

BATAVIA CITY COUNCIL CONFERENCE MEETING

**City Hall - Council Board Room
One Batavia City Centre
Monday, January 22, 2018 at 7:00 PM**

(Special Business Meeting following Conference)

AMENDED AGENDA

- I. Call to Order
- II. Invocation – Councilperson Pacino
- III. Pledge of Allegiance
- IV. Public Comments
- V. Council Response to Public Comments
- VI. Communications
 - a. Kibler’s Harvester, LLC – Liquor License
- VII. Council President Report
 - a. Announcement of the next regular City Council Business meeting to be held on Monday, February 12, 2018 at 7:00 p.m. at the City Hall Council Board Room, 2nd Floor, City Centre
- VIII. Budget Resolutions that require Public Hearings
- IX. Redfield Parkway Pillars
- X. Healthy Schools Project
- XI. Foreclosure Property
- XII. Occupancy Agreement – Courts Facility Renewal/Extension
- XIII. Habitat for Humanities – 116 Swan Street
- XIV. Batavia Players, Inc. Lease
- XV. Dwyer Stadium Lease and Sublease Extension Agreement
- XVI. Adjournment

OFFICE USE ONLY		
<input type="radio"/> Original	<input type="radio"/> Amended	Date



**State Liquor
Authority**

**Standardized NOTICE FORM for Providing 30-Day Advanced Notice to a
Local Municipality or Community Board**
(Page 1 of 2 of Form)

1. Date Notice Was Sent: 11/21/2017 *Amended 12/18/17* 1a. Delivered by: Overnight Mail with Tracking Number

2. Select the type of Application that will be filed with the Authority for an On-Premises Alcoholic Beverage License

☒ New Application ☐ Renewal ☐ Alteration ☐ Corporate Change ☐ Removal ☐ Class Change

For **New** applicants, answer each question below using all information known to date.

For **Renewal** applicants, set forth your approved Method of Operation only.

For **Alteration** applicants, attach a complete written description and diagrams depicting the proposed alteration(s).

For **Corporate Change** applicants, attach a list of the current and proposed corporate principals.

For **Removal** applicants, attach a statement of your current and proposed addresses with the reason(s) for the relocation.

For **Class Change** applicants, attach a statement detailing your current license type and your proposed license type.

This 30-Day Advance Notice is Being Provided to the Clerk of the following Local Municipality or Community Board

3. Name of Municipality or Community Board: City of Batavia

Applicant/Licensee Information

4. License Serial Number, if Applicable: pending Expiration Date, if Applicable:

5. Applicant or Licensee Name: ~~The Harvester LLC~~ Kibler's Harvester, LLC ← *Amended 12/18/17*

6. Trade Name (if any):

7. Street Address of Establishment: 103-105 Harvester Ave.

8. City, Town or Village: Batavia , NY Zip Code: 14020

9. Business Telephone Number of Applicant/Licensee: 585-356-2200

10. Business Fax Number of Applicant/Licensee:

11. Business E-mail of Applicant/Licensee: john@nybarguy.com or mj.kibler84@gmail.com

12. Type(s) of Alcohol sold or to be sold: ☐ Beer & Cider ☐ Wine, Beer & Cider ☒ Liquor, Wine, Beer & Cider

13. Extent of Food Service: ☐ Full food menu;
Full Kitchen run by a chef or cook ☒ Menu meets legal minimum food availability requirements;
Food prep area at minimum

14. Type of Establishment: Bar/Tavern

15. Method of Operation:
(Check all that apply)

<input type="checkbox"/> Seasonal Establishment	<input checked="" type="checkbox"/> Juke Box	<input type="checkbox"/> Disc Jockey	<input checked="" type="checkbox"/> Recorded Music	<input type="checkbox"/> Karaoke
<input type="checkbox"/> Live Music (Give details: i.e. rock bands, acoustic, jazz, etc.): <u></u>				
<input type="checkbox"/> Patron Dancing	<input type="checkbox"/> Employee Dancing	<input type="checkbox"/> Exotic Dancing	<input type="checkbox"/> Topless Entertainment	
<input type="checkbox"/> Video/Arcade Games	<input type="checkbox"/> Third Party Promoters	<input type="checkbox"/> Security Personnel		
<input type="checkbox"/> Other (specify): <u></u>				

16. Licensed Outdoor Area:
(Check all that apply)

<input checked="" type="checkbox"/> None	<input type="checkbox"/> Patio or Deck	<input type="checkbox"/> Rooftop	<input type="checkbox"/> Garden/Grounds	<input type="checkbox"/> Freestanding Covered Structure
<input type="checkbox"/> Sidewalk Cafe <input type="checkbox"/> Other (specify): <u></u>				

OFFICE USE ONLY		
<input type="radio"/> Original	<input type="radio"/> Amended	Date _____



**State Liquor
Authority**

**Standardized NOTICE FORM for Providing 30-Day Advanced Notice to a
Local Municipality or Community Board**
(Page 2 of 2 of Form)

17. List the floor(s) of the building that the establishment is located on: _____
18. List the room number(s) the establishment is located in within the building, if appropriate: _____
19. Is the premises located within 500 feet of three or more on-premises liquor establishments? ☐ Yes ☒ No
20. Will the license holder or a manager be physically present within the establishment during all hours of operation? ☒ Yes ☐ No
21. If this is a transfer application (an existing licensed business is being purchased) provide the name and serial number of the licensee.
3008169 K Merrick Enterprises Inc. dba The Harvester
22. Does the applicant or licensee own the building in which the establishment is located? ☐ Yes (If Yes SKIP 23-26) ☒ No

Owner of the Building in Which the Licensed Establishment is Located

23. Building Owner's Full Name: Melissa Kilber
24. Building Owner's Street Address: 445 Halls Corners Road
25. City, Town or Village: Attica State: NY Zip Code: 14011
26. Business Telephone Number of Building Owner: 585-356-2200

**Representative or Attorney representing the Applicant in Connection with the
application for a license to traffic in alcohol at the establishment identified in this notice**

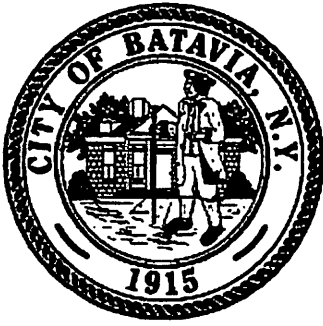
27. Representative/Attorney's Full Name: John Springer
28. Street Address: PO Box 497
29. City, Town or Village: Port Jefferson State: NY Zip Code: 11777
30. Business Telephone Number of Representative/Attorney: 631-331-3334
31. Business Email Address: john@nybarguy.com

I am the applicant or hold the license or am a principal of the legal entity that holds or is applying for the license. Representations in this form are in conformity with representations made in submitted documents relied upon by the Authority when granting the license. I understand that representations made in this form will also be relied upon, and that false representations may result in disapproval of the application or revocation of the license.

By my signature, I affirm - under **Penalty of Perjury** - that the representations made in this form are true.

32. Printed Name: John Springer Title: Representative

Signature: X



City of Batavia

To: Honorable City Council

From: Matt Worth, Interim City Manager

Date: January 17, 2018

Subject: Budget Resolutions that require Public Hearings

Attached are four resolutions introducing the proposed budget ordinance, water rate changes, Business Improvement District (BID) Plan and City Centre Concourse User Fee Local Law amendments. All four actions require a public hearing prior to consideration to execution. It is recommended that the Budget Ordinance, Water Rate changes, Business Improvement District (BID) Plan and City Centre Concourse amendments be introduced at the February 12th Business Meeting and the public hearings be conducted at the February 26th Council meeting. Any resolution can be amended prior to the public hearing; however any substantial changes following the public hearing would require another public hearing prior to adoption.

It is recommended that all four resolutions be moved to the February 12th meeting so that public hearings can be scheduled for February 26th.

#-2018
RESOLUTION INTRODUCING 2018-2019 BUDGET ORDINANCE AND
SCHEDULING A PUBLIC HEARING

Motion of Councilperson

WHEREAS, the City Manager prepared and submitted to the City Council a Proposed Budget for the 2018-2019 fiscal year on January 12, 2018 pursuant to Section 16.3 of the City Charter, copies of which were received by all members of the City Council and a copy placed on file in the City Clerk's Office; and

WHEREAS, a Public Hearing is required for compliance with the City Charter and the public hearing will be held on February 26, 2018 at 7:00 PM in the Council Board Room of City Hall.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the 2018-2019 Budget Ordinance is hereby introduced pursuant to Section 3.13 of the City Charter.

BE IT FURTHER RESOLVED, that the City Council hold a public hearing on said Budget Ordinance in the Council Board Room, Second Floor, One Batavia City Centre, Batavia, New York, at 7:00 PM on Monday, February 26, 2018; and

BE IT FURTHER RESOLVED, that the City Clerk publish or cause to be published a public notice in the official newspaper of the City of said public hearing at least five (5) days prior thereto.

Seconded by Councilperson
and on roll call

ORDINANCE #001-2018
AN ORDINANCE ADOPTING THE 2018-2019 BUDGET AND DETERMINING THE
AMOUNT OF TAX TO BE LEVIED ON ALL REAL PROPERTY FOR THE 2018-2019
FISCAL YEAR

BE IT ENACTED, by the Council of the City of Batavia, New York:

SECTION 1. The proposed Budget for 2018-2019, submitted by the City Manager pursuant to Sections 16.3, 16.4, and 16.5 of the City Charter on January 12, 2018, setting forth the estimates of revenues and expenditures for the fiscal year 2018-2019, including all wage adjustments and salary schedules for all employees covered under collective bargaining agreements, and non-union, part-time and seasonal employees, of the various funds of the City of Batavia, namely, General Fund, Water Fund, Sewer Fund, City Centre Fund and Workers' Compensation Fund is hereby approved and that the several amounts allowed as estimated expenditures be and are hereby appropriated to the use of the several departments of the City of Batavia for the purpose set forth in each estimate in the proposed budgets for the fiscal year 2018-2019.

SECTION 2. The City Council does hereby finally ascertain, fix, and determine that the entire amount necessary, proper, and legal be raised by tax to defray the expenditures of the City of Batavia for the fiscal year of 2018-2019 is \$5,249,947.

SECTION 3. The sum of \$5,249,947 the entire amounts heretofore ascertained, fixed, and determined as necessary, proper, and legal be raised by tax to defray the expenditures of the City of Batavia for the fiscal year 2018-2019, be and the same is hereby levied on all the real property subject to taxation by the City of Batavia according to valuation upon the assessment roll for the fiscal year 2018-2019.

SECTION 4. The amounts to be raised by taxation as hereby stated for City purposes is hereby a warrant upon the Clerk-Treasurer to spread and extend such levies upon the current assessment tax roll and to collect the same.

SECTION 5. The budget summaries, as filed in the Clerk-Treasurer's Office of the various funds of the City of Batavia, are made a part hereof and are hereby declared to be part of the Ordinance.

SECTION 6. This Ordinance shall become effective April 1, 2018.

Budget Summaries

General Fund

General Fund - Capital Reserves	\$ 143,000.00
City Council	\$ 48,730.00
City Manager	\$ 166,290.00
Finance	\$ 112,405.00
Administrative Services	\$ 342,035.00
Clerk/Treasurer	\$ 141,780.00
City Assessment	\$ 142,750.00
Legal Services	\$ 220,819.00
Personnel	\$ 140,030.00
Engineering	\$ 32,000.00
Elections	\$ 24,830.00
Public Works Administration	\$ 108,540.00
City Facilities	\$ 398,440.00
Information Systems	\$ 123,300.00
General Fund - Contingency	\$ 125,000.00
Police	\$ 3,778,030.00
Fire	\$ 3,622,490.00
Control of Dogs	\$ 1,430.00
Inspection	\$ 317,270.00
Vital Statistics	\$ 18,920.00
Maintenance Administration	\$ 189,310.00
Street Maintenance	\$ 604,140.00
Public Works Garage	\$ 451,030.00
Snow Removal	\$ 522,010.00
Street Lights & Traffic Signals	\$ 282,300.00
Sidewalk Repairs	\$ 285,720.00
Parking Lots	\$ 126,000.00
Community Development	\$ 20,000.00
Economic Development	\$ 110,000.00
Council on Arts	\$ 2,250.00
Parks	\$ 577,400.00
Summer Recreation	\$ 78,610.00
Youth Services	\$ 185,495.00
Historic Preservation	\$ 5,450.00
Community Celebrations	\$ 15,450.00
Planning & Zoning Boards	\$ 3,100.00
Storm Sewer	\$ 180,950.00
Refuse & Recycling	\$ 64,630.00
Street Cleaning	\$ 114,800.00
Medical Insurance	\$.00

General Fund - Debt Service/Bonds	\$ 466,665.00
General Fund – BAN	\$ 60,750.00
Install Pur Debt - Municipal Lease	\$ 64,843.00
Gen. Fund – Debt Srvc-Energy Lease	\$ 80,117.00
General Fund - Transfer/Other Funds	\$ 2,217,286.00
TOTAL GENERAL FUND	\$ 16,716,395.00

