

TOWN OF WEST SENECA



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

TO: The Honorable Town Board

FROM: John J. Fenz, Esq.
Town Attorney

DATE: January 7, 2016

RE: Application of 2400 North America Drive Associates, LLC
v. Town of West Seneca
Request for Authority to Execute Consent Order

Kindly approve and authorize the Town Attorney to execute the Consent Order to resolve the real property tax assessment challenge of 2400 North America Drive Associates, LLC against the Town of West Seneca.

This is a matter involves an application of an owner of commercial property in the Town to have his assessment reduced. The property bears the Tax Identification Number of 135.05-4-3 and is located at the mailing address of 2400 North America Drive.

After deliberation with counsel and the Town Assessor, it has been determined that it is in the best economic interest of the Town to resolve this litigation pursuant to the terms of the attached consent order.

Please let me know if you have any questions.

At a Special Term of the Supreme Court, Erie County,
held at 25 Delaware Avenue, Buffalo, New York, on the
_____ day of _____, 2015.

PRESENT: HON. SHEILA A. DITULLIO, A.J.S.C.
Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

IN THE MATTER OF THE APPLICATION UNDER
ARTICLE 7 OF THE REAL PROPERTY TAX LAW

BY

2400 NORTH AMERICA DRIVE ASSOCIATES

Petitioner,

v.

TOWN OF WEST SENECA

Respondents,

CONSENT ORDER

Index No.: 801088/13
807948/14
808961/15

AND

WEST SENECA CENTRAL SCHOOL DISTRICT

AND

COUNTY OF ERIE

Intervenors.

FOR REVIEW OF THE 2013-2014, 2014-2015 & 2015-2016 TAX
ASSESSMENT OF CERTAIN REAL PROPERTY IN THE SAID
TOWN OF WEST SENECA, NEW YORK

The above-entitled special proceedings involving real property tax certiorari for the premises owned by Petitioner in the Town of West Seneca, New York, known as 2400 North America Drive in West Seneca, New York, S.B.L. #135.05-4-3 for the tax years 2013-2014, 2014-2015, & 2015-2016 having progressed for trial, and negotiations for settlement having been conducted, and said

settlement having been approved and recommended by the Attorneys for the Town of West Seneca, the County of Erie, the West Seneca Central School District, and the Attorney for Petitioner, and it further appearing that the assessment of premises in the Town of West Seneca provides the basis for the imposition of ad valorem taxes assessed by the County of Erie, the Town of West Seneca and the West Seneca Central School District, it is hereby

ORDERED, STIPULATED, AND ADJUDGED that the real property tax assessment for the tax years 2013-2014, 2014-2015, and 2015-2016 for the premises at 2400 North America Drive be set at \$504,000, and it is further

ORDERED, STIPULATED, AND ADJUDGED that the real property tax assessment for the tax years 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, and 2021-2022 for the premises at 2400 North America Drive be set at \$504,000, and it is further

ORDERED, STIPULATED, AND ADJUDGED that the provisions of Section 727 of the Real Property Tax Law shall apply to the aforementioned tax years without regard to revaluation or update in the interval, and it is further

ORDERED, STIPULATED, AND ADJUDGED that said Petitioner in any instrument or agreement transferring any part or all of the subject property or any interest therein shall covenant with any grantee, transferee, and mortgagee and their respective distributees, successors and/or assigns that they shall be bound by the terms of this Consent Order and that such covenant shall be deemed to run with the land for the tax periods embraced by the terms thereof, and it is further

ORDERED, STIPULATED, AND ADJUDGED that in the event that the assessment is increased for any stated year at a level higher than provided herein when there has been no assessable addition or improvement to the property, Petitioner retains the right to reinstate and reinstitute its

Article 7 proceedings herein settled with respect to that parcel only, and Respondents waive any objection based upon statute of limitations grounds, and it is further

ORDERED, STIPULATED, AND ADJUDGED that the fiscal officers of Erie County, the Town of West Seneca, West Seneca Central School District, and any other taxing unit affected by the above assessment reductions shall apply such adjusted assessment and in the event that any such tax payment has not been paid, issue corrected tax bills which reflect the proper reduced assessment for the property, with a copy of corrected tax bills sent to the attorneys for Petitioner, said corrected tax bills to be paid without interest or penalty if paid within 45 days of receipt of said corrected bills, with Petitioner waiving property tax refunds, and it is further

ORDERED, STIPULATED, AND ADJUDGED that this Court shall retain jurisdiction over this proceeding pending the expiration of the periods herein recited, and that all applications to enforce any or all of the terms of this Consent Order shall be brought by motion before this Court, and it is further

ORDERED, STIPULATED, AND ADJUDGED that Petitioner shall have the right to seek specific enforcement of this Order, Stipulation and Judgment by all means provided by law, and it is further

ORDERED, STIPULATED, AND ADJUDGED that this Order, Stipulation and Judgment hereby constitutes and represents the entire understanding and agreement amongst the parties, and the full settlement of the tax certiorari herein; there are no costs or disbursements awarded to, by or against any party, and upon compliance with the terms of this Order, Stipulation and Judgment, the

proceedings herein shall be, and the same hereby are, settled and discontinued with prejudice.

HON. SHEILA A. DITULLIO, A.J.S.C.

GRANTED:

The parties consent to be bound by the terms of this Court Order by subscribing hereunto their names and legal authority:

FOR PETITIONER 2400 NORTH AMERICA DRIVE ASSOCIATES FOR RESPONDENT TOWN OF WEST SENECA

By: PETER ALLEN WEINMANN, ESQ. Attorney for Petitioner By: RICHARD H. COLE, ESQ. Attorney for Respondent

Date: Date:

FOR PETITIONER 2400 NORTH AMERICA DRIVE ASSOCIATES FOR RESPONDENT TOWN OF WEST SENECA

By: RONALD GEORGE As Agent By: JOHN J. FENZ, ESQ. Town Attorney

Date: Date:

FOR INTERVENOR WEST SENECA CENTRAL SCHOOL DISTRICT

By: NATHAN GEARY, ESQ. Attorney for Intervenor

Date:

FOR INTERVENOR COUNTY OF ERIE

FOR INTERVENOR WEST SENECA CENTRAL SCHOOL DISTRICT

By: SEAN R. MCDERMOTT, ESQ. Attorney for Intervenor By: JANICE LEWANDOWSKI Assistant Manager of Financial Services

Date: Date: