

SUPREME COURT: STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
VILLAGE OF MILLBROOK

Plaintiff,

SUMMONS

-against-

Index No.:

2013 -5392

THE THORNE PROJECT LTD, MICHAEL
DOWNING and ERICA DOWNING,

Date Purchased:

Defendants.
-----X

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer or, if the complaint is not served with the summons, to serve notice of appearance on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete, if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dutchess County is hereby designated as the place of trial. The basis of venue is the location of the premises: 3323 Franklin Avenue, Village of Millbrook, County of Dutchess, State of New York, also known and designated as Section 6765, Block 19, Lot 548131 on the Tax Map of the Village of Millbrook.

Dated: August 30, 2013

VAN DeWATER & VAN DeWATER, LLP

By: 

Kyle W. Barnett, Esq.

Attorneys for Plaintiff

Office and Post Office Address:

85 Civic Center Plaza, Suite 101

P.O. Box 112

Poughkeepsie, New York 12602

Tel. No.: (845) 452-5900

2013 AUG 30 PM 12:21
CLERK OF COURT
JULIA M. HARRIS
CLERK OF COURT

SUPREME COURT: STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
VILLAGE OF MILLBROOK

VERIFIED COMPLAINT

Plaintiff,

Index No.:

-against-

THE THORNE PROJECT LTD, MICHAEL DOWNING
and ERICA DOWNING,

Defendants.

-----X

Plaintiff Village of Millbrook (the "Village"), by its
attorneys Van DeWater & Van DeWater, LLP, complaining of
defendants alleges:

1. This action is brought pursuant to CPLR § 3001 for
declaratory relief, and for equitable relief in the nature
of rescission or reformation of a lease agreement.

THE PARTIES

2. Plaintiff Village of Millbrook is a municipal
corporation duly organized under the laws of this state,
and maintains its principal office at Village Hall, 35
Merritt Avenue, in the Village of Millbrook, New York.

3. Upon information and belief, defendant Thorne
Project Ltd. is a New York domestic business corporation
formed on February 27, 2009, with an address of record at
3323 Franklin Avenue, Millbrook, New York.

4. Upon information and belief, the defendant Michael J. Downing is a natural person having an address of 87 Woods Drive, Clinton Corners, New York 12514.

5. Upon information and belief, the defendant Erica L. Downing is a natural person having an address of 87 Woods Drive, Clinton Corners, New York 12514.

THE PROPERTY

6. The Village, at all times since September 9, 1896, was and is the owner in fee simple of the following described premises, located at 3323 Franklin Avenue and situate in the Village of Millbrook, County of Dutchess and State of New York, identified as Village of Millbrook Parcel Grid Identification # 135801-6765-19-548131("the Property"):

Beginning in the North line of Franklin Avenue at a point fifty-eight (58) feet easterly from the Southeast corner of the premises, now or late of Maria Haviland, then in line of said Avenue South $86^{\circ}10'$ East four hundred and thirty-one and two tenths (431.2) feet to the West Side of Maple Avenue, then in Line of said Avenue marked by row of trees North $21^{\circ}20'$ East, three hundred and twenty-five and three tenths (325.2) feet, to a stake fourteen inches beyond a Maple Tree in said Line thence North $86^{\circ}10'$ West parallel to Franklin Avenue five hundred and twenty (520) feet to a point two feet and four inches beyond the end of a stone wall in the same line, thence in line of East Side of street three hundred and nine and eight tenths (309.8) feet to the place of beginning.

THE LEASE

7. On February 24, 2009 the Village, as landlord, entered into a lease with defendant The Thorne Project Ltd., as tenant, for certain portions of the building located on the Property, known as the "Thorne Building," as well as certain other portions of the Property, for use as an arts and entertainment center (the "Lease"). A copy of the Lease is attached as Ex. "A".

8. Upon information and belief, defendant The Thorne Project Ltd. was not formed until February 27, 2009, three days after the Lease was executed. Defendants Michael J. Downing and Erica L. Downing purportedly executed the Lease on behalf of The Thorne Project Ltd. (Defendants The Thorne Project Ltd., Michael J. Downing and Erica L. Downing are hereinafter collectively referred to as "Tenant").

9. Subject to contingencies, the Lease calls for both the Village and the Tenant to conduct improvements to the Thorne Building and the Property in order for them to be used for the intended purpose of the Lease.

10. While the term of the Lease is stated to commence upon the date of its execution, in reality the Lease's ten (10) year duration does not commence any earlier than a

deferred "Fixed Rent Commencement Date" which, itself, does not occur until the Landlord's improvements are completed and the Tenant opens for business. See Lease Sections 1.2, 1.8 and 2.2.

11. The Lease specifically provides that the transaction is "contingent upon the Landlord raising the Funds" necessary for it to complete the Landlord's Work. See Lease Section 4.4.

12. The Lease further provides that "If the Funds are not obtained by March 15, 2009, then Tenant shall have the right at any time thereafter to terminate this Lease" and that "in the event Tenant exercises such right, this lease shall automatically terminate and neither party shall have any obligation or liability to the other" *Id.*

13. The Lease further provides that "Tenant shall have the option to continue with this lease even if Landlord is not able to raise all of the Funds", if the parties agree on a plan for Tenant to undertake the Landlord's work and obtain a rent credit. *Id.*

14. The Lease further provides that "if the parties are not able to agree as to how the Landlord's work will be allocated between Tenant and Landlord, then Tenant shall retain its right to terminate this Lease at any time." *Id.*

15. The Village was unable to raise the Funds and the

Lease contingency was not met. The Lease was contingent upon the Village's raising of funding to pay for the Landlord's improvements. That contingency of the Lease has failed.

16. Tenant did not exercise its right to terminate the Lease.

17. The parties did not come to an agreement concerning reallocation of Landlord and Tenant improvements, and the "agreement to agree" in the Lease failed to bear fruit.

18. At public meetings before the Village Board of Trustees with regard to modification of the Lease, in response to a request for a demonstration of Tenant's financial ability to perform, it publicly acknowledged that it did not have such financial ability; that it had relied upon the support of backers who had pledged to contribute large sums of money in furtherance of the project, but that these backers had had a change of heart.

19. The Village commenced a summary eviction proceeding against defendant The Thorne Project Ltd. in Town of Washington Justice Court alleging a breach of contract in that Tenant lacked the financial ability to complete its obligations under the Lease and that Tenant failed to complete other obligations within a reasonable

time.

20. By Decision and Order dated June 6, 2011, the Justice Court, finding itself bound by the four corners of the Lease, held that the provisions of the Lease provide that "Tenant can continue with the Lease and wait for Landlord to obtain the Funds." Such finding of the Justice Court in the prior summary proceeding is no bar to the instant action in Supreme Court against Tenant which seeks equitable and declaratory relief, i.e. the invalidation or reformation of the Lease itself, which could not have been raised or asserted by the Village within the summary proceeding.

21. To date, more than four (4) years after the Lease, Tenant has not exercised its right to terminate the Lease, has not undertaken any work on the Thorne Building, has not paid rent, has not paid carrying charges, and has not opened for business.

22. To date, more than four (4) years after the Lease, the Tenant has not provided the \$10,000.00 security required under the Lease or obtained the required insurance, or otherwise proven financial ability to meet its obligations to make lease improvements and to open for business. See Lease Sections 1.7, 13.1, Article 20.

23. To date, more than four (4) years after the

Lease, the 10 year duration of the Lease has not yet commenced, and it will never commence due to the failure of the transaction's core contingency, i.e., the Village's funding of Landlord's improvements to the Premises.

24. The Thorne Building remains vacant and the majority of the Property is unused, and unable to be used, while it is encumbered by the Lease.

**AS AND FOR A FIRST CAUSE OF ACTION
(FOR RESCISSION OF THE LEASE
AS CONTRARY TO PUBLIC POLICY AND UNCONSCIONABLE)**

25. Plaintiff repeats the allegations contained in the paragraphs hereinabove as if herein fully set forth.

26. The Lease provides that it is contingent upon a certain event, i.e., municipal funding of improvements to the Property, but the Lease continues indefinitely after the failure of that contingency unless the parties successfully agree to modify the central element of the transaction in the exercise of the Lease's "agreement to agree" on the reallocation of lease improvements.

27. Upon the failure of the contingency, and upon the failure of supplemental agreement under the Lease's "agreement to agree", the Lease term does not begin to run, the Tenant's obligation to pay rent does not arise, and the

Village's property remains encumbered indefinitely while its carrying costs continue.

28. The Lease must be rescinded because it is unconscionable and it violates public policy.

29. Moreover, by its terms as interpreted and found by the Justice Court in the summary proceeding, the Lease requires the Village to expend significant funds to complete the Landlord's Work despite the fact that there is no demonstrated financial ability on the part of the Tenant to complete its portion of the work as necessary for the use of the Property as intended under the Lease. In essence, the Village is required under the Lease to use its resources for the benefit of a private individual in violation of the Gift Clause of Article VIII, § 1 of the New York Constitution.

30. So long as they remain subject to the Lease encumbrance whose term has not begun to run, and may never run at the unilateral whim of the Tenant, the Property and Thorne Building located on it are indefinitely rendered without any beneficial public use and unavailable to the residents of the Village or the public at large, and the Village is further kept from any ability to sell or lease the Thorne Building and Property to a different tenant with a demonstrated financial ability to enter into such a

transaction with the Village and to return the building to a beneficial use. This is unconscionable and injurious to and against public policy.

31. Because the Lease by its terms is unconstitutional, unconscionable and contrary to public policy, the Village is entitled to the remedy of rescission of the Lease, and a declaration that the Lease is null and void.

**AS AND FOR A SECOND CAUSE OF ACTION
(FOR RESCISSION OF THE LEASE
AS VIOLATIVE OF THE RULE AGAINST PERPETUITIES)**

32. Plaintiff repeats the allegations contained in the paragraphs hereinabove as if herein fully set forth.

33. Upon information and belief, pursuant to this state's Estates, Powers and Trusts Law ("EPTL") § 9-1.1(b), no estate in property shall be valid unless it must vest, if at all, not later than twenty-one years after one or more lives in being at the creation of the estate.

34. Upon information and belief, EPTL § 9-1.1(b) invalidates any interest that may not vest within the prescribed time period.

35. Upon information and belief, where the creator of an estate in property is a corporate entity, rather than a

natural person, the statutory period is simply twenty-one years from the effort at creation.

36. Under its terms, the Lease does not vest an estate in the Tenant, because the Lease may not commence within twenty one years from the creation of the Lease.

37. The effective commencement date of the Lease, and the vesting of a lease estate in the Tenant, require either (a) the municipal Landlord's raising of public funding necessary to perform the Landlord's improvement's of the Premises, or (b) in the absence of municipal funding, the parties' making of an agreement to reallocate the expense of improvements of the Premises more upon, or totally upon, the Tenant.

38. The Village did not raise the public funding necessary for the Landlord's improvements, the contingency has failed.

39. The Landlord and the Tenant have not made a supplemental agreement to reallocate the costs of the improvements upon the Tenant, and neither has an obligation to do so.

40. Absent municipal funding of improvements, or absent success of the parties in converting the Lease's "agreement to agree" into a supplemental cost-sharing agreement, the Tenant in virtual perpetuity has no

obligations (a) to pay rent, (b) to make Tenant improvements, (c) to start up the commercial enterprise which was the subject of the lease, or (d) to pay carrying charges for any portion of the Premises in rent.

41. Absent municipal funding of improvements, or absent success of the parties in converting an "agreement to agree" into a supplemental cost-sharing agreement, the 10 year term of the Lease never begins to run, thereby interfering indefinitely with the alienability of the Premises.

42. Absent municipal funding of improvements, or absent success of the parties in converting an "agreement to agree" into a supplemental cost-sharing agreement, the Village's opportunities to alienate the Property are impeded in excess of twenty-one years from the Lease due to the non-vesting of an actual lease estate in the Tenant.

43. Because the Lease by its terms is violative of the rule against perpetuities, the Village is entitled to the remedy of rescission of the Lease, and a declaration that the Lease is null and void.

AS AND FOR A THIRD CAUSE OF ACTION
(FOR REFORMATION OF THE LEASE)

44. Plaintiff repeats the allegations contained in the paragraphs hereinabove as if herein fully set forth.

45. The provision of the Lease giving Tenant the exclusive and unilateral right to terminate the Lease upon the failure of the contingency of municipal funding, without providing for automatic lease termination due to failure of the contingency, represents mutual mistake on the part of the parties in the formulation of the transaction.

46. Because the purposes of the Lease have been entirely frustrated by application of its terms, and the Lease is injurious to the Village and of no benefit to the Tenant either, the Village is entitled to the equitable remedy of reformation of the Lease to eliminate the provision of the Lease giving Tenant the right to terminate the Lease upon the failure of the contingency and providing instead that the Lease is automatically terminated upon such failure, and that upon such automatic termination neither party shall not have any obligation or liability to the other.

WHEREFORE, plaintiff Village of Millbrook demands judgment:

- a. Rescinding the Lease on the grounds that it is unconscionable and contrary to public policy; and
- b. Rescinding the Lease on the grounds that it violates the rule against perpetuities; and
- c. Reforming the Lease to provide that it terminates automatically upon failure of the municipal funding contingency, and consequently declaring the Lease to be terminated, null and void; and
- d. That the Village recover its costs against any answering defendant; and
- e. That the Village have such other and further relief as to the Court may seem just and proper.

Dated: August 27, 2013
Poughkeepsie, NY

VAN DE WATER & VAN DE WATER, LLP

By: 

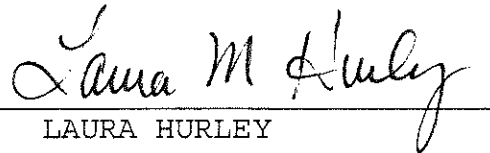
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VERIFICATION

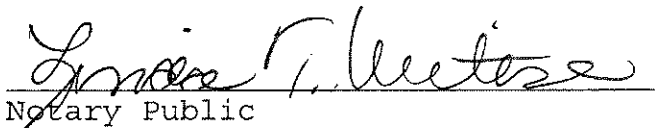
STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

LAURA HURLEY, being duly sworn, deposes and says:

I am the mayor of the Village of Millbrook, New York,
a municipal corporation, one of the parties to the action;
I have read the annexed Verified Complaint, know the
contents thereof and the same 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. As to those matters, my belief is
based upon the reports, records and files of the Village of
Millbrook.


LAURA HURLEY

Sworn to before me this
27 day of August, 2013.


Notary Public

LINDA T. WILTSE
Notary Public, State of New York
No. 01W18198234
Qualified in Dutchess County
Commission Expires 11/10/2016

Lease

VILLAGE OF MILLBROOK
Landlord

and

The Thorne Project Ltd.
Tenant

Date: February 27, 2009

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Office Lease

Lease dated February 14, 2009 between the Village of Millbrook ("Landlord"), having an address at 35 Merritt Avenue, Millbrook, NY 12545 Attn: Mayor and The Thorne Project Ltd., having an address at 3260 Franklin Avenue, Millbrook, NY 12545 ("Tenant").