Water, Wastewater & Workers Comp Funds

PROPOSED 2018/19

Water Administration	\$ 2,514,240.00
Pump Station & Filtration	\$ 1,234,810.00
Water Distribution	\$ 390,600.00
Water Fund – Medical Insurance	\$.00
Water Fund Contingency	\$ 15,000.00
Water Fund - Debt Service/Bonds	\$ 94,112.00
Install Pur Debt – Municipal Lease	\$ 4,031.00
Water Fund– Debt Srvc-Energy Lease	\$ 19,118.00
Water Fund – Transfers for Cap Proj	\$.00
Water Fund - Transfer to Other Funds	\$ 430,100.00
Water Fund - Reserve	\$ 99,568.00
Water Fund – Debt Service – BAN	\$.00
TOTAL WATER	\$ 4,801,579.00

Wastewater Administration	\$ 306,140.00
Sanitary Sewers	\$ 396,015.00
Wastewater Treatment	\$ 763,430.00
WW Fund Contingency	\$ 15,000.00
WW Fund – Medical Insurance	\$.00
WW Fund – Debt Service/Bonds	\$ 446,938.00
WW Fund – Debt Service/BAN	\$.00
WW Fund - Debt Srvc-Energy Lease	\$ 7,931.00
Install Pur Debt – Municipal Lease	\$ 29,027.00
WW Fund – Transfer to Other Funds	\$ 206,120.00
WW Fund – Transfer for Capital Proj	\$.00
WW Fund - Reserve	\$ 465,000.00
TOTAL WASTEWATER	\$ 2,635,601.00

Workers' Compensation	\$ 270,230.00
TOTAL WORKER'S COMP	\$ 270,230.00

TOTAL WATER,WASTEWATER, WORKERS' COMP	\$ 7,707,410.00
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CITY CENTRE & HEALTH INSURANCE FUNDS

Administration	\$ 172,582.00
Contingency	\$ 8,345.00
City Centre Fund-Transfer to Other Funds	\$ 22,903.00
TOTAL CITY CENTRE	\$ 203,830.00

Medical Insurance	\$ 2,355,350.00
TOTAL HEALTH INSURANCE	\$ 2,355,350.00

TOTAL CITY CENTRE & HEALTH INSURANCE	\$ 2,559,180.00
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TOTAL ALL FUNDS \$ 26,982,985

#-2018

A RESOLUTION INTRODUCING A LOCAL LAW AMENDING SECTION 184-41 (A), (B), (C), AND (O) OF THE BATAVIA MUNICIPAL CODE TO ESTABLISH NEW WATER RATES, METER FEES AND A CAPITAL IMPROVEMENT FEE AND PROVIDING FOR PUBLIC NOTICE AND HEARING

Motion of Councilperson

BE IT RESOLVED, that Local Law No. 1 of the Year 2018 entitled “**LOCAL LAW NO. 1 OF THE YEAR 2018 CITY OF BATAVIA TO AMEND §184-41 (A), (B), (C), AND (O) OF THE CODE OF THE CITY OF BATAVIA TO ESTABLISH NEW WATER RATES, METER FEES AND A CAPITAL IMPROVEMENT FEE**” be introduced before the City Council of Batavia, New York; and

BE IT FURTHER RESOLVED, that copies of the aforesaid proposed Local Law be laid upon the desk of each member of the City Council by the City Clerk; and

BE IT FURTHER RESOLVED, that the City Council hold a public hearing on said proposed Local Law in the Council Board Room, Second Floor, One Batavia City Centre, Batavia, New York, at 7:00 p.m. on Monday, February 26, 2018; and

BE IT FURTHER RESOLVED, that the City Clerk publish or caused to be published a public notice in the official newspaper of the City of said public hearing at least three (3) days prior thereto.

**Seconded by Councilperson
and on roll call**

**LOCAL LAW NO. 1 OF THE YEAR 2018
CITY OF BATAVIA**

**A LOCAL LAW TO AMEND §184-41(A), (B), (C), AND (O) OF THE CODE OF THE
CITY OF BATAVIA TO ESTABLISH NEW WATER RATES, METER FEES AND A
CAPITAL IMPROVEMENT FEE**

Be It Enacted by the City Council of the City of Batavia, New York as follows:

Section 1. § 184-41. Water rates.

A. Water Rates

City – Water – Quarterly Schedule

~~\$5.12~~ [\$5.30] per 1,000 gallons

Town Served Directly by the City – Building and Hydrants

~~\$6.57~~ [\$6.80] per 1,000 gallons

B. Bulk rate at water plant fill station: ~~\$6.86~~ [\$7.10] per 1,000 gallons; cards: \$12.50 each.

Section 3. Effective Date

The foregoing amendment shall become effective with the water consumed ~~April 1, 2017~~
~~as billed on and after June 1, 2017~~ [April 1, 2018 as billed on and after June 1, 2018].

C. Quarterly meter service and availability charge for meters:

Type	Size in Inches	Quarterly Fee
Disc	5/8	\$9.98 [\$10.33]
Disc	3/4	\$12.52 [\$13.07]
Disc	1	\$13.30 [\$13.77]
Disc	1 ½	\$22.61 [\$23.40]
Disc	2	\$31.39 [\$32.49]
Compound	2	\$26.59 [\$27.52]
Compound	3	\$101.13 [\$104.67]
Compound	4	\$160.96 [\$166.60]
Compound	6	\$243.15 [\$251.66]
Turbo	3	\$59.84 [\$61.93]
Turbo	4	\$101.13 [\$104.67]
Fireline	4	\$101.13 [\$104.67]
Fireline	6	\$160.96 [\$166.60]

Fireline	8	\$224.38 [\$232.24]
Fireline	10	\$293.01 [\$303.27]

All of the above meter service charges include the required remote reading encoder systems.

O. Quarterly Capital Improvement fee for meters:

Type	Size in Inches	Quarterly Fee
Disc	5/8	\$5.45 [\$5.99]
Disc	3/4	\$6.90 [\$7.59]
Disc	1	\$7.26 [\$7.99]
Disc	1 1/2	\$12.34 [\$13.58]
Disc	2	\$17.13 [\$18.85]
Compound	2	\$14.52 [\$15.97]
Compound	3	\$55.21 [\$60.73]
Compound	4	\$87.88 [\$96.67]
Compound	6	\$132.77 [\$146.04]
Turbo	3	\$32.67 [\$35.94]
Turbo	4	\$55.21 [\$60.73]
Fireline	4	\$55.21 [\$60.73]
Fireline	6	\$87.88 [\$96.67]
Fireline	8	\$122.51 [\$134.76]
Fireline	10	\$159.99 [\$175.99]

Deletions designated by ~~strikeout~~
Additions designated as [brackets]

#-2018
**A LOCAL LAW TO AMEND §66, CITY OWNED PROPERTY, OF THE BATAVIA
MUNICIPAL CODE**

Motion of Councilperson

BE IT RESOLVED, that Local Law No. __ of the Year 2018 entitled “**LOCAL LAW NO. 1 OF THE YEAR 2018 CITY OF BATAVIA AMENDING THE LOCAL LAW §66, CITY OWNED PROPERTY, OF THE BATAVIA MUNICIPAL CODE**” be introduced before the City Council of Batavia, New York; and

BE IT FURTHER RESOLVED, that copies of the aforesaid proposed Local Law be laid upon the desk of each member of the City Council by the City Clerk; and

BE IT FURTHER RESOLVED, that the City Council held a public hearing on said proposed Local Law in the Council Board Room, Second Floor, One Batavia City Centre, Batavia, New York, at 7:00 p.m. on Monday, February 26, 2018; and

BE IT FURTHER RESOLVED, that the City Clerk publish or caused to be published a public notice in the official newspaper of the City of said public hearing at least five (5) days prior thereto.

**Seconded by Councilperson
and on roll call**

**LOCAL LAW NO. ____ THE YEAR OF 2018
CITY OF BATAVIA**

TO AMEND §66, CITY OWNED PROPERTY, OF THE BATAVIA MUNICIPAL CODE

Be It Enacted by the City Council of the City of Batavia, New York as follows:

Section 1. Chapter 66. City-Owned Property

Article IV. City Centre Concourse User Fee

§ 66-16. General provisions.

- A. Title. This chapter shall be known as the City of Batavia "City Centre Concourse User Fee."
- B. Scope. This chapter establishes rules for the issuance and collection of the City Centre Concourse User Fee for purposes of the operation, maintenance, management and capital improvements of the City Centre Concourse.
- C. Purpose. It is the purpose of this chapter to provide the basis for the collection of the City Centre Concourse User Fee.
- D. Applicability. This chapter shall be applicable to all property owners whose property is physically adjacent to or abuts the City Centre Concourse, is part of the City Centre or is an adjoining hallway that provides access from parcels to the exterior of the City Centre. This shall include all property owners regardless of direct access to the City Centre Concourse, as this may change periodically due to alterations of individual properties. Parcel SBL No. 84.049-1-69 is not included as a parcel subject to this chapter.
- E. Definitions. As used in this chapter, the following terms shall have the meanings ascribed to them:

CITY

The City of Batavia, a municipal corporation incorporated in 1915 pursuant to the laws of the State of New York.

CITY CENTRE CONCOURSE

Referred to as "Concourse" shall be the enclosed pedestrian structure constructed as part of the Jefferson Plaza Urban Renewal Project connecting individual parcels. This is to include the exterior loading dock and access hallway connecting the loading dock to the concourse.

CITY CENTRE CONCOURSE USER FEE

Referred to as "User Fee", the fees charged to properties that are physically adjacent to or abutting the Concourse for purposes of the operation, maintenance, management and capital improvements of the Concourse.

PROPERTY OWNER

The owner of premises that is physically adjacent to or abutting the Concourse.

PARCEL

An address or location physically adjacent to or abutting the Concourse.

SINGLE PARCEL OWNER

At the effective date of this legislation, any Property Owner of a single Parcel that exceeds 11,500 contiguous square feet physically adjacent to or abutting the Concourse.

§ 66-17. City Centre Concourse User Fee.

- A. The user fee for the operation, maintenance, management and capital improvement of the Concourse shall be reviewed and proposed annually by the Director of Finance in order to determine whether there are sufficient funds to defray the fixed charges, amortization costs and annual costs of the Concourse. If the difference between the revenue derived from the user fee and the total annual costs is sufficient to justify an increase or decrease in the fees, the City shall make the appropriate change which shall be confirmed by resolution of the City Council and maintained on file in the office of the City Clerk.
- B. All revenues derived from the user fee shall be kept in a separate fund to be known as the Concourse Fund. No expenditures chargeable against the Concourse Fund shall be incurred except upon appropriation of the City Council and such expenditures must be for a purpose for which such Concourse Fund has been established.
- C. The amount of the user fee on each parcel will be apportioned annually and shall be billed separately from the parcel's tax bill. The user fee shall be due and payable as follows: one-half the total user fee on the first day of May and the balance of the user fee, without payment of interest, on the first day of August of each year. Such user fee shall become delinquent 30 days after the due dates.
- D. Unpaid user fees shall be the personal liability of the owner of the property and charges remaining unpaid 30 days after the May and August user fee bills shall become a lien upon the property and be included in the following tax assessment.
- E. Each user fee bill shall include half of the annual user fee. A late charge shall be added to the entire amount of each bill, to include all delinquent amounts and late charges from the previous period that are not paid by the due date. This will be referred to as balance forward billing. The amount of the late payment charge shall be equal to 5% of the delinquent balance for charges which are billed twice a year and monthly plus a 1% late payment charge for every

month thereafter. In addition, a \$20 processing fee shall be added to the total delinquent balance when the delinquent balance becomes a lien.

- F. User fees remaining unpaid 30 days after the May and August user fee bills shall be immediately credited to the City Centre Fund by the General Fund. The General Fund shall then assume all liability of unpaid user fees. All charges, penalties and interest collected in accordance with this section shall be paid to the General Fund.
- G. In the event the effective date of this law is after April 1, 2018, the user fee to be assessed hereunder will be pro-rated from such effective date through March 31, 2019.

§ 66-18. User Fee.

- A. The amount of user fee to be paid by each parcel owner shall be determined by dividing the total fixed charges, amortization costs and annual costs of the operation of managing the Concourse by the total square footage of all parcels as identified by the City Assessor, multiplied by the square footage of the parcel.
- B. Single Parcel Owners, as defined in § 66-16 of this chapter, shall be assessed the set user fee against square footage, however the multiplier for the assessment shall be 11,500 square feet for such single Parcels.
- C. Annual user fee schedule:
 - (1) \$2.00 per square foot effective April 1, 2018 – March 31, 2019
 - (2) \$2.00 per square foot effective April 1, 2019 – March 31, 2020
 - (3) \$2.00 per square foot effective April 1, 2020 – March 31, 2021
 - (4) \$2.04 per square foot effective April 1, 2021 – March 31, 2022
 - (5) \$2.06 per square foot effective April 1, 2022 – March 31, 2023
- D. Starting fiscal year April 1, 2022, in accordance with § 66-17 of this chapter, the user fee shall be determined by the revenue needed from the user fee to support the total annual costs of the operation, maintenance, management and improvement of the Concourse.

§ 66-19. Miscellaneous provisions.

- A. Should any section, paragraph, sentence, clause or phrase in this chapter be declared unconstitutional or invalid for any reason, the remainder of the chapter shall not be affected thereby and shall remain in full force and effect, and to this end the provisions of this chapter are declared to be severable.

§ 66-20. Effective Date.

- A. This chapter shall be effective April 1, 2018.

