

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS
VILLAGE OF MILLBROOK,

Plaintiff,

-against-

THE THORNE PROJECT LTD, MICHAEL DOWNING
and ERICA DOWNING,

Defendants.

STIPULATION OF SETTLEMENT

VAN DEWATER & VAN DEWATER, LLP

Attorneys for Plaintiff
Office and P.O. Address
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P. O. Box 112
Poughkeepsie, New York 12602
Telephone: 845-452-5900

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated:

Signature: *Jeffrey S. Bettestoni*
Print Signer's Name: 4-4-14

Service of a copy of the within

Dated:

Signature:
Attorney(s) for

PLEASE TAKE NOTICE

NOTICE OF
ENTRY

*that the within is a (certified) true copy of a
entered in the Office of the Clerk of the within named Court on*

NOTICE
SETTLEMENT

*that an order of which the within is a true copy will be presented for settlement before
the HON. , one of the Judges of the within named Court at ___ Market Street,
Poughkeepsie, New York 12601, on*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
VILLAGE OF MILLBROOK,

Plaintiff,

-against-

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

Defendants.
-----X

**STIPULATION OF
SETTLEMENT**

Index No.:
2013-5392

DUTCHESS COUNTY
CLERK'S OFFICE
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WHEREAS, the parties have reached a settlement of all claims in this action; and

WHEREAS, the parties, having been represented by and consulted with counsel and intending to be legally bound, wish to fully set forth in writing the terms of settlement in their entirety;

NOW, THEREFORE, the parties hereby stipulate and agree as follows:

1. Upon the filing of this Stipulation with the Court, the above entitled action is and will be discontinued with prejudice. No separate Stipulation Discontinuing Action needs to be filed.

2. The VILLAGE OF MILLBROOK shall pay the sum of twenty-three thousand seven hundred dollars (\$23,700.00) to the defendants within seven days of the execution of this Stipulation. Such payment shall be made by check payable as

directed by the Defendants' attorneys, Corbally, Gartland & Rapplelea.

3. Upon execution of this Stipulation, the Defendants shall surrender all rights of entry and possession to the real property known as the Thorne Building located at 3323 Franklin Avenue in the Village of Millbrook and described as the "Premises" in section 1.6 a Lease dated February 24, 2009 between the VILLAGE OF MILLBROOK, as Landlord, and THE THORNE PROJECT, LTD, as Tenant (the "Lease") and shall also surrender any and all keys to the Premises.

4. Upon execution of this Stipulation, the Lease shall terminate and be of no further force and effect, except as provided in section 5 below, and the Plaintiff shall be entitled to immediate and full possession of the Premises.

5. The parties shall and hereby do release each other from all liability pursuant to the Lease except as follows:

A. Pursuant to Lease Section 9.5, Tenant was responsible for removing all snow, ice or other obstructions on the Building steps and the walkway leading to the parking lot. In the event that a claim is made against the Plaintiff which arises out of a failure to perform that obligation, the Defendant, THE THORNE PROJECT, LTD., shall remain liable for that obligation as stated in the Lease.

B. The above provisions of subparagraph "A" shall also apply in the event that any lien or other encumbrance to title is filed against the subject real property based upon an act or omission of Tenant (for instance, the filing of a mechanic's lien based upon nonpayment by Tenant for materials supplied to or labor performed at the Premises).

C. All rights of subrogation to insurance maintained by Tenant shall continue.

D. The parties acknowledge that the \$10,000.00 security deposit required by the Lease was never paid by Tenant.

E. The parties acknowledge that Tenant ordered custom-made pipes (from Calculated Fire Protection Co., Inc.) for a sprinkler system which needs to be installed at the Premises and that the pipes are presently stored at the Premises. The Defendants hereby release and waive any claim of ownership to or interest in these pipes and any related building materials stored at the Premises, so that the VILLAGE OF MILLBROOK hereby becomes the owner of those pipes and any related building materials.

6. Each party shall be responsible for its own attorneys' fees, costs and disbursements.

7. The VILLAGE OF MILLBROOK represents that (a) the execution, delivery and performance of this Stipulation by the VILLAGE OF MILLBROOK has been duly authorized by proper

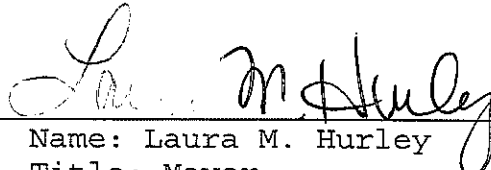
governmental action of the VILLAGE OF MILLBROOK and the person who has executed this Agreement on behalf of the VILLAGE OF MILLBROOK has been duly authorized to do so (an "Authorized Signatory") and (b) this Stipulation by VILLAGE OF MILLBROOK, upon execution by an Authorized Signatory, constitutes a valid and binding obligation of VILLAGE OF MILLBROOK in accordance with its terms.

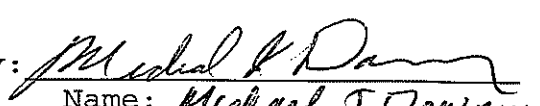
8. THE THORNE PROJECT, LTD. represents that (a) the execution, delivery and performance of this Stipulation by the THE THORNE PROJECT, LTD. has been duly authorized by proper corporate action of the THE THORNE PROJECT, LTD. and the person who has executed this Agreement on behalf of the THE THORNE PROJECT, LTD. has been duly authorized to do so (an "Authorized Signatory") and (b) this Stipulation by THE THORNE PROJECT, LTD., upon execution by an Authorized Signatory, constitutes a valid and binding obligation of THE THORNE PROJECT, LTD. in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Stipulation of Settlement on the 27th day of March, 2014.

VILLAGE OF MILLBROOK

THE THORNE PROJECT, LTD.

By: 
Name: Laura M. Hurley
Title: Mayor

By: 
Name: Michael S Downing
Title: Pres.

Michael Downing
MICHAEL DOWNING

Erica Downing
ERICA DOWNING