

BATAVIA CITY COUNCIL SPECIAL CONFERENCE MEETING

**City Hall - Council Board Room
One Batavia City Centre
April 12, 2021 after Business Meeting**

AGENDA

- I. Call to Order
- II. Ellicott Trail Easements
- III. Waste Water Treatment Plant Bid for Air System
- IV. National Northern Border Regional Commission Infrastructure Grant – Bank St Waterline Improvements
- V. Adjournment



City of Batavia

Memorandum

To: Honorable City Council Members

From: Rachael J. Tabelski, MPA, City Manager

Date: April 5, 2021

Subject: Ellicott Trail Easements

On March 14, 2016 the City of Batavia City Council approved an Inter-Municipal Agreement to split the local cost share of the Ellicott Trail project and, at the completion of the project, to maintain a portion of the trail within the City limits.

The project has reached completion, and in 2020 City Council authorized the payment of (\$196,763) per resolution #78-2020 to the Town of Batavia for the local cost share of the project.

During the planning of the trail, and as a means to advance the trail project, the Town of Batavia acquired various easements for real property within the City limits. To finalize the project the Town of Batavia requests that the City accept the transfer of these easements as outlined in the Ellicott Trail Easement Assignment Agreement.

The term of the agreement is for thirty (30) years. The trail will be maintained and operated as a public improvement and will be restricted from vehicular access. The City's portion of the trail will be insured.

I recommend that the City Council accept the transfer of easements and agrees to assume sole ownership and responsibility for maintenance and repair of the Ellicott Trail inside the City limits (Pearl Street Road to Cedar Street) including the easement areas.

The easements include:

1. 665 E. Main St.
2. Batavia Gardens
3. Ellicott Station
4. Elmwood Cemetery

I recommend that the City Council move the Ellicott Trail Assignment Agreement to the Special Business Meeting scheduled for April 26th 2021.

#-2021

**A RESOLUTION AUTHORIZING THE CITY OF BATAVIA TO ACCEPT THE
TRANSFER OF EASEMENTS RELATED TO THE ELLICOTT TRAIL AND EXECUTE
THE EASEMENT ASSIGNMENT AGREEMENT**

Motion of Councilmember

WHEREAS, the City Council for the City of Batavia approved an Inter-Municipal Agreement with the Town of Batavia to construct the Ellicott Trail; and

WHEREAS, the Ellicott Trail has been constructed and specific easements will be assigned from the Town of Batavia to the City; and

WHEREAS, the following easements related to the trail will be assigned to the City- 665 East Main St., Batavia Gardens, Ellicott Station, and Elmwood Cemetery; and

WHEREAS, the City commits to maintain and repair the Ellicott Trail inside City limits from Pearl Street Rd. to Cedar St. including the easement areas.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Batavia accepts the assignment of easements and authorizes the City Council President to execute the Ellicott Trail Easement Assignment Agreement.

**Seconded by Councilmember
and on roll call**

ELLICOTT TRAIL EASEMENT ASSIGNMENT AGREEMENT

THIS AGREEMENT, made the _____ day of _____, 2021, by and among the TOWN OF BATAVIA, a Municipal Corporation of the State of New York, with offices located at 3833 West Main Street Road, Batavia New York 14020, (hereinafter “Town”); and the CITY OF BATAVIA, a Municipal Corporation of the State of New York, with offices located at City Hall, One Batavia City Centre, Batavia, New York 14020 (hereinafter “City”); (hereinafter referred to collectively as the “Parties”).

WITNESSETH:

WHEREAS, The Parties have previously entered into various agreement relative to the construction of the Ellicott Trail (the “Project”), including an agreement dated the 26th day of May, 2016 (the “Construction Agreement”), which set forth the understanding of the Parties in regards to the construction and ownership of the Ellicott Trail through portions of the Town and City (the “Trail”), and

WHEREAS, The Construction Agreement provided that the Town would serve as lead Project Sponsor for the construction of the Trail, which includes a trail surface, grading, lighting, bridges, landscaping, and related improvements (the “Trail Improvements”), and that upon completion of the Project, the City would assume ownership and maintenance of the portion of the Trail and Trail Improvements within the City limits, with the Town assuming the same responsibilities for the portion of the Trail and Trail Improvements in the Town; and

WHEREAS, in furtherance of the Town’s responsibilities to further the Project, the Town acquired various easements over real property within the City limits as more particularly described on “Exhibit A” (collectively, the “Easements”); and

WHEREAS, the Project is now completed and the parties wish to finalize transfer of ownership and maintenance of the portions of the Trail within the City limits to the City as provided in the Construction Agreement,

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the Parties hereby covenant and agree as follows:

- 1. The Town hereby transfers, quit claims, and assigns forever to the City, and the City hereby accepts, all its right, title and interest in and to the Easements set forth on the attached "Exhibit A," attached hereto and made a part hereof, including all right, title and interest in and to the Trail Improvements located on the parcels encumbered by the Easements.**
- 2. Further, the Town hereby transfers, quit claims, and assigns forever to the City, and the City hereby accepts, all its right, title and interest in and to the remaining Trail Improvements located on other parcels within the City limits as set forth more on the Ellicott Trail Project plans dated November, 2018, which can be further described as the Ellicott Trail from Pearl Street Road to Cedar Street from Station 0+00 to Station 144+00.**
- 3. The City hereby agrees to assume sole ownership and responsibility for maintenance and repair of the Easement areas and the Trail Improvements located within the City Limits. and the Town shall retain no maintenance or repair responsibilities over the same upon the execution of this Agreement.**
- 4. The City hereby agrees to maintain and operate the Trail as a public improvement and to permit public non-vehicular access upon same for the term of this agreement, or as long as required under the rules, conditions and agreements governing the state and federal funds provided to the Town for the completion of the Project, whichever is longer.**
- 5. Term of Agreement. Unless mutually agreed by the parties in writing, the term of this Agreement shall be Thirty (30) years.**
- 6. Entire Agreement. There are no other Agreements or understandings, either oral or written, by and among the Parties effecting this Agreement. No changes, addition or deletions of**

any portions of this Agreement shall be valid or binding upon the Parties hereto, unless the same is approved in writing by the Parties.

7. No Assignment. This Agreement may not be assigned by any party, in whole or in part, without the prior written consent of the Parties hereto.
8. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all which shall constitute the same instrument herein.

[SIGNATURES FOLLOW ON NEXT PAGES]

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

TOWN OF BATAVIA

By: _____
Gregory H. Post, Supervisor

On the _____ day of _____ in the year 2021, before me, the undersigned, personally appeared GREGORY H. POST, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual(s), or the person upon behalf of which the individual acted, executed the instrument.

(signature and office of individual taking acknowledgment)

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

CITY OF BATAVIA

By: _____

On the _____ day of _____ in the year 2021, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual(s), or the person upon behalf of which the individual acted, executed the instrument.

(signature and office of individual taking acknowledgment)

EXHIBIT A
LIST OF EASEMENTS

This Agreement pertains to the following easements owned by the Town of Batavia as of the date of execution of this Agreement:

TAX ID OF UNDERLYING PARCEL	EASEMENT RECORD LOCATION	GRANTOR
1. 84.015-1-37.311	Instrument # DE2017-1926	Ellicott Station, LLC
2. 84.015-1-37.312	Instrument # DE2017-1926	Ellicott Station, LLC
3. 84.020-1-4	Instrument # DE2018-563	Elmwood Cemetery Association
4. 85.013-1-23.1	Instrument # DE2018-669	665 East Main Street, LLC
5. 85.013-1-74	Instrument # DE2018-359	Batavia Gardens Associates, LP

RKH

R.K.Hite & Co., Inc.

P.O. Box 130 • 87 Genesee Street • Avon, NY 14414
 Voice 585-226-6702 • Fax 585-226-8067

TO: Town of Batavia
 3833 West Main Street Road
 Batavia, NY 14020

LETTER OF TRANSMITTAL

DATE

2018-07-06

JOB NO.

