2010, by and between the **TOWN OF BATAVIA**, a municipal corporation with its offices located at 3833 West Main Road, Batavia, New York 14020 (hereinafter referred to as "Buyer"), and **JOHN A. RILEY** and **MARCIA RILEY**, residing at 2982 Galloway Road, Batavia, New York 14020 (hereinafter referred to as "Sellers").

WITNESSETH:

WHEREAS, the Buyer intends to investigate the use of a portion of Sellers' land as hereinafter described for potential uses as a park and/or recreational activities, and

APRIL 21, 2010
REGULAR TOWN BOARD MEETING

WHEREAS, Buyer desires to have an exclusive Option to purchase this property during the period that it will need to investigate funding and other steps necessary to accomplishing this development, and Sellers agree to grant this Option.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

29. In consideration of the sum of ONE THOUSAND TWO HUNDRED AND 00/100 DOLLARS (\$1,200.00), paid by the Buyer to the Sellers, receipt whereof is hereby acknowledged, the Sellers do hereby grant to the Buyer the exclusive Option to purchase a certain portion of Sellers' property located in the Town of Batavia, County of Genesee and State of New York, and more particularly being described as follows (hereinafter referred to as "Premises"):

E. Approximately 12.5 acres of vacant land located on Galloway Road, being a portion of tax map number 2-1-8.1, located in the southeast corner of this parcel.

30. This Option shall expire two years from the date of this Agreement. The Buyer shall have the exclusive Option at its sole discretion to extend and renew this Option Agreement for an additional period of two years, upon payment of the same Option price of an additional \$1,200.00, provided that Buyer gives written notice to Sellers prior to the expiration of the initial Option term.

31. This Option is to be exercised by the Buyer by dating and signing a "Purchase and Sale Contract for Lots and Vacant Land", in the form as annexed hereto, and personally returning and delivering it to the Sellers at the address set forth above, prior to the expiration date of this Option or the one renewal thereof.

32. If the Buyer exercises this Option, then it will be responsible to prepare a survey of the Premises, and the purchase price shall be paid at the rate of ONE THOUSAND EIGHT HUNDRED AND 00/100 DOLLARS (\$1,800.00) per acre, based upon the acreage as surveyed.

33. In the event that the Buyer exercises the Option, any payments for the Option and renewal thereof by the Buyer to the Sellers shall be considered as a down payment to be deducted from the purchase price at closing.

34. If this Option is exercised as herein provided, the Buyer and Sellers will perform all of the obligations set forth in the annexed "Purchase and Sale Contract for Lots and Vacant Land" to be performed as respective Buyer and Sellers as set forth therein.

35. In the event that the Buyer does not exercise this Option during the initial time period or during the renewal period thereof, then this Option shall be declared terminated, cancelled and null and void, without further obligation by either party to the other. In such event the Sellers shall retain any payments made by the Buyer in consideration for this Purchase Option Agreement.

36. The Sellers shall pay all taxes and assessments due upon the Premises until the termination of the Option period(s) or until the closing hereunder.

37. This Purchase Option Agreement shall not be assigned by either party without the express prior written consent of the other.

38. This Agreement and the terms and conditions thereof shall be binding and inure to the benefit of both the Buyer and Sellers, and their respective heirs, successors and permitted assigns, and this Purchase Option Agreement shall run with the land upon the Premises described herein.

39. At any time after execution of this Purchase Option Agreement, Buyer shall have the right to inspect, survey, examine and/or test the Premises and conduct such tests thereon as it deems

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appropriate, by agents or otherwise. Buyer and/or its agents or employees shall have access to the Premises at any reasonable time for purposes of making the foregoing inspections. Buyer shall pay all costs associated with the foregoing inspection of the Premises performed or conducted by Buyer, or at the request of Buyer, by its agents or otherwise. Buyer agrees to indemnify, defend and hold Sellers harmless from all actual suits, causes of action, losses, payments and expenses arising from any personal injury or property damage caused by Buyer's negligence during the inspection of the Premises. Buyer agrees to return the Premises in as near as possible to its condition prior to Buyer's entry thereon.

40. During the term of the Option period or the renewal thereof, the Sellers shall have the right to enter upon the Premises to conduct proper forestry maintenance upon any wooded areas located upon the Premises. The Sellers agree to indemnify, defend and hold Buyer harmless from all actual suits, causes of action, losses, payments and expenses arising from any personal injury or property damage caused by any maintenance activities conducted by the Sellers or their agents on the Premises.

41. This Purchase Offer Agreement constitutes the entire Agreement and understanding between the parties relating to the Premises and supersedes all prior or other Agreements and representations in connection with said sale and purchase. It shall not be changed except by an instrument in writing signed by the Buyer and Sellers or person authorized to act on their behalf.

42. This Agreement shall be governed and construed according to the Laws of the State of New York, and any and all disputes or causes of action that shall arise in relation to this Agreement shall be solely brought and venued in Genesee County, New York.

IN WITNESS WHEREOF the parties have last signed this Agreement the day and year first written above, which will be the effective date of this Agreement.

The Town of Batavia

John A. Riley

By: Gregory H. Post
Supervisor

Marcia Riley

State of New York }
County of Genesee }ss:

On this _____ day of _____, 2010, before me, the undersigned, personally appeared John A. Riley, 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

State of New York }
County of Genesee }ss:

On this _____ day of _____, 2010, before me, the undersigned, personally

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appeared Marcia Riley, 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

State of New York }
County of Genesee }ss:

On this _____ day of _____, 2010, before me, the undersigned, personally appeared Gregory H. Post, 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

PURCHASE AND SALE CONTRACT

FOR LOTS AND VACANT LAND

When signed, this document becomes a binding contract. Buyer or Seller may wish to consult their own attorney.

TO: John A. and Marcia Riley (Seller)
(Buyer)

FROM: THE TOWN OF BATAVIA

OFFER TO PURCHASE

Buyer offers to purchase the property described below from Seller on the following terms:

1. **Property Description.** Property known as vacant land on Galloway Road in the Town of Batavia, State of New York, also known as Tax No.'s Part of 2-1-8.1 including all buildings, and any other improvements and all rights which the Seller has in or with the property. Approximate Lot Size: 12.5 acres
Description: (Include specific inclusions and exclusions) Located in the southeast corner of this parcel.

2. **Price: Amount and How it will be Paid.** The purchase price is: (Check and complete applicable provisions)

(A) _____ Dollars (\$ _____).