Article 1. Basic Terms and Definitions

Section 1.1 Fixed Rent. The Fixed Rent shall be as follows: The Fixed Rent for Years 1-2 of the Term shall be \$40,000 per year. The Fixed Rent for Years 3-4 of the Term shall be \$50,000 per year. The Fixed Rent for Year 5 of the Term shall be \$51,500 per year. The Fixed Rent for Year 6 of the Term shall be \$53,045 per year. The Fixed Rent for Year 7 of the Term shall be \$54,636 per year. The Fixed Rent for Year 8 of the Term shall be \$56,275 per year. The Fixed Rent for Year 9 of the Term shall be \$57,963 per year. The Fixed Rent for Year 10 of the Term shall be \$59,702 per year.

Section 1.2 Fixed Rent Commencement Date. The date on which Tenant first opens for business to the general public, which date shall not be later than sixty days after the Landlord completes the Landlord Work.

Section 1.3 Guarantor. Michael Downing.

Section 1.4 Landlord's Work. The work described on Exhibit B to this lease.

Section 1.5 Notice Address.

(a) Landlord. 35 Merritt Avenue, P.O. Box 349, Millbrook, NY 12545, Attn: Mayor.

(b) Tenant. 3260 Franklin Avenue, Millbrook, NY 12545, Attn: Michael and Erica Downing.

Section 1.6 Premises. The Premises shall include (i) the entire first floor of the building commonly known as the Thorne Building (the "Building"; the land used in connection with the Building is called the "Land") in Millbrook, New York; provided, however that the cross-hatched area of the first floor marked on Exhibit A attached shall be deemed the common areas), (ii) the cross-hatched area of the basement space marked on Exhibit A attached and (iii) the projector booth on the second floor of the Building. Additionally, Tenant and its guests shall have the right to use the bathrooms located in the basement.

Section 1.7 Security. \$10,000.

Section 1.8 Term. The period commencing on the date hereof (the "Commencement Date") and ending on the date (the "Expiration Date") which is ten years subsequent to the Fixed Rent Commencement Date, subject to the Tenant's right to extend the term of the Lease set forth in Section 7.1 hereof.

Section 1.9 Certain Definitions. This Section lists each defined term appearing in more than one Article, other than the Basic Terms, and the Section in which it is defined. Any reference in this lease to (a) "legal action", includes any suit, proceeding or other legal, arbitration or administrative process and (b) "person", includes any individual or entity.

Defined Term	Section
Authority	11.1
Default	18.1
Default Rate	19.5
Funds	4.4
Initial Tenant Work	5.3
Laws	11.1
Rent	2.2
Tenant's Plan's	5.2
Tenant's Work	5.1

Article 2. Demise; Rent

Section 2.1 Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, for the Term, at the Rent and on the other terms of this lease.

Section 2.2 Tenant shall pay Landlord the Rent, without notice, deduction or offset (except as provided in this lease), in lawful money of the United States of America, by Tenant's check or another method approved by Landlord, at Landlord's Notice Address or another address Landlord designates, and as provided in this lease. The Fixed Rent shall be paid in equal monthly installments, in advance, on the first day of each calendar month during the Term, except that Tenant shall not pay the Fixed Rent until the Fixed Rent Commencement Date. If the Fixed Rent Commencement Date is not the first day of a month, the Fixed Rent for the month in which the Fixed Rent Commencement Date occurs shall be apportioned according to the number of days in that month. All sums, other than the Fixed Rent, payable by Tenant to Landlord under this lease, are considered additional rent (and the Fixed Rent and all additional rent are collectively called "Rent").

Article 3. Use

Section 3.1 Tenant shall use the Premises as an arts and entertainment center and shall be permitted to hold, among other things, musical performances, variety shows and classic movie showings. The Tenant shall also be permitted to hold art shows, antique shows and provide education classes with respect to various artistic and creative endeavors. The Tenant shall be permitted to operate a café and bar (which may include alcohol) which will be open in conjunction with any business activity.

Article 4. Condition of the Premises; Landlord's Work

Section 4.1 Tenant has examined the Premises and, subject to Landlord performing Landlord's Work, (a) Tenant shall accept possession of the Premises in its "AS IS" condition on the date of this lease, and (b) Landlord has no obligation to perform any work, supply any materials, incur any expenses or make any installations to prepare the Premises for Tenant's occupancy.

Section 4.2 Landlord shall, at its expense, in a Building standard manner, using Building standard materials, in accordance with all applicable Laws, as soon as practicable following the date Landlord obtains the Funds, perform the Landlord's Work. The Landlord's Work shall be commenced on or before March 15, 2009 and shall be completed by Landlord in a diligent fashion. If requested by Landlord or Tenant, Landlord and Tenant shall promptly sign and deliver a confirmation of the Fixed Rent Commencement Date, and any other dates referred to in this lease, but the failure to do so shall not change those dates.

Section 4.3 Tenant and its guests may use the parking lot (the "Parking Lot") serving the Building. Promptly after the first anniversary of the Rent Commencement Date, Landlord shall construct additional parking spaces at the Premises to adequately serve the Tenant's needs and to comply with applicable Laws, which additional parking spaces shall be based on the Tenant's attendance history during the first year of operation; provided, however, that in no event shall Landlord construct fewer than 15 additional parking spaces. Further, during the term of this lease, Landlord shall not enact or support any parking restrictions on any streets adjacent to or surrounding the Building unless such parking restrictions will not adversely affect the operation of the Tenant's business. Additionally, Landlord shall not seek or attempt to shut down the Tenant's business as a result of any parking issues or any complaints by the public regarding parking.

Section 4.4 The parties acknowledge that Landlord needs to raise funds (the "Funds") to pay for the Landlord's Work. Notwithstanding anything in this lease to the contrary, this lease is contingent upon Landlord raising the Funds. If the Funds are not obtained by March 15, 2009, then Tenant shall have the right at any time thereafter to terminate this Lease. In the event Tenant exercises such right, this lease shall automatically terminate and neither party shall have any obligation or liability to the other except that Landlord shall have the obligation to return the Security, and the security set forth in Section 5.6 hereof, to Tenant. Notwithstanding the foregoing, the parties acknowledge that Tenant shall have the option to continue with this lease even if Landlord is not able to raise all of the Funds. In such case, at the request of Tenant, Landlord and Tenant shall hold one or more meetings (collectively, the "Meetings") to discuss, given the amount of available Funds, which portion of the Landlord's Work should be performed by Tenant (the "Tenant Additional Work") and which portion of the Landlord Work should be performed by Landlord (the "Remaining Landlord Work"). In the event such parties agree as to the responsibility of the Landlord Work, then the Tenant shall promptly commence, and diligently complete, the Tenant Additional Work and the Landlord shall promptly commence, and diligently complete, the Remaining Landlord Work. Tenant shall receive a rent credit for all of its costs and expenses incurred in completing the Tenant Additional Work. If, for example, the Tenant incurs \$40,000 in completing the Tenant Additional Work, then no Fixed Rent shall be due to the Landlord during the first year of the Term. If the parties are not able to agree as to

how the Landlord's Work will be allocated between Tenant and Landlord, then Tenant shall retain its right to terminate this Lease at any time.

Article 5. Tenant's Work

Section 5.1 Except as may be expressly provided in this lease, Tenant shall not make any changes to the Premises, the Building, the Building systems, or any part thereof (collectively, "Tenant's Work"), without Landlord's consent. Landlord's consent shall not be unreasonably withheld or delayed provided that Tenant's Work does not (i) affect any part of the Building outside the Premises, (ii) adversely affect any structural element of the Building or (iii) adversely affect any Building system. Tenant's Work shall be performed, at Tenant's expense, in a professional manner using new materials of first class quality and in compliance with this lease and all Laws. If Tenant's Work consists solely of the installation of Tenant's Property in the Premises, a change affecting only Tenant's Property in the Premises or the painting, carpeting or decorating of the Premises, Landlord's consent shall not be required, provided (i) Tenant gives Landlord 10 days prior notice of such Tenant's Work (with reasonable details of the work to be performed) and (ii) all of the other applicable provisions of this lease shall apply.

