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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: April 5, 2018

RE: Kmart #9392, Assessment Challenge  
Request for Authority to Stipulation of Settlement

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Kindly approve and authorize the Town Attorney to execute the Stipulation of Settlement to resolve the real property tax assessment challenge commenced by the owners of the above-referenced Property.

This is a matter involves an application of an owner of commercial property in the Town to have his assessment reduced.

After deliberation with outside 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 Stipulation.





<u>Assessment Year</u>	<u>Tax Map No.</u>	<u>Original Assessed Value</u>	<u>Amount of Reduction</u>	<u>Final Assessed Value</u>
2016	143.05/1/27.112	\$4,040,100	\$1,340,100	\$2,700,000
2017	143.05/1/27.112	\$4,040,100	\$1,340,100	\$2,700,000

and it is further

STIPULATED AND AGREED that if the assessed value extended for the 2018, 2019 and 2020 assessment rolls is set at \$2,700,000 petitioner shall not contest such assessments unless an exception to the moratorium provisions of RPTL § 727 applies or the statute is deemed unconstitutional, and it is further

STIPULATED AND AGREED that the petitioner, by his attorney, warrants and represents that, to his knowledge, no other person, partnership or corporation has an interest in these proceedings. In the event that the petitioner and/or his attorneys become aware of such an interest at any time prior to the entry of judgment herein, he shall so advise respondents and the Court. In addition, at the time an application is made for a tax refund, petitioner shall submit to the Erie County Treasurer an affidavit stating that, in the event it is finally adjudged by a court of competent jurisdiction that another person has an interest in these proceedings and that part, or all, of the tax refund to be paid herein should have been paid to such person, petitioner shall make such payment to such person and shall hold the County of Erie free

and harmless from any liability for any duplicate payment of a tax refund, and it is further

STIPULATED AND AGREED that the officer or officers having custody of said assessment roll and any tax roll upon which the subject assessment and any taxes levied have been entered, shall correct the said entries in conformity with the attached order and shall note upon the margin of said roll, opposite said entries, that the same have been corrected by the authorization of said order, and it is further

STIPULATED AND AGREED that the order provide, that the Town of West Seneca, shall audit and allow the claim of the petitioner for the overpayment of the Town taxes paid by petitioner for the above tax year in excess of what the taxes would have been if the assessment had been made upon the reduced assessed valuation as ordered, without interest, within 90 days from the date of service of a certified copy of Court Order with Notice of Entry, and it is further

STIPULATED AND AGREED that the order provide that the West Seneca Central School District shall audit and allow the claim of petitioner for overpayment of the School taxes paid by petitioner for the above tax years in excess of what the taxes would have been if the assessments made upon the reduced assessed valuation as

ordered, without interest, within 90 days from the date of service of a certified copy of Court Order with Notice of Entry, and it is further

STIPULATED AND AGREED, that the order provide that the Commissioner of Finance, on behalf of the County of Erie, shall audit and allow the claim of the petitioner for the overpayment of County and all special district taxes and assessments paid by petitioner for the above tax year in excess of what the taxes would have been if the assessment had been made upon the reduced assessed valuation as ordered, without interest, within 90 days from the date of service of a certified copy of Court Order with Notice of Entry, and it is further

STIPULATED AND AGREED that to the extent any taxes or assessments are unpaid and have already been billed for the Town, County and special districts in accordance with the original assessed valuation, the officer or officers having custody of the assessment rolls and/or the tax rolls shall forward to the petitioner, in care of KOEPPPEL MARTONE & LEISTMAN, LLP, as attorneys, a new bill or bills, taxing said petitioner on the basis of the final total assessed valuation as stipulated herein, and it is further

STIPULATED AND AGREED that the within stipulation constitutes a full settlement of this tax certiorari proceeding for the 2016 and 2017 assessment years of the Town of West Seneca, and that upon compliance with the terms of this stipulation, the proceeding shall be deemed discontinued, with prejudice, and without costs or allowances to any party.

Dated: Mineola, New York  
July 20, 2017

KOEPPEL MARTONE & LEISTMAN, LLP  
Attorneys for Petitioner

By

  
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MYRNA A. CADET-OSSE, ESQ.

COLE, SORENTINO, HURLEY HEWNER  
& GAMBINO, PC  
Attorneys for Town of West Seneca

By

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RICHARD H. COLE, ESQ.

HARRIS BEACH, PLLC  
Attorneys for Intervenor-Respondent  
West Seneca Central School District

By

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J. RYAN WHITE, ESQ.

MOSEY PERSICO, LLP  
Attorneys for Intervenor-Respondent  
Erie County

By

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MARGARET A. HURLEY, ESQ.