(B) One Thousand Eight Hundred Dollars (\$ 1,800.00) per acre,

exclusive inclusive of area within the right-of-way, as determined by instrument survey.

Buyer shall receive credit at closing for any deposit pursuant to the annexed Purchase Option Agreement..

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The balance of the purchase price shall be paid as follows: (Check and complete applicable provisions.)

(A) By official bank draft or certified check at closing.

(B) By Buyer delivering a purchase money bond and mortgage to Seller at closing. This purchase money bond and mortgage shall be in the amount of \$_____, shall be amortized over a term of ___ years, and all due and payable in ___ years from the date of closing, shall bear interest at the rate of ___ % per year, and shall be paid in (monthly) installments of \$_____, including principal and interest. The mortgage shall contain the statutory clauses as to payment, insurance, acceleration on default of 30 days, taxes, assessments, and water rates and also shall provide for late charges of 2% of any monthly payment which is not paid within 15 days after it is due and for recovery of reasonable attorney's fees if the mortgage is in default. The mortgage shall allow Buyer to prepay all or part of the mortgage without penalty at any time but shall also provide that the mortgage be paid in full if Buyer sells the property, unless Seller consents in writing to assumption of the mortgage debt. The balance of the purchase price will be paid at closing by official bank draft or certified check.

(C) Mortgage Assumption pursuant to the terms and conditions of the Mortgage Assumption Addendum.

3. **Contingencies.** Buyer makes this offer subject to the following contingencies. If any of these contingencies is not satisfied by the dates specified, then either Buyer or Seller may cancel this contract by written notice to the other. With reasonable notice, Seller agrees to allow Buyer and/or its Agents or Employees access to the property for the purpose of satisfying these contingencies: (Check and complete applicable provisions.)

(A) **Development Approvals.** This offer is contingent upon Buyer obtaining all requisite approvals from any governing body having jurisdiction for construction or development of the property as _____. Buyer is to have until _____ to obtain approval in final, nonappealable form, upon conditions acceptable to Buyer and Seller. Buyer and Seller agree to make joint application by _____ and diligently pursue the application.

(B) **Subdivision Approval.** This offer is contingent upon Buyer Seller obtaining all requisite approvals from any governing body having jurisdiction for subdivision approval of the property. Buyer and Seller agree to make joint application for subdivision approval by _____ and diligently pursue the application. The final approval, upon conditions acceptable to Buyer and Seller, shall be obtained on or before _____.

(C) **Percolation and Subsurface Tests.** The Buyer shall have permission to enter the property for the purpose of conducting percolation and subsurface tests. If the percolation rates are unsatisfactory or if subsurface conditions are revealed which would result in unusual site development expense in the opinion of the Buyer, then the Buyer shall have the option of canceling this contract by written notice to the Seller without further liability on the part of either party. Buyer shall make such determination within _____ days of acceptance, otherwise this contingency is waived. Buyer shall restore the ground to the same condition as found.

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(D) **Water Availability.** The Buyer shall have permission to enter the property for the purpose of drilling a well for water at Buyer's expense provided that Buyer shall deposit as security in Seller's attorney's trust account an amount sufficient to cover the maximum expense of well drilling shown on a written estimate provided to Buyer's well driller. If the water supply is unsatisfactory in the opinion of the Buyer, then the Buyer shall have the option of canceling this contract by written notice to the Seller without further liability on the part of either party. Buyer shall make such determination within _____ days of acceptance, otherwise this contingency is waived. Buyer shall restore the ground to the same condition as found.

(E) **Mortgage Contingency.** This offer is subject to Buyer obtaining and accepting a _____ mortgage loan commitment in an amount not to exceed \$_____ at an interest rate not to exceed _____% for a term of _____ years. Buyer shall immediately apply for this loan and shall have until _____, 20__ to obtain and accept a written mortgage commitment. The conditions of any such mortgage commitment shall not be deemed contingencies of this contract but shall be the sole responsibility of Buyer. Acceptance of a written mortgage commitment by Buyer shall be deemed a waiver and satisfaction of this contingency.

(F) **Sale and Transfer of Title Contingency.** This offer is contingent upon the sale and transfer of title of Buyer's existing property pursuant to the terms and conditions of the Sale and Transfer of Title Contingency Addendum attached to and made a part of this offer.

(G) **Attorney Approval.** This contract is subject to the written approval of attorneys for Buyer and Seller within 10 calendar days, excluding Sundays and public holidays, from date of acceptance (the "Approval Period"). If either attorney (i) does not provide written approval within the Approval Period or (ii) makes written objection to or conditionally approves (collectively, the "Objection") the contract within the Approval Period and the Objection is not cured by written approval by both attorneys and all of the parties within the Approval Period, then (A) either Buyer or Seller may cancel this contract by written notice to the other and any deposit shall be returned to the Buyer or (B) the approving attorney may notify the other party (with a copy to any attorney listed below) in writing that no approval has been received and that the noticed party has five (5) calendar days, inclusive of Sundays and public holidays, from receipt of the notice ("Grace Period") to provide written attorney approval or disapproval of the contract. The approving attorney shall provide to the noticed party (with a copy to any attorney listed below) a copy of the approving attorney's approval letter, whether conditional or not, along with the written notice of the Grace Period. If written attorney approval or disapproval is not provided to the approving attorney within the Grace Period, then this Attorney Approval contingency shall be deemed waived by the noticed party and any conditions in the approving attorney's approval letter shall be deemed accepted by the noticed party.

(H) **Waiver of Attorney Approval.** This offer is not subject to the Buyer's attorney approval.

(I) **Environmental Audit.** This offer is subject to an environmental audit at the Buyer's expense, within 45 days of acceptance, satisfactory in the Buyer's sole discretion.

(J) **Other Contingencies.** _____ The terms and conditions of the Purchase Option Agreement

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dated _____, 2010

4. **Closing Date, Place and Possession.** Transfer of title shall take place at the Genesee County Clerk's Office on or before _____, 2010. Possession to be at time of closing.

5. **Title and Related Documents.** Seller shall provide the following documents in connection with the sale:

A. **Deed.** Seller will deliver to Buyer at closing a properly signed and notarized Warranty Deed with lien covenant (or Executor's Deed, Administrator's Deed or Trustee's Deed, if Seller holds title as such).