4760.79

ATTENTION

Teresa M. Morasco, Town Clerk

RE:

PIN 4760.79 - Ellicott Trail Project

WE ARE SENDING YOU Attached under separate cover via the following items:

- Shop Drawings Prints Plans Samples Specifications
 Copy of Letter Change Order Original, recorded document

COPIES	DATE	NO.	DESCRIPTION
			Map 13 - 665 East Main St LLC (85.013-1-23.1)
			■ TE - recorded
			■ PE - recorded
			■ Subordination, Consent and Waiver - recorded

REMARKS

THESE ARE TRANSMITTED as checked below:

- For Approval No Exceptions Taken Resubmit _____ Copies for Approval
 For Your Use Make Corrections Note Submit _____ Copies for Distribution
 As Requested Returned for Corrections Return _____ Corrected Prints
 For Review and Comment _____
 FOR BIDS DUE _____ PRINTS RETURNED AFTER LOAN TO US

COPY TO
 Dean Frohm, PRS

SIGNED: DMG on behalf of Dean Frohm (585) 419-5565

If enclosures are not as noted, kindly notify us at once.



GENESEE COUNTY – STATE OF NEW YORK
 MICHAEL T. CIANFRINI, COUNTY CLERK
 15 MAIN STREET, BATAVIA, NEW YORK 14020

 **COPY**

COUNTY CLERK'S RECORDING PAGE

THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH



INSTRUMENT #: DE2018-669

Receipt#: 10310
 Clerk: NYGEFEE
 Rec Date: 05/03/2018 01:40:44 PM
 Doc Grp: D
 Descrip: AGMT REC'D IN DEEDS
 Num Pgs: 6
 Rec'd Frm: DEAN FROHM/JZ

Party1: 665 EAST MAIN STREET LLC
 Party2: BATAVIA TOWN OF
 Town: BATAVIA

Recording:

Cover Page	5.00
Recording Fee	45.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
TP584	5.00

Sub Total: 75.00

Transfer Tax
 Transfer Tax - State 0.00

Sub Total: 0.00

Total: 75.00

**** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****
 Transfer Tax #: 1347
 Exempt
 Consideration: 24600.00

Total: 0.00

WARNING***

*** Information may be amended during the verification process, and may not be reflected on this cover page.

THIS PAGE CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 316-a (5) & 319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.

Michael T. Cianfrini

Michael T. Cianfrini
 Genesee County Clerk

Record and Return To:

RK HITE & CO INC
 PO BOX 130
 AVON NY 14414

GRANT OF PERMANENT EASEMENT

This grant of easement is made this 3rd day of May, 2018,

BETWEEN

665 EAST MAIN STREET, LLC, a New York state limited liability company, with offices 6000 Route 20A, Warsaw, New York 14569,

Grantor, and
TOWN OF BATAVIA, a municipal corporation created and existing under the laws of the State of New York, with offices at 3833 West Main Street Road, Batavia, New York, 14020,

Grantee,

WITNESSETH, that the Grantor, in consideration of ten or more dollars, lawful money of the United States, does hereby grant and release to the Grantee, their successors and assigns,

A PERMANENT EASEMENT in, on, under and over the tract or tracts of land of the Grantor, hereinafter designated as Map No.13, Parcel No.16, under PIN 4760.79, Ellicott Trail TEP Project, situated in the City of Batavia, County of Genesee and State of New York, being a portion of Tax Map Parcel 85.013-1-23.1 and being further described in Exhibit "A", attached hereto and made a part hereof (hereinafter "Easement Premises").

SAID PERMANENT EASEMENT to be exercised for the purpose of constructing, operating and maintaining a shared use surface trail, for the use and benefit of the public, for the purpose of walking, hiking, jogging and cross-country skiing trails or other legal purpose as approved by Grantee in order to enhance the conservation and enjoyment of natural or scenic resources and to further the general welfare of the public. The use of any motorized vehicles – except by emergency services and by the municipality for maintenance purposes – is expressly prohibited.

Subject to any easements, restrictions or rights-of-way of record.

Grantee shall have the right to construct, maintain, operate, repair and remove existing features, improvements and installations on the surface of the Easement Premises and to place thereon directional signs, trail identification signs, regulatory signs, trail base, trail surface, earthwork, pipes, culverts, bridges, steps and control structures to prohibit unlawful use of the Easement Premises and to foster and improve enjoyment thereof.

Grantor will not be able to construct any feature within the Easement Premises or to restrict/prohibit use of the easement for the uses identified above.

Grantee shall have the right to protect the Easement Premises from erosion, provide clear traversability and enhance the scenic value of the Trail Easement by planting and removing trees, plants or shrubs where and to the extent deemed necessary by Grantee.

Grantee agrees to inspect the Easement Premises to determine the adequacy, safety and fitness and compliance with laws of the Easement Premises from time to time as necessary. Grantee agrees to maintain the Easement Premises and improvements thereon in safe condition and to keep the Easement Premises free from hazards, to the extent reasonable. Under no circumstances shall Grantor be required to improve or in any way alter the Easement Premises as a result of or in connection with the Easement.

Grantee shall cause the Easement Premises to be used in compliance with any federal, state and local statute, law, ordinance, code, rule or regulation, to the extent reasonably possible.

The Grantor nor its successor and assigns shall be liable for personal injury or property damage to any person caused by the carelessness, negligence or conduct of Grantee or any other person in the use of the Easement Premises connection with this Easement. Grantee agrees to defend, indemnify and hold harmless Grantor, its successor's and assigns from any and all claims and damages, caused directly by, the existence of this Easement, the presence of Grantee's facilities on the Easement Premises, or the acts of Grantee, its agents, employees, servants, contractors, invitees or any other persons under the direction and control of any of the foregoing.

Grantee shall purchase and maintain in effect at all times a protective liability and property damage insurance policy from a reputable insurance company doing business in the State of New York to cover the Easement Premises, designating Grantor, its officers, employees, agents and servants as named or additional insured. The comprehensive general liability shall include contractual liability, independent contractors and personal injury liability insurance Grantee and shall furnish to Grantor written notice of any change in, or cancellation of, coverage under the policy at least thirty days prior to the effective date of such change or cancellation.

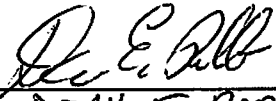
The Grantee shall have the right to transfer or assign any and all rights and responsibilities accruing to it by the grant of this Easement, provided that such transferee or assignee expressly agrees to uphold the purposes of this Easement and to enforce its terms and conditions. This Easement is fully valid and enforceable by any assignee of the Grantee whether assigned in whole or in part. In the event the Ellicott Trail TEP project terminates, Grantee shall not be permitted to sell, grant or convey the permanent easement described in paragraph 1 to any other person or entity and all right, title and interest in said property shall revert to the Grantor.

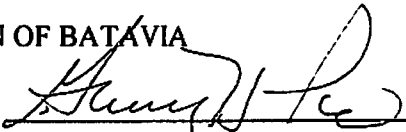
All notices, demands and requests which may be or are required to be given by any party to the other shall be in writing and shall be deemed given when sent by United States Registered or Certified Mail, postage prepaid, (a) if for Grantee, addressed to 3833 West Main Street Road, Batavia, New York, 14020 or at such other place as Grantee may from time to time designate by written notice to Grantor, or (b) if for Grantor, addressed to 6000 Route 20A, Warsaw, New York 14569,

TO HAVE AND TO HOLD the above-granted rights unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed by its duly authorized officer the day and year first above written.

