

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.
Date: December 10, 2015
Re: Purchase of the Western Portion of "The Oxbow"

Kindly adopt a resolution authorizing the Supervisor to execute the attached Purchase and Sale Agreement, whereby the Town contracts to purchase 13.24 acres of vacant land which comprises the westerly portion of what is commonly known as "The Oxbow" for \$29,000.00. Further authorize the Supervisor take all necessary actions to perform the Agreement.

The entire purchase will be funded by the proceeds of a Cooperative Agreement between the Town and the United States Fish and Wildlife Service.

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the "Contract") is made as of December ____, 2015, by and between the Town of West Seneca, a New York municipal corporation, with an address of 1250 Union Road, West Seneca, New York (the "Purchaser") and Michael Serafini, Inc., a New York Corporation, with an address of 3529 Broadway, Cheektowaga, NY 14225 (the "Seller").

RECITALS:

A. Seller is the owner of parcel of real property, an unimproved vacant lot, situated in the Town of West Seneca, County of Erie and State of New York, which includes the westerly portion of the geographic feature commonly known as "The Oxbow," consisting of approximately 13.24 acres (the "Property"), and

B. Seller wishes to sell and Purchaser wishes to purchase the Property on the terms and conditions stated in this Contract.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby mutually acknowledged, the Seller and Purchaser agree as follows:

1. Sale and Purchase. Seller shall sell to Purchaser and Purchaser shall purchase from Seller the Property on the terms, covenants, conditions and provisions stated in this Contract.

2. The Property. The Property shall be sold together with all rights of the Seller in and to all streets, highways, alleyways, driveways, easements, rights of way and appurtenances, permits, and licenses which benefit the Property.

3. Permitted Exceptions. The Purchaser shall accept the Property subject to:

- (a.) Rights of the public in and to any portion of the Property which lies within the boundary of any street, highway, alley or roadway, provided said rights do not conflict with the present or intended improvements and uses of the Property;
- (b.) Restrictions and agreements of record, provided they do not conflict with the present or intended improvements and uses of the Property, and provided the same have not been violated (unless their enforcement is barred by law);
- (c.) Water lines, sanitary sewer, drainage, gas distribution lines and mains, electrical, telephone, and other utility easements and rights of way of record, provided (i) they are located within fifteen (15)

feet of the boundary lines of the Property or may be used to service the Property, (ii) no buildings or other structures are located upon or within the easement areas; and (iii) they do not conflict with the present or intended improvements and uses of the Property; and

- (d.) Zoning, building and other land use and building regulations, ordinances and requirements affecting the Property (subject to Purchaser's right to terminate this Contract in accordance with Section 10 hereof), provided they do not conflict with the present or intended improvements and uses of the Property.

4. Price. Purchaser shall pay to Seller for the Property, the sum of TWENTY NINE THOUSAND and 00/100 Dollars (\$ 29,000.00) in U.S. funds, which shall be payable as follows:

(a) Upon execution of this Contract by Seller and Purchaser, the sum of ONE THOUSAND and 00/100 Dollars (\$1,000.00) ("Initial Deposit"), which shall be held in escrow by Seller's Attorney (the "Escrow Agent").

(b) Upon transfer of title as hereinafter provided, in cash, bank draft, certified check, or wire transfer, the balance of the purchase price shall be paid by Purchaser to Seller, subject to closing adjustments as hereinafter provided.

5. Adjustments at Closing. There shall be prorated and adjusted as of 12:00 midnight prior to the delivery of the deed all non-delinquent taxes and assessments appearing on current tax bills computed on a fiscal year basis, and water and sewer charges, if any.

6. Seller's Deliveries. Seller shall deliver to Purchaser's attorney within 10 days after the full execution of this Contract the following items:

- (a) The existing binder for Title Insurance for the Property, if any such policy exists;
- (b) Copies of any and all environmental screens, assessments or reports for the Property, conducted by, or on behalf of Seller;
- (c) Copies of any and all real property tax receipts;
- (d) Copies of any and all billing statements for the Property; and,
- (e) Copies of all leases, options to purchase, easement agreements and rights of way which affect the Property.

7. Title Search, Survey and Title Objections. Seller shall deliver to Purchaser's attorney within sixty (60) days following the full execution of this Contract, a fully guaranteed tax and title search which covers the Property only, the first set-out of which shall be the first recorded source of title in the Erie County Clerk's office, or a deed to an apparent owner recorded prior to 1920 ("Title Search"), together with a survey of the Property dated subsequent to the date of this Contract, showing the Property and

the location of the structures and improvements, together with all easements and rights of way affecting it (the "Survey").

Purchaser shall have the right to examine title and to determine whether any easements, rights of way, restrictions, encumbrances or other matters affecting title would, in Purchaser's judgment, adversely affect Purchaser's ability to develop and use the Property, or render title unmarketable. If Purchaser objects to any matters disclosed in the Title Search or Survey, Purchaser shall, within the Inspection Period, notify Seller in writing specifying the objectionable matters. Seller may elect (but shall have no obligation) to attempt to cure any disapproved matter. If Seller cannot or elects not to cure any disapproved matter, Seller may elect to obtain an owner's title insurance policy in the amount of the purchase price at standard rates covering the disapproved matters naming the Purchaser as insured ("Owners Policy") at no additional cost or obligation to Purchaser. In such event Purchaser shall accept the Owners Policy, Seller shall pay the premium for the Owner's Policy. Notwithstanding anything to the contrary contained in this section, Seller shall be obligated to discharge any monetary liens affecting the Property at or prior to closing. In the event Seller is unable or unwilling to cure any disapproved matter during the Inspection Period and Seller is unable or unwilling to obtain an Owner's Policy insuring over the disapproved title matters, then Purchaser may at any time prior to the expiration of the Inspection Period (i) terminate this Contract by written notice to Seller, in which event the Initial Deposit shall be returned to Purchaser; or (ii) waive such title objection(s) and accept title to the Property subject thereto, in which event, there shall be no reduction in the purchase price. In the event Purchaser does not give Seller written notice of termination pursuant to this section prior to the expiration of the Inspection Period, then Purchaser shall be conclusively deemed to have waived any such objections to matters disclosed in the Title Search (or title insurance commitment, if applicable) and/or Survey.

8. Deed. At closing, Seller shall deliver to Purchaser a warranty deed with lien covenant.

9. Possession. Purchaser shall have possession of the Property from and after the date of delivery of the Deed.

10. Purchaser's Inspections & Conditions.

(a) Purchaser may, at Purchaser's expense, upon reasonable notice to Seller, at any time after the execution of this Contract by Seller and Purchaser, have inspectors, engineers, environmental consultants, contractors and/or other appropriate professionals enter upon the Property in accordance with and subject to the provisions of Section 11 hereof to conduct investigations to determine, without limitation, whether (i) the Property, in Purchaser's sole discretion, is in acceptable condition, and is appropriate and acceptable for Purchaser's intended uses; (ii) the Property is free of underground storage tanks, environmental contamination, pollution, hazardous conditions, and other environmental concerns; and (iii) the subsoil and other features of the property are appropriate and acceptable, in Purchaser's judgment, for Purchaser's intended uses.

(b) Purchaser shall have confirmed that (i) the Property is properly zoned to permit its intended uses; (ii) that no permits, authorizations, or approvals are required for Purchaser's intended uses; (iii) that the Property is otherwise suitable in all respects for Purchaser's intended purposes.

If, in Purchaser's sole discretion, the conditions are not satisfactory, Purchaser shall have the right to terminate this Contract by written notice to Seller within fifteen (15) days of the receipt of the deliverables set forth in paragraphs 6 and 7 (the "Inspection Period"). Upon receipt by Seller of such notice of termination, this Contract shall terminate, Purchaser shall be entitled to a refund of the Initial Deposit and neither party shall have any further rights or obligations pursuant to this Contract, except as otherwise herein expressly provided. In the event Purchaser does not give Seller written notice of termination pursuant to this section before the expiration of the Inspection Period, then Purchaser shall be conclusively deemed to have waived all of the conditions and shall proceed to Closing.

11. Purchaser's Right of Entry. Seller also hereby grants to Purchaser, its officers, employees, agents and contractors a temporary non-exclusive license to enter upon the Property during regular business hours, upon reasonable notice to Seller, for the purposes of inspecting, examining and conducting various tests which are required in order for Purchaser to fulfill the Conditions (the "Investigatory Work"), on the following terms, covenants and conditions:

(a) Compliance with Laws. Purchaser shall comply at all times with all applicable laws, rules, regulations, and ordinances pertaining to the performance of the Investigatory Work.

(b) Conduct of Investigatory Work; Restoration. Purchaser shall carry out any Investigatory Work on the Property in a good and workmanlike manner and with due and reasonable dispatch. In conducting the Investigatory Work, Purchaser shall not damage or interfere with any electric utility poles, towers, wires or other facilities or improvements which are located on the Property. Upon the earlier (i) the completion of such Investigatory Work or (ii) the termination of this Contract, Purchaser shall fully restore the Property to substantially the same condition which existed immediately before such Investigatory Work was undertaken. Purchaser's obligation to restore the Property shall survive the termination of this Contract.

(c) Indemnification. Purchaser hereby agrees to defend, indemnify and hold Seller and its successors and assigns harmless from and against any and all suits, causes of action, litigation, damages, losses, liabilities, obligations, penalties, claims, demands, judgments, costs, disbursements and expenses (including, without limitation, reasonable attorneys' fees) arising out of any claim or claims (whether asserted by Purchaser or any third parties, or any of their respective agents, employees or invitees) for bodily or other personal injury, death or property damage, directly connected with (i) the performance by Purchaser of the Investigatory Work, (ii) entry by Purchaser, its

employees, agents, or contractors onto the Property, and/or (iii) the failure of Purchaser to keep and perform any of the terms, conditions or covenants to be kept and performed by Purchaser in connection with the Investigatory Work.

12. Intentionally omitted.

13. Intentionally omitted.

14. Costs. Seller shall pay the cost of the Title Search and for the continuation of same to the time of closing, the cost of the Survey, the Real Estate Transfer Tax, the cost of filing Form TP-584, the premium for an Owner's Policy if required pursuant to Paragraph 6 of this Contract. All current fiscal years' taxes shall be prorated and adjusted as of 12:00 midnight prior to the date of closing, assessments and installments of amount appearing on current tax bills computed on a fiscal year basis. Purchaser shall pay the fee for recording the Deed and the cost of filing Form RP-5217.

15. Brokers. Seller and Purchaser represent and warrant to each other that they have not dealt with any broker, finder, or other intermediaries in connection with this Contract who or which might be entitled to a commission on account of the sale of the Property to Purchaser.

16. Closing & Closing Deliveries This Contract shall be closed at the Erie County Clerk's Office on or before the thirtieth (30th) day following expiration or waiver of the Inspection Period, or at such other time and place as Seller and Purchaser mutually agree upon.

At Closing, the Seller shall deliver to the Purchaser the following items:

(a) Deed. A warranty deed with lien covenant (the "Deed"), duly authorized, executed and acknowledged, conveying good and marketable, or insurable, fee simple title to the Property to Purchaser.

(b) Foreign Person. A certification of Seller certifying that Seller is not a "foreign person," in the form of attached hereto and made a part hereof, and any required tax affidavits.

(c) Title Company Requirements. Any affidavits or instruments reasonably required by the Title Company and contemplated pursuant to this Contract.

(d) Closing Statements. Closing statement reflecting all payments, prorations, charges, and costs of transfer.

17. Assignment. The Purchaser may assign this Contract of any of its rights hereunder without the prior written consent of the Seller.

18. Notices. Any notice permitted or required to be given by the terms of this Contract shall be in writing and shall be sufficiently given if hand delivered, sent by nationally recognized overnight courier service (such as Federal Express or United Parcel Service) or sent by certified mail, return receipt requested, as follows:

If to Seller: Jane Michalek Harrington, Esq.
300 Center Road
West Seneca, New York 14224

If to Purchaser: John J. Fenz, Esq.
3755 Seneca Street
West Seneca, NY 14221

Notices given pursuant to this section shall be deemed to have been received (a) if personally delivered, upon delivery; (b) if sent by nationally recognized overnight courier service, one business day after sending; or (c) if sent by certified mail, three (3) business days after the notice was mailed. Either party may, by written notice given in accordance with this section, designate a different address or addresses to which such notices shall be sent. Notices given on behalf of either party by the attorney for such party shall have the same force and effect as notices given by the party itself.

19. Default. If, without fault on the part of Seller, Purchaser should fail to consummate its purchase of the Property in accordance with this Contract, Seller's sole remedy shall be to retain the Deposit(s) paid by Purchaser hereunder.