B. **Abstract, Bankruptcy and Tax Searches.** Seller will furnish and pay for and deliver to Buyer or Buyer's attorney at least 15 calendar days prior to the date of closing, fully guaranteed tax, title and United States Court Searches dated or redated after the date of this contract with a local tax certificate for Village or City taxes, if any. Seller will pay for continuing searches to and including the day of closing.

C. **Instrument Survey Map.** The Buyer Seller shall furnish and pay for an instrument survey of the property being purchased and shall have markers placed on the angle points and pins on the corners. The map shall be prepared by a licensed surveyor and dated or redated after the date of this contract. The map shall show acreage inclusive exclusive of the rights of way. The map shall be furnished to the parties and their attorneys 20 days after removal of all contingencies. The map shall be certified to meet the standard requirements of the Genesee County Bar Association, Buyer's mortgage lender and, if applicable, meet the filing standards for subdivision as set forth by the responsible agency of the county in which the property is located.

6. **Marketability of Title.** The Deed and other documents delivered by Seller shall be sufficient to convey good marketable title to the property in fee simple, free and clear of all liens and encumbrances. However, Buyer agrees to accept title to the property subject to restrictive covenants of record common to the tract or subdivision of which the property is a part, provided these restrictions have not been violated, or if they have been violated, that the time for anyone to complain of the violations has expired. Buyer also agrees to accept the title of the property subject to public utility easements along lot lines as long as those easements do not interfere with any buildings now on the property or with any improvements Buyer may construct in compliance with all present restrictive covenants of record and zoning and building codes applicable to the property. Buyer also agrees to accept title to the property subject to fence encroachments of less than one foot onto the property, as long as the fence placement does not (i) impair access to the property from a public or private right of way and/or (ii) render the property in violation of: (a) any applicable building, zoning and/or subdivision requirements and/or (b) any easements, agreement or restrictive covenants of record. Seller agrees to furnish any documents required by federal or state laws for transfer of title to real property.

7. **Objection to Title.** If Buyer raises a valid written objection to Seller's title which indicates that the title to the property is unmarketable, Seller may cancel this contract by giving prompt written notice of cancellation to Buyer and Buyer's deposit shall be returned. However, if Seller is able to cure the title objection on or before the closing date, or if the title objection is insurable and Buyer is willing to accept

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insurable title, then this contract 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 Buyer is unwilling to accept insurable title, Buyer may cancel this contract by giving prompt written notice of cancellation to Seller and Buyer's deposit shall be returned.

8. Recording Costs, Mortgage Tax, Transfer Taxes and Closing Adjustments. Seller will pay the real property transfer tax and special additional mortgage recording tax, if applicable. Buyer will pay mortgage assumption charges, if any, and will pay for recording the deed and the mortgage, and for the entire mortgage tax. The parties agree to cooperate in the execution and timely filing of all necessary documentation to determine any real property transfer gains tax. The following, as applicable, will be prorated and adjusted between Seller and Buyer as of the date of closing, excluding any delinquent items, interest and penalties: current taxes computed on a fiscal year basis, rent payments, fuel oil on the property, water charges, pure water charges, sewer charges, mortgage interest, current common charges or assessments. If there is a water meter at the property, Seller shall furnish an actual reading to a date not more than 10 days before the closing date set forth in this contract. At closing, the water charges and any sewer rent shall be apportioned on the basis of such actual reading.

9. Zoning. Seller represents that the property is zoned Agricultural – Residential District.

10. Risk of Loss. Risk of loss or damage to the property by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the property by fire or such other casualty occurs prior to transfer, Buyer may cancel this contract without any further liability to Seller and Buyer's deposit is to be returned. If Buyer does not cancel but elects to close, then Seller shall transfer to Buyer any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

11. Services. The Seller represents that the following services are available at the property line: Public Water, Public Sewers, Natural Gas, Electric Service, Cable T.V., Telephone.

12. Deposit to Listing Broker. Buyer has deposited will deposit upon acceptance \$ N/A in the form of a _____ with _____ (Escrow Agency) _____, which deposit is to become part of the purchase price or returned if not accepted or if this contract thereafter fails to close for any reason not the fault of Buyer. If Buyer fails to complete Buyer's part of this contract, Seller is allowed to retain the deposit to be applied to Seller's damages, and may also pursue other legal rights Seller has against the Buyer, including but not limited to a lawsuit for any real estate brokerage commission paid by the Seller.

13. Real Estate Broker.

(A) The parties agree that _____ brought about this purchase and sale.

(B) It is understood and agreed by both Buyer and Seller that no broker brought about this purchase and sale.

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Phone: (H) _____ (W) 343-1729 Phone: _____ (W) _____

Attorney: Kevin D. Earl, Esq. Attorney: _____

Address: 216 East Main Street, Suite 20, Batavia, NY 14020 Address: _____

Phone: 343-6320 Fax: 343-6602 Phone: _____

Fax: _____

Discussion: Prior to the vote Councilman Gerace questioned whether the Town has the option of an environmental assessment of the proposed purchase options. The Supervisor stated it is preferred to do in house by our qualified staff.

The Supervisor thanked Councilman Gerace for the time and effort he put into this.

RESOLUTION NO. 70:

Supervisor Post offered the following:

**PIPELINE CROSSING LICENSE AGREEMENT BETWEEN THE
TOWN OF BATAVIA AND CSX TRANSPORTATION INCORPORATED
FOR WORTENDYKE WATER TRANSMISSION MAIN**

RESOLVED, that the Batavia Town Board hereby authorizes the Supervisor to enter into a Facility Encroachment License Agreement between the Town of Batavia and CSX Transportation, Incorporated to construct, use and maintain a pipeline, solely for the transmission of potable water, under or across property owned or controlled by CSX Transportation, Incorporated on Wortendyke Road.

Second by: CouncilmanLang

Ayes: Post, Lang, Underhill, Michalak, Gerace

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 71:

Councilwoman Michalak offered the following:

**RURAL DEVELOPMENT APPLICATION SERVICES AGREEMENT –
WORTENDYKE ROAD PROPOSED WATER DISTRICT
BETWEEN THE TOWN OF BATAVIA AND STUART I. BROWN ASSOCIATES**

WHEREAS, the Supervisor wishes to retain Stuart I. Brown Associates to prepare the Town's application for grant and loan assistance for submission to Rural Development for the proposed extension

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of public water service to serve areas along Wortendyke Road at a cost not to exceed two thousand two hundred and fifty dollars (\$2,250); and

WHEREAS, the above costs represent a 25% savings if all proposed projects – Creek/East Road, Pratt Road, Wortendyke Road, Batavia North – East of Route 98 and Batavia North – West of Route 98 are all commenced at the same time;

NOW, THEREFORE, BE IT RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to retain Stuart I. Brown Associates for the aforementioned services and costs and to execute the attached proposal agreement between the Town of Batavia and Stuart I. Brown Associates.