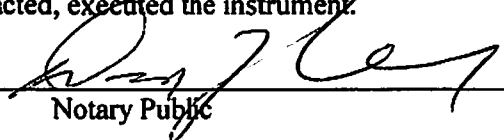
665 EAST MAIN STREET, LLC

BY: 
NAME: DEAN E. ROBB
TITLE: MEMBER

TOWN OF BATAVIA
BY: 
NAME: GREGORY H. POST
TITLE: TOWN SUPERVISOR

STATE OF NEW YORK)
COUNTY OF GENESEE) ss.:

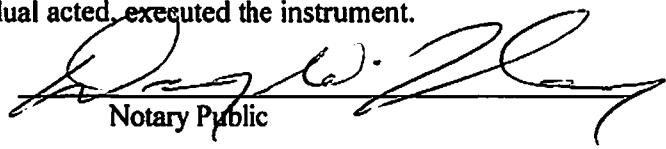
On the 3rd day of May in the year 2018, before me, the undersigned, personally appeared Dean Robb, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her said capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

Dean W. Frohm
Notary Public, State of New York
County of Monroe, #01FR6341606
Commission Expires May 09, 2020

STATE OF NEW YORK)
COUNTY OF GENESEE) ss.:

On the 3rd day of May in the year 2018, before me, the undersigned, personally appeared Gregory H. Post, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her said capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Dean W. Frohm
Notary Public, State of New York
County of Monroe, #01FR6341606
Commission Expires May 09, 2020

Exhibit A

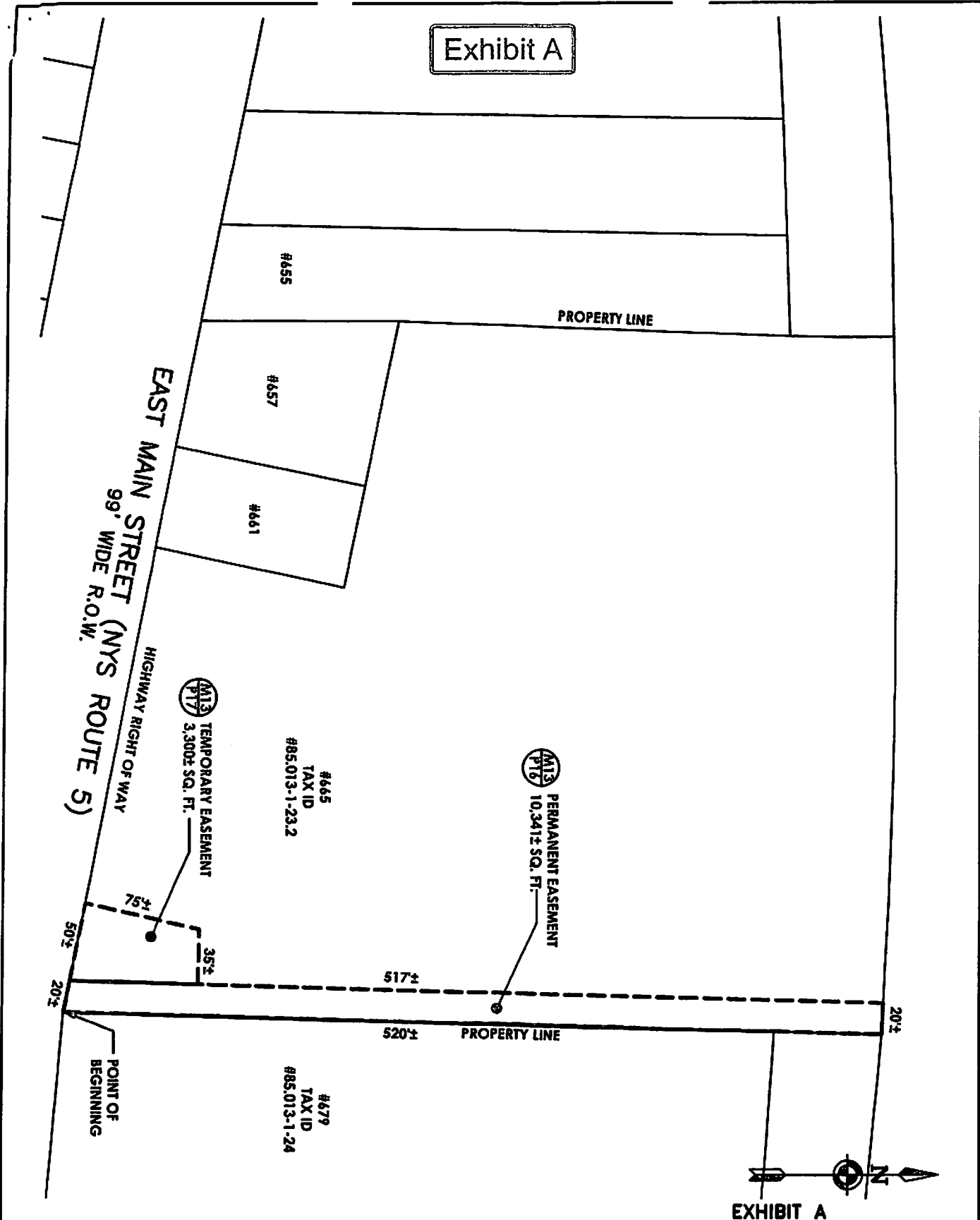


EXHIBIT A

TOWN OF BATAVIA
 3833 West Main St. Rd. 14020
 GENESEE COUNTY STATE OF NEW YORK

DATE:	5/17
DRAWN:	JEA
CHECKED:	TL
SCALE:	1"=60'
PROJ. #:	

PERMANENT AND TEMPORARY EASEMENT
 MAP 13, PARCEL 16
 MAP 13, PARCEL 17
ELLCOTT TRAIL PROJECT
 PIN #4760.79

GRANT OF PERMANENT EASEMENT

This grant of easement is made this 6th day of March, 2018,

BETWEEN

BATAVIA GARDENS ASSOCIATES, L.P., a New York limited partnership, with a mailing address c/o Sermar Management Corporation, 349 West Commercial Street, Suite 3100, East Rochester, New York 14445,

Grantor, and

TOWN OF BATAVIA, a municipal corporation created and existing under the laws of the State of New York, with offices at 3833 West Main Street Road, Batavia, New York, 14020,

Grantee,

WITNESSETH, that the Grantor, in consideration of one or more dollars, lawful money of the United States, does hereby grant and release to the Grantee, their successors and assigns,

A PERMANENT EASEMENT in, on, under and over the tract or tracts of land of the Grantor, hereinafter designated as Map No. 14, Parcel No. 18, under PIN 4760.79, Ellicott Trail TEP Project, situated in the City of Batavia, County of Genesee and State of New York, being a portion of Tax Map Parcel 85.013-1-74 and being further described in Exhibit "A", attached hereto and made a part hereof (hereinafter "Easement Premises").

SAID PERMANENT EASEMENT to be exercised for the purpose of constructing, operating and maintaining a shared use surface trail, for the use and benefit of the public, for the purpose of walking, hiking, jogging and cross-country skiing trails or other legal purpose as approved by Grantee in order to enhance the conservation and enjoyment of natural or scenic resources and to further the general welfare of the public. The use of any motorized vehicles – except by emergency services and by the municipality for maintenance purposes – is expressly prohibited.

SUBJECT TO any easements, restrictions or rights-of-way of record.

GRANTEE shall have the right to construct, maintain, operate, repair and remove existing features, improvements and installations on the surface of the Easement Premises and to place thereon directional signs, trail identification signs, regulatory signs, trail base, trail surface, earthwork, pipes, culverts, bridges, steps and control structures to prohibit unlawful use of the Easement Premises and to foster and improve enjoyment thereof.

GRANTOR will not be able to construct any feature within the Easement Premises or to restrict/prohibit use of the easement for the uses identified above.

GRANTEE shall have the right to protect the Easement Premises from erosion, provide clear traversability and enhance the scenic value of the Trail Easement by planting and removing trees, plants or shrubs where and to the extent deemed necessary by Grantee.

GRANTEE agrees to inspect the Easement Premises to determine the adequacy, safety and fitness and compliance with laws of the Easement Premises from time to time as necessary. Grantee agrees to maintain the Easement Premises and improvements thereon in safe condition and to keep the Easement Premises free from hazards, to the extent reasonable. Under no circumstances shall Grantor be required to improve or in any way alter the Easement Premises as a result of or in connection with the Easement.

GRANTEE shall cause the Easement Premises to be used in compliance with any federal, state and local statute, law, ordinance, code, rule or regulation, to the extent reasonably possible.

~~GRANTOR~~ ^{ESS} ~~nor~~ its successor and assigns shall ^{NOT ESS} be liable for personal injury or property damage to any person caused by the carelessness, negligence or conduct of Grantee or any other person in the use of the Easement Premises connection with this Easement. Grantee agrees to defend, indemnify and hold harmless Grantor, its successor's and assigns from any and all claims and damages, caused directly by, the existence of this Easement, the presence of Grantee's facilities on the Easement Premises, or the acts of Grantee, its agents, employees, servants, contractors, invitees or any other persons under the direction and control of any of the foregoing.

GRANTEE shall purchase and maintain in effect at all times a protective liability and property damage insurance policy from a reputable insurance company doing business in the State of New York to cover the Easement Premises, designating Grantor, its officers, employees, agents and servants as named or additional insured. The comprehensive general liability shall include contractual liability, independent contractors and personal injury liability insurance Grantee and shall furnish to Grantor written notice of any change in, or cancellation of, coverage under the policy at least thirty days prior to the effective date of such change or cancellation.


GRANTEE shall have the right to transfer or assign any and all rights and responsibilities accruing to it by the grant of this Easement, provided that such transferee or assignee expressly agrees to uphold the purposes of this Easement and to enforce its terms and conditions. This Easement is fully valid and enforceable by any assignee of the Grantee whether assigned in whole or in part.

ALL NOTICES, DEMANDS AND REQUESTS which may be or are required to be given by any party to the other shall be in writing and shall be deemed given when sent by United States Registered or Certified Mail, postage prepaid, (a) if for Grantee, addressed to 3833 West Main Street Road, Batavia, New York, 14020 or at such other place as Grantee may from time to time designate by written notice to Grantor, or (b) if for Grantor, addressed to c/o Sermar Management Corporation, 349 West Commercial Street, Suite 3100, East Rochester, New York 14445.

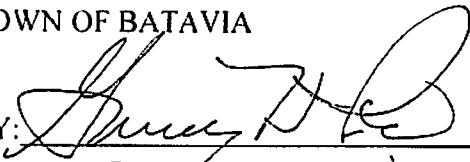
TO HAVE AND TO HOLD the above-granted rights unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed by its duly authorized officer the day and year first above written.

BATAVIA GARDENS ASSOCIATES, L.P. BY
ITS GENERAL PARTNER SERMAR
MANAGEMENT CORPORATION

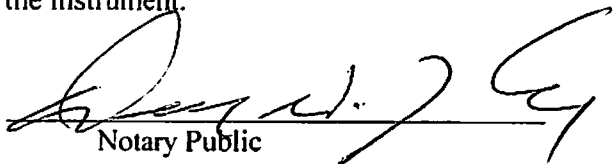
BY: 
NAME: ERIC J SERTL
TITLE: MEMBER

TOWN OF BATAVIA

BY: 
NAME: GREGORY H. POST
TITLE: TOWN SUPERVISOR

STATE OF NEW YORK)
COUNTY OF Monroe) ss.:

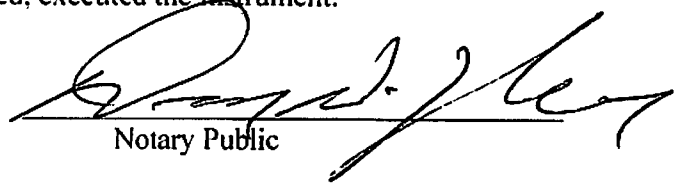
On the 6th day of March in the year 2018, before me, the undersigned, personally appeared Eric J. Sertl, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her said capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

Dean W. Frohm
Notary Public, State of New York
County of Monroe, #01FR6341606
Commission Expires May 09, 2020

STATE OF NEW YORK)
COUNTY OF GENESEE) ss.:

On the 5th day of March in the year 2018, before me, the undersigned, personally appeared Gregory H. Post, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her said capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

Dean W. Frohm
Notary Public, State of New York
County of Monroe, #01FR6341606
Commission Expires May 09, 2022

Exhibit A

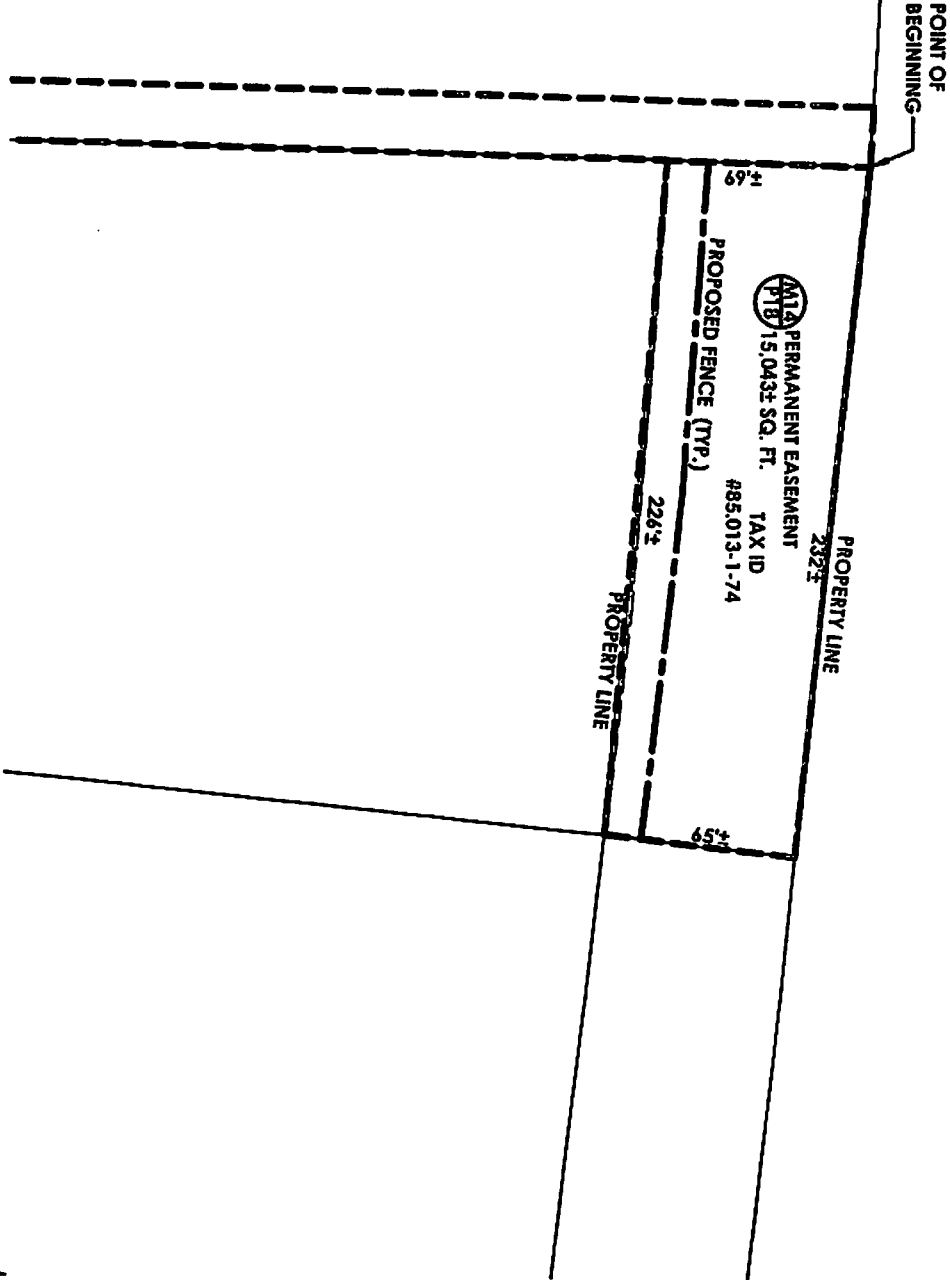


EXHIBIT A

TOWN OF BATAVIA

3833 West Main St. Rd. 14020

GENESEE COUNTY STATE OF NEW YORK

DATE: 5/17
 DRAWN: JEA
 CHECKED: TL
 SCALE: 1"=60'
 PROJ. #:

PERMANENT EASEMENT
MAP 14, PARCEL 18

ELLCOTT TRAIL
PROJECT
PIN #4760.79



GENESEE COUNTY - STATE OF NEW YORK
 MICHAEL T. CIANFRINI, COUNTY CLERK
 15 MAIN STREET, BATAVIA, NEW YORK 14020

*orig to
Twin Clerk
Transmit*

COUNTY CLERK'S RECORDING PAGE
 THIS PAGE IS PART OF THE DOCUMENT - DO NOT DETACH



INSTRUMENT #: DE2017-1926

Receipt#: 27174
 Clerk: NYGEFEE
 Rec Date: 12/05/2017 03:19:24 PM
 Doc Grp: D
 Descrip: AGMT REC'D IN DEEDS
 Num Pgs: 7
 Rec'd Frm: DEAN/AB

Party1: ELLICOTT STATION LLC
 Party2: BATAVIA TOWN OF
 Town: BATAVIA CITY

Recording:

Cover Page	5.00
Recording Fee	50.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
TP584-1	1.00

Sub Total: 76.00

Transfer Tax
 Transfer Tax - State 0.00

Sub Total: 0.00

Total: 76.00

**** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****
 Transfer Tax #: 636
 Transfer Tax
 Consideration: 0.00

Total: 0.00

WARNING***

*** Information may be amended during the verification process, and may not be reflected on this cover page.

THIS PAGE CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 316-a (5) & 319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.

