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TOWN OF WEST SENECA

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: March 19, 2015

RE: In the Matter of the Application of Anthony DeSimone v.
Town of West Seneca
Request for Authority to Execute Settlement

Kindly approve and authorize the Town Attorney to execute the Consent Order to conclude the real property tax assessment challenge litigation between Anthony DeSimone and the Town of West Seneca.

This is a matter involves an application of an owner of residential property in the Town to have his assessment reduced. After deliberation with counsel, I have 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.

MAR 23 2015



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

ANTHONY DESIMONE

Petitioner,

v.

TOWN OF WEST SENECA

CONSENT ORDER

Index No.: 807967/2014

Respondent,

AND

WEST SENECA CENTRAL SCHOOL DISTRICT

Intervenor.

FOR REVIEW OF THE 2014-2015 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 84 Caldwell Drive in West Seneca, New York, S.B.L. #143.18-4-13 for the tax year 2014-2015 having progressed for trial, and negotiations for settlement having been conducted, and said settlement having been approved and recommended by the Attorney for the Town of West Seneca, Attorney for 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, 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 year 2014-2015 for the premises at 84 Caldwell Drive be set at \$122,000, and it is further

ORDERED, STIPULATED, AND ADJUDGED that the provisions of Section 727 of the Real Property Tax Law shall apply for the next four consecutive assessment rolls without regard to update, and it is further

ORDERED, STIPULATED, AND ADJUDGED that if the Town of West Seneca conducts a town-wide revaluation during the Section 727 period, then the assessment shall be set no higher than the fair market value equivalent of the corrected assessment at \$122,000 (i.e. \$284,400 fair market value), and it is further

ORDERED, STIPULATED, AND ADJUDGED that Petitioner shall not protest any assessment or commence any proceeding to review any assessment with regard to the real property described herein with respect to the assessment completed for the taxable status dates March 1,

2015 (2015-2016), March 1, 2016 (2016-2017), March 1, 2017 (2017-2018) and March 1, 2018 (2018-2019) so long as the assessed value of the property does not exceed the amount as set forth herein, 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 determine any overpayment of taxes, and in the event of overpayment, refund the overpayment with statutory interest within 45 days by official check payable to the order of Wolfgang & Weinmann, LLP as

attorneys and agents for Petitioner, accompanied by a calculation sheet, such attorneys to hold the proceeds as trust funds for appropriate distribution, and are to remain subject to the further jurisdiction of this Court relative to their attorney's lien pursuant to Judiciary Law Section 475, or 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 the exception that Petitioner waives 2014-2015 property tax refunds from the West Seneca Central School District 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
ANTHONY DESIMONE

By: _____
TREVOR P. DUFFY, ESQ.
Attorney for Petitioner

Date: _____

FOR RESPONDENT
TOWN OF WEST SENECA

By: _____
RICHARD H. COLE, ESQ.
Attorney for Respondent

Date: March 12, 2015

FOR PETITIONER

By: _____
ANTHONY DESIMONE
As Petitioner

Date: _____

FOR RESPONDENT
TOWN OF WEST SENECA

By: _____
JOHN J. FENZ, ESQ.
Town Attorney

Date: _____

FOR INTERVENOR WEST SENECA
CENTRAL SCHOOL DISTRICT

By: _____
J. RYAN WHITE, ESQ.
Attorney for Intervenor

Date: March 6, 2015

FOR INTERVENOR WEST SENECA
CENTRAL SCHOOL DISTRICT

By: _____
JANICE LEWANDOWSKI
Assistant Manger of Financial Services

Date: _____