Second by: Councilman Gerace

Ayes: Michalak, Gerace, Lang, Underhill, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 72:

Councilman Gerace offered the following:

**RURAL DEVELOPMENT APPLICATION AND ENVIRONMENTAL SERVICES
AGREEMENT –
PRATT ROAD PROPOSED WATER DISTRICT
BETWEEN THE TOWN OF BATAVIA AND STUART I. BROWN ASSOCIATES**

WHEREAS, the Supervisor wishes to retain Stuart I. Brown Associates to prepare the Town's application for grant and loan assistance for submission to Rural Development for the proposed extension of public water service to serve areas along Pratt Road at a cost not to exceed two thousand two hundred and fifty dollars (\$2,250); and

WHEREAS, the Supervisor wishes to retain Stuart I. Brown Associates for the completion of the required environmental documents for the proposed extension of public water service to serve areas along Pratt Road at a cost not to exceed three thousand dollars (\$3,000); and

WHEREAS, the above costs represent a 25% savings if all proposed projects – Creek/East Road, Pratt Road, Wortendyke Road, Batavia North – East of Route 98 and Batavia North – West of Route 98 are all commenced at the same time;

NOW, THEREFORE, BE IT RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to retain Stuart I. Brown Associates for the aforementioned services and costs and to execute the attached proposal agreement between the Town of Batavia and Stuart I. Brown Associates.

Second by: Councilwoman Michalak

Ayes: Gerace, Michalak, Lang, Underhill, Post

APPROVED by unanimous vote (5-0)

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RESOLUTION NO. 73:

Councilman Lang offered the following:

**RURAL DEVELOPMENT APPLICATION AND ENVIRONMENTAL SERVICES
AGREEMENT –
CREEK AND EAST ROADS PROPOSED WATER DISTRICT
BETWEEN THE TOWN OF BATAVIA AND STUART I. BROWN ASSOCIATES**

WHEREAS, the Supervisor wishes to retain Stuart I. Brown Associates to prepare the Town's application for grant and loan assistance for submission to Rural Development for the proposed extension of public water service to serve areas along Creek and East Roads at a cost not to exceed two thousand two hundred and fifty dollars (\$2,250); and

WHEREAS, the Supervisor wishes to retain Stuart I. Brown Associates for the completion of the required environmental documents for the proposed extension of public water service to serve areas along Creek and East Roads at a cost not to exceed three thousand dollars (\$3,000); and

WHEREAS, the above costs represent a 25% savings if all proposed projects – Creek/East Road, Pratt Road, Wortendyke Road, Batavia North – East of Route 98 and Batavia North – West of Route 98 are all commenced at the same time;

NOW, THEREFORE, BE IT RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to retain Stuart I. Brown Associates for the aforementioned services and costs and to execute the attached proposal agreement between the Town of Batavia and Stuart I. Brown Associates.

Second by: Deputy Supervisor Underhill

Ayes: Lang, Underhill, Michalak, Gerace, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 74:

Deputy Supervisor Underhill offered the following:

**PROPOSAL OF SERVICES AGREEMENT –
BETWEEN THE TOWN OF BATAVIA AND STUART I. BROWN ASSOCIATES
RURAL DEVELOPMENT PRE-ELIGIBILITY DETERMINATION
BATAVIA NORTH – EAST OF ROUTE 98**

WHEREAS, the Town wishes to retain Stuart I. Brown Associates to prepare the Town's Pre-Eligibility Determination (PED) for submission to Rural Development to determine the Town's eligibility for loan and grant assistance for the proposed extension of public water service to serve the Batavia North – East of Route 98 area; and

WHEREAS, the cost to prepare the PED's is \$1,200 (proposal attached).

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NOW, THEREFORE, BE IT RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to retain Stuart I. Brown Associates for the preparation of the Pre-Eligibility Determination (PED) for submission to Rural Development at a cost not to exceed One thousand two hundred dollars (\$1,200.00) and to execute the attached proposal agreement between the Town of Batavia and Stuart I. Brown Associates.

Second by: Councilman Lang
Ayes: Underhill, Lang, Michalak, Gerace, Post
APPROVED by unanimous vote (5-0)

RESOLUTION NO. 75:

Supervisor Post offered the following:

**RURAL DEVELOPMENT APPLICATION AND ENVIRONMENTAL SERVICES
AGREEMENT – BATAVIA NORTH
EAST OF ROUTE 98 PROPOSED WATER DISTRICT
BETWEEN THE TOWN OF BATAVIA AND STUART I. BROWN ASSOCIATES**

WHEREAS, the Supervisor wishes to retain Stuart I. Brown Associates to prepare the Town's application for grant and loan assistance for submission to Rural Development for the proposed extension of public water service to serve the Batavia North – East of Route 98 area at a cost not to exceed two thousand two hundred and fifty dollars (\$2,250); and

WHEREAS, the Supervisor wishes to retain Stuart I. Brown Associates for the completion of the required environmental documents for the proposed extension of public water service to serve the Batavia North – East of Route 98 area at a cost not to exceed three thousand dollars (\$3,000); and

WHEREAS, the above costs represent a 25% savings if all proposed projects – Creek/East Road, Pratt Road, Wortendyke Road, Batavia North – East of Route 98 and Batavia North – West of Route 98 are all commenced at the same time;

NOW, THEREFORE, BE IT RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to retain Stuart I. Brown Associates for the aforementioned services and costs and to execute the attached proposal agreement between the Town of Batavia and Stuart I. Brown Associates.

Second by: Councilman Gerace
Ayes: Post, Gerace, Lang, Underhill, Michalak
APPROVED by unanimous vote (5-0)

RESOLUTION NO. 76:

Councilwoman Michalak offered the following:

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**PROPOSAL OF SERVICES AGREEMENT –
BETWEEN THE TOWN OF BATAVIA AND STUART I. BROWN ASSOCIATES
RURAL DEVELOPMENT PRE-ELIGIBILITY DETERMINATION
BATAVIA NORTH – WEST OF ROUTE 98**

WHEREAS, the Town wishes to retain Stuart I. Brown Associates to prepare the Town's Pre-Eligibility Determination (PED) for submission to Rural Development to determine the Town's eligibility for loan and grant assistance for the proposed extension of public water service to serve an area on the north side west of route 98; and

WHEREAS, the cost to prepare the PED's is \$1,200.00 (proposal attached).

NOW, THEREFORE, BE IT RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to retain Stuart I. Brown Associates for the preparation of the Pre-Eligibility Determination (PED) for submission to Rural Development at a cost not to exceed twelve hundred dollars (\$1,200.00) and to execute an agreement between the Town of Batavia and Stuart I. Brown Associates.

Second by: Deputy Supervisor Underhill
Ayes: Michalak, Underhill, Gerace, Lang, Post
APPROVED by unanimous vote (5-0)

RESOLUTION NO. 77:

Councilman Gerace offered the following:

**RURAL DEVELOPMENT APPLICATION AND ENVIRONMENTAL SERVICES
AGREEMENT –BATAVIA NORTH
WEST OF ROUTE 98 PROPOSED WATER DISTRICT
BETWEEN THE TOWN OF BATAVIA AND STUART I. BROWN ASSOCIATES**

WHEREAS, the Supervisor wishes to retain Stuart I. Brown Associates to prepare the Town's application for grant and loan assistance for submission to Rural Development for the proposed extension of public water service to serve the Batavia North – West of Route 98 area at a cost not to exceed two thousand two hundred and fifty dollars (\$2,250); and

WHEREAS, the Supervisor wishes to retain Stuart I. Brown Associates for the completion of the required environmental documents for the proposed extension of public water service to serve the Batavia North – West of Route 98 area at a cost not to exceed three thousand dollars (\$3,000); and

WHEREAS, the above costs represent a 25% savings if all proposed projects – Creek/East Road, Pratt Road, Wortendyke Road, Batavia North – East of Route 98 and Batavia North – West of Route 98 are all commenced at the same time;

NOW, THEREFORE, BE IT RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to retain Stuart I. Brown Associates for the aforementioned services and costs and to execute

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the attached proposal agreement between the Town of Batavia and Stuart I. Brown Associates.

Second by: Councilwoman Michalak
Ayes: Gerace, Michalak, Lang, Underhill, Post
APPROVED by unanimous vote (5-0)

RESOLUTION NO. 78:

Councilman Lang offered the following:

**RESOLUTION TO ESTABLISH POSITION
ASSESSOR TRAINEE**

RESOLVED, the Batavia Town Board hereby establishes the position of Assessor Trainee (MSD222 duties statement attached).

Second by: Deputy Supervisor Underhill
Ayes: Lang, Underhill, Michalak, Gerace, Post
APPROVED by unanimous vote (5-0)

RESOLUTION NO. 79:

Deputy Supervisor Underhill offered the following:

ASSESSOR APPOINTMENT

RESOLVED, the Batavia Town Board hereby appoints Michael Cleveland as the Assessor effective May 4, 2010 at a rate of \$30.00 per hour.

Second by: Councilman Lang
Ayes: Underhill, Lang, Michalak, Gerace, Post
APPROVED by unanimous vote (5-0)

RESOLUTION NO. 80:

Supervisor Post offered the following:

**CONSULTANT AGREEMENT
PARK ROAD RECONSTRUCTION PROJECT**

WHEREAS, the Town of Batavia has received authorization from the U.S. Department of Transportation in the amount of \$513,000 to fund the design of the Park Road Project from NYS Route 98 to NYS Route 63 in the Town of Batavia (Project number 4754.861); and

WHEREAS, the use of these funds requires that the Town of Batavia utilize the New York State Locally Administered Federal Aid Project Manual to design and administer the project. This manual defines the consultant selection process and general scope of work that must be followed; and

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WHEREAS, the Assistant Town Engineer requested proposals to assist the Town Engineering Department with the following work tasks for the design of the Park Road Project; 1) survey and mapping, 2) environmental screening 3) wetland identification 4) drainage design 5) traffic analysis 6) photo simulations 7) miscellaneous engineering tasks as required. The request was sent to the 15 firms which are on the New York State Local Design Service Agreement list. These firms are all located in the Western New York area; and

WHEREAS, a Consultant Selection Committee (“Committee”) was established consisting of the Town Engineer, Assistant Town Engineer and Highway Superintendent; and

WHEREAS, the committee received proposals from twelve firms; and

WHEREAS, the committee evaluated the proposals based upon 1) Qualifications/ Experience of the Firm, 2) Understanding of scope of work, 3) Technical Approach, 4) Ability to meet the project schedule; and

WHEREAS, based on the proposal scoring system and discussions among the committee, Dewberry-Goodkind, Inc. is the preferred consultant; and

WHEREAS, the committee is recommending to the Town Board to award the project to, Dewberry-Goodkind Inc.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board authorizes the Supervisor to retain Dewberry-Goodkind, Inc. to assist the Town Engineering Department on the design of the Park Road Project and to execute an agreement between the Town of Batavia and Dewberry-Goodkind, Inc.; and be it

FURTHER RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to negotiate the cost for the contract agreement.

Second by: Councilman Gerace

Ayes: Post, Gerace, Lang, Underhill, Michalak

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 81:

Councilwoman Michalak offered the following:

AMEND E-PAYMENT SYSTEM
ACCEPTANCE OF CREDIT CARDS

WHEREAS, in November 2009 a proposal from Business Automation Services, Incorporated, (BAS) Clifton Park, New York was accepted for an E-Payment System to accept credit cards and online payments through the website; and

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WHEREAS, BAS has been negotiating with other vendors to eliminate monthly fees to the municipality (merchant) and reduced convenient fees to the consumer; and

WHEREAS, Gov-Pay powered by Power-Pay is a vendor that serves municipalities at no cost for merchant accounts; and

WHEREAS, BAS has contracted with Gov-Pay powered by Power-Pay and hereby submits the attached quote to the Town; and

WHEREAS, there are convenience fees associated with this service that will be paid by the consumer that utilize it.

NOW, THEREFORE, BE IT

RESOLVED the Batavia Town Board hereby authorizes BAS to provide this amended E-Payment System, as proposed, and be it

FURTHER RESOLVED, the Supervisor and the Town Clerk are hereby authorized to execute the necessary documents.

