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October 31, 2013

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HAND DELIVERED

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Re: **Village of Millbrook vs.
The Thorne Project, Ltd., et al
Index No. 2013-5392**

Dear Kyle:

Enclosed, for service upon you, please find defendants' verified answer with affirmative defenses/counterclaim in the above referenced matter.

Very truly yours,

CORBALLY, GARTLAND AND RAPPLEYEA, LLP


Allan B. Rappleyea

ABR/nd/lmj
enclosure

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

VILLAGE OF MILLBROOK,

Plaintiff,

VERIFIED ANSWER
WITH AFFIRMATIVE
DEFENSES/COUNTERCLAIM

- against -

THE THORNE PROJECT, LTD., MICHAEL
DOWNING and ERICA DOWNING,

Index No. 2013-5392

Defendants.

Defendants, for their Answer to the Complaint, states as follows:

1. Deny each and every allegation contained in paragraph "1" of the complaint and refer all issues of law to the Court.
2. Admit the allegations of paragraphs "2", "3", "4" and "5" of the complaint.
3. Deny each and every allegation contained in paragraphs "6", "7", "8", "9", "10", "11", "12", "13", "14" and "15" of the complaint and refer all issues of law, including contract construction, to the Court.
4. Admit the allegations of paragraph "16" of the complaint.
5. Deny each and every allegation contained in paragraphs "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45" and "46" of the complaint and refer all issues of law, including contract construction, to the Court.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by waiver, estoppel and documentary evidence.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by res judicata, claim preclusion and merger by judgment.

The facts that exist now are the same facts that existed in 2011, when plaintiff initiated a summary proceeding, seeking expedited relief, in Justice Court. At that time plaintiff alleged that no lease existed, or that it had been breached. Plaintiff requested the Court to interpret certain lease provisions, including those now before the Court. All of plaintiff's claims that were alleged in 2011, or could have then been alleged, were disposed of by the Justice Court in the prior litigation commenced by plaintiff. Plaintiff filed a notice of appeal in relation to the prior litigation, but did not perfect this appeal. Thus, res judicata, claim preclusion and merger by judgment bar this action, which essentially seeks to re-litigate what was or should have been litigated in 2011, when plaintiff sought to use the Justice Court to obtain expedited relief, rather than commencing a plenary action as it now has.

THIRD AFFIRMATIVE DEFENSE

The Rule Against Perpetuities does not apply to this negotiated lease and plaintiff attempts to unilaterally inject terms into the subject lease that do not exist. For example, even if the parties do or did not agree on who would pay what for what, only the Tenant, not Landlord, retained a right to terminate.

FOURTH AFFIRMATIVE DEFENSE

There is no factual or legal basis to support plaintiff's rescission claim.

FIFTH AFFIRMATIVE DEFENSE

The lease permits the Court to strike any invalid portions and leave the remainder intact. If any provision is found to be invalid, the remainder of the leave remains effective.

SIXTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM

Defendants were the prevailing party in the prior litigation commenced by plaintiff. Plaintiff is indebted to defendants for the costs and legal fees in relation to the prior proceeding, and defendants seek judgment herein for those costs and legal fees, as well as the costs and legal fees to be incurred in this action, along with associated interest.

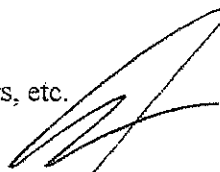
WHEREFORE, Defendants requests judgment as follows:

- A. That the complaint be dismissed in its entirety; and
- B. That the Court grant defendants judgment on their counterclaim, with interest,

and such further relief as it may deem just and proper.

Dated: Millbrook, New York
October 30, 2013

Yours, etc.




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

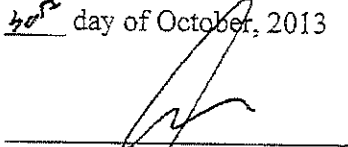
Michael Downing, being duly sworn says:

I am a defendant herein; I have read the annexed answer and know the contents thereof and the allegations therein are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.



Michael Downing

Sworn to before me this
30th day of October, 2013



Notary Public

ALLAN R. DAPPIEVEA
Notary Public, State of New York
No. 110, 000, 000, 000
Qualified in Dutchess County
Commission Expires March 10, 20 15