Section 5.2 Prior to performing any Tenant's Work which, pursuant to this Article, requires Landlord's consent, Tenant shall, at Tenant's expense (a) deliver to Landlord, a description of such work in form reasonably satisfactory to Landlord, and suitable for filing with the applicable Authority, if filing is required by Law ("Tenant's Plans"), (b) obtain Landlord's approval of Tenant's Plans (which shall not be unreasonably withheld or delayed), (c) obtain (and deliver to Landlord copies of) all required authorizations of any Authority, (d) deliver to Landlord whatever insurance it reasonably requires. If, in connection with Tenant's Work or any other act or omission of Tenant or Tenant's employees, agents or contractors, a mechanic's lien, financing statement or other lien or violation is filed against Landlord, or any part of the Premises or the Building, Tenant shall, at Tenant's expense, have it removed by bonding or otherwise within 30 days after Tenant receives notice of the filing.

Section 5.3 Notwithstanding anything herein to the contrary, Landlord hereby approves the Tenant Work set forth in Exhibit C attached (the "Initial Tenant Work").

Section 5.4 At Tenant's request, Landlord shall join in any applications for any authorizations required from any Authority in connection with Tenant's Work (to which Landlord has consented, if required pursuant to this Article), and otherwise cooperate with Tenant in connection with Tenant's Work, but Landlord shall not be obligated to incur any expense or obligation in connection with any such applications or cooperation.

Section 5.5 Tenant shall have the right to perform the Tenant Work at the same time as Landlord is completing the Landlord Work.

Section 5.6 Within 10 days of Tenant being notified that Landlord has obtained the Funds, Tenant shall deposit \$25,000 with Landlord as security for Tenant's completion of the Tenant Work. Such sums shall be advanced to Tenant as follows: (i) \$8,000 shall be advanced to Tenant immediately after it commences the Tenant Work, (ii) \$8,000 shall be advanced to Tenant after Landlord has reasonably determined that 50% of the Tenant Work is complete and (iii) the balance of such security deposit shall be advanced to Tenant upon the completion of the Tenant Work.

Article 6. Real Estate Taxes

Section 6.1 The Landlord shall pay any real estate taxes payable with respect to any part of the Building or the Land.

Article 7. Extension Option

Section 7.1 Tenant shall have the option to extend the Term of this Lease for an additional ten years upon the satisfaction of the following conditions: (i) Tenant shall notify Landlord of its exercise of such option no later than one-hundred twenty days prior to the original expiration date of this Lease and (ii) Tenant is not in Default of this Lease.

Section 7.2 If Tenant exercises its option to extend the Lease as set forth above, then the Fixed Rent for the extension term shall be as follows: Fixed Rent for the first five years of the extension term shall be equal to the fair market rent, but in no event shall the Fixed Rent for any of such years exceed \$62,687. Fixed Rent for the second five years of the extension term shall be equal to the annual Fixed Rent for the first five years of the extension term multiplied by 1.05 (i.e. a 5% increase).

Section 7.3 The parties shall negotiate in good faith the fair market rent set forth in Section 7.2. If the parties are unable to agree on such fair market rent, then the issue shall be submitted to arbitration in accordance with Section 23.3(b) hereof.

Article 8. Electricity

Section 8.1 Tenant shall, at Tenant's expense, pay for the electricity used in the Premises.

Article 9. Services

Section 9.1 Heat, Ventilation and Air Conditioning. Landlord shall provide to the Premises, when and as required for the comfortable occupancy of the Premises, heat, ventilation and air conditioning.

Section 9.2 Water. Landlord shall ensure that adequate water is provided to Tenant. Landlord shall install a water meter at the Premises to measure Tenant's water use in the Premises. Tenant shall be responsible for paying its water charges based on its usage, as reflected in the water meter.

Section 9.3 Access. Tenant shall have access to the Premises 24 hours each day, seven days each week.

Section 9.4 Directory Listing. Landlord shall list Tenant's name and the name of any permitted subtenant on the Building's main tenant directory, at Tenant's expense. The listing of any other name on the door of the Premises, the Building directory, or otherwise, shall not vest in that person any right or interest in this lease or in the Premises, nor shall it be considered Landlord's consent to any assignment of this lease or any sublease or occupancy of the Premises.

Section 9.5 Snow. Tenant shall be responsible for removing all snow, ice or other obstructions on the Building steps and the walkway leading to the Parking Lot. Any snow, ice or other obstructions in the Parking Lot or the sidewalks surrounding the Land and the Building shall be removed by Landlord.

Article 10. Repairs

Section 10.1 Tenant shall take good care of the Premises and the fixtures and appurtenances therein. All damage to the Building (including the Building systems) or the Land resulting from any act or omission of Tenant or Tenant's employees or contractors, shall be repaired, at Tenant's expense, by Tenant to the reasonable satisfaction of Landlord or, at Landlord's option, by Landlord. Tenant shall give prompt notice to Landlord if any portion of the Premises or any Building system within the Premises requires repair.

Section 10.2 Landlord shall maintain in good working order and repair the exterior and structural portions of the Building, and the public portions of the Building interior and the Building plumbing, electrical and heating ventilation and air-conditioning systems serving the Premises. Landlord shall perform such repairs or other work in a manner which minimizes interference with the conduct of Tenant's business in the Premises and damage to the Premises, Tenant's Work and Tenant's Property (all of which shall promptly be repaired by Landlord, at its expense).

Article 11. Laws

Section 11.1 Tenant shall, at Tenant's expense, subject to the provisions of this lease, including Article 5, comply with all present and future laws, rules, regulations, orders, ordinances, judgments, requirements and (if Landlord adopts same) recommendations (collectively, "Laws"), of the United States of America, the State of New York, the City of New York or any present or future subdivision, court, agency, department, commission, board, bureau or instrumentality thereof (collectively, "Authority") applicable to Tenant's occupancy of the Premises, Tenant's Work, Tenant's Property or the Premises.

Section 11.2 Tenant shall promptly deliver to Landlord a copy of any communication or other materials relating to the Premises, the Building (including the Building systems), Tenant's Property or Tenant's Work received by Tenant from any Authority.

Section 11.3 Landlord shall promptly cure any violation of Law affecting the Building or the Premises to the extent the violation interferes with Tenant's occupancy of the Premises or the performance of Tenant's Work.

Article 12. Subordination

Section 12.1 This lease, and the rights of Tenant under this lease, are subject and subordinate in all respects to all present and future underlying mortgages provided Tenant receives a non-disturbance agreement in form reasonably satisfactory to Tenant.

Article 13. Insurance

Section 13.1 Tenant shall, at Tenant's expense, maintain at all times during the Term and at all times when Tenant is in possession of the Premises (a) commercial general liability insurance in respect of the Premises, on an occurrence basis, with a combined single limit (annually and per occurrence and location) of not less than \$1,000,000, naming Landlord as an additional insured, in compliance with this Article, (b) property insurance in an amount equal to 100 percent of full replacement value (with a deductible not exceeding \$10,000) covering Tenant's Work and Tenant's Property, against fire and other risks included in the standard New York form of property insurance and (c) such other insurance as Landlord may reasonably require.

Section 13.2 Tenant shall deliver to Landlord certificates in form reasonably acceptable to Landlord evidencing the insurance required by this lease to be maintained by Tenant before the Fixed Rent Commencement Date (and with respect to any insurance required pursuant to Article 5, before the commencement of any Tenant's Work). All required insurance (including insurance required pursuant to Article 5) shall be primary, issued by companies reasonably satisfactory to Landlord and contain a provision whereby it cannot be canceled unless Landlord is given at least 30 days' prior written notice of the cancellation.

Section 13.3 Landlord shall maintain property insurance, in an amount not less than the amount which avoids any coinsurance provisions of the insurance, covering the Building (including the Premises, but not including the property required to be insured by Tenant pursuant to this Article), against fire and the other risks included in the standard New York form of property insurance, with such companies and with such deductibles as Landlord selects. Tenant shall not do or permit to be done any act which shall invalidate or be in conflict with Landlord's insurance policies, or increase the rates of insurance applicable to the Building.