Second by: Councilman Lang

Ayes: Michalak, Lang, Underhill, Gerace, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 82:

Councilman Gerace offered the following:

PARTICIPATION AGREEMENT
FEDERAL SURPLUS PROPERTY ASSISTANCE PROGRAM

WHEREAS, the New York State Office of General Services (NYSOGS) administers the Federal Surplus Property Assistance Program; and

WHEREAS, the Town is eligible to participate in this program.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to make application to the NYSOGC and to execute the Participation Agreement to enroll and participate in the Federal Surplus Property Assistance Program (application and agreement attached).

Second by: Deputy Supervisor Underhill

Ayes: Gerace, Underhill, Michalak, Lang, Post

APPROVED by unanimous vote (5-0)

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Discussion: Prior to the vote the Supervisor informed the Town Board that this includes piping and such that the Town may be eligible to purchase.

RESOLUTION NO. 83:

Councilman Lang offered the following:

RESOLUTION TO APPROVE AMENDED AGREEMENT
FOR DEVELOPMENT OF RECREATIONAL FIELDS

WHEREAS, the Comprehensive Plan of the Town of Batavia has identified as one of its goals "...to work with government and private entities to increase the number and enhance the quality of recreational opportunities available to Town residents.", and

WHEREAS, to further this purpose, the Town entered into an "Agreement for Development of Recreational Fields", dated July 1, 2009, with Developers CY Properties, LLC and Theodore Hawley, which is due to expire on May 30, 2010, and

WHEREAS, the Town of Batavia Engineering Department, with the assistance of Theodore Hawley, drafted a "Batavia Sports Park 2010 Concept Plan", dated April 2010, and

WHEREAS, the Town and the aforesaid Developers desire to extend this Agreement until December 31, 2010, with additional terms and conditions, and

WHEREAS, the Town desires to continue to investigate the feasibility of the areas referred to in the Concept Plan for recreational development and is committing money and "in kind" services as set forth in a proposed Amended Agreement for the purpose of monitoring and obtaining information and documentation about the needs and benefits of activities and programs as proposed in the Concept Plan, in lieu of committing funds to have a recreational study prepared. Stuart Brown Associates submitted a proposal for \$41,120.00 to complete a recreational study which will only provide estimated information. The Batavia Sports Park 2010 Concept Plan includes preparing a revenue monitoring plan which will provide actual statistics necessary for the Town Board to determine if this program should be continued at this location in the Town of Batavia.

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Batavia, New York, that the proposed "Amended Agreement for Development of Recreational Fields", a copy of which is annexed and made part of the Town Board Minutes, is hereby approved, and the Town Supervisor is hereby authorized and directed to execute this Amended Agreement on behalf of the Town of Batavia, and

BE IT FURTHER RESOLVED that funds in the amount of \$41,850.00, as set forth in the aforesaid Amended Agreement, is hereby authorized to be expended from line item A64060.410, and

BE IT FURTHER RESOLVED that approval to provide "in kind" labor by Town employees, as well as material and equipment, that will not exceed the sum of \$17,650.00, as calculated by the Assistant

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Town Engineer, is hereby authorized to be expended as proposed in the aforesaid Amended Agreement.

Second by: Councilman Gerace

Ayes: Lang, Gerace, Underhill, Michalak, Post

APPROVED by unanimous vote (5-0)

Discussion: The Supervisor reported that the major sluice work has been done and they will be working on the parking lot as soon as practically possible.

AMENDED AGREEMENT

FOR DEVELOPMENT OF RECREATIONAL FIELDS

THIS AGREEMENT, made the _____ day of _____, 2010, by and between **THE TOWN OF BATAVIA, NEW YORK**, a municipal corporation, with offices located at 3833 West Main Street Road, Batavia, New York 14020, (hereinafter referred to as "Town"); and **CY PROPERTIES, LLC**, a limited liability corporation, with offices located at 6465 Transit Road, Elba, New York, and **HAWLEY PROPERTIES, LLC**, a limited liability corporation, with offices located at 8164 Bank Street Road, Batavia, New York 14020 (hereinafter referred to as "Developers").

WITNESSETH:

WHEREAS, the Town desires to increase the number and enhance the quality of recreational opportunities available to Town residents, and

WHEREAS, the Developers have proposed to undertake and complete a project to build and maintain athletic fields in the Town of Batavia for use by Community Organizations and Non-Community Organizations, and

WHEREAS, the Town and the Developers previously entered into an Agreement on July 1, 2009, for an initial period of one (1) year, which will end on May 30, 2010, and

WHEREAS, the Town of Batavia Engineering Department has prepared a document entitled "Batavia Sports Park 2010 Concept Plan", dated April 2010, (hereinafter referred to as "Concept Plan"), and

WHEREAS, the parties desire to extend this prior Agreement until December 31, 2010, with some additional terms and conditions, in order to obtain additional information and to monitor the potential for providing activities as set forth in the Concept Plan.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

1. The Town will contribute a cash amount of \$41,850.00 and "in kind" labor, material and equipment not to exceed the sum of \$17,650.00, as calculated by the Assistant Town Engineer, to

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complete 150 feet by 125 feet of parking area, to provide 100 feet of 24 inch culvert pipe and to furnish and install approximately 3,000 feet of snow fence around the fields.

2. The Developers will build and maintain recreational fields located within the boundaries of the Town of Batavia that will be used by existing Community Organizations and Non-Community Organizations, including, but not limited to, use by youth from Youth Recreation Programs established in the Town and City of Batavia that receive financial contributions from the Town.

3. During the term of this Agreement, the Developers will charge fees for use of the fields that shall not exceed any amount currently paid by the Town, Genesee Community College, the City of Batavia or the Batavia City School District for use of existing recreational facilities. The fees charged for all other Organizations shall be at the sole discretion of the Developers.

4. In further consideration of the monetary and "in kind" contributions by the Town, the Developers will provide services to the Town to coordinate and schedule the use of the recreational facilities. The Developers will make its best efforts to provide for the activities and use of the facilities as set forth in the Calendar of Events set forth in the aforesaid Concept Plan.

5. This Agreement is subject to the Developers obtaining approval from any other Governmental Agencies as needed and to obtain all required permits.

6. The term of this Agreement shall be for a period commencing on the date set forth above in this Amended Agreement and ending on December 31, 2010.

7. At the termination of this Agreement, the Town will consider its recreational needs and further contribution to projects and services of the Developers to meet these needs. In this regard, the Developers will collect the information, documentation and statistics as requested by the Town concerning the use of the facilities during the term of this Amended Agreement, and provide the same to the Town upon request.