If, without fault on the part of Purchaser, Seller should fail to consummate its purchase of the Property in accordance with this Contract, Purchaser shall have the right to pursue against Seller all other legal remedies available to Purchaser.

20. Warranties and Representations of Seller. Seller represents and warrants to Purchaser to the best of Seller's knowledge as follows:

A. Other than disclosed in the Title Search and Survey, there are no easements or rights-of-way which affect the Property;

That other than disclosed to the Purchaser, there are no service contracts or agreements which affect the Property;

B. That the Seller has received no written notice that the Property is in violation of any federal, state and municipal laws, rules, regulations, ordinances and codes (collectively "Laws"), including all Laws relating to land use and the environment.

- C. There are no condemnation, zoning or other proceedings either instituted, or to Seller's best knowledge threatened, which affect the Property;
- D. That there are no options to purchase, or rights of first refusal, relating to the Property;
- E. Seller is duly organized, validly existing, and in good standing under the laws of the State of New York;
- F. Seller has the full power and authority to execute, deliver and perform its obligations under this Contract;
- G. This Contract and all agreements, instruments and documents herein provided to be executed by Seller are and as of the date of closing will be duly authorized, executed and delivered by and are and will be binding upon Seller.

Each and every warranty and representation shall be true as of the date hereof and as of the date of closing and shall survive delivery of the deed and closing of this Contract for a period of one (1) year. Each and every warranty and representation is included for the exclusive benefit of Purchaser and may be waived or removed in full or in part by Purchaser. If any of the warranties or representations are untrue at any time while this Contract is in effect, Purchaser may waive any rights arising therefrom and proceed with the closing or Purchaser may terminate this Contract by giving written notice to Seller, whereupon the Deposit shall be promptly returned to Purchaser.

21. Escrow. The Initial Deposit shall be held in escrow by the Escrow Agent in IOLA escrow account. At no time shall the Initial Deposit be the property of the Escrow Agent. At closing, the Initial Deposit shall be paid by the Escrow Agent to Seller or to any other payee identified by Seller. If this Contract is canceled pursuant to any provision hereof, the Initial Deposit shall be returned to the Purchaser.

22. Signatures. This Contract shall not become effective unless signed by both Seller and Purchaser, subject to the approval of the Town of West Seneca Town Board, on or before December 31, 2015.

23. Miscellaneous.

(a) Successors and Assigns. The terms, covenants, conditions and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns (to the extent assignment is permitted hereunder).

(b) Entire Agreement. This Contract, including its schedules and/or exhibits, constitutes the entire agreement between Seller and Purchaser relating to the within transaction, and is intended to supersede any prior agreements between the parties with respect to the sale of the Property.

(c) Modification. This Contract shall not be amended, modified, supplemented, or revoked, except by a writing signed by Seller and Purchaser.

(d) Submission Not an Offer. This submission by either party to the other of contract drafts, or of other proposals, correspondence or materials related to the proposed sale of the Property shall not be deemed to create an enforceable contract, neither party shall be bound to the other unless and until this formal Contract of Sale has been fully executed by both Seller and Purchaser, as herein provided.

(e) Captions. The captions contained in this Contract are for convenience only, and are not intended to limit or amplify the terms hereof in any way.

(f) Construction. Any ambiguity in this Contract shall not be construed against the Purchaser, of the drafter of the Contract.

(g) Counterparts. This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(h) Invalidity. If any clause, provision or section of this Contract shall be ruled invalid by any court having jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

IN WITNESS WHEREOF, Seller and Purchaser have executed or caused this Contract to be executed as of the day and year first above written.

SELLER:
Michael Serafini, Inc.