Article 14. Casualty

Section 14.1 If (a) the Premises is damaged by fire or other casualty, or (b) the Building (including any Building system) is damaged by fire or other casualty so that Tenant is deprived of reasonable access to the Premises or any part of the Premises, or the Premises or any part of the Premises, is unusable by Tenant for the reasonable conduct of Tenant's normal business in the Premises, Tenant shall give prompt notice to Landlord. Subject to the provisions of this Article (a) Landlord shall, at Landlord's expense, repair the damage, excluding the damage to Tenant's Work or Tenant's Property and (b) Tenant shall, at Tenant's expense, promptly remove Tenant's Property from the Premises to the extent required by Landlord in connection with Landlord's repair of the damage. Until the repairs to be performed by Landlord are substantially completed, the Rent shall be reduced in proportion to the area of the Premises to which Tenant shall not have reasonable access or which is unusable by Tenant for the reasonable conduct of Tenant's normal business in the Premises.

Article 15. Condemnation

Section 15.1 If as the result of a taking by condemnation or similar legal action of an Authority (a) all of the Premises, or so much thereof as renders the Premises wholly unusable by Tenant, is taken, (b) a portion of the Building or the Land is taken, resulting in Tenant no longer having reasonable access to or use of the Premises, (c) all or substantially all of

the Building or the Land is taken or (d) a portion of the Building is taken resulting in Landlord's determination to demolish the Building, the Term shall expire on the date of the vesting of title. In that event, the Rent shall be apportioned as of the date of termination and any Rent paid by Tenant to Landlord for any period after that date shall be promptly refunded by Landlord to Tenant.

Section 15.2 In the event of any such taking of all or any part of the Premises, the Building or the Land, the condemnation award shall be allocated between Landlord and Tenant in accordance with their respective interests.

Section 15.3 If a taking does not result in the termination of this lease (a) Landlord shall, at Landlord's expense, as soon as practicable, restore that part of the Premises, the Building or the Land not taken, so that the Premises are usable, and (b) from and after the date of the vesting of title, the Rent shall be reduced in the same proportion as the area of the Premises, if any, which was taken.

Article 16. Assignment and Subletting

Section 16.1 Tenant shall not, without Landlord's consent (a) assign, encumber or otherwise transfer this lease or any interest in this lease, or (b) sublet or permit others to occupy all or any part of the Premises without the consent of Landlord, which consent will not be unreasonably withheld or delayed.

Article 17. Access

Section 17.1 Landlord shall have the right, without the same constituting an eviction or constructive eviction of Tenant in whole or in part and without any abatement of the Rent or liability to Tenant, to (a) place (and have access to) concealed ducts, pipes and conduits through the Premises (without a material reduction or reconfiguration of the useable area of the Premises), (b) enter the Premises at reasonable times on reasonable prior notice, which may be oral (but prior notice shall not be required in an emergency), to inspect the Premises, to show the Premises to others or to perform any work Landlord deems necessary or desirable to the Premises or the Building (including the Building systems) or for the purpose of complying with Laws, (c) alter, maintain or repair the Building (including the Building systems) or the Land, and change the arrangement or location of entrances, corridors, doorways, elevators, stairs, toilets, or other public portions of the Building or the Land (provided that Tenant shall have reasonable access to the Premises and toilets on the same floor as the Premises and, as a result thereof, there shall be no material reduction in the services which Landlord is required by this lease to provide to Tenant) and (d) take all material into the Premises that may be required in connection with any of the matters described in this Section. If Tenant is not present when Landlord desires to enter the Premises, Landlord or Landlord's contractors may enter the Premises (by force, in the event of an emergency) without liability to Tenant.

Section 17.2 One time each summer during the Term, it is expected that Landlord will put on a carnival during a four or five day period on the Land adjacent to the Building. During such carnival, the Village of Millbrook Fire Department and certain carnival employees will need access to the common areas of the Building to, among other things, run various wires and cables and access the second floor of the Building. Tenant consents to this use and acknowledges that some of these wires and cables could interfere with some of its events and

that Tenant will not be entitled to an abatement of rent as a result thereof. Notwithstanding the foregoing, in order for Landlord to exercise such access rights and in order to give Tenant time to plan for such events, Landlord shall give Tenant at least 120 days prior notice of the carnival.

Section 17.3 Landlord shall exercise Landlord's rights under this Article in a manner which minimizes interference with the conduct of Tenant's business in the Premises and damage to the Premises, Tenant's Work and Tenant's Property (all of which shall promptly be repaired by Landlord, at its expense).

Article 18. Default

Section 18.1 Each of the following is a "Default" by Tenant under this lease:

- (a) Tenant fails to pay when due any Rent and the failure continues for five days following Landlord's notice (which notice shall also be considered any demand required by any Law). If, however, Landlord gives such a notice twice in any 12-month period, any additional failure to pay any Rent when due within that 12-month period shall be considered a Default (without the requirement of any notice by Landlord).
- (b) Tenant fails to comply with Article 16.
- (c) Tenant fails to comply with any other term of this lease and the failure continues for 30 days following Landlord's notice. If, however, compliance cannot, with diligence, reasonably be fully accomplished within that 30-day period, Tenant shall have as long as is reasonably necessary to fully comply, provided Tenant commences compliance within that 30-day period and thereafter pursues compliance to completion with diligence.
- (d) Tenant or any Guarantor, institutes, or has instituted against it any legal action seeking any relief from its debts under any Law which is not dismissed within 60 days, or a receiver, trustee, custodian or other similar official is appointed for it or for all or a substantial portion of its assets, or commits any other act indicating insolvency.
- (e) Guarantor fails to comply with any term of its Guaranty and such failure continues beyond the applicable cure period.

Section 18.2 If a Default occurs, Landlord may at any time during the continuance of the Default give notice to Tenant that this lease shall terminate on the date specified in that notice, which date shall not be less than five days after Landlord's notice to Tenant. If Landlord gives that notice, the Term shall expire on the date set forth in that notice (but Tenant shall remain liable as provided in this lease).

Section 18.3 If Tenant is in arrears in the payment of the Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to any items Landlord sees fit.

Article 19. Remedies

Section 19.1 If this lease is terminated pursuant to Article 18 or Landlord reenters or obtains possession of the Premises by summary proceedings or any other legal action, all of the provisions of this Section shall apply (in addition to any other applicable provisions of this lease).

(a) Tenant (and all other occupants) shall vacate and surrender to Landlord the Premises in accordance with this lease.

(b) Landlord, at Landlord's option, may (i) relet the Premises, or any portion of the Premises, from time to time, in the name of Landlord, Tenant or otherwise, as determined by Landlord, to any person and on any terms, but Landlord shall have no obligation to relet the Premises, or any portion of the Premises, or to collect any rent (and the failure to relet the Premises, or any portion of the Premises, or to collect any rent shall not impose any liability or obligation on Landlord or relieve Tenant of any obligation or liability under this lease), and (ii) make any changes to the Premises as Landlord, in Landlord's judgment, considers advisable or necessary in connection with a reletting, without imposing any liability or obligation on Landlord or relieving Tenant of any obligation or liability under this lease.

(c) Tenant shall pay Landlord all Rent payable to the date on which this lease is terminated or Landlord reenters or obtains possession of the Premises.