8. The Developers hereby agree to indemnify and hold harmless the Town for all claims, losses, costs and damages arising out of any activities of the Developers pursuant to the terms and conditions of this Agreement including costs of settling any actions and reasonable attorney's fees for defense. Each party will provide the other with timely notice of any claims and fully cooperate with each other to defend the same.

9. The Developers shall require all individuals or organizations that use the facilities to provide to the Developers and the Town proof of insurance certifying that accident and liability insurance is in full force and effect during the use of these facilities in a coverage amount to be not less than one (1) million dollars, with the Developers and the Town being named as additional insureds on all such insurance policies.

IN WITNESS WHEREOF the parties have last signed this Agreement the day and year first written above.

CY PROPERTIES, LLC

TOWN OF BATAVIA, NEW YORK

By: _____
Print Name

Print Title

By: Gregory H. Post
Town of Batavia Supervisor

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HAWLEY PROPERTIES, LLC

By: _____
Print Name

Print Title

State of New York }
County of Genesee }ss.

On this _____ day of _____, 2010, before me, the undersigned, personally appeared Gregory H. Post, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

State of New York }
County of Genesee }ss.

On this _____ day of _____, 2010, before me, the undersigned, 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

State of New York }
County of Genesee }ss.

On this _____ day of _____, 2010, before me, the undersigned, 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

RESOLUTION NO. 84:

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Deputy Supervisor Underhill offered the following:

**ADDITIONAL ENGINEERING SERVICES
IMPROVEMENTS TO SANITARY SEWER SYSTEM
WITHIN SEWER DISTRICT NO. 1-AMENDMENT #4**

WHEREAS, Erdman Anthony was authorized on January 19, 2005 to provide engineering services required for making improvements to the Town's Sanitary Sewer System within Sewer District No. 1.; and

WHEREAS, Additional engineering services, outside the original and amended scope of work, were provided as described in the attached letter proposal.

NOW, THEREFORE BE IT,

RESOLVED, the Batavia Town Board hereby accepts the additional engineering services required for making improvements to the Town's Sanitary Sewer System within Sewer District No. 1 at an additional cost of twenty thousand dollars (\$20,000.00).

Second by: Councilman Lang

Ayes: Underhill, Lang, Michalak, Gerace, Post

APPROVED by unanimous vote (5-0)

SUSPEND THE RULES-Motion Councilman Gerace second Deputy Supervisor Underhill to suspend the rules to introduce an additional resolution.

Ayes: Gerace, Underhill, Michalak, Lang, Post

MOTION CARRIED by unanimous vote (5-0)

RESOLUTION NO. 85:

Supervisor Post offered the following:

**RESOLUTION TO APPROVE A SECOND RENEWAL OF GALLOWAY LAND LEASE
AGREEMENT BETWEEN JOHN A. RILEY AND THE TOWN OF BATAVIA**

WHEREAS, John Riley has requested to re-new for the second time the land lease for the approximately 20 acres of land located within a parcel owned by the Town of Batavia, located at 3190 Galloway Road, and

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Batavia, New York that a proposed Second Land Lease Renewal Agreement by and between the Town of Batavia and John A. Riley, a copy of which is annexed and made part of the Town Board Minutes, is hereby approved and the Town Supervisor is authorized to execute this Second Land Lease Renewal Agreement on behalf of the Town of Batavia.

Second by: Councilman Lang

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Ayes: Post, Lang, Underhill, Michalak, Gerace
APPROVED by unanimous vote (5-0)

SECOND

LAND LEASE RENEWAL AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2010, between the **TOWN OF BATAVIA, NEW YORK**, a municipal corporation with offices at 3833 West Main Street Road, Batavia, New York 14020, herein called the Lessor, and **JOHN A. RILEY**, residing at 2982 Galloway Road, Batavia, New York 14020, herein called the Lessee.

WITNESSETH

WHEREAS, the parties desire to enter into a Second Renewal Agreement for the rental of a portion of property owned by the Lessor to be used for agricultural purposes upon the same terms and conditions of the previous Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

1. The Lessor hereby Leases to the Lessee for agricultural purposes for the growing and harvesting of crops only, approximately 20 acres of land being part of an approximately 44 acre parcel located in the Town of Batavia at 3190 Galloway Road, Tax ID No. 2-1-8.2.
2. The nature of the crops to be grown shall be approved in advance by Lessor; with no further planting to take place upon the Leased premises.
3. This Lease shall become effective upon executing, and shall continue in force until December 31, 2010.
4. The terms of this Lease shall be binding on the heirs, personal representatives, successors, executors and administrators of both the Lessor and Lessee.
5. The Lessee shall neither assign this Lease to any persons, nor sublet any part of the real estate for any purpose without the written consent of Lessor.
6. The annual cash rent for this land which will be paid by the Lessee to the Lessor is \$600.00 (\$30 per acre) and is to be paid on or before execution of this Agreement.
7. The Lessee agrees to follow generally accepted good agricultural practices on the lands Leased.
8. The Lessee agrees to preserve established water courses, tile drains, tile outlets, diversion ditches, terraces and grass waterways and to refrain from any operation that will injure them.
9. The Lessor may terminate this Lease as to the entire acreage or as to any part thereof upon two weeks written notice to the Lessee. In such event, the Lessee is to be reimbursed, at Lessor's cost, for whatever expense Lessee has incurred in connection with any crop which may be planted on the acreage as to which the Lease has been terminated.
10. Lessee agrees that it will engage in no practice which would introduce environmentally hazardous products to the Leased acreage.
11. This Second Land Lease Renewal Agreement constitutes the entire agreement between the parties. Any notice under the terms of this Agreement must be sent in writing by United States mail, return receipt requested; and shall be deemed delivered three days following the date on which it is sent. This Agreement may be modified only in writing signed by both parties.

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12. Lessee hereby indemnifies and agrees to hold harmless Lessor from any and all costs, damage, expense, or liability arising out of Lessee's occupation and use of the Leased acreage pursuant to this Land Lease.

13. The Lessee shall secure and keep in full force and effect during the term of this Agreement liability insurance in an amount not less than \$1,000,000.00 per occurrence, with the Lessor to be named as an additional insured. This liability insurance shall be issued by a responsible insurer licensed to do business in the State of New York.