PURCHASER:
Town of West Seneca

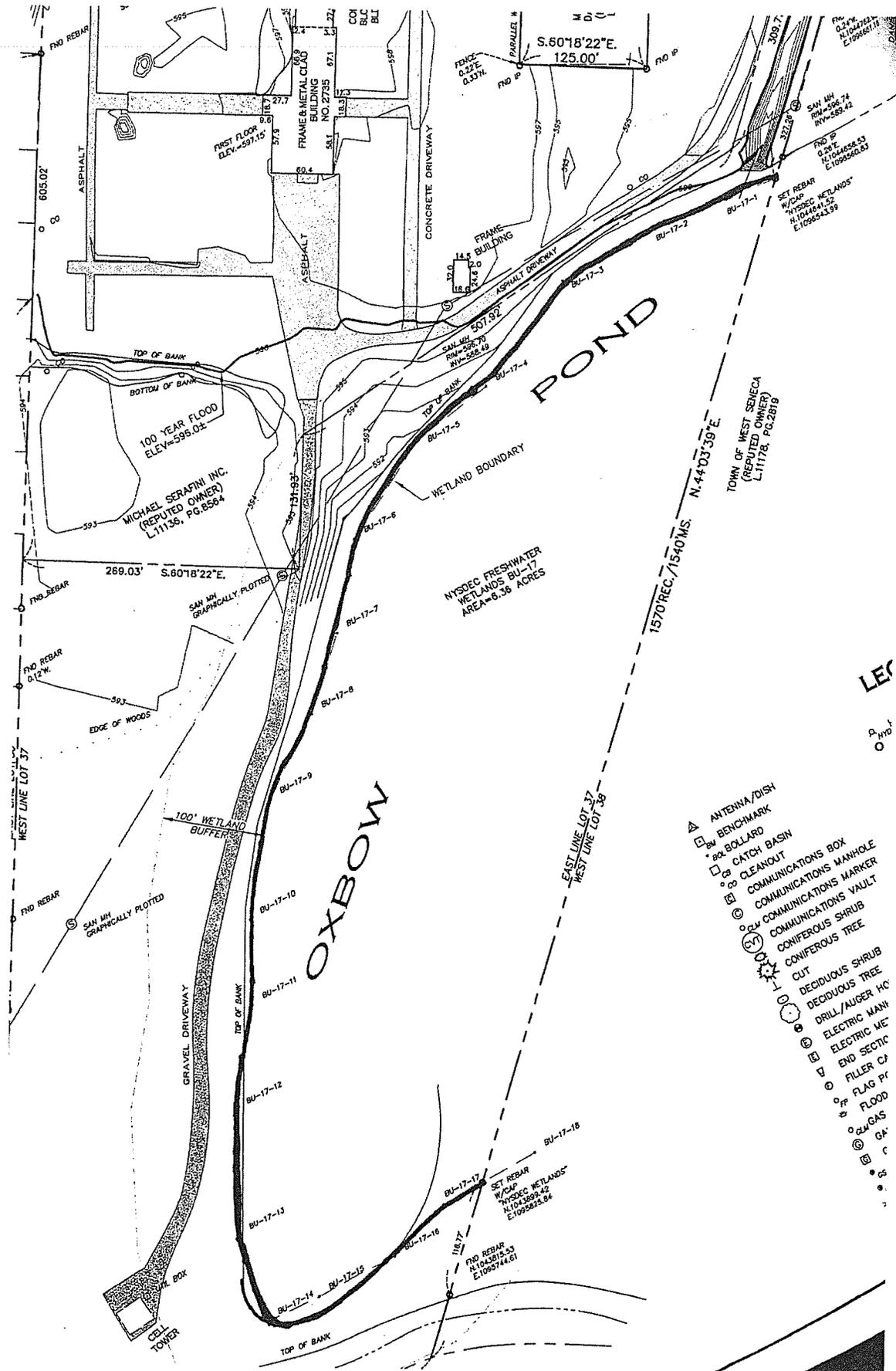
By:
Its:

Sheila Meegan
Town Supervisor

Date: _____

Date: _____

CLINTON ST.



- LEG**
- ▲ ANTENNA/DISH
 - ⊕ BENCHMARK
 - ⊙ 84 BOLLARD
 - CATCH BASIN
 - CLEANOUT
 - ⊠ COMMUNICATIONS BOX
 - ⊙ COMMUNICATIONS MANHOLE
 - ⊙ COMMUNICATIONS MARKER
 - ⊙ COMMUNICATIONS VAULT
 - ⊙ COMMUNICATIONS SHRUB
 - ⊙ CONIFEROUS TREE
 - ⊙ CUT
 - ⊙ DECIDUOUS SHRUB
 - ⊙ DECIDUOUS TREE
 - ⊙ DRILL/AUGER HC
 - ⊙ ELECTRIC MANHOLE
 - ⊙ ELECTRIC MET
 - ⊙ END SECTIC
 - ⊙ FILLER CP
 - ⊙ FLAG CP
 - ⊙ FLOOD
 - ⊙ GAS
 - ⊙ GC
 - ⊙ G
 - ⊙ GS