#-2018

**A RESOLUTION TO SCHEDULE A PUBLIC HEARING AND INTRODUCE
PROPOSED LOCAL LAW NO. __ OF THE YEAR 2018 ENTITLED “AMENDING THE
BUSINESS IMPROVEMENT DISTRICT PLAN”**

Motion of Councilperson

BE IT RESOLVED, that proposed Local Law No. 4 of the year 2017 entitled “LOCAL LAW NO. __ OF THE YEAR 2018 AMENDING THE BUSINESS IMPROVEMENT DISTRICT PLAN” is introduced before the City Council of the City of Batavia, New York; and

BE IT FURTHER RESOLVED, that copies of the aforesaid proposed Local Law be laid upon the desk of each member of the City Council; and

BE IT FURTHER RESOLVED, that the City Council hold a public hearing on said proposed Local Law at City Hall, One Batavia City Centre, Batavia, New York, at 7:00 p.m. on Monday, February 26, 2018; and

BE IT FURTHER RESOLVED, that the City Clerk publish or cause to be published a public notice in the official newspaper of the City of said public hearing at least ten (10) days prior thereto.

**Seconded by Councilperson and on
roll call**

LOCAL LAW NO. __ OF THE YEAR 2018

CITY OF BATAVIA

A LOCAL LAW AMENDING THE BUSINESS IMPROVEMENT DISTRICT PLAN

A LOCAL LAW amending the Business Improvement District Plan in the City of Batavia in accordance with Article 19-A of the General Municipal Law submitted to the City Clerk on January 12, 2018.

BE IT ENACTED by the City Council of the City of Batavia as follows:

SECTION 1. The Downtown Business Improvement District established by Local Law No. 6 of 1997 adopted on November 24, 1997 and further outlined in Chapter 58 of the Code of the City of Batavia, and was amended by Local Law No. 3 of 2005 adopted on June 27, 2005 to include the Ellicott Street business area and further amended by Local Law No. 3 of 2016 on August 6, 2016, the City Council having found that the amendment of the district plan, herein attached, is in the public interest, that all notice and hearing requirements have been complied with, that all properties within the district will benefit from the amendments and that all property benefited is included in the boundaries of the district.

SECTION 2. The provision of services within the district shall be pursuant to said amended district plan of the Downtown Batavia Business Improvement District (BID). All said services shall be in addition to, and not a substitution for required municipal services provided by the City of Batavia on a city-wide basis.

SECTION 3. To the extent not explicitly provided herein, the provisions set forth in Article 19-A of the General Municipal Law shall govern the operation of the Downtown Batavia Business Improvement District and the Batavia Business Improvement District Management Association. Insofar as the provisions of this Local Law are inconsistent with the provisions of any other Local Law or act, the provisions of this local law shall be controlling.

SECTION 4. Any additional amendments to the BID or the BID Plan shall be made in accordance with the provisions set forth in section 980-i of Article 19-A of the General Municipal Law.

SECTION 5. The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part of this Local Law which can be given effect without such invalid part or parts.

A PLAN UPDATE FOR THE
BUSINESS IMPROVEMENT DISTRICT



January 12, 2018

Prepared by City of Batavia

In 1997, a core group of property owners within Downtown Batavia Business District asked the City of Batavia to form a Business Improvement District (BID) to help foster streetscape improvements and business growth. The boundaries of the district included the historic downtown Main Street from Liberty/Summit Streets to the Upton Monument and areas to the north and south between Washington Avenue and Ellicott Street. In March 1998 these owners also formed the non-profit Batavia Business Improvement District Management Association Incorporated (Management Association) to provide marketing, promotional and other business improvement district development services for the BID to the City of Batavia.

Since 1998, the BID and the Management Association have had many accomplishments and were fortunate to benefit from numerous development and streetscape projects the City has initiated, including a complete redevelopment of Main Street. The Management Association has also partnered with the City on a number of streetscape and beautification projects throughout the downtown core, administered a popular facade improvement program and promoted a summer concert series.

Because of the BID's success, and its visual transformation, interest in the BID grew and owners in the adjacent Ellicott Street area, just southeast of downtown, requested the City of Batavia to consider an amendment of the Downtown BID boundaries that would annex their properties to the BID. Consequently, in 2005 the City Council authorized the extension of the BID to include the adjacent Ellicott Street area.

Because the BID Plan has not been updated since 2005, the City of Batavia has prepared updates to the Plan including a change in the district assessment charge to properly reflect operations, capital accounting for surplus funds, compliance with the Open Meetings Law and Freedom of Information Law and additional budgetary compliance reporting.

I. Map and Boundary of the District

Exhibit A is a description of the boundaries of the district. Exhibit B is a list of benefitted properties by address and property owner.

II. Land Uses

Allowed uses within the district comply with the City of Batavia Zoning Ordinance. The current BID includes the C-3 zoning district and allows such uses as retail stores, banks, offices, restaurants, hotels, places of amusement, services, shopping centers, residential uses and government buildings. Other districts included in the current BID boundaries are the C-2 zoning district which allows such uses as retail stores, restaurants, hotels, places of amusement, offices, banks and shopping centers, a small section of industrial zoned property and the P-2 planned development district on Main Street for the United Memorial Center Bank Street Campus.

There are no immediate plans to change the allowed uses within the current zoning district.

III. Activities allowed by Business Improvement District Law (Article 19-A)

The main objectives of the improvement district are to provide for attractive and functional infrastructure improvements, and to have an operational budget for marketing, communications, events and administration. The concept has created an attractive downtown area that has encouraged investment in the area and provided a pedestrian friendly environment to downtown shoppers, businesses and other downtown users.

An operational budget insures that the City and the Management Association can communicate and

market the district to the public, downtown owners and potential investors. The operational budget also provides funds for basic administration of the Management Association activities such as meetings and staff.

The General Municipal Law authorizes the legislative body of a participating municipality to exercise the following powers with respect to a business improvement district:

a.) To provide for district improvements located within the municipality to promote business activity in the district:

1. construction and installation of landscaping, planting and park areas;
2. construction of lighting and heating facilities;
3. construction of physically aesthetic and decorative safety fixtures, equipment and facilities;
4. construction of improvements to enhance security of persons and property within the district;
5. construction of pedestrian overpasses and underpasses and connections between buildings;
6. closing, opening, widening or narrowing of existing streets;
7. construction of ramps, sidewalks, plazas and pedestrian malls;
8. rehabilitation or removal of existing structures as required;
9. removal and relocation of utilities and vaults as required;
10. construction of parking lot and parking garage facilities; and
11. construction of fixtures, equipment, facilities and appurtenances as may enhance the movement, convenience and enjoyment of the public and be of economic benefit to surrounding properties such as: bus stop shelters; benches and street furniture; booth, kiosks, display cases, and exhibits; signs; receptacles; canopies; pedestrian shelters and fountains.

b.) To provide for the operation and maintenance of any district improvement.

c.) To provide for additional maintenance or other additional services required for the enjoyment and protection of the public and the promotion and enhancement of the district whether or not in conjunction with improvements authorized by this section, including:

1. enhanced sanitation services;
2. services promoting and advertising activities within the district;
3. marketing education for businesses within the district;
4. decorations and lighting for seasonal and holiday purposes; and
5. services to enhance the security of persons and property within the district.

d.) To construct improvements on the properties of businesses located within the BID for the specific purpose of increasing access from public areas to the businesses for persons with disabilities. This is the only exception to the requirement that BID improvements be made on or within municipal or district owned or leased property.

Note: Funding from a source other than the BID assessment may be spent for improvements and services that are not listed in the General Municipal Law §980-c.

IV. Improvements, operation costs and the maximum costs thereof

a) Capital Infrastructure Improvements

The BID has enjoyed millions in infrastructure and facade improvements over the last 15 years. While most of the streetscape improvements on Main Street were funded by the state and federal

governments, the remainder of streetscape and facade improvements were funded through an \$830,000 bond that will be retired with payments from BID special assessments and City general funds in 2016.

In 2005 the City expanded the BID boundaries to include Ellicott Street businesses. The district plan was subsequently amended providing for an increase in the annual BID assessment to \$120,000. An additional \$350,000 of downtown infrastructure improvements was proposed along Ellicott Street as part of district plan amendment. The improvements desired included trees, decorative lighting and sidewalk improvements that mimic the improvements already in place within the current BID. The district plan continued to outline that BID assessments would cover 60% of the debt service related to capital improvements and the City would contribute general funds for 40% of the debt service. In addition, any outside sources of funds would be dedicated toward reducing the annual bond costs proportionally. Following the BID expansion the City received a \$500,000 Transportation Enhancement Program (TEP) grant and the Ellicott Street Scape project was expanded to a \$750,000 total project cost, making the local match between the City and the BID \$250,000 to complete Ellicott Streetscape improvements. At the conclusion of the project both the City and BID paid for the remaining cost of the project with available funds and the City did not issue a bond or incur debt service for the project as was originally planned in the 2005 district plan amendment.

There are no immediate infrastructure or physical improvements planned; however, the City and the Management Association expect to begin a district plan update to include infrastructure and capital improvements.

b.) Operations

1. A primary concern regarding the BID assessment and levy is that the 2016/17 BID assessment get exceeds the General Municipal Law limits for district assessment charges used for operations. As outlined in General Municipal Law §980-k, the City is limited in the amount of money that can be raised for a BID through the assessment. The district assessment charge, excluding debt service, may not exceed 20 percent of the total general municipal taxes levied in a year against the taxable property in the BID. For 2016/17 the total general municipal taxes levied in the 2016/17 year is \$275,194. Therefore, the maximum amount of district assessment charge that can be raised for operational use, excluding debt service, is \$55,038.

The City debt service payment for the 1999 infrastructure bond improvements for the 2016/17 year is \$25,651.08. The proportional share of infrastructure bond payments is 60 percent for the BID owners and 40 percent for the City of Batavia. Thus the BIDs share of debt service is \$15,391, while the City's share is \$10,260. This is the last debt service payment for the 1999 infrastructure bond improvements.

Therefore, the maximum amount of district assessment charge that should have been levied should be no greater than \$70,429 (\$55,038 for operation + \$15,391 for debt service). The actual BID assessment levied for this year, \$120,000, exceeds the authorized amount allowed for operations and debt service payments under the General Municipal Law. As a result, the BID assessment that was levied May 1, 2016 was an additional \$49,571 in conflict with the General Municipal Law and the district plan with no authorized use of the additional funds.

The following BID budget amendments were made by the City:

- i. The Management Association has budgeted \$55,020 for annual operations and management of the district.
- ii. The BIDs share of debt service is \$15,391, while the City's share is \$10,260. August 1,

- 2016 is the last debt service payment for the 1999 infrastructure bond improvements.
- iii. The additional levy of \$49,571 will be held in the City's Trust Account until the BID plan can be updated and approved by City Council to include a capital infrastructure project.
2. Prior to the May 2016 BID levy, the City has paid over to the Management Association 100% of the amount of the BID levy and the Management Association has remitted to the City an amount equal to the BID's 60% share of debt service payments as described. The Management Association has kept any BID assessment proceeds in excess of the amount allowed in a reserve fund. As of June 6, 2016, the balance of this reserve was \$202,865.54. The Management Association will maintain these funds in a separate bank account and on a monthly basis provide the City's Chief Fiscal Officer with statements verifying the funds have been retained. The City and the BID Association will utilize these funds for capital improvements, either on a "pay as you go basis" or through the issuance of debt, as made mutually agreeable to the City and the Management Association as incorporated into an updated district plan. The funds will remain unutilized until the update district plan is adopted outlining new capital and infrastructure improvements.
 3. In future years, the Management Association's proposed budget shall be forwarded to the City's Chief Fiscal Officer (City Manager) no later than January 15th of every year. The City Manager will then review the proposed budget and complete a statement to the City Council and Management Association Board of Directors indicating that the provisions of General Municipal Law 19-A have been met. This step will serve to ensure that the proposed levy by the City of Batavia for the BID is compliant with the General Municipal Law.

V. Time for Implementation

Once this plan is amended and approved by the City of Batavia, the City and Management Association will undertake the implementation of actions set forth herein in the updated district plan..

VI. Rules & Regulations of the District and the District Management Association

The Management Association will continue to provide BID operational, management, marketing and other BID-related services to the City of Batavia as an independent contractor as permitted under Article 19-A of the General Municipal Law.

The Management Association's Board of Directors will manage the business of the corporation and consist of a majority of property owners. Three public representatives shall also continue to make up the Board of Directors and one each will be appointed by the City's Chief Executive Officer, City's Chief Financial Officer, and the City of Batavia Council.

Offices for the Management Association will be within the district. This office shall be staffed by an Executive Director and other staff as budgeted by the Board of Directors.

Subject to any provisions of General Municipal or City Law, the Not-for Profit Corporation Law or any similar laws, the Management Association may buy, sell or exchange real property. The Management Association may also accept and apply for funds and contributions of real estate.

Because a substantial portion of the Management Association's activities are funded by a special assessment levied by the City and its activities are important to the economic health and vitality of the City, it is necessary that the business of the Management Association be performed in an open and public manner. This provides for the residents and businesses in the community to be fully aware of and able to

observe the activities of the Management Association Board of Directors, as well as attend and listen to the deliberations and decisions that go into the making of BID policy. In addition, providing access to meeting minutes allows residents and businesses to observe the decision-making process by the Board and to review the documents leading to those determinations.

Under General Municipal Law §980-a the requirements of a district plan may provide for “*any other item or matter required to be incorporated therein by the legislative body.*” Therefore, the Batavia City Council is requiring that the Management Association Board of Directors comply, conform and abide by the State of New York Open Meetings and Public Information Laws. This will apply to all Management Association and sub-committee meetings, including Executive Committee meetings. The Management Association will further post all by-laws, Board and Committee meeting minutes, annual budgets, audited financial statements and annual reports on the Management Association’s website for public viewing.

VII. Business Improvement District Assessment

As outlined in Section IV of this document two sources have been identified for funding the activities of the Business Improvement District: the Business Improvement District assessment (BID Assessment) and the City of Batavia. The BID Assessment for each property is calculated by multiplying the assessed valuation of the property by the BID assessment rate.

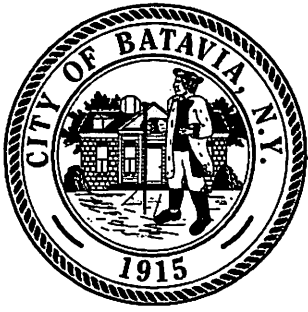
The district assessment charge for the 2018/19 year, in accordance with the General Municipal Law 980-k, a BID is limited in the amount of money that can be raised through the assessment. The district assessment charge, excluding debt service, may not exceed 20 percent of the total general municipal taxes levied in a year against the taxable property in the BID. As January 12, 2018 it is estimated that 20 percent of the total general municipal taxes levied in 2018/19 against the taxable property in the BID is \$55,353, based on current taxable assessed values and the existing City property tax rate. The BID assessment requested is \$55,000 and the estimated assessment to be \$1.78653 per \$1,000 of assessed value. There is currently no debt service to be paid for with district assessment charges.

VIII. Description of Boundaries

See the attached description of the boundaries of the existing BID.

IX. List of Benefitted Properties

A list of benefitted properties is attached.



City of Batavia

To: Jason Molino, City Manager

From: Lindsey Luft, Administrative Intern

Date: December, 21, 2017

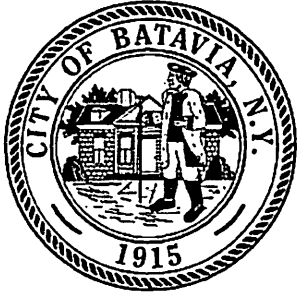
Subject: Redfield Parkway Pillars

Attachments: In Site: Architecture, LLP Draft Scope of Work

The Redfield Parkway Pillars serve as a ceremonial gateway and entrance into the United States Veterans Hospital Campus and are in need of restoration. Council requested staff to review current circumstances and conditions of the pillars. After doing so, we reached out to In Site: Architecture, LLP, sent them many pictures and asked for a draft scope of work.

The scope of work that was presented includes: documentation and investigation of existing conditions, research and design work as required related to lighting, preparation of bid documents, construction specifications, coordination of bidding, and construction administration. The scope of work is not to exceed \$4,860.


It is recommended that the City move forward with this scope of work due to its comprehensive nature and that the City will be short staffed and have limited resources to manage the project in-house. A project cost estimate based on investigation will also be determined prior to bidding the project.



City of Batavia

Memorandum

To: Honorable City Council

From: Matt Worth, Director of Public Works 

Date: January 16, 2018

Subject: Healthy Schools Project – Construction Agreement with Roman Construction

The City of Batavia was awarded funding through the Transportation Alternatives Program to reconstruct approximately 12,300 lf of sidewalk, referred to as the Healthy Schools Corridor Project. As a result, an advertisement for bids was issued on November 20, 2017 with a bid opening date of December 19, 2017. There were three bids that ranged from \$721,566.00 to \$969,482.00. Erdman Anthony has reviewed the bids and recommends that the City of Batavia award the project to Roman Construction Development Corp. of Pendleton, NY.

It is recommended that appropriations be approved and authorization be given to the Council President to enter into agreement with Roman Construction Development Corp. to complete construction phases of this project in the amount of \$721,566.00 which will ultimately be reimbursed at a rate of 75% through FHWA and 25% through Sidewalk reserves and CHIPS funding.

Supporting Documentation:

Erdman Anthony Bid Review and Recommendation
Draft Resolution

#-2018
A RESOLUTION TO ENTER INTO AN AGREEMENT WITH
ROMAN CONSTRUCTION DEVELOPMENT CORP.
FOR THE HEALTHY SCHOOLS CORRIDOR PROJECT
PIN 4755.93

Motion of Councilperson

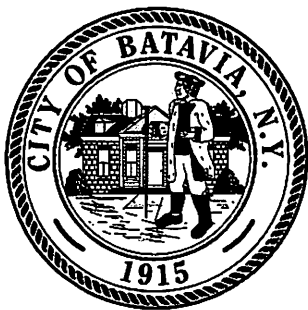
WHEREAS, a Project for the Reconstruction of Sidewalks for Liberty Street from East Main Street (Route 5) to Cherry Street, Tracy Ave from Washington Avenue to North Street and Washington Avenue from Ross Street to Bank Street, City of Batavia, Genesee County, P.I.N. 4755.93 (the "Project") is eligible for funding under Title 23 U.S.Code, as amended, that calls for the apportionment of the costs of such program to be borne at the ratio of 75% Federal funds and 25% non-federal funds; and

WHEREAS, the City of Batavia has previously agreed to advance the Project by administering the work; and

WHEREAS, a competitive bid was made by Roman Construction Development Corp., (7279 Lakeview Court, Pendleton, NY 14120) for the value of \$721,566.00 to construct the project.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the City Council President is hereby authorized on behalf of the City to execute an agreement with Roman Construction Development Corp. for the Healthy School Corridor Project.

Seconded by Councilperson
and on roll call



City of Batavia

MEMORANDUM

To: Matt Worth, Interim City Manager
From: Heidi J. Parker, Clerk-Treasurer
Date: January 11, 2018
Subject: Foreclosure Property

On August 24, 2017, the City of Batavia auctioned 46 Swan St and was scheduled to close to the high bidder for \$1,500. The high bidder withdrew their bid at the last minute and did not close on the sale. The property was offered to the back bidder, Richard Borrell, for \$1,400, who accepted and signed the sale contract in December 2017.

The recommendation is that Council approve the sale of the above listed property at the February 12, 2018 business meeting. There are no outstanding taxes on any City properties owned by Mr. Borrell and no code violations that have been billed.

#-2018
A RESOLUTION TO AUTHORIZE THE
COUNCIL PRESIDENT TO SIGN AGREEMENT FOR THE SALE OF THE
PROPERTY AUCTIONED ON AUGUST 24, 2017

Motion of Councilperson

WHEREAS, the City foreclosed on 46 Swan St for non-payment of property taxes; and

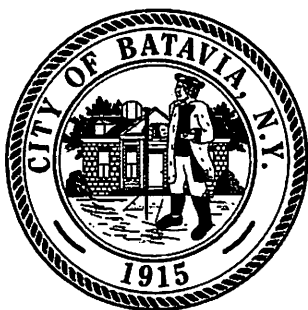
WHEREAS, ads were placed in the Batavia Daily News and documentation was sent to Bontrager Real Estate & Auction Service, Inc. regarding the properties; and

WHEREAS, a Public Real Estate Auction was held at Bontrager's Auction Center on August 24, 2017 at 6:00 p.m.; and

WHEREAS, the highest bidder withdrew their bid at the time of scheduled closing and the property was offered to the back bidder, Richard Borrell, for \$1,400:

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia, that it authorizes the City Council President to sign all necessary and appropriate closing documents, including Quit Claim deeds, to convey the property to Richard Borrell for 46 Swan St, subject to purchasers' execution of Contracts of Sale that are satisfactory to the City Attorney's Office.

Seconded by Councilperson and on roll call



City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: January 9, 2018

Subject: Occupancy Agreement – Courts Facility Renewal/Extension

In June 1996 the City of Batavia and Genesee County entered into a monumental shared service agreement sharing the cost, both capital and operational, for the construction and maintenance of a joint City-County Court facility. That agreement outlined the debt sharing and operational structure for which the City and County have jointly housed both Courts and the District Attorney's Office for the past twenty years. Two years ago, the final debt service on the building was made. Annually the City receives estimated operational and maintenance costs for the succeeding year based on the occupiable space by each entity. The partnership has worked very well as the joint capital and operational costs are significantly lower than two separate facilities.

In June 2016 the original 20-year term for the joint occupancy agreement had expired and needed to be renewed. While a year overdue, the agreement has continued, as intended, and the City and County have continued to share operational costs.

There are six (6) 10-year renewal/extension periods as part of the original agreement. It is recommended that the City Council extend the joint occupancy agreement for the Genesee County Courts Facility for the period of June 24, 2016 through June 24, 2026 and continue the existing relationship. The Genesee County Legislature has already approved the renewal in December.

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#-2018

**A RESOLUTION RENEWING THE OCCUPANCY AGREEMENT WITH
GENESEE COUNTY FOR TH GENESEE COUNTY COURTS FACILITY**

Motion of Councilperson

WHEREAS, in 1996 the City of Batavia and Genesee County entered into an agreement for a joint occupancy of the Genesee County Courts Facility for twenty years, with an option to renew the contract for six (6) 10-year periods, and

WHEREAS, the City made notification to the Genesee County to extend the agreement for the first ten-year period, which would continue the agreement through June 24, 2026, under the same terms and conditions as the original Agreement;

NOW, THEREFORE, BE IT RESOLVED, by the City Council hereby authorizes the City Council President to execute a renewal with Genesee County for the joint occupancy of the Genesee County Facility for the period of June 24, 2016 through June 24, 2026.

**Seconded by Councilperson
and on roll call**

DRAFT

GENESEE COUNTY

JAY A. GSELL
County Manager
jgsell@co.genesee.ny.us

L. MATTHEW LANDERS
Assistant County Manager
mlanders@co.genesee.ny.us



COUNTY COURTHOUSE
7 Main Street
Batavia, New York 14020
(585) 344-2550 Ext. 2204
Fax: (585) 345-3077

December 21, 2017

Jason Molino, City Manager
City of Batavia
One Batavia City Centre
Batavia, New York 14020

RE: Occupancy Agreement – Courts Facility

Dear Jason:

The County Legislature approved the Occupancy Agreement renewal at their December 13, 2017 meeting. Enclosed is the original agreement for the Council's review and approval. Please forward me a copy of the renewal once it has been fully executed.

Sincerely,

Vicky Muckle
Executive Assistant
to the County Manager

RESOLUTION NO. 489

**OCCUPANCY AGREEMENT WITH CITY OF
CITY OF BATAVIA FOR THE GENESEE COUNTY
COURTS FACILITY – APPROVAL OF**

Legislator Clattenburg offered the following resolution:

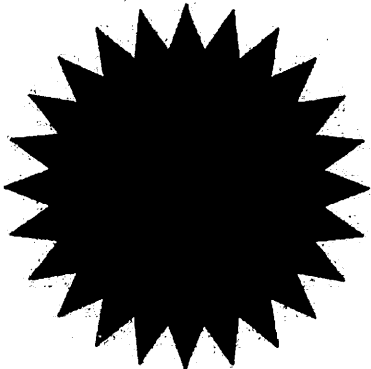
WHEREAS, Resolution No. 153 adopted June 12, 1996 did authorize the agreement between Genesee County and the City of Batavia for joint occupancy of the Genesee County Courts Facility for twenty years, with an option to renew the contract for six (6) 10 year periods, and

WHEREAS, Notification has been made by the City of Batavia to extend the agreement for the first ten year period, which would continue the agreement through June 24, 2026, under the same terms and conditions as the original Agreement, and

WHEREAS, The Committee on Ways and Means has reviewed this request and does concur, Now, therefore, Be it

RESOLVED, That the Chair of the Genesee County Legislature is hereby authorized and directed to execute a renewal with the City of Batavia, a municipal corporation of the State of New York with offices at One Batavia City Centre, Batavia, New York 14020 for the joint occupancy of the Genesee County Courts Facility for the period of June 24, 2016 through June 24, 2026.

Legislator DeJaneiro seconded the resolution which was adopted by 288 votes, Torrey (38) absent.

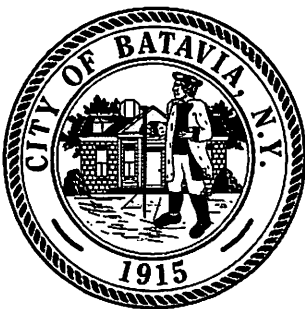


**State of New York
County of Genesee**

I hereby certify that the foregoing is a true and correct transcript of a resolution duly adopted by the Genesee County Legislature on the 13th day of December 2017.
Dated, Batavia, New York


December 14, 2017

Patricia LaPrade
Clerk of the Genesee County Legislature



City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: January 11, 2018

Subject: Habitat for Humanities – 116 Swan Street

Attached please find a memo Lauren Casey, the Executive Director of Habitat for Humanity's explaining the circumstance surrounding 116 Swan Street. As the memo explains, 116 Swan St. was transferred by the City to Habitat to renovate and restore. The City has had a long-standing relationship with Habitat in which the City annually transfers property to Habitat for restoration and offers excellent opportunities to deserving families for home ownership. 116 Swan Street was different in that it is the first property to be transferred to Habitat that is in the 100-year flood zone.