(d) Tenant shall also pay to Landlord, as damages, any deficiency between (i) the aggregate Rent for the period which otherwise would have constituted the unexpired portion of the Term (conclusively presuming the additional rent for each year thereof to be the same as was payable for the year immediately preceding the termination, re-entry or obtaining of possession) and any expenses incurred by Landlord in connection with the termination, reentry or obtaining of possession, and the reletting of the Premises, including all repossession costs, brokerage commissions, reasonable attorneys' fees and disbursements, alteration costs and other expenses of preparing the Premises for reletting and (ii) the rents, if any, applicable to that period collected under any reletting of any portion of the Premises. Tenant shall pay any deficiency in monthly installments on the days specified in this lease for payment of installments of the Fixed Rent, and Landlord shall be entitled to recover from Tenant each monthly deficiency as the same arises. No suit to collect the deficiency for any month shall prejudice Landlord's right to collect the deficiency for any subsequent month. Tenant shall not be entitled to any rents payable (whether or not collected) under any reletting, whether or not those rents exceed the Rent. Notwithstanding anything in this paragraph to the contrary, Tenant's aggregate maximum liability under this paragraph shall not exceed an amount equal to three months of Fixed Rent.

Section 19.2 Tenant hereby waives (a) the service of any notice of intention to re-enter or obtain possession of the Premises or to institute any legal action in connection therewith, except as provided in this lease and (b) on its own behalf and on behalf of all persons claiming under Tenant, including all creditors, any rights Tenant and all such persons might otherwise have under any Law to redeem the Premises, to re-enter or repossess the Premises, or to restore this lease, after (i) Tenant is dispossessed pursuant to any Law or by any Authority, (ii) Landlord reenters or obtains possession of the Premises pursuant to any legal action, or (iii) the Expiration Date, whether by operation of law or pursuant to this lease (including the occurrence

of the Expiration Date by Landlord terminating this lease pursuant to Section 18.2). The words "re-enter," "re-entry" and "re-entered" as used in this lease shall not be considered to be restricted to their technical legal meanings. Landlord shall have the right to enjoin any Default and the right to invoke any remedy allowed by any Law in addition to any remedies provided in this lease. All remedies provided in this lease are cumulative and Landlord's right to invoke, or invocation of, any remedy shall not preclude Landlord from invoking any other remedy.

Section 19.3 If there is then a Default, or if Tenant fails to comply with any obligation under this lease which, in Landlord's reasonable opinion creates an emergency, Landlord may, but is not obligated to, cure the Default or, without notice, cure the failure to comply, for the account of Tenant. All amounts incurred by Landlord in that connection, and any amounts (including reasonable attorneys' fees and disbursements) in instituting, prosecuting or defending any legal action by or against Tenant, or in connection with any dispute under this lease, in which Landlord prevails, with interest thereon at the Default Rate, shall be paid by Tenant to Landlord within 15 days following Tenant's receipt of Landlord's request. Landlord shall promptly reimburse Tenant for any reasonable attorneys' fees and disbursements incurred by Tenant in connection with any legal action or other dispute with Landlord under this lease, in which Tenant prevails.

Section 19.4 The failure of Landlord to seek redress for a Default, or of Landlord or Tenant to insist upon the strict performance of any term of this lease, shall not prevent Landlord from redressing a subsequent Default or Landlord or Tenant from thereafter insisting on strict performance. The receipt by Landlord of the Rent with knowledge of a Default or Tenant's failure to strictly perform under this lease shall not be deemed a waiver of the Default or failure. No term of this lease shall be considered waived by Landlord or Tenant unless the waiver is in a writing signed by the waiving party. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent shall be considered other than on account of the next installment of the Rent, or as Landlord may elect to apply same. No endorsement or statement on any check or letter accompanying any check or payment shall prevent Landlord from cashing the check or otherwise accepting the payment, without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy.

Section 19.5 If Tenant fails to pay any installment of the Fixed Rent on the first day of the month or any additional rent when due, in addition to any other right or remedy of Landlord, Tenant shall pay to Landlord within 15 days following Landlord's notice (a) a late charge equal to 4% of the amount unpaid and (b) interest at the rate (the "Default Rate") which is the lesser of the rate of 4% per annum above the prime rate of Citibank N.A. or the maximum legal interest rate permitted under the circumstances, on the amount unpaid, from the date the payment was first due to and including the date paid.

Article 20. Security

Section 20.1 Tenant has deposited with Landlord, as security for Tenant's compliance with this lease, the Security, in cash. If there is a Default, Landlord may use all or any portion of the Security to cure the Default or for the payment of any other amount due and payable from Tenant to Landlord in accordance with this lease. Landlord shall deposit the Security in an interest bearing account at a banking institution selected by Landlord. Landlord

shall not be required to exhaust its remedies against Tenant or the Security before having recourse to Tenant, any Guarantor, the Security or any other security held by Landlord, or before exercising any right or remedy, and recourse by Landlord to any one of them, or the exercise of any right or remedy, shall not affect Landlord's right to pursue any other right or remedy or Landlord's right to proceed against the others. If there is then no uncured Default, the Security and any accrued and unpaid interest thereon, or any balance, shall be paid or delivered to Tenant on the fifth anniversary of the Fixed Rent Commencement Date.

Article 21. Broker

Section 21.1 The parties represent to each other that they did not deal with any broker in connection with this lease. Tenant hereby indemnify, defend and hold harmless Landlord from and against any claims for any brokerage commissions or other compensation which are made by any broker alleging to have dealt with Tenant in connection with this lease, and all costs, expenses, liabilities and damages in connection therewith, including reasonable attorneys' fees. Landlord hereby indemnify, defend and hold harmless Tenant from and against any claims for any brokerage commissions or other compensation which are made by any broker alleging to have dealt with Landlord in connection with this lease, and all costs, expenses, liabilities and damages in connection therewith, including reasonable attorneys' fees.

Article 22. Notices

Section 22.1 Except as may be provided in this lease, all notices and other communications under this lease must be in writing and sent by nationally recognized overnight courier service or registered or certified mail (return receipt requested), addressed to Landlord or Tenant at the Notice Address.

Section 22.2 Any notice or other communication sent as provided in this Article shall be effective (a) on the date received (or rejected) if sent overnight courier service, or (b) two Business Days after mailing by registered or certified mail.

Section 22.3 Any notice or other communication given by Landlord to Tenant in accordance with this Article may be signed and given by Landlord's managing agent, if any, with the same force and effect as if signed and given by Landlord.

Article 23. Liability

Section 23.1 In the event of a transfer or lease of the Building (a) the transferor or lessor shall be and hereby is relieved of all obligations and liabilities of Landlord under this lease accruing after the effective date of the transfer or lease, and (b) the transferee or lessee shall be deemed to have assumed all of Landlord's obligations and liabilities under this lease effective from and after the effective date of the transfer or lease.

Section 23.2 After Tenant opens for business, Tenant shall have the right at any time to terminate this lease upon ninety days notice to Landlord if Tenant determines that the operation of Tenant's business is not economically viable. If Tenant exercises such right, (i) Tenant shall be liable for all Rent due hereunder through such ninetieth day (it being acknowledged that Tenant shall not be liable for Rent which would otherwise accrue after such

ninetieth day) and (ii) Landlord shall have no obligation to reimburse Tenant for any work Tenant performed at the Premises.

Section 23.3 (a) If Tenant requests Landlord's consent or approval under this lease and Landlord denies or delays Landlord's consent or approval, Landlord shall have no liability therefor and Tenant shall not be entitled to any damages. Tenant's sole remedy shall be as provided in paragraph (b) of this Section, and that remedy shall be available only if Landlord has in this lease, with respect to the subject of the request, agreed not to unreasonably withhold or delay Landlord's consent or approval. However, if any such consent or approval is deemed given pursuant to the provisions of this lease, then that shall be Tenant's sole remedy. Except as otherwise expressly set forth in this lease, Landlord's consent or approval, to be effective, must be in a writing signed by Landlord.

(b) If (i) Tenant requests Landlord's consent or approval, (ii) Landlord denies or delays its consent or approval, (iii) this lease provides that such consent or approval shall not be unreasonably withheld or delayed and (iv) within 30 days following Landlord's denial or, if Landlord delays its consent or approval, within 45 days following Tenant's request, Tenant gives notice to Landlord that Tenant considers same unreasonable, the dispute shall be settled in the county in which the Building is located by expedited arbitration administered by the American Arbitration Association ("AAA") under the AAA's Commercial Arbitration Rules, Expedited Procedures (to the extent then in effect). A judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. If the arbitrator determines that Landlord's consent or approval was unreasonably withheld or delayed, Landlord shall be considered to have given its consent or approval. The determination of the arbitrator shall be binding and conclusive on Landlord and Tenant. Landlord and Tenant shall each pay their own expenses of this procedure, except the fees and expenses of the AAA and the arbitrator shall be paid 50 percent by Landlord and 50 percent by Tenant.

Article 24. End of Term

Section 24.1 On the Expiration Date (a) Tenant (and all other occupants) shall vacate and surrender the Premises, broom clean and in good order and condition, except for ordinary wear and tear and damage for which Tenant is not responsible under this lease, and otherwise as may be required by this lease, and (b) Tenant shall remove all of Tenant's Property.

Section 24.2 If the Premises are not vacated and surrendered in accordance with this lease, on the date required by this lease, Tenant shall be liable to Landlord for (a) all losses, costs, liabilities and damages which Landlord incurs by reason thereof, including reasonable attorneys' fees, and Tenant shall indemnify, defend and hold harmless Landlord against all claims made by any succeeding tenants against Landlord or otherwise resulting from the failure of Tenant (and all other occupants) timely to vacate and surrender the Premises in accordance with this lease, and (b) per diem use and occupancy in respect of the Premises equal to twice the Rent payable under this lease for the last year of the Term (which Landlord and Tenant presently agree is the Rent to which Landlord would be entitled, is presently contemplated by them as being fair and reasonable under such circumstances and is not a penalty). In no event, however, shall this Section be construed as permitting Tenant (and all other occupants) to remain in possession of the Premises after the Expiration Date.

Article 25. Miscellaneous

Section 25.1 (a) This lease shall be governed by the law of the State of New York.

(b) Tenant shall not record this lease or any memorandum of this lease without the consent of Landlord.

(c) Subject to the provisions of this lease, this lease shall bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors and assigns.

(d) This lease may not be changed or terminated, in whole or in part, except in a writing signed by Landlord and Tenant.

(e) Notwithstanding any provision of this lease, or any Law, to the contrary, or the execution of this lease by Tenant, this lease shall not bind or benefit Landlord or Tenant, unless and until this lease is signed and delivered by Landlord and Tenant.

(f) The Exhibits to this lease, if any, are a part of this lease, but, in the event of an inconsistency between this lease and the Exhibits, this lease shall control.

(g) Each obligation of Tenant under this lease is a separate and independent covenant of Tenant, not dependent on any other provision of this lease.

(h) The captions in this lease are for reference only and do not define the scope of this lease or the intent of any term. All Article and Section references in this lease shall, unless the context otherwise specifically requires, be deemed references to the Articles and Sections of this lease.

(i) If any provision of this lease, or the application thereof to any person or circumstance, is invalid or unenforceable, then in each such event the remainder of this lease or the application of such provision to any other person or any other circumstance (other than those as to which it is invalid or unenforceable) shall not be affected, and each provision hereof shall remain valid and enforceable to the fullest extent permitted by Law.

(j) Tenant shall have the right to use the existing tables and chairs which are currently located in the Premises.

(k) If there is then no Default, Tenant may peaceably and quietly enjoy the Premises without hindrance by Landlord or any person lawfully claiming under Landlord, subject however, to the terms of this lease. Landlord represents to Tenant that the use of the Premises by Tenant in accordance with Section 3.1 hereof shall not violate any covenants and/or restrictions encumbering the Building and/or the Land. Landlord also agrees that it shall not use the Building and/or the Land, and shall not allow any future tenant or occupant of the Building, to violate such covenants and restrictions.

(l) Tenant may have go before the Village planning board (or another board) (collectively, the "Board") to obtain approval for the Tenant Work and to use the Premises in accordance with Section 3.1. In such case, if the Board imposes any requirements or obligations on Tenant which Tenant determines, in its sole and absolute discretion, to be burdensome, then Tenant shall have the right to terminate this Lease at any time in which case any security deposit held by Landlord shall be promptly returned to Tenant. Additionally, if Tenant determines, in its sole and absolute discretion, that the cost of the insurance required by Article 13 hereof is prohibitive, then Tenant shall have the right to terminate this Lease at any time in which case any security deposit held by Landlord shall be promptly returned to Tenant.

(m) If Tenant is unable to obtain a liquor license to serve alcoholic drinks in the Premises, then Tenant shall have the right to terminate this Lease at any time in which case any security deposit held by Landlord shall be promptly returned to Tenant.

In Witness Whereof, Landlord and Tenant have executed this lease on the date of this lease.

Landlord

VILLAGE OF MILLBROOK

By: Anthony J. Cimini
Name: Mayor
Title:

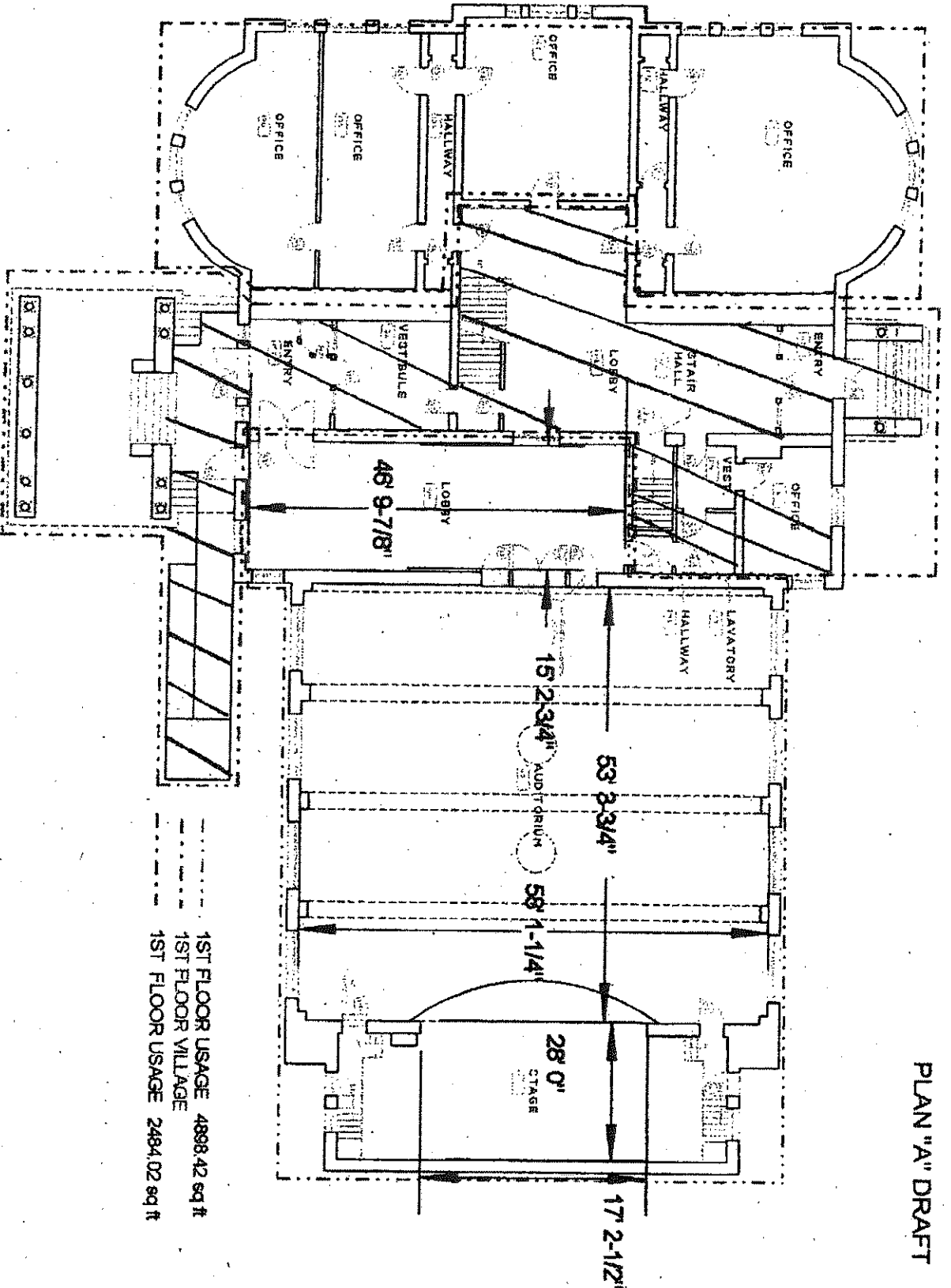
Tenant

The Thorne Project Ltd.

By: Michael J. Downing
Name: Michael J. Downing

By: Erica L. Downing
Name: Erica L. Downing

EXHIBIT A



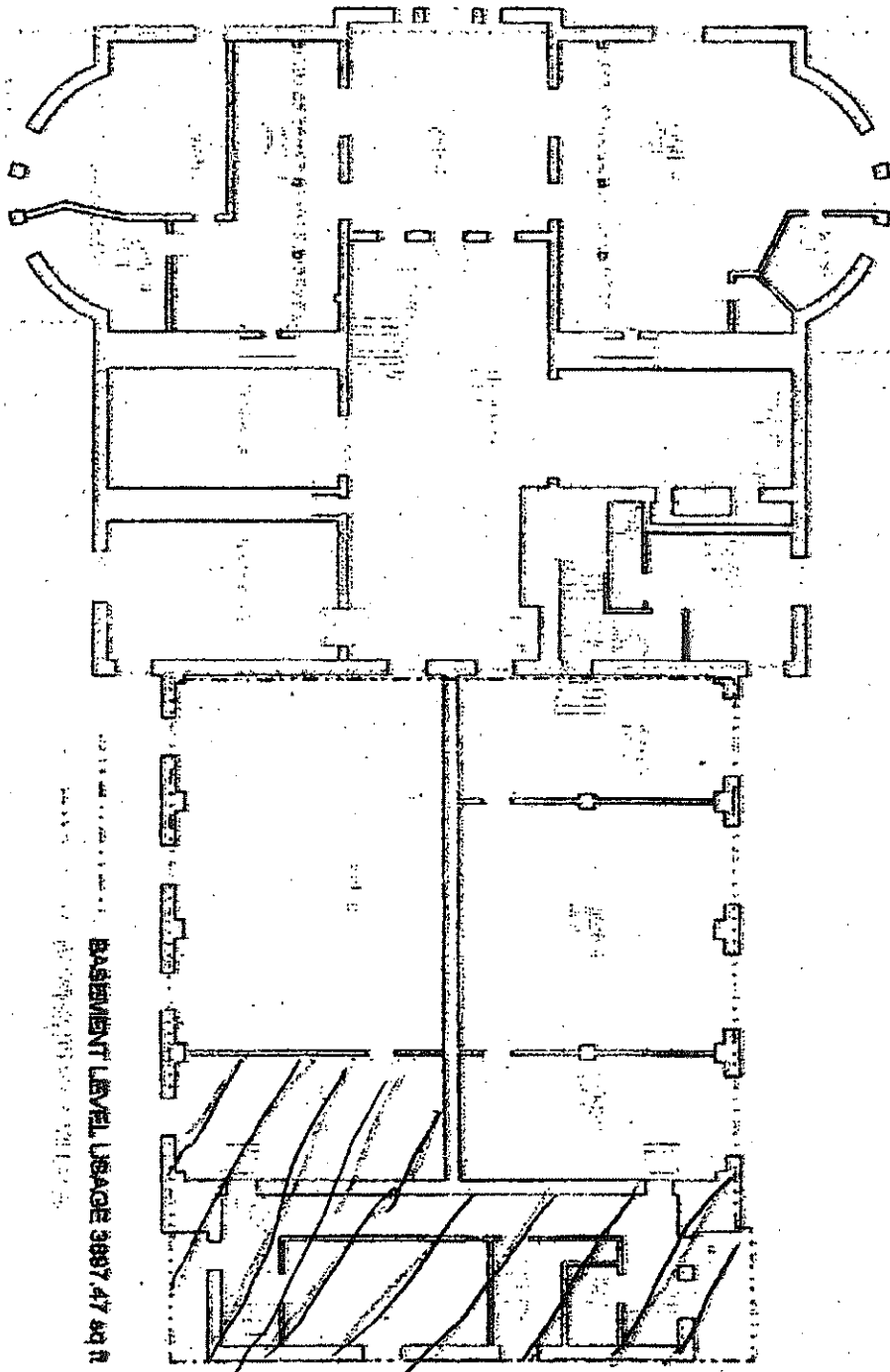
1st FLOOR LEVEL

THE THORNE PROJECT

OCT 17, 2008

VER 1.01 A1

EXHIBIT A (cont.d)



BASMENT LEVEL, USAGE 3687.47 sq ft

PLAN "A" DRAFT

BASMENT LEVEL

THE THORNE PROJECT

OCT 17, 2008 VER 1.01 A2

Exhibit B - Landlord's Work

- Sprinkler system to the extent required by code
- ✱ Install Handicap Accessible Bathrooms on First Floor
- ✱ Renovate bathrooms in basement
- Bring electric systems up to code to service the areas intended to be used by the Tenant. Install electric meter to measure Tenant's electrical usage with respect to the Premises.
- Install central air conditioning system with respect to the common areas and the Premises
- Upgrade heating system sufficient for the intended use of the Tenant.
- ✱ Install water meter to measure Tenant's water use at the Premises
- Repair roof and chimneys to protect the Premises
- Emergency exits and emergency lighting
- Comply with all handicap requirements for the common areas and the Premises.
- Repair of building exterior as necessary to protect the Premises and common areas, including water sealing, pointing and structural repair
- Secure building (no broken windows or entry points)
- Make all renovations/repairs required in order for the Tenant to be able to proceed with the Tenant Work and to obtain a certificate of occupancy with respect to the common areas and the Premises.

All of the foregoing shall comply with all Laws (as defined in the Lease).

Exhibit C – Initial Tenant Work

Auditorium

- Plexiglass installation in windows
- Installation of stage and ambiance lighting
- Installation of sound system
- Acoustical work including installation of curtains and support fixtures, and tiles
- Construction of rear corner structures for acoustics as well as future seating expansion
- Installation of doors between bar and theatre
- Clean/dye/fireproof stage curtain
- Movie screen installation (and projector in second floor closet)
- Window installation in wall between bar and theatre

Bar

- Flooring
- Construction of bar
- Installation of plumbing and related fixtures

Café (Separate Room from Bar)

- Flooring
- Construction of shelving/pantry space
- Installation of plumbing and related fixtures

Office

- Flooring
- Construction of storage closet space

Classrooms

- Acoustical work including installation of tiles
- Carpet installation
- Construction of temporary walls with doors

'Vestibule'

- Construction of storage closets
- Construction of patron coat closets

Basement space

- Renovation into dressing/green rooms including nonstructural wall destruction
- Resurfacing of walls and floors

GENERAL

- Installation of security system including changing locks and erecting gates
- Painting of all rented space
- Woodwork restoration, including ticket booth, façade, doors and mouldings

- **Installation of outdoor lighting**
- **Installation of ambiance lighting in rented space**
- **Installation of satellite service equipment**
- **Furnish all rented space**
- **Repair plaster and water damage where needed in rented space**