Michael T. Cianfrini

Michael T. Cianfrini
 Genesee County Clerk

Record and Return To:

R K HITE CO INC
 PO BOX 130
 87 GENESEE ST
 AVON NY 14414

GRANT OF PERMANENT EASEMENT

This grant of easement is made this 15 day of November, 2017.

BETWEEN

ELLICOTT STATION, LLC, a New York state limited liability company, with offices at One City Centre, Batavia, New York 14020,

Grantor, and

TOWN OF BATAVIA, a municipal corporation created and existing under the laws of the State of New York, with offices at 3833 West Main Street Road, Batavia, New York, 14020,

Grantee,

WITNESSETH, that the Grantor, in consideration of one or more dollars, lawful money of the United States, does hereby grant and release to the Grantee, their successors and assigns,

A PERMANENT EASEMENT in, on, under and over the tract or tracts of land of the Grantor, hereinafter designated as Map Nos. 6 & 7, Parcel Nos. 7 & 8, under PIN 4760.79, Ellicott Trail TEP Project, situated in the City of Batavia, County of Genesee and State of New York, being a portion of Tax Map Parcel 84.015-1-37.311 & 84.015-1-37.312 and being further described in Exhibit "A", attached hereto and made a part hereof (hereinafter "Easement Premises").

SAID PERMANENT EASEMENT to be exercised for the purpose of constructing, operating and maintaining a shared use surface trail, for the use and benefit of the public, for the purpose of walking, hiking, jogging and cross-country skiing trails or other legal purpose as approved by Grantee in order to enhance the conservation and enjoyment of natural or scenic resources and to further the general welfare of the public. The use of any motorized vehicles – except by emergency services and by the municipality for maintenance purposes – is expressly prohibited.

Subject to any easements, restrictions or rights-of-way of record.

Grantee shall have the right to construct, maintain, operate, repair and remove existing features, improvements and installations on the surface of the Easement Premises and to place thereon directional signs, trail identification signs, regulatory signs, trail base, trail surface, earthwork, pipes, culverts, bridges, steps and control structures to prohibit unlawful use of the Easement Premises and to foster and improve enjoyment thereof.

Grantor will not be able to construct any feature within the Easement Premises or to restrict/prohibit use of the easement for the uses identified above.

Grantee shall have the right to protect the Easement Premises from erosion, provide clear traversability and enhance the scenic value of the Trail Easement by planting and removing trees, plants or shrubs where and to the extent deemed necessary by Grantee.

Grantee agrees to inspect the Easement Premises to determine the adequacy, safety and fitness and compliance with laws of the Easement Premises from time to time as necessary. Grantee agrees to maintain the Easement Premises and improvements thereon in safe condition and to keep the Easement Premises free from hazards, to the extent reasonable. Under no circumstances shall Grantor be required to improve or in any way alter the Easement Premises as a result of or in connection with the Easement, except for the facilities and improvements and alterations constructed by Grantee.

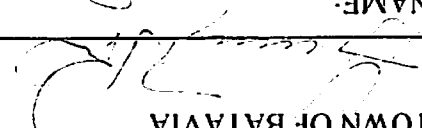
Grantee shall cause the Easement Premises to be used in compliance with any federal, state and local statute, law, ordinance, code, rule or regulation, to the extent reasonably possible.

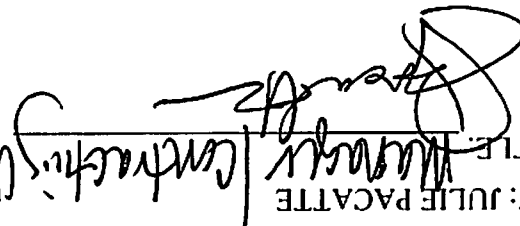
Neither the Grantor nor its successors and assigns shall be liable for personal injury, death or property damage to any person or property caused by or arising from the carelessness, negligence or conduct of Grantee or any other person in the use of the Easement Premises and in connection with this Easement. Grantee, on behalf of itself and its successors and assigns, agrees to defend, indemnify and hold harmless Grantor, its successors and assigns from any and all claims and damages, caused directly or indirectly by and /or arising from the existence of this Easement, the presence of Grantee's facilities on the Easement Premises, or the acts of Grantee, its agents, employees, servants, contractors, invitees or any other persons under the direction and control of any of the foregoing.

Grantee, and its successors and assigns, shall purchase and maintain in effect at all times a protective liability and property damage insurance policy from a reputable insurance company doing business in the State of New York, and acceptable to Grantor and in the form and content as required by Grantor, to cover the Easement Premises, designating Grantor, its officers, employees, agents and servants as named or additional insured. The comprehensive general liability shall include contractual liability, independent contractors and personal injury liability insurance Grantee and shall furnish to Grantor written notice of any change in, or cancellation of, coverage under the policy at least thirty days prior to the effective date of such change or cancellation.

The Grantee shall have the right to transfer or assign any and all rights and responsibilities accruing to it by the grant of this Easement, provided that such transferee or assignee expressly agrees to uphold the purposes of this Easement and to enforce its terms and conditions and assumes all liability under the terms and conditions of the Easement. This Easement is fully valid and enforceable by any assignee of the Grantee whether assigned in whole or in part.

All notices, demands and requests which may be or are required to be given by any party to the other shall be in writing and shall be deemed given when sent by United States Registered or Certified Mail, postage prepaid, (a) if for Grantee, addressed to 3833 West Main Street Road, Batavia, New York, 14020 or at such other place as Grantee may from time to time designate by written notice to Grantor, or (b) if for Grantor, addressed to One City Centre, Batavia, New York 14020.

TOWN OF BATAVIA
 BY: 
 NAME: Gregory H. Post
 TITLE: TOWN SUPERVISOR

BY: JULIE PACATTE
 TITLE: Manager Contracting Division


BY: BATAVIA DEVELOPMENT CORPORATION, A NEW YORK STATE NOT-FOR-PROFIT CORPORATION, IT'S SOLE MEMBER

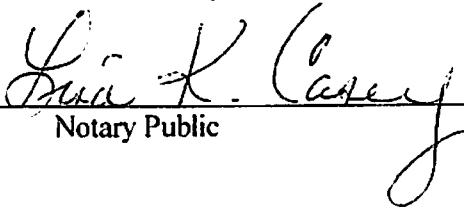
ELLICOTT STATION, LLC, A NEW YORK STATE LIMITED LIABILITY COMPANY

TO HAVE AND TO HOLD the above-granted rights unto Grantee, its successors and assigns forever.
 IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed by its duly authorized officer the day and year first above written.

STATE OF NEW YORK)
COUNTY OF GENESEE) ss.:

On the 15 day of November in the year 2017, before me, the undersigned, personally appeared JULIE PACATTE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her said capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

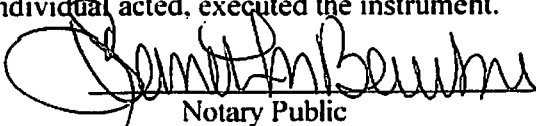
LISA K. CASEY
Notary Public, State of New York
No. 01CA6272329
Qualified In Genesee County
Commission Expires 11/19/20 20



Notary Public

STATE OF NEW YORK)
COUNTY OF GENESEE) ss.:

On the 17 day of November in the year 2017, before me, the undersigned, personally appeared Gregory H. Post, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her said capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

SANDRA M. BAUBIS
Notary Public, State of New York
Qualified in Genesee County
My Commission Expires Aug. 24, 20 18

