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Sep. 10. 2016 3:40PM

(FAX)

No. 188 / P. 2 P.002/016

P1M

STATE OF NEW YORK  
SUPREME COURT COUNTY OF PUTNAM

GARRISON UNION FREE SCHOOL DISTRICT,

Plaintiff,

-against-

CARY DOWNEY,

Defendant.

STIPULATION AND ORDER

Index No.: 251/2015

2016 SEP 29 AM 9:30

PUTNAM COUNTY  
CLERK

For a Judgment Pursuant to Article 30 and 63 of the Civil Practice Law and Rules of the State of New York.

THIS STIPULATION AND ORDER is made and entered into as of this 16th day of September, 2016, by and among the following (each, individually, a "Party" and, collectively, the "Parties"): Plaintiff, Garrison Union Free School District and Defendant Cary Downey as the owner of 322 Route 403, Garrison, New York, 10524.

R E C I T A L S

1. The Parties to this Agreement have asserted various claims as specifically described in the lawsuit brought by Garrison against Downey as the owner of property known as 322 Route 403, Garrison, New York, 10524 pending in the State of New York Supreme Court for Putnam County under Index Number 251/2015 (the "Action for a Declaratory Judgment").

2. The Parties have agreed to resolve the Action for a Declaratory Judgment in accordance with the terms of this Agreement.

3. At all times relevant herein, Plaintiff Garrison Union Free School District ("Plaintiff" or "School District"), was and remains a union free school district organized and existing pursuant to the *New York Education Law*, with a principal place of business located at 1100 New York 9D, Garrison, New York 10524.

4. Defendant Cary Downey ("Defendant") was and remains a natural person residing in the Town of Philipstown, County of Putnam, State of New York at 322 Route 403, Garrison, New York 10524.

5. The School District owns real property located in the Town of Philipstown in the County of Putnam, commonly referred to as the "Garrison School Forest". The Garrison School

Forest is 181 wooded acres located in the center of the rough square formed by Route 9D on the west, Snake Hill Road on the north, Route 9 on the east, and Route 403 on the south. The Garrison School Forest is intended to be used for educational purposes by children, teachers, families, and community members.

6. The Garrison School Forest contains multiple trails for use by children, teachers, families, and community members.

7. Access to the Garrison School Forest trails is solely by rights-of-way over private or partially private roads, including one such right-of-way at 322 Route 403.

8. In or about April, 1957, Frederick Osborn gave the School District a portion of the Garrison School Forest, including access to the School Forest through a one-half interest in an access road beginning at 322 Route 403.

9. The Indenture dated April 12, 1957 is annexed as Exhibit A.

10. The property was gifted to the School District to be a "forest and public recreation area" so that there "may be stimulated in such young people and children an interest in the conservation of natural resources and an awareness of the interdependence of man with the natural relationships of forests, water supply and the wildlife they support." See Exhibit A.

11. The 1957 Indenture also grants the District "the right to use the private road situated partly on the above-described premises and partly on the premises of Samuel Sloan Duryce for the purpose of ingress from and egress to the Cat Rock Road to which such private road extends." (Cat Rock Road and Route 403 is the same road and are used interchangeably).

12. At all times herein relevant since 1957, the School District has shared ownership of the access road off of Route 403 with the owner of 322 Route 403, currently Defendant Downey, and that road provides access to the designated parking area for the Orange Trail of the Garrison School Forest.

13. The School District and the owner of 322 Route 403 each own 12-feet from the centerline of the road, and both have shared access over the road from the common grantor - Frederick Osborn.

14. For more than twenty years, the School District community, including the general public, enjoyed access, both vehicular and pedestrian, to the Garrison School Forest via the road at 322 Route 403 without interruption and without interference, including unobstructed use of the access right-of-way from Route 403 to the designated parking area.

15. The shared boundary and the access road location and ownership are depicted in the January 22, 2013 survey attached hereto as Exhibit "B".

16. Defendant Downey has installed a stone pillar and a gate on both sides of the entrance to the subject road at 322 Route 403.

17. One stone pillar/gate is located on the property owned by the District.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. RECITALS.

The recitals to this Agreement are true and correct, and are incorporated into and made a substantive part of this Agreement.

2. OBLIGATIONS.

A. Settlement. The parties agree as follows:

(a) A justiciable controversy currently exists concerning the rights of the parties, including the public through the deed to the Plaintiff, to use the access road at 322 Route 403 into the Garrison School Forrest and the placement of the stone pillar/gate on District property.