Unfortunately, after thorough review by Habitat the property requires extensive investment to not only make it flood complaint but also repair structural defects. After multiple conversations Habitat has come to a possible solution that would not only build the first flood compliant home in the City, but can also be used as a model for future new builds on the Southside of the City.

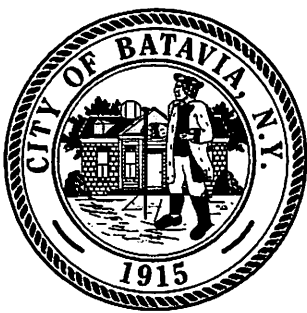
In the attached memo, Ms. Casey explains in detail the estimated cost for the demolition and construction of a newly built home. The total cost of the project is \$104,000. In that analysis it is estimated that the engineering and architecture to design a flood compliant home would cost \$17,395. However, once drafted and approved by the City, these plans can be reused for new builds in the City, eliminating much of the soft costs for new housing projects by Habitat in the future.

Considering flood plain development has been and continues to be a priority of City Council, and was outlined as a top priority in the City's recently adopted Comprehensive Plan, this project fits nicely into achieving the City's future goals and objectives. In addition, Habitat has already been approached by two land owners who are willing to turn over two vacant lots to Habitat for residential single family homes.

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City of Batavia

To assist with making this project financially feasible for Habitat they are requesting the City provide grant assistance to cover the cost of the engineering and design of the new flood compliant home. After discussing the project with Habitat as well as the City's Certified Floodplain Manager, Ron Panek, it is recommended that the City provide a grant to cover the engineering and architecture costs. The City has approximately \$48,000 committed to community development projects remaining from the Vibrant Batavia initiative. Utilizing these to support the building design of the City's first ever series of flood complaint homes provides an incredible added value to the City's housing stock in the flood plain, and paves a path to future development in the flood plain.

It is recommended that the City Council approve \$17,400 from the City's Committed Fund Balance for the engineering and architecture costs related to this project. In addition, it is recommended that \$8,700 be distributed to Habitat when a building permit is issued by the City and that the remaining \$8,700 be distributed when the structure is built and a Certificate of Occupancy issued by the City.

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#-2018

A RESOLUTION TO AUTHORIZE THE USE OF \$17,400 OF COMMITTED FUND BALANCE TO HABITAT FOR HUMANITIES OF GENESEE COUNTY FOR THE DEVELOPMENT OF ARCHITECTURAL DESIGN RELATED TO THE CONSTRUCTION OF A FLOOD COMPLIANT SINGLE-FAMILY HOUSE IN THE CITY OF BATAVIA

Motion of Councilperson

WHEREAS, the City foreclosed on 116 Swan Street (SBL # 84.074-1-6) for non-payment of property taxes; and

WHEREAS, on or about February 17, 2016 the City of Batavia, discontinued the public use of said property and to conveyed 116 Swan Street to the Batavia Housing Authority, for transfer to the Habitat for Humanities of Genesee County ("Habitat") for redevelopment; and

WHEREAS, after thorough review by Habitat the property would require extensive investment to not only to make the structure flood complaint but also repair structural defects; and

WHEREAS, after additional consideration Habitat would like to demolish the existing structure and build the first completely flood compliant home in the City of the Batavia, and create a model for future flood compliant new home construction in the City of Batavia; and

WHEREAS, the total cost of the project is \$104,000, of which it is estimated that the engineering and architecture to design a flood compliant home would cost \$17,395; and

WHEREAS, Habitat is requesting a grant from the City to cover the engineering and architecture design costs; and

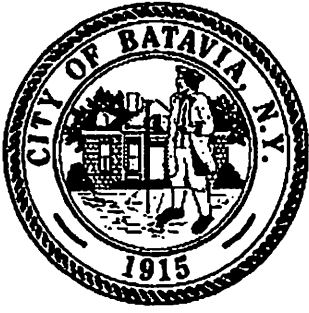
WHEREAS, flood plain development has been and continues to be a priority of City Council, and is outlined as a top priority in the City's adopted Comprehensive Plan; and

NOW THEREFORE BE IT RESOLVED, this project fits nicely into achieving the City's future goals and objectives in encourage development and growth in the City's 100-year flood plain and this project provides a model for future construction projects; and

BE IT FURTHER RESOLVED, that the City Council is desirous of supporting the project by Habitat to encourage more flood complaint home construction and approves the use of \$17,400 of Committed Fund Balance restricted for community development purposes for the engineering and architecture costs of the project; and

BE IT FURTHER RESOLVED, that \$8,700 is to be distributed when a building permit is issued by the City for the project and the remaining \$8,700 is to be distributed when the structure is built and a Certificate of Occupancy is issued by the City.

**Seconded by Councilperson
and on roll call**



City of Batavia

Memorandum

To: Jason Molino, City Manager

From: Ronald G. Panek, Certified Floodplain Manager

RGP

Date: 1/2/2018

Subject: 116 Swan St

Habitat for Humanity is proposing to build a new single family dwelling at 116 Swan St. This property is located in the AH flood zone. I have reviewed with them the requirements of the NFIP for new buildings in the floodplain, and they are ready to move forward with the design phase of the project. This will be our first flood compliant dwelling in the AH flood zone and will serve as a model for further redevelopment of our floodplain.

Department of Public Works
Bureau of Inspection
One Batavia City Centre
Batavia, New York 14020

Phone: 585-345-6325
Phone: 585-345-6345
Fax: 585-343-1385
www.batavianewyork.com

Habitat for Humanity of Genesee County

116 S. Swan Street Project

Prepared for Jason Molino

Objective: Request funding to subsidize costs associated with the demolition and reconstruction of a Habitat house located at 116 S. Swan Street, which was acquired from the city of Batavia in October of 2016. Such funding will assist Habitat in building the first new, flood-compliant home within the city of Batavia and provide decent and affordable housing for a family within the community.

Summary of Project: The home located at 116 S. Swan Street is located in the floodplain. The work that Habitat intends to complete on this home, as with all of its projects, exceeds 50 percent of the market value of the existing structure, triggering FEMA's substantial improvement rule. As a consequence, the home will need to comply with FEMA standards. The lowest level of living space must be 2 feet above the base flood elevation. All mechanicals must also occupy a space 2 feet above the base flood elevation. Openings in the foundation walls or flood vents for water to rush through in the event of a flood must also be a part of the new design. Complying with these standards will require Habitat to hire many professionals, including surveyors, architects, civil engineers and paid contractors. These paid professionals would not ordinarily be involved with a Habitat project.

1. **Analysis of Elevation vs. Demolition.** A feasibility study was completed by Habitat to determine if the home located at 116 S. Swan Street could be elevated two feet above the base flood elevation in order to allow the future homeowner to reap the tax benefits defined by the Residential Redevelopment Inhibited Property Exemption as well as reduced flood insurance premiums. Guided by the findings of engineers, architects and contractors, Habitat concluded that due to a lack of occupancy for years the existing home was not structurally sound to elevate. Moreover, the work required to safely lift the structure above the base flood elevation proved cost prohibitive. Habitat has determined that demolition of the existing structure is the most feasible course of action to take in order to proceed with this project.

2. **Pursuit of common goals.**

- a. **Revitalization.** The City of Batavia and Habitat have worked closely to identify areas where rehabilitation of distressed properties would have the most positive impact on neighborhood revitalization. Completion of the Swan Street project will mark the tenth home acquired by Habitat from the City of Batavia, denoting years of collaboration and achievement. The expectation and hope is that by

putting deserving families in rehabilitated or new homes, their pride of ownership in their properties shines through and serves to uplift those around them, positively impacting housing within the city. See **Exhibit A** for photos of rehabilitated homes within the city.

- b. **Reduction in flood insurance premiums.** A flood risk evaluation report prepared by a certified flood manager indicated that building/rehabilitating a flood compliant home will reduce flood insurance premiums by an estimated 67%. The estimated current annual premium of the existing structure is \$1,753.00, whereas the premium for a flood compliant home at this location would be reduced to \$571.00 annually. This savings is essential to pass along to a future Habitat homeowner.
- c. **Strong and stable homes help build strong and stable communities.** A decent place to live and an affordable mortgage allow for an opportunity to save more, to invest in education, and to have more financial stability. It can allow for improved health, stronger childhood development and the ability to make forward looking choices. While these benefits directly impact the family unit, they also, in turn, positively impact the community. Additionally, Habitat families add value to the community through their contribution of tax dollars.

Address	Sale Date	Assessed Value	2017 Tax Bill
150 State Street	October 2011	\$ 64,300.00	\$ 2,076.77
11 Raymond Avenue	September 2012	\$ 79,000.00	\$ 2,698.73
104 North Street	May 2013	\$ 89,000.00	\$ 3,121.84
11 Harvester Avenue	March 2014	\$ 50,000.00	\$ 1,471.75
2 McKinley Avenue	July 2015	\$ 47,300.00	\$ 2,712.57
11 South Spruce Street	November 2015	\$ 67,000.00	\$ 4,023.47
131 Pearl Street	July 2016	\$ 50,000.00	\$ 2,316.36
27 Oak Street	December 2016	\$ 60,000.00	\$ 2,204.66
240 State Street	April 2017	\$ 65,300.00	

Request for Financial Assistance: The additional costs associated with building a flood compliant home at 116 S. Swan Street will exhaust nearly 75% of Habitat's current budget for house construction and increase overall estimated costs for this project by approximately 60%. See table below. This increase significantly impacts Habitat's ability to carry out its mission. Most importantly, to Habitat, it nearly means the lost opportunity of rehabilitating or building another decent and affordable home for a family in need of a hand-up, never a hand-out. In

conclusion, Habitat requests financial assistance to subsidize construction costs that it would not ordinarily incur as a result of building in the floodplain.

116 S. Swan Street

Elevate/Rehab

Demolition/New Build

Structural work completed by paid contractor prior to elevation of house

\$ 50,000.00

Paid contractor to complete demolition

\$ 15,000.00

Costs for engineering/architecture/flood compliance

\$ 18,000.00

Costs for engineering/architecture/flood compliance

\$ 17,395.00

Asbestos survey required for demolition permit

\$ 1,800.00

Estimated asbestos abatement

\$ 10,000.00

Additional Costs to Habitat for Flood Compliance

\$ 68,000.00

Additional Costs to Habitat for Flood Compliance

\$ 44,195.00

Cost savings to Habitat through demolition as opposed to elevation

\$ 23,805.00

Budgeted material and labor construction costs/project

\$ 60,000.00

Budgeted material and labor construction costs/project

\$60,000.00

Total Estimated Construction Costs

\$ 128,000.00

Total Estimated Construction Costs

\$104,195.00

Budgeted construction costs/Total estimated construction costs

57.58%

Additional costs/Current budgeted construction costs

73.66%

Exhibit A

**Properties acquired by Habitat for Humanity
of Genesee County from the City of Batavia**



150 State Street After Rehabilitation



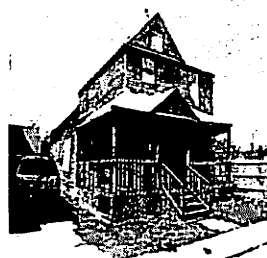
11 Raymond Avenue Before & After



104 North Street Before & After



11 Harvester Avenue Before & After



2 McKinley Ave Before & After



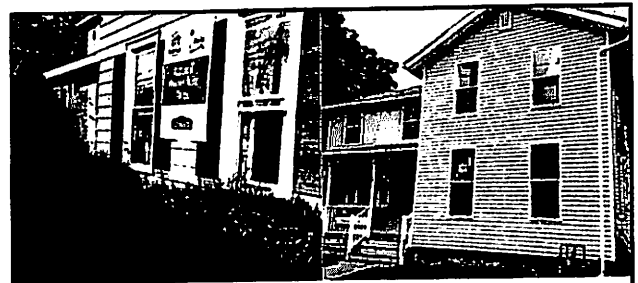
11 South Spruce After Rehabilitation



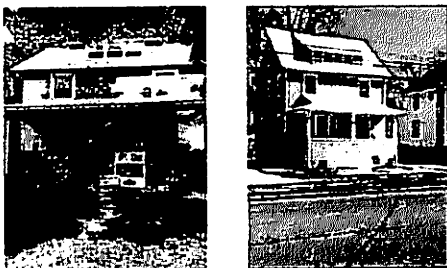
13 South Spruce Before & After
Not acquired through the City, but neighbors
an additional Habitat property that was.



131 Pearl Street Before & After



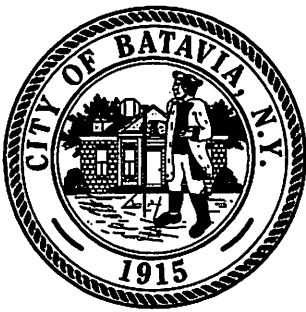
27 Oak Street Before & After



240 State Street Before & After



116 South Swan Street In Progress



City of Batavia

Memorandum

To: Honorable City Council

From: Matt Worth, Interim City Manager

Date: January 17, 2018

Subject: Lease Agreement with Batavia Players Theater Company

Discussions have been ongoing between the City and the Batavia Players, Inc in regards to leasing City owned property located within the City Centre, specifically parcels 2, 35, and 39 Batavia City Centre. These discussions have been part of an effort to revitalize vacant City Centre space in conjunction with an opportunity to bring events into the heart of the downtown area.

Relocation of the theater to the downtown area has been identified in the City's 2012 Community Improvement Plan as well as the 2017 Comprehensive Plan. This initiative is also part of a project identified for consideration in the City's DRI application as a contributor to the City's arts, culture, and entertainment initiatives. A successful DRI application is a critical piece to this initiative to move forward, and is used as a milepost in triggering the lease agreement in the resolution. The resolution is also a needed component for Batavia Players Inc. to demonstrate a level of control of the property for the their DRI application.

Specifically, it should be noted that the lease agreement has allowances for the City to terminate the lease upon 180 days' notice, as well as allowing for the City to sell the property as it sees fit. The lease payments have an escalating schedule which is common for unfurnished spaces that will require initial investments by the tenant. Provisions for a right of first refusal for the current space occupied by Dent medical should it become available in the future are also included, among others.

This agreement also provides a revenue stream along with the space occupied by Dent to support the City's commitment of maintenance fees as outlined in the new agreement for the City Centre concourse operations.

Supporting Docs: Draft Lease
Draft Resolution
Map

#-2018

**A RESOLUTION AUTHORIZING COUNCIL PRESIDENT TO SIGN
LEASE AGREEMENT WITH BATAVIA PLAYERS, INC.**

Motion of Councilperson

WHEREAS, the City of Batavia and Batavia Players, Inc. are desirous of entering into a Lease Agreement regarding operation of a Performance Arts and Fine Arts Education Center at parcel 2, 35 and 39 Batavia City Centre, Batavia, New York; and

WHEREAS, the Interim City Manager has negotiated an acceptable lease with Batavia Players, Inc.; and

WHEREAS, the City attorney has reviewed and approved the lease agreement and agrees this may continue for approval; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the Council President is hereby authorized to execute a lease agreement with Batavia Players, Inc. at 2, 35 and 39 Batavia City Centre, which has been reviewed and is satisfactory to the City Attorney's office. Upon successful notice of award from the Downtown Revitalization Initiative.

**Seconded by Councilperson
and on roll call**

COMMERCIAL LEASE
AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT ("Lease"), made this ___ the day of month, 2018 by and among City of Batavia, One Batavia City Centre, Batavia, New York 14020 ("Landlord") and Batavia Players, Inc., PUT YOUR ADDRESS HERE ("Tenant").

WITNESSETH:

WHEREAS, Landlord is the owner of that certain real property located at 2, 35 and 39 Batavia City Centre, City of Batavia, Genesee County, New York and further identified as Tax Parcel Identification Numbers and 84.049-1-52, 84.049-1-55-1, 84.049-1-56 (the "Premises"); and

WHEREAS, Tenant desires to lease a total of approximately 8,975 square foot portion of the Premises from Landlord and Landlord desires to lease the Premises to Tenant on the terms and conditions set forth below.

NOW, THEREFORE, upon the terms and conditions herein set forth, the parties agree as follows:

1. PREMISES, PARKING

(a) Tenant hereby takes and leases from Landlord and Landlord hereby leases to Tenant the Premises, together with the right to use in common with others entitled thereto, all common areas and amenities available at or relating to the Building, including without limitation any lobbies, restrooms, stairways, elevators, walks, driveways, and parking areas serving the Premises.

(b) It is agreed and understood that Tenant shall take the Premises in its "as is" condition and Landlord makes no representations as to the condition of the Premises, the Mall containing the Premises, and any equipment. By taking possession of the Premises, Tenant is deemed to have accepted the condition of the Premises on the Commencement Date.

2. TERM

(a) The initial term of this Lease (the "Initial Term") shall be for a period of 60 months, commencing on month __, 2018 (the "Commencement Date") and terminating on month __, 2023 (the "Termination Date"), unless earlier terminated or extended as provided for in this Lease.

(b) Tenant and Landlord shall have the option, so long as Tenant is not in default under the terms of this Lease, to extend the Initial Term for one (1), five-year renewal term (each a "Renewal Term") the cost will be at a rate of \$4.00 per square foot. If Tenant wishes to exercise such renewal option, Tenant must provide Landlord with written notice at least 60 days prior to the end of the Initial Term, as applicable. If no such notice is provided, this Lease shall automatically renew for an additional Renewal Term.

(c) The Landlord shall have the right and option to terminate the Lease on one-hundred and eighty (180) days written notice to Tenant.

(d) If Tenant fails to vacate the Premises (or any portion thereof) within 30 days past the Termination Date, then Tenant shall be deemed to be a month-to-month Tenant and shall pay Landlord Base Rent in the amount of 110% of the monthly rent then in effect immediately prior to such holdover period as specified in Section 3 for the time Tenant remains in possession.

3. BASE RENT

(a) Beginning on the Commencement Date, and thereafter on the first day of each month for the remainder of the Initial Term or Renewal Term, as applicable, Tenant shall pay to Landlord at its address indicated above, or at such other place as Landlord may designate by written notice, the following base rent ("Base Rent"):

<u>Months</u>	<u>Per Square Foot</u>	<u>Monthly Rent</u>
Month 1 to Month 6	\$1.00/SF	\$747.92
Month 7 to Month 12	\$3.00/SF	\$1,223.86
Month 13 to Month 60	\$4.00/SF	\$2,991.66

(b) Base Rent shall be paid in advance, without deduction or offset, or demand. In the event any payment of Base Rent or Additional Rent (as defined herein) is not paid within ten (10) days after written notice, such amount shall be subject to a late charge equal to five percent (5%) of all outstanding balances.

(c) Any and all amounts due under this Lease in addition to Base Rent, shall be considered "Additional Rent" and Landlord shall have the same rights with respect to Additional Rent as it does with respect to Base Rent.

4. [INTENTIONALLY OMITTED]

5. USE OF PREMISES

(a) Tenant is a non-profit organization which shall use the Premises for performing arts center and fine art educational center purposes and ancillary uses reasonably related thereto and for no other purpose whatsoever without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

(b) Tenant shall not place any antenna or aerials or similar devices outside of the Premises or on the roof, without the express written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed.

(c) Tenant shall comply with all applicable federal, state, and municipal laws, ordinances, and regulations and shall not directly or indirectly make any use of the Premises which may be prohibited by any such laws, ordinances, and regulations.

6. ASSIGNMENT AND SUBLET

(a) Tenant covenants and agrees that it will not sublet, assign, pledge or otherwise encumber said Premises, or allow the Premises to be used by anyone other than Tenant without the express written consent of Landlord. Any assignment or subletting shall not relieve Tenant of any obligations and liabilities set forth in this Lease. Landlord's consent to any transfer, assignment or sublease shall not be deemed to be a waiver on the part of Landlord of any prohibition against any future transfer, assignment, or subletting.

(b) In the event Landlord consents in accordance with Section 6(a) above, Tenant shall deliver to Landlord a written agreement in form and substance reasonably satisfactory to Landlord pursuant to which the transferee, assignee, or sublessee assumes all of the obligations and liabilities of Tenant under this Lease, and a copy of the assignment agreement or sublease.

7. ALTERATIONS

(a) Except for de minimus, non-structural alterations totaling less than Two THOUSAND DOLLARS, which alterations shall not require Landlord's consent, Tenant shall not make any alterations to the Premises without prior written consent of Landlord. If Landlord grants its consent, the alterations shall be performed in a good and workmanlike manner and in accordance with all applicable legal and insurance requirements and in accordance with the plans, blueprints or diagrams provided to Landlord by Tenant showing the proposed alterations and approved by Landlord in writing prior to the commencement of any work.

(b) Tenant shall not make any alterations, repairs or installations, or perform any other work to or on the Premises unless prior to the commencement of such work Tenant shall obtain and during the performance of such work keep in force general liability and workmen's compensation insurance to cover every contractor, materialman or any other person to be employed or having access to the Premises. The policy shall be non-cancellable without ten (10) days' advance written notice to Landlord. Landlord shall be named as additional insured with respect to the liability policy. The policy shall be for amounts and in form reasonably satisfactory to Landlord. Prior to the commencement of work, Tenant shall deliver certificates of all policies to Landlord, together with a copy of any permits required by any governmental authority with jurisdiction over the Premises.

(c) If any mechanic or materialman's lien is filed against the Premises as result of any additions, alterations and improvements by Tenant or any other work or act of Tenant, Tenant shall discharge the same by bonding or payment being made within ten (10) days after notice of the lien has been filed with the Genesee County Clerk. If Tenant shall fail to so bond or discharge the lien, Landlord may bond or pay the lien or claim for the account of Tenant after inquiring into the validity of the lien or the claim, and Tenant shall reimburse Landlord, as Additional Rent, upon demand for all costs, expenses and reasonable professional fees incurred in connection therewith, including the amount paid to discharge such lien.

(d) Tenant accepts all responsibility for and all costs related to removing/relocating

of the magnetic resonance imaging (MRI) machine either off or on premise.

8. [INTENTIONALLY OMITTED]

9. INSURANCE REQUIREMENTS

(a) Tenant agrees to maintain in full force throughout the Initial Term or any renewals or extensions, without exception of any kind, at its own cost and expense, one (1) or more policies of general liability and property damage insurance which up to the maximum liability amounts thereof insures Tenant and Landlord (and such other persons designated by the Landlord having an insurable interest) against liability for injury to persons and/or property (and death) of any person or persons in or about the Premises. The limits of liability of such insurance shall be not less than \$1,000,000.00 for injury (or death) caused to any one person, not less than \$2,000,000.00 for injury (or death) to more than one person arising from any accident, and not less than \$500,000.00 with respect to damage to property. The insurance must be issued by an "A" rated, or better, insurance company licensed to conduct business in the State of New York with the New York State Insurance Department/Department of Financial Services. All such policies or certificates thereof shall be deposited with Landlord by Tenant promptly upon the commencement of this Lease and upon each renewal period or within five (5) days upon written request of Landlord; such insurance policies shall name Landlord or its designee as additional insureds and shall contain a further provision by which the insurer agrees that such policy may not be canceled except upon thirty (30) days' advance written notice to Landlord or its designee.

(b) Tenant agrees to pay all premiums and charges for such insurance as set forth in this paragraph and in the event of its failure to make any such payment when due or in the event of its failure to provide any insurance or renewal thereof. Landlord may procure the same and/or pay the premiums thereon and Tenant agrees to pay such premiums to Landlord upon demand and the same shall be deemed to be Additional Rent for such Premises including a ten percent (10%) administrative fee.

(c) Landlord shall maintain, throughout the Initial Term and any Renewal Term, all risk property insurance covering the Mall building, including the Premises and leasehold improvements, in an amount equal to one hundred percent (100%) of the reasonably estimated replacement cost thereof.

10. INDEMNIFICATION AND LIMITATION OF LANDLORD LIABILITY

(a) Tenant shall indemnify and hold Landlord harmless from and against all costs, damages, claims, liabilities and expenses (including reasonable attorney's fees) suffered by or claimed against Landlord arising out of or resulting from (i) Tenant's use and occupancy of the Premises or the business conducted by the Tenant therein, (ii) any negligent act or willful misconduct by Tenant or its employees or guests, or (iii) any breach or default by Tenant in the performance or observance of its covenants or obligations under this Lease.

(b) Except as may be otherwise herein provided, Landlord and its agents shall not be liable for damages by abatement in rent or otherwise for any damage either to the person or

property of Tenant nor for the loss of or damage to any property of Tenant by theft or any other cause whatsoever whether similar or dissimilar to the foregoing. In addition, Landlord or its agents shall not be liable for any injury or damage to persons or property or loss of or interruption to the business of Tenant resulting from fire, explosion, falling plaster, steam, gas, electricity, rain, snow, heating system leaks, leaks from pipes and drums, appliances or the plumbing system from any part of the Building containing the Premises or from the roofs, street, storm and sanitary sewers, parking area or subsurface or from any other place or by the discontinuance of any service to be provided by Landlord to Tenant, unless caused by the negligence or willful misconduct of Landlord.

(c) The Owner of the Premises is a New York municipal corporation ("municipality") and all officials, representations, staff, employees and agents of said municipality, shall have absolutely no personal liability with respect to any provision of this Lease, nor any obligations or liability arising therefrom or in connection herewith.

11. SURRENDER OF PREMISES

(a) Upon termination of this Lease by expiration or otherwise, Tenant shall immediately vacate the Premises and surrender possession thereof, including all keys as herein required to Landlord; Tenant shall surrender the Premises in broom clean condition except for reasonable wear and tear; Tenant grants to Landlord full authority and license to enter the Premises to take possession in the event of any termination of this Lease.

(b) Upon surrender of the Premises, Tenant may not remove any of the leasehold improvements, fixtures, or equipment permanently affixed to the Premises and shall leave the Premises intact and free and clear of all liens or encumbrances whatsoever. Tenant shall remove all trade fixtures and personal property from the Premises and restore the Premises to the condition the Premises were in on the Commencement Date, ordinary wear and tear and approved alterations excepted.

12. ESTOPPEL CERTIFICATE

Landlord and Tenant agree that from time to time upon not less than fifteen (15) business days' prior request by the other party, it will deliver to Landlord a statement in writing certifying that the Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and identifying said modifications) as well as identifying the dates to which rent and other charges have been paid, as well as stating that as far as the person making the estoppel certificate knows the other party is not in default under any provision of this Lease if such is the case.

13. DAMAGE AND DESTRUCTION

(a) In the event of destruction of twenty five percent (25%) or less of the Premises by fire or any other casualty, Landlord shall use reasonable efforts to restore or repair said destruction with due diligence, and rent shall be equitably abated in accordance with the proportion of the Premises that shall be rendered untenable and those that may be used safely in accordance with applicable laws. Landlord shall expend such sums as may be required to repair or restore improvements to the conditions they

were immediately prior to the date of destruction. Notwithstanding the foregoing, Landlord will notify Tenant within thirty (30) days of the date of such casualty whether Landlord can complete the restoration. If Landlord cannot so complete or fails to complete the same within a reasonable period, Tenant may, at its option, terminate this Lease upon thirty (30) days advance written notice to Landlord.

(b) If in excess of twenty five percent (25%) of the Building containing the Premises shall be destroyed by fire or other casualty, the Landlord shall have the option to terminate this Lease by giving Tenant written notice within thirty (30) days after such destruction, and Base Rent and Additional Rent shall be apportioned as of the date of destruction and prepaid rent and Additional Rent returned to Tenant. If Landlord does not terminate the Lease within thirty (30) days of the date of the casualty, Landlord shall notify Tenant whether or not the restoration can be completed within one hundred twenty (120) days after the insurance proceeds are received. Thereafter, the Premises shall be restored to the condition existing immediately prior to the date of destruction within twelve (12) months after Landlord receives insurance proceeds on such damage. Base Rent and Additional Rent shall abate for the period the Premises are untenable. If such restoration has not been completed or cannot be completed within twelve (12) months from the date of the casualty, Tenant shall be entitled to terminate this Lease (i) within thirty (30) days of Landlord's notice that restoration cannot be completed or (ii) after the expiration of the twelve (12) months period. If Tenant being so entitled does not elect to terminate this Lease, then the same shall remain in full force and effect and rent shall recommence when the restored Premises are returned to Tenant and shall thereafter continue in full force and effect for the remainder of the term of the Lease.

14. CONDEMNATION

(a) If a non-substantial portion of the Premises or access to the Premises shall be taken, as herein provided, for public improvements or otherwise, under the exercise of the right of eminent domain and the Premises continue to be reasonably suitable and accessible for the use which is herein authorized, then this Lease shall continue in full force and effect and the Base Rent and Additional Rent herein provided for shall be reduced from the date of such taking in direct proportion to the reduction in usefulness of the Premises.

(b) If the Premises, or access to the Premises as provided in (a) above, shall be taken, condemned or acquired by grant or otherwise for the widening of streets or for other public improvements, or shall otherwise be taken in the exercise of the right of eminent domain in each such case, so as to render the Premises unfit for the use herein authorized, in Tenant's reasonable discretion, Tenant shall have the right to terminate and cancel this Lease on thirty (30) days written notice to Landlord, and Base Rent and Additional Rent and other charges set forth under this Lease shall abate as of the date of the taking.

15. DEFAULTS OF TENANT

Upon the happening of any of the following:

(a) If Tenant fails either (i) to pay any installments of Base Rent or of Additional Rent, or any part hereof when due, and such failure shall continue for ten (10) days after written notice, or; (ii) to perform or observe any other agreement or covenant or provision of this Lease and any such failure shall continue for thirty (30) days after written notice; or

(b) If any voluntary petition or similar pleading under any bankruptcy act or under any federal or state law seeking reorganization or arrangement with creditors or adjustment of debts, is filed by or against Tenant, or if any such petition or pleading is involuntary, and it is not adjudicated favorably to Tenant within thirty (30) days after its filing; or

(c) If Tenant admits its inability to pay its debts, or if a receiver, trustee or other court appointee is appointed for all or a substantial part of Tenant's property; or

(d) If the leasehold interest of Tenant is levied upon or attached by process of law; or

(e) If Tenant makes an assignment for the benefit of creditors or if any proceedings are filed by or against Tenant to declare Tenant insolvent or unable to meet its debts; or

(f) If a receiver or similar type of appointment or court appointee or nominee of any name or of character is made for Tenant or its property; or

(g) If Tenant dissolves, voluntarily or otherwise, or is subject to a judicial receivership of any kind.

Then, Landlord, thereupon or at any time thereafter, at its election and with notice, may terminate this Lease, or without prejudice to its right to terminate may take any lawful action available to it, all without such termination or action affecting Landlord's right for recovery of past due or future rents or other obligations of Tenant hereunder. If Tenant abandons the Premises, Landlord may enter for any purposes whatsoever without affecting Tenant's obligations hereunder.

16. REMEDIES OF LANDLORD

In case of any such default, reentry, expiration and/or dispossession by summary proceedings or otherwise:

(a) The Base Rent, any Additional Rent, and any and/all fees due under this Lease, shall become due thereupon and be paid by Tenant up to the time of such reentry, dispossession and/or expiration, together with such expenses as Landlord may incur for legal expenses and reasonable attorneys' fees.

(b) Landlord may relent the Premises or any part or parts thereof, for a term, or terms which may at Landlord's option be less than or exceed the period which would have otherwise constituted the balance of the term of this Lease and may grant concessions. Tenant shall receive a credit against any and all Lease obligations hereunder for the amount received by Landlord in connection with such reletting. Any amounts in excess of Tenant's obligations

shall be retained by Landlord. Tenant or the legal representatives of Tenant shall also pay Landlord as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the rent amount, if any, of the rents collected on account of the Lease or leases of the Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. The failure or refusal of Landlord to relet the Premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages, there shall be added to the deficiency such expenses as Landlord may incur in connection with reletting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this Lease, and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of the Landlord to collect the deficiency for any subsequent month by a similar proceeding. Landlord, at Landlord's option, may make such alterations, repairs, replacements and/or decorations in the Premises as the Landlord in Landlord's reasonable judgment considers advisable and necessary for the purpose of reletting the Premises and the making of such alterations and/or decorations shall not operate or be considered to release Tenant from liability hereunder. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises, or in the event that the Premises are relet for failure to collect the rent thereof under such reletting. In the event of a breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right to invoke any remedy allowed at law or in equity as if reentry, summary proceedings and other remedies were not herein provided for. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

(c) Landlord may declare the entire rent for the balance of the Lease term, including any Additional Rent, immediately due and payable by Tenant.

17. QUIET ENJOYMENT

Landlord covenants and agrees with Tenant, and upon paying the Base Rent and any Additional Rent and performing all of the terms and conditions on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises, subject, nonetheless, to the terms and conditions of this Lease.

18. NOTICES

Any notices or demands to be given pursuant to this Lease shall be in writing and shall be effectively served by either (i) personal delivery to a party or (ii) upon sending the written notice to the Landlord or Tenant as the case may be at the office or residential addresses set forth above (or below with regard to any Guarantor) by certified mail, return receipt requested, or at such other address as either party shall designate by written notice

to the other party. Any notice shall be deemed to be given on the date on which the same was delivered personally or on the second day after the notice was deposited in a regularly maintained receptacle for the deposit of United States mail addressed and sent as aforesaid.

19. CAPTIONS

Captions used herein are for identification purposes only and in no way, define, limit or describe the scope of this Lease, nor the intent of any provisions thereof.

20. ENTIRE AGREEMENT

This Lease cannot be changed, modified or discharged in whole or in part except by written instrument signed by the party against whom enforcement is sought, except Landlord may, in its sole discretion and without prior authorization and/or notice to Tenant, assign this Lease to any purchaser/transferee/grantee/mortgagee/lien holder of the real property containing the Leased Premises.

21. LAWS GOVERNING AND VENUE

This Lease is written under and shall be construed in accordance with the laws of the State of New York, with regard to any principles of conflicts of law. Any suit which may be brought to interpret or enforce any of the terms or obligations of the parties in this Lease hereunder shall be brought in State Supreme Court, County of Genesee, State of New York.

22. SUCCESSORS IN INTEREST

It is understood and agreed that all of the covenants, agreements, terms, conditions, provisions, and undertakings in this Lease or any renewals thereof shall extend to and be binding upon the heirs, executors, administrators and successors of the respective parties hereto, the same as if they were in every case named and expressed.

23. WAIVER OF REDEMPTION

Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause or in the event of Landlord obtaining possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

24. INSPECTION/EXAMINATION OF PREMISES

Landlord and its authorized representatives shall have the right upon twenty-four (24) hours' prior notice (or sooner if circumstances warrant a more immediate entry), to enter the Premises at all reasonable times for any of the following purposes:

(a) To determine whether the Premises are in good condition and whether Tenant is complying with all of its obligations under this Lease;

(b) To do any necessary maintenance and to make any required restoration to the Premises; or

(c) To show the Premises to prospective purchasers, or mortgagees, within six (6) months of the Termination Date, as such date may be extended from time to time, tenants. Landlord shall conduct its activities on the Premises as allowed in this paragraph in a manner that will cause the least possible interference to Tenant's business operations at the Premises.

Notwithstanding the above, in the event of an emergency, Landlord may enter the Premises at any time, without notice, to make any repairs required under the circumstances.

25. REPAIRS AND MAINTENANCE

(a) Landlord shall make or cause to be made at its expense: (i) structural repairs to exterior walls, structural columns, and structural floors which collectively enclose the Premises; (ii) repairs and replacements of the roof, gutters and downspouts of the building enclosing the Premises; and (iii) repair, maintenance and upkeep of all heating, furnaces and/or boiler and/or air conditioning units, from time to time as such repairs and maintenance are necessary.

Notwithstanding anything contained in this Lease, Landlord, its agents or servants, will be permitted unlimited access, without notice, through the Leased Premises to any part of the Premises or building containing the Premises for the purpose of servicing heat, plumbing, electrical, and/or any other building-related repairs and maintenance matters. If Tenant installs an alarm system, Landlord is to be supplied an access code and if Tenant changes any locks, Landlord is to be supplied new keys. Tenant may not change locks or install any alarm systems without prior notification in writing to Landlord and without providing keys and codes to the same immediately upon such installation.

26. INVALIDITY OF PARTICULAR PROVISION

If any term or provision of this Lease or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of each term or provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

27. WAIVER OF COVENANT OR CONDITION

The failure of either party to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment for the future of any such covenants, conditions or options, but the same shall be and remain in full force and effect.

28. SECURITY DEPOSIT

Landlord agrees to waive the security deposit.

29. BROKERS

Tenant warrants that it has not had any dealings with any realtor, broker, or agent in connection with the negotiation of this Lease and agrees to save and hold Landlord harmless from any cost, expense, or liability from any compensation, commission, or charges claimed by any realtor, broker, or agent.

30. ENVIRONMENTAL COMPLIANCE

(a) Tenant represents, warrants, and covenants that Tenant will not store or use hazardous materials at or affecting the Premises in any manner which violates federal, state, or local laws, ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of hazardous materials or substances.

(b) Tenant covenants that it shall keep or cause the Premises to be kept free of hazardous materials or substances and not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, produce or process hazardous materials or substances, except in compliance with all applicable federal, state and local laws or regulations.

(c) Tenant covenants to ensure compliance by all of its agents, employees, licensees, invitees, customers, operators, and occupants of the Premises with all applicable federal, state, and local laws, ordinances, rules and regulations and will ensure that all such agents, employees, licensees, invitees, customers, operators, and occupants obtain and comply with any and all required approvals, registrations, or permits.

(d) Tenant shall defend, indemnify and hold harmless Landlord, its members, employees, agents, officers, and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature known, including reasonable attorneys' fees contingent or otherwise, arising out of or in any way related to hazardous materials or substances brought onto the Premise by Tenant, its employees, agents, contractors, invitees, or licensee or the soil, water, vapor, vegetation, buildings, personal property, persons, animals, or otherwise and any personal injury (including wrongful death) or property damage arising out of or related to such hazardous materials or substances.

(e) Termination of this Lease as a result of Tenant's default shall not operate as a discharge of Tenant's engagement as to hazardous materials or substances and Tenant shall deliver the Premises to Landlord free of any and all hazardous materials, except to the extent such hazardous materials or substances were present at the Premises prior to the Commencement Date

(f) In the event Tenant does not timely perform any of the above obligations, Landlord may perform said obligations at the expense of Tenant and such expense shall be

considered Additional Rent plus a ten percent (10%) administration fee.

The provisions of this paragraph including Tenant representations and warranties contained herein shall survive default, reentry, expiration, and/or dispossession by summary proceedings or Lease termination.

31. RIGHTS RESERVED BY LANDLORD

Landlord reserves without affecting Tenant's obligations hereunder the following rights, provided that Landlord shall give Tenant twenty-four (24) hours' notice before exercising same:

(a) To show the Premises to prospective tenants during the last six (6) months of the Initial Term or any Renewal Term, as applicable, during regular business hours in the event the Tenant fails to exercise its right to renew.

(b) To show the Premises to prospective purchasers during the Term or any renewal term of this Lease during regular business hours.

(c) To make repairs required of the Landlord pursuant to this Lease in and about the Premises and for such purposes enter the Premises and during the continuance of said repairs to temporarily close doors, entryways, public spaces, and corridors in the Mall building and to interrupt or temporarily suspend building services and facilities, all without abatement of rent or affecting any Tenant's obligations hereunder, if the Premises are accessible and provided that the Landlord proceeds in a reasonably expeditious manner. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility, or liability whatsoever for the care or supervision of the Premises or the Mall building or any part thereof, other than as in this Lease provided.