Rev0

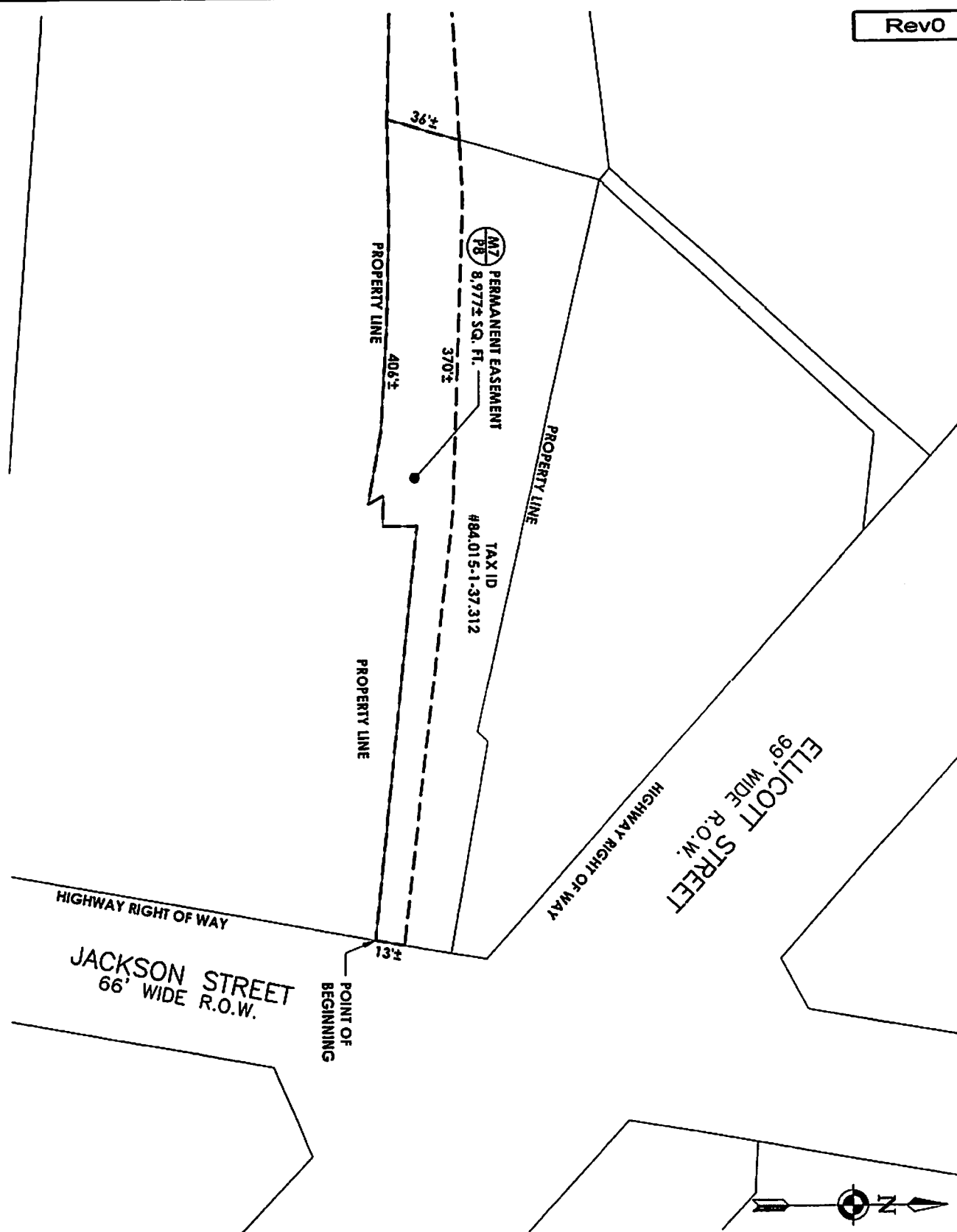


EXHIBIT A
PERMANENT EASEMENT
MAP 7, PARCEL 8

TOWN OF BATAVIA
3833 West Main St. Rd. 14020
GENESEE COUNTY STATE OF NEW YORK

DATE:	1/17
DRAWN:	JEA
CHECKED:	TL
SCALE:	1"=60'
PROJ. #:	

ELLCOTT TRAIL PROJECT
PIN #4760.79

Rev0

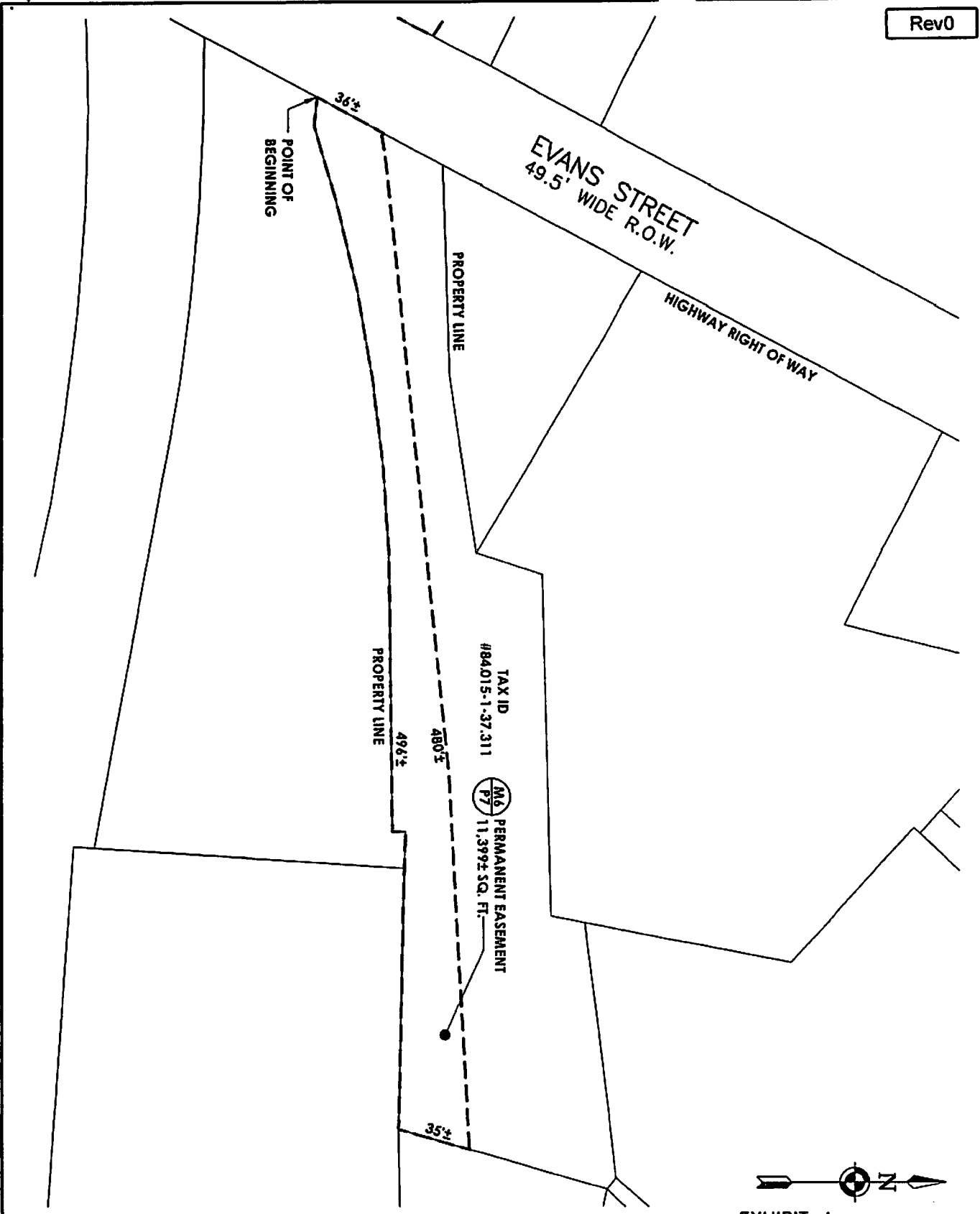


EXHIBIT A

PERMANENT EASEMENT
MAP 6, PARCEL 7

TOWN OF BATAVIA

3833 West Main St. Rd. 14020
GENESEE COUNTY STATE OF NEW YORK

DATE:	1/17
DRAWN:	JEA
CHECKED:	TL
SCALE:	1"=60'
PROJ. #:	

**ELLCOTT TRAIL
PROJECT**
PIN #4760.79



GENESEE COUNTY – STATE OF NEW YORK
 MICHAEL T. CIANFRINI, COUNTY CLERK
 15 MAIN STREET, BATAVIA, NEW YORK 14020

COUNTY CLERK'S RECORDING PAGE
 THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH



INSTRUMENT #: DE2018-563

Receipt#: 8389
 Clerk: NYGEFEE
 Rec Date: 04/11/2018 03:12:05 PM
 Doc Grp: D
 Descrip: AGMT REC'D IN DEEDS
 Num Pgs: 6
 Rec'd Frm: DEAN FROHM/AB

Party1: ELMWOOD CEMETERY ASSOCIATION
 Party2: BATAVIA TOWN OF
 Town: BATAVIA CITY

Recording:

Cover Page	5.00
Recording Fee	45.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
TP584	5.00

Sub Total: 75.00

Transfer Tax	
Transfer Tax - State	0.00

Sub Total: 0.00

Total: 75.00

**** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****
 Transfer Tax #: 1248
 Exempt
 Consideration: 25600.00

Total: 0.00

WARNING***

*** Information may be amended during the verification process, and may not be reflected on this cover page.

THIS PAGE CONSTITUTES THE CLERK'S
 ENDORSEMENT, REQUIRED BY SECTION 316-a (5) &
 319 OF THE REAL PROPERTY LAW OF THE STATE OF
 NEW YORK.