14. The Lessor or anyone designated by it shall have right of entry at any reasonable time to inspect their property and/or farming methods used.

15. The Lessee shall neither cut live trees nor market timber, fence posts or firewood. The Lessee will not have any above or below ground mineral or gas or oil rights.

16.

TOWN OF BATAVIA

By: _____
Gregory H. Post, Town Supervisor

JOHN A. RILEY

STATE OF NEW YORK)
COUNTY OF GENESEE) ss:

On the ____ day of _____, in the year 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Gregory H. Post, 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 executed the same in his capacity, and that by his signature on the instrument, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF GENESEE) ss:

On the ____ day of _____, in the year 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared John A. Riley, 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 executed the same in his capacity, and that by his signature on the instrument, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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Abstract No. 4-2010: Motion Councilman Lang, second Councilwoman Michalak to authorize the Supervisor to pay the following vouchers:

General	\$ 186,516.87
Highway	9,589.83
Sewer No. 1	3,233.48
Sewer No. 2	4,525.51
Water	10,450.39
Pearl	6,253.14
Wilkinson	3,623.06
Ellicott	17,000.00
Alexander/Pike	62,685.17
Saile	700.00
Rose	29,911.53
Park	37.96
Batavia Fire	<u>710,134.00</u>
TOTAL	\$1,044,660.94

Check numbers 14743 thru 14843, online \$887.31

Ayes: Lang, Michalak, Gerace, Underhill, Post

MOTION CARRIED by unanimous vote (5-0)

DEPARTMENT REPORTS:

The Supervisor reported for the following departments:

Highway

Road Maintenance- The highway department has been busy with road and roadside property repairs. Installation of sluice pipes is ongoing.

Traffic Study- The City and Town are working in conjunction with the NYSDOT on traffic counts on Ellicott Street to assist with the plans and the designs.

Water/Wastewater

Projects- The Genesee County Agricultural Park, Genesee Community College, and the Park Road water/sewer lines are substantially complete.

Supervisor's Report:

Status Report on expenditures and revenues is available for the Board's review. The investment sheets will be entered into the minute book. The monies are invested in CD's and are paying a rate of .23%.

ADVANCED ACCOUNTING SCHOOL- Motion Councilman Gerace, second Councilwoman Michalak authorizing the Bookkeeper to attend the Advanced Accounting School August 31 through September 2, 2010 in the Town of Aurora, no cost for the school, cost to the Town will be reimbursement for meals and mileage.

Ayes: Gerace, Michalak, Lang, Underhill, Post

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MOTION CARRIED by unanimous vote (5-0)

LOCAL GOVERNMENT CONFERENCE REIMBURSEMENT- Motion Deputy Supervisor Underhill, second Councilwoman Michalak authorizing reimbursement to Rhonda Saulsbury, Town Assessment Board of Review Member, \$450.00 to attend the Local Government Conference May 16 through May 18 in Albany.

Ayes: Underhill, Michalak, Gerace, Lang, Post

MOTION CARRIED by unanimous vote (5-0)

PURCHASE DELL MINI 10 LAPTOP COMPUTERS- Motion Councilwoman Michalak, second Deputy Supervisor Underhill authorizing the purchase of four (4) dell mini 10 laptop computers and (4) Microsoft 2007 for small business for the Town Board Members at a cost not to exceed \$650.00 each.

Amend Motion: Motion Councilman Gerace, second Deputy Supervisor Underhill to amend motion, adding: "said computers are the property of the Town".

Roll Call on the amendment

Ayes: Gerace, Underhill, Michalak Lang, Post

MOTION CARRIED by unanimous vote (5-0)

Roll Call on the amended motion

Ayes: Michalak, Underhill, Gerace, Lang, Post

MOTION CARRIED by unanimous vote (5-0)

Discussion: The Supervisor reported that this is the result of continuing education and correspondence. If home personal computers are used for Town business they are subject to sub-peony and freedom of information. This will eliminate that issue.

NEW YORK STATE ASSOCIATION OF LOCAL GOVERNMENT RECORDS OFFICERS

(NYSALGRO) SCHOOL- Motion Deputy Supervisor Underhill, second Councilman Gerace authorizing the Town Clerk to attend the NYSALGRO School June 13 through June 15 at the Radisson Riverside in Rochester. The registration cost is \$25.00, plus reimbursement for meals and mileage.

Ayes: Underhill, Gerace, Lang, Michalak, Post

MOTION CARRIED by unanimous vote (5-0)

COMMUNICATIONS:

The Town Clerk reported on the following:

March Town Clerk monthly report collected a total of \$4,047.71, remitted \$3,667.29 to the Supervisor for the Local Share.

March Town/County Tax Collection –collected a total of \$224,289.34; remitted \$4,787.72 to the Supervisor for Penalties and \$219,501.62 to the Genesee County Treasurer.

Petitions to Establish Water Districts- Petitions were received in the Town Clerks office March 24 to establish or extend the water districts in the Bank Street Road, Batavia-Elba Townline Road, and State Street Road areas.

Assemblyman Hawley Letter- Received a letter from Assemblyman Hawley acknowledging receipt of the Town's resolution urging support of the Farmland Protection Program and Environmental Protection Fund.

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Community Action Of Orleans & Genesee County is hosting its annual agency-wide tour on May 11, 2010. It will be a tour of each of their sites in Batavia, Holley, and Albion. Anyone interested must RSVP by May 7 by calling 343-7798

Community Action of Orleans & Genesee County will be having a surplus food distribution at the Genesee County Fairgrounds from 11:00 to 3:00 on May 12, June 2, August 4, September 1, October 6 and November 3.

Bohns Restaurant –Received notification from Bohn’s Restaurant that they have applied for renewal of their liquor licenses.

Thank You Jason Tomporowski- Received a thank you from Jason Tomporowski for the Town’s support in leasing property to him.

OLD BUSINESS:

Well Water Contamination- The Supervisor reported that reports are coming in from the well testing. Approximately 25% are showing coli-form. He continues to urge the community to get their wells tested. Most well water is at risk at some point. The Town continues to support and offer assistance in getting your well water tested.

ADJOURNMENT:

Motion Councilman Lang, second Councilman Gerace to adjourn the Regular Town Board Meeting at 8:04 P.M.

Ayes: Lang, Gerace, Underhill, Michalak, Post

MOTION CARRIED by unanimous vote (5-0)

Respectfully submitted,

Teresa M. Morasco
Town Clerk