32. FORCE MAJEURE

Except for the payment of Base Rent or Additional Rent, in the event either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of an act of God, strikes, lockouts, labor troubles, inability to procure materials (including energy), power, casualty, inclement weather, restrictive governmental laws, orders or regulations, riots, insurrection, war, or any other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of any such act shall be extended for a period equivalent to the period of such delay.

33. SIGNAGE/AWNINGS

Tenant shall have the right at its sole cost and expense to erect on the exterior of the Premises its standard sign and/or awning previously approved, in writing, by the Landlord as to location, size, style, and content, which shall also be structurally sound and in conformity with all municipal and other applicable regulations. Tenant shall remove any such signs at the termination of this Lease and repair any damage caused by such

installation/removal. Any changes to the standard sign of the Tenant, as originally approved by Landlord, shall again be only with the express written consent of the Landlord.

Notwithstanding, any exterior signage and/or awnings that the Tenant desires to be placed on or about the Premises shall be subject to the prior written consent of the Landlord, the Landlord's insurance company, and the municipality having jurisdiction over the Premises as to location, size, style, and content. The cost of the signage, installation, and any required governmental permits and insurance shall be the sole responsibility of the Tenant.

34. MISCELLANEOUS

a) Landlord is currently leasing 2,077 square feet of 35 Batavia City Centre (#84.049-1-55.1) to another leasee. Landlord agrees that upon the space becoming vacant the Tenant shall have first right of refusal to lease the additional space at the same rent outlined in Section 3 of this lease. The Landlord shall provide the Tenant in writing notice that the space is available. The Tenant shall have thirty (30) days upon receipt of the Landlord notice to confirm they desire to lease the additional space. If no response is received, after the 30 days the Landlord may seek other potential tenants.

b) The Tenant may request after hours access to the City Centre Concourse on specific days and times throughout the year. The Landlord shall within reason and in good faith work with the Tenant to access to the concourse provided the Tenant:

- i. Provides a written request to the Landlord not less than 30 days in advance of said needed access identifying what access is needed and what dates and times the access will be needed; and
- ii. Provides indemnification and insurance naming the City of Batavia as additional insured for all access to the concourse after hours; and
- iii. Shall be responsible for any additional Landlord costs related to staffing, security, cleaning, operation, maintenance, repairs etc. for providing said access to the concourse after hours; and
- iv. After hours access to the concourse shall only be used to access functions and activities in the Tenant leased space. No functions or activities shall be hosted in the concourse.

c) Any gender used herein shall be deemed to refer to any other gender more grammatically applicable to the party whom such use of gender relates. The use of the singular shall be deemed to include the plural and conversely the plural shall be deemed to include the singular.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

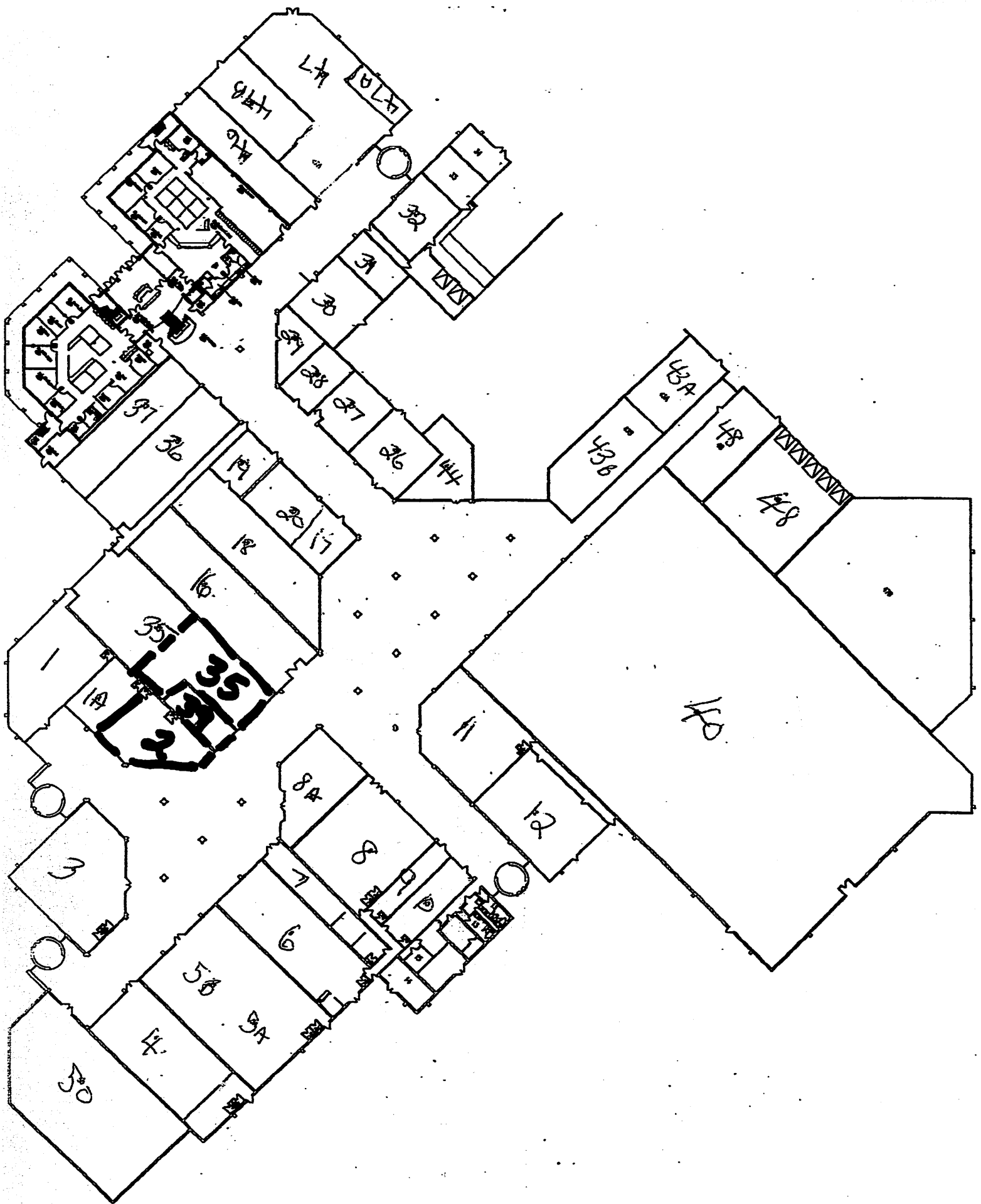
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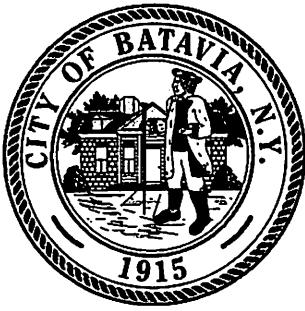
By:
Name:
Title:

Batavia Players, Inc.:

By
Name
Title:

DRAFT





City of Batavia

Memorandum

To: Honorable City Council

From: Matt Worth, Interim City Manager

Date: January 19, 2018

Subject: Sub-Lease Agreement with City / BRRC / NY-Penn League for Dwyer Stadium Operations

Discussions have been ongoing between the City and the NY-Penn League, Inc in regards to leasing Dwyer Stadium for operations of the Batavia Muckdogs baseball team. These discussions have been part of an effort to maintain the current baseball team to the benefit of both the City and NY-Penn League through the next year. As a result of discussions between the NY-Penn League and the City Attorney, an assignment of the sub-lease has been drafted for City Council's consideration.

As Council is aware, the League assumed ownership of the team this past December for Genesee County Baseball Inc. (GCBC). The League is agreeable to operate the team at Dwyer Stadium under the terms and conditions of the previous sublease to GCBC and declaration to Rochester Community Baseball (Rochester Redwings) for this upcoming year. The NY-Penn League is anxious to have staff assigned to the facility in preparation of the upcoming season and therefore requests action on this item at the earliest time available.

Upon review, I believe that this agreement is beneficial to the City by ensuring professional baseball continues in Batavia for the upcoming season under terms that allow for the responsible operations of this City facility. The League has been made aware of the proposed budget and funds that may be available for improvements and have an understanding of these limitations. These items can be discussed in more detail during budget workshop meetings, and after a review of priorities has been discussed with the League.

Supporting Documentation

Sub-Lease Agreement

#-2018

**A RESOLUTION AUTHORIZING THE CITY COUNCIL PRESIDENT TO SIGN AN
ASSIGNMENT OF THE DWYER STADIUM LEASE AND SUBLEASE EXTENSION
AGREEMENT**

Motion of Councilperson

WHEREAS, the City of Batavia is the owner of Dwyer Stadium and the Batavia Regional Recreation Corporation (BRRC) operates and manages the Dwyer Stadium facility as outlined in the Dwyer Stadium Lease Agreement; and

WHEREAS, the Genesee County Baseball Club, Inc. (GCBC) owned the Batavia Muckdogs minor league franchise and the BRRC sublets the premises to GCBC so that the Batavia Muckdogs can use the facility to play its home baseball games at Dwyer Stadium; and

WHEREAS, GCBC and Rochester Community Baseball, Inc. (RCBI) are parties to a Management and Operating Agreement by which RCBI managed and operated the day to day business of GCBC including the Batavia Muckdogs, pursuant to and as more particularly provided for by the Management and Operating Agreement.

WHEREAS, the City, BRRC, GCBC and RCBI extended the Lease and Sublease Agreements by Agreement dated January 9, 2017, in accordance with, and as more particularly provided for by an Extension agreement the Lease and Sublease Agreements expire on April 2, 2019.

WHEREAS, since the extension of the Lease and Sublease Agreements the Management and Operating Agreement has expired and not been renewed.

WHEREAS, on December 14, 2017, the New York Penn League, Inc. terminated GCBC's ownership interest in the Batavia Muckdogs franchise and assumed ownership and control of the team.

WHEREAS, the New York Penn League's wholly owned subsidiary, Batavia Muckdogs, Inc., wishes to operate the team at Dwyer Stadium under the Sublease.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the Council President by and is hereby authorized to sign said Assignment of the Dwyer Stadium Lease and Sublease Extension Agreement as stated in "Attachment A" on behalf of the City of Batavia.

**Seconded by Councilperson
and on roll call**

**ASSIGNMENT OF DWYER STADIUM
LEASE AND SUBLEASE EXTENSION AGREEMENT**

This Assignment is made on January __, 2018 by and among the City of Batavia ("City") Batavia Regional Recreation Corporation ("BRRC") and Batavia Muckdogs, Inc. ("Muckdogs").

Recitals

- A. The City and BRRC are parties to a Lease Agreement, dated March 12, 2008 pursuant to which the City, as owner of certain real property with improvement thereon consisting of a baseball field and grandstand facilities, known as Dwyer Stadium ("Premises" or "Facility"), leases the Facility to BRRC to operate and manage the Facility.
- B. BRRC, Genesee County Baseball Club, Inc. ("GCBC") and the City are parties to a Sublease Agreement dated April 3, 2008 pursuant to which BRRC subleases the Facility to GCBC, the original owner of the Batavia Muckdogs minor league franchise of the New York-Pennsylvania Professional Baseball League, Inc. ("NY-Penn League") so that the team can use the Facility to play its home baseball games at the Facility and which Sublease Agreement amended the Lease Agreement, in part, as more particularly set forth in the Sublease Agreement.
- C. GCBC and Rochester Community Baseball Inc. ("RCBI") were parties to a Management and Operating Agreement by which RCBI managed and operated the day-to-day business of GCBC including the team pursuant to a Management and Operating Agreement and certain Delegation Agreement.
- D. The City, BRRC, GCBC and RCBI mutually extended the Lease Agreement and Sublease Agreement on January 19, 2011, March 13, 2013, April 13, 2015 and January 9, 2017.
- E. The Lease and Sublease Agreement currently is set to expire on April 2, 2019, unless terminated earlier as set forth therein.
- F. The Management and Operating Agreement between GCBC and RCBI has expired and not been renewed.
- G. On December 14, 2017 the NY-Penn League terminated GCBC's ownership interest in the Batavia Muckdogs franchise and has assumed control and ownership of the team.
- H. The NY Penn League's wholly owned subsidiary, the Muckdogs, desires to operate the team at Facility under the terms of the Sublease.
- I. The Lease and Sublease may not be assigned without the City's written approval.

NOW, THEREFORE for good and valuable consideration the receipt of which is hereby acknowledged by the parties hereto and in consideration of the mutual covenants and agreement contained therein, it is agreed as follows:

1. The Batavia Muckdogs, Inc. shall assume and be responsible for all rights, duties, privilege and obligations of GCBC under the Sublease Agreement and Lease and Sublease Extension Agreement dated January 9, 2017, and all references in the Lease and Sublease Agreement and Extension Agreement to GCBC shall be interpreted as the Batavia Muckdogs, Inc.
2. The City and BRRC hereby assign to and Batavia Muckdogs, Inc. hereby accepts and assumes such assignment and delegation of the rights, duties, privileges and obligations as they exist under the January 9, 2017 Lease and Sublease Extension Agreement.
3. Representatives of the City and the Batavia Muckdogs, Inc. shall promptly meet and shall meet from time to time as may be required to discuss Facility repairs and capital improvements.

CITY OF BATAVIA

By: _____
Eugene Jankowski, Jr., Council President

**BATAVIA REGIONAL
RECREATION CORPORATION**

By: _____
Steven Maxwell, President

BATAVIA MUCKDOGS, INC.

By: _____
, President