Michael T. Cianfrini

Michael T. Cianfrini
 Genesee County Clerk

Record and Return To:

R K HITE & CO INC
 PO BOX 130
 AVON NY 14414

GRANT OF PERMANENT EASEMENT

This grant of easement is made this 27th day of April, 2018,

BETWEEN

ELMWOOD CEMETERY ASSOCIATION, a New York State not-for-profit corporation, with a mailing address of PO Box 225, Batavia, New York 14021-0225,

Grantor, and
TOWN OF BATAVIA, a municipal corporation created and existing under the laws of the State of New York, with offices at 3833 West Main Street Road, Batavia, New York, 14020,

Grantee,

WITNESSETH, that the Grantor, in consideration of one or more dollars, lawful money of the United States, does hereby grant and release to the Grantee, their successors and assigns,

A PERMANENT EASEMENT in, on, under and over the tract or tracts of land of the Grantor, hereinafter designated as Map No. 8, Parcel Nos. 9, under PIN 4760.79, Ellicott Trail TEP Project, situated in the City of Batavia, County of Genesee and State of New York, being a portion of Tax Map Parcel 84.020.-1-4 and being further described in Exhibit "A", attached hereto and made a part hereof (hereinafter "Easement Premises").

SAID PERMANENT EASEMENT to be exercised for the purpose of constructing, operating and maintaining a shared use surface trail, for the use and benefit of the public, for the purpose of walking, hiking, jogging and cross-country skiing trails or other legal purpose as approved by Grantee in order to enhance the conservation and enjoyment of natural or scenic resources and to further the general welfare of the public.

GRANTOR reserves the following rights and uses: the use of the Easement Premises by persons and vehicles for cemetery operations and needs, including but not limited to funeral processions, delivery of goods and services, public visits during cemetery business hours, and entry and exit by persons and vehicles providing emergency services. Grantor also reserves the right to close the Easement Premises and deny access when necessary for cemetery operations.

Subject to any easements, restrictions or rights-of-way of record.

THIS CONVEYANCE is made in the ordinary course of business and does not constitute all or substantially all of the assets of the selling corporation.

THIS CONVEYANCE is made pursuant to an order from the New York State Cemetery Board.

Grantee shall have the right to construct, maintain, operate, repair and remove existing features, improvements and installations on the surface of the Easement Premises and to place thereon directional signs, trail identification signs, regulatory signs, trail base, trail surface, earthwork, pipes, culverts, bridges, steps and control structures to prohibit unlawful use of the Easement Premises and to foster and improve enjoyment thereof.

Grantor will not be able to construct any feature within the Easement Premises or to restrict/prohibit use of the easement for the uses identified above.

Grantee shall have the right to protect the Easement Premises from erosion, provide clear traversability and enhance the scenic value of the Trail Easement by planting and removing trees, plants or shrubs where and to the extent deemed necessary by Grantee. No trees or shrubs can be removed from a lot owners lot without due notice and permission from them and the cemetery association.

Grantee agrees to inspect the Easement Premises to determine the adequacy, safety and fitness and compliance with laws of the Easement Premises from time to time as necessary. Grantee agrees to maintain the Easement Premises and improvements thereon in safe condition and to keep the Easement Premises free from hazards, to the extent reasonable. The Town or City of Batavia will initially seal the roadway, install the bike path symbols on the roadway and required trail signage. The Town or City will provide all long-term maintenance of the roadway and the above items as necessary for duration of the easement. The City of Batavia police department will patrol the trail and respond to any distress calls. Under no circumstances shall Grantor be required to improve or in any way alter the Easement Premises as a result of or in connection with the Easement.

Grantee shall cause the Easement Premises to be used in compliance with any federal, state and local statute, law, ordinance, code, rule or regulation, to the extent reasonably possible.

The Grantor and its successor and assigns shall not be liable for personal injury or property damage to any person caused by the carelessness, negligence or conduct of Grantee or any other person in the use of the Easement Premises in connection with this Easement. Grantee agrees to defend, indemnify and hold harmless Grantor, its successor's and assigns from any and all claims and damages, caused directly by, the existence of this Easement, the presence of Grantee's facilities on the Easement Premises, or the acts of Grantee, its agents, employees, servants, contractors, invitees or any other persons under the direction and control of any of the foregoing.

Grantee shall purchase and maintain in effect at all times a protective liability and property damage insurance policy from a reputable insurance company doing business in the State of New York to cover the Easement Premises, designating Grantor, its officers, employees, agents and servants as named or additional insured. The comprehensive general liability shall include contractual liability, independent contractors and personal injury liability insurance Grantee and shall furnish to Grantor written notice of any change in, or cancellation of, coverage under the policy at least thirty days prior to the effective date of such change or cancellation.

The Grantee shall have the right to transfer or assign any and all rights and responsibilities accruing to it by the grant of this Easement, provided that such transferee or assignee expressly agrees to uphold the purposes of this Easement and to enforce its terms and conditions. This Easement is fully valid and enforceable by any assignee of the Grantee whether assigned in whole or in part.

All notices, demands and requests which may be or are required to be given by any party to the other shall be in writing and shall be deemed given when sent by United States Registered or Certified Mail, postage prepaid, (a) if for Grantee, addressed to 3833 West Main Street Road, Batavia, New York, 14020 or at such other place as Grantee may from time to time designate by written notice to Grantor, or (b) if for Grantor, addressed to PO Box 225, Batavia, New York 14021-0225.

TO HAVE AND TO HOLD the above-granted rights unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed by its duly authorized officer the day and year first above written.

ELMWOOD CEMETERY ASSOCIATION

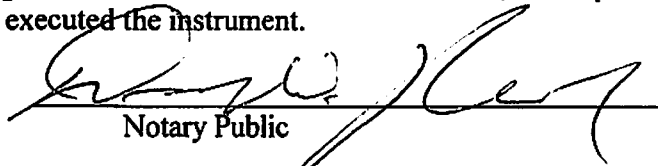
BY: Robert A. Carlson
NAME: ROBERT A. CARLSON
TITLE: PRESIDENT

TOWN OF BATAVIA

BY: Gregory H. Post
NAME: GREGORY H. POST
TITLE: TOWN SUPERVISOR

STATE OF NEW YORK)
COUNTY OF GENESEE) ss.:

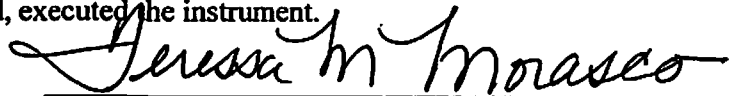
On the 3rd day of April in the year 2018, before me, the undersigned, personally appeared Robert A. Carlsen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her said capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

Dean W. Frohm
Notary Public, State of New York
County of Monroe, #01FR6341606
Commission Expires May 09, 2020

STATE OF NEW YORK)
COUNTY OF GENESEE) ss.:

On the 4th day of April in the year 2018, before me, the undersigned, personally appeared Gregory H. Post, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her said capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

TERESSA M. MORASCO
Notary Public, State of New York

Qualified in Genesee County
Commission Expires October 22, 2021

TERESSA M. MORASCO
Notary Public, State of New York
Qualified in Genesee County
Commission Expires October 22, 2021