(b) At all times relevant herein, the School District owns the Garrison School Forest and twelve-feet from the centerline of the private road at 322 Route 403 as shown in the survey dated January 22, 2013 annexed hereto as Exhibit "B".

(c) At all times relevant herein the School District, and its employees, agents, invitees and the public through the School District, has the right to access the "Dirt Parking Area" through the road at 322 Route 403 as shown in Exhibit "B" via vehicular or pedestrian traffic and the owner of 322 Route 403 does not have the right to restrict the School District's access and the public's access to the Garrison School Forest from the access road on 322 Route 403 to the Dirt Parking Area shown in Exhibit "B".

(d) The 1957 Indenture, annexed hereto as Exhibit A, provides that "No roads shall be built on the premises and no automobile or other motor vehicles except such as are necessary for fire protection or other forestry purposes shall be used or permitted on the premises\*\*\*."

(e) The Dirt Parking Area's sole purpose has been since it was created more than 20 years ago has been to park vehicles accessing the Garrison School Forrest from Route 403 along the shared access road.

(f) Notwithstanding the language of the 1957 Indenture relating to possible restrictions on the use of said road, and based on the usage of the road since 1957, the parties agree that the intent of the reference to any restriction on building new roads and restricting vehicular traffic to forestry or emergency vehicles applies to the area within the Garrison School Forest, and does not apply to or relate to the access road leading from Cat Rock Road and/or Route 403 to the Dirt Parking Area which was present at all times relevant as shown in Exhibit B.

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(g) Moreover, Defendant's placement of a pillar and gate on or across the access area shall not be used to restrict access by the public and the District to the School Forrest and the District consents to allow the pillar and gate to be located on its property as long as they are not used to restrict or prevent access to the Forest.

(h) The District reserves all rights to have the pillar on its property and gate removed from District property if Defendant or the successor in interest to the property shall not abide by the terms of this settlement agreement and Order.

The parties agree to the entry of an Order pursuant to *CPLR* Article 30 and *CPLR*

Article 63:

- (a) Declaring that Plaintiff's access to the Garrison School Forest via the road at 322 Route 403, is unrestricted and both pedestrian and vehicular traffic is permitted on the road up to the designated parking area and as identified in Exhibit "B" under the terms of the 1957 Indenture as modified and clarified by the parties herein; and
- (b) Declaring that the public's access to the Garrison School Forest via the road at 322 Route 403, either directly or through the rights of the Plaintiff, is unrestricted and both pedestrian and vehicular traffic is permitted on the road up to the designated parking area as identified in Exhibit "B"; and
- (c) Declaring that the Stone Pillar and gate on Plaintiff's property are owned in all respects by Plaintiff and shall remain on said property so long as they are not used to restrict or interfere with pedestrian and vehicular traffic to affect access to the parking area in Exhibit B.

B. Stipulation of Dismissal. Within five (5) days after so ordering by the Court, attorneys for Plaintiff shall file the Stipulation of Settlement for the lawsuit, in the form attached hereto as Exhibit "C".

C. Costs and Expenses. Each Party will bear its own costs and expenses in connection with the Lawsuits and this Agreement.

3. GENERAL PROVISIONS.

3.1. Modification. No modification of any provision of this Agreement shall be effective unless the same is in writing and signed by all parties, and then such modification shall be effective only in the specific instance or for the purpose for which given.

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3.2. Applicable Law. The performance, construction and enforcement of this Agreement and the documents executed in connection with this Agreement shall be governed by the laws of the State of New York.

3.3. Binding Effect. This Agreement shall have no effect unless and until it has been executed by all parties hereto. The agreement is binding on the parties and successors and interests and assigns and this order shall be deemed to run with the land owned by both parties hereto.

3.4. Filing: This Agreement and Order shall be filed in public records to provide notice to the public that the parties and their successors are bound by the terms herein.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this Agreement under seal as of the day and year first written above.

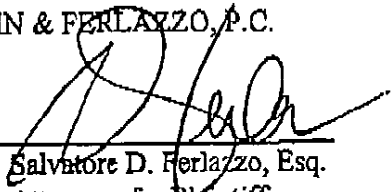
Dated: September 16, 2016

Dated: September 18, 2016

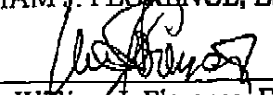
GIRVIN & FERLAZZO, P.C.

LAW OFFICES OF  
WILLIAM J. FLORENCE, ESQ.

By: \_\_\_\_\_

  
Salvatore D. Ferlazzo, Esq.  
Attorneys for Plaintiff  
Garrison Union Free School District  
20 Corporate Woods Blvd.  
Albany, New York 12211

By: \_\_\_\_\_

  
William J. Florence, Esq.  
Attorney for Defendant  
Cary Downey  
One Park Place, Suite 300  
Peckskill, New York 10566

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**VERIFICATION**

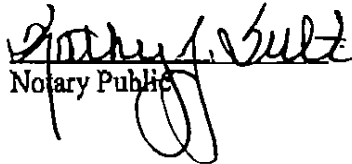
STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF Putnam )

Raymond O'Rourke, being duly sworn hereby deposes and says that I am the Superintendent on behalf of Garrison Union Free School District, Plaintiff in the within action, that your deponent has read the foregoing Stipulation and Order and knows the contents thereof, that the same is true to deponent's knowledge.

GARRISON UNION FREE  
SCHOOL DISTRICT,

By:   
Raymond O'Rourke

Sworn to before me this  
20 day of September, 2016

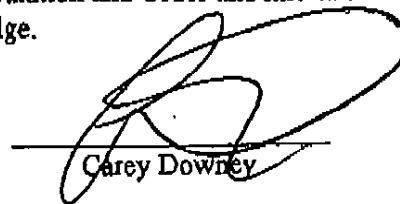
  
Notary Public

KATHY J. SULT  
Notary Public, State of New York  
No. 01SU4734528  
Qualified in Orange County  
Commission Expires Jan. 31, 2018

**VERIFICATION**

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

Carey Downey, being duly sworn hereby deposes and says that I am the Defendant in the within action, that your deponent has read the foregoing Stipulation and Order and knows the contents thereof, that the same is true to deponent's knowledge.

  
Carey Downey

Sworn to before me this  
11 day of September, 2016

  
Notary Public

WILLIAM J. FLORENCE, JR.  
Notary Public, State of New York  
No. 1256235  
Qualified in Westchester County  
Commission Expires November 30, 2017

SO ORDERED:

  
HON. PAUL I. MARX, J.S.C.

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THIS INDENTURE, made the 14th day of April, 1957, between FREDERICK OSBORN, residing at Garrison, Town of Philipstown, County of Putnam and State of New York (his said place of residence having no street number), party of the first part, and CONSOLIDATED UNION FREE SCHOOL DISTRICT NO. 4 OF THE TOWNS OF PHILIPSTOWN AND PUTNAM VALLEY, PUTNAM COUNTY, NEW YORK, a municipal corporation of the State of New York, having its principal office at Garrison (no street number), Town of Philipstown, County of Putnam and State of New York, party of the second part,

W I T N E S S E T H :

WHEREAS, by deed dated the 20th day of December, 1956, and recorded in the Clerk's Office of the County of Putnam on the 21st day of December, 1956 in Book No. 464 of Deeds, page 69, the party of the first part conveyed to the party of the second part certain real property at Garrison, in the Town of Philipstown, County of Putnam and State of New York for the uses and purposes and upon the estates in said deed set forth; and

WHEREAS, the party of the first part desires to set apart certain additional real property at Garrison, in the Town of Philipstown, County of Putnam and State of New York, for use in conjunction with the premises heretofore conveyed by the party of the first part to the party of the second part as aforesaid as a forest and public recreation area in the hope that by the development of the recreational aspects of such combined property by the party of the second part and its successors hereinafter mentioned with special consideration given to the interests of the young people of the community, the children attending the local schools and such children's and youth organizations as the Boy Scouts and the Girl Scouts of America,





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angle in said wall; thence North 27 degrees 29 minutes East 335 feet to an angle in said wall; thence North 27 degrees 03 minutes East 340 feet to an angle in said wall; thence North 25 degrees 12 minutes East 265 feet to an angle in said wall; thence North 26 degrees 59 minutes East 355 feet to a twin Red Oak tree standing at the junction of two stone walls; thence South 62 degrees 17 minutes East 192 feet to the junction of two stone walls; thence along the line of lands now or formerly of A. D. Newman, North 7 degrees 26 minutes West 373 feet to the junction of two stone walls in the line of lands now or formerly of said Newman; thence along the line of lands now or formerly of Mrs. Young, being along a stone wall, the following courses and distances: North 59 degrees 43 minutes West 337.3 feet; North 59 degrees 06 minutes West 689 feet and North 58 degrees 10 minutes West 547 feet to a cross cut on a rock; running thence along land of Samuel Sloan