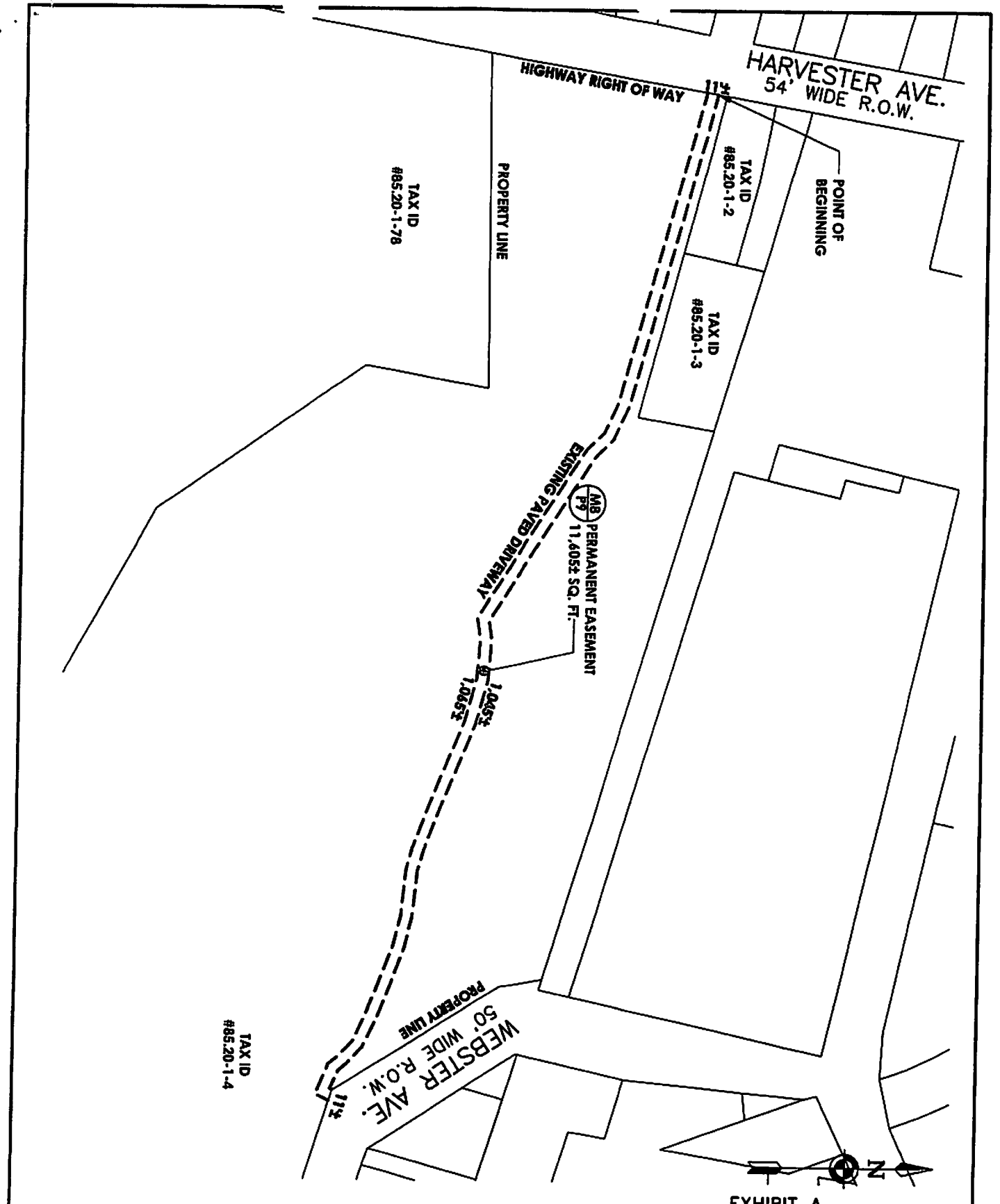


EXHIBIT A

PERMANENT EASEMENT
MAP 8, PARCEL 9

TOWN OF BATAVIA

3833 West Main St. Rd. 14020
GENESEE COUNTY STATE OF NEW YORK

DATE:	1/17
DRAWN:	JEA
CHECKED:	TL
SCALE:	1"=120'
PROJ. #:	

**ELLCOTT TRAIL
PROJECT**
PIN #4760.79



City of Batavia

Memorandum

To: Rachael Tabelski – City Manager

From: Raymond Tourt – Supt. of Maintenance

Date: March 29, 2021

Subject: WWTP Air Header Project

Part of the 2021 - Capital Project Plan is to replace the air header system at the Wastewater Treatment Plant. This system introduces supplemental air to the three primary wastewater ponds. This air provides oxygen to the ponds to effectively digest waste. Even though this project is scheduled for FY21/22, it was discovered that the system's rate of decline is higher than originally anticipated. For this reason, the project is being advanced as quickly as it can be.

Currently, the system is working on roughly 20% capacity. The existing 30-year-old air header system has been compromised. It is leaking a significant amount of air, thus affecting the quantity of air being delivered to the ponds. The project is being expedited and GHD has provided us plans being advertised for bid on April 1, 2021. The bid opening is scheduled to be open on April 19, 2021. With an anticipated request for award on April 26, 2021 with work beginning as soon as possible after that date. The plan is to replace the header system one pond at a time. This will allow us to increase the quantity of air into the ponds as the work progresses. The project will be completed in the Spring/Summer of this year.

#-2021
A RESOLUTION TO ENTER INTO AN AGREEMENT WITH
XXXXX
FOR THE WWTP AIR HEADER REPLACEMENT PROJECT

Motion of Councilmember

WHEREAS, the City has solicited bids for WWTP Air Header Replacement Project, that is funded by Wastewater reserve funds; and

WHEREAS, a competitive bid was made by XXXXXX for the replacement of the air header as specified in the contract document titled WWTP Air Header Replacement Project – 2021-1; and

WHEREAS, XXXXXX. is the lowest responsible bidder (\$XXX.xx);

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 XXXXXX in the amount of XXXXX for the WWTP Air Header Replacement Project.

Seconded by Councilmember
and on the roll call



City of Batavia

Memorandum

To: Honorable City Council Members

From: Rachael J. Tabelski, MPA, City Manager

Date: April 6, 2021

Subject: NBRC Grant – Bank Street Waterline Improvements

The Northern Border Regional Commission (NBRC), in partnership with the New York State Department of State, is offering funding for economic development and infrastructure projects in eligible communities.

Genesee County is one of 28 New York counties eligible within the NBRC's service area to apply for grant funding. The NBRC grant can provide for up to 80% of funding for an infrastructure project up to \$1M in total cost.

Currently, the City has a qualifying waterline project on Bank Street. The Bank Street waterline project is needed to improve water pressure and fire suppression capabilities on Bank Street, as well as enable future development on the City Centre Campus, and the Alva Place location for the Police Station.

The project is within the City's Brownfield Opportunity Area and the federally designated Opportunity Zone, as well as consistent with the City Downtown Revitalization Initiative (DRI). This project was a finalist for DRI funding but was not selected in the final round.

The current Bank Street waterline will be updated to an 8" line and the current 2" and 4" lines will be abandoned. The estimated cost of the project is \$410,000 and the City will provide a local match to the grant of 20% (\$82,000) from Water Fund reserves if awarded.

I recommend that City Council advance the resolution to support the submission of the grant application to the April 26th Special Business Meeting.

#-2021

**A RESOLUTION TO SUPPORT THE SUBMISSION A NORTHERN BORDER
REGIONAL COMMISSION APPLICATION**

Motion of Councilmembers

WHEREAS, the Northern Border Regional Commission (NBRC), in partnership with the New York State Department of State, is offering funding for economic development and infrastructure projects; and

WHEREAS, the City of Batavia is eligible to apply for NBRC grants as Genesee County is within the NBRC's service area; and

WHEREAS, the City of Batavia would like to apply for an infrastructure grant to upgrade water lines on Bank Street between Main Street and Washington Street to support pending development projects as well as improving water pressure for fire suppression; and

WHEREAS, the estimated cost of the project is \$410,000; and

WHEREAS, the NBRC grant requires a twenty percent (20%) local funding share; and

NOW THEREFORE, BE IT RESOLVED, that the City of Batavia City Council supports the submission of a grant application to the Northern Border Regional Commission for Bank Street water line improvements.

BE IT FURTHER RESOLVED, that the City of Batavia will provide the twenty percent (20%) local share for the project estimated at \$82,000.

**Seconded by Councilmember
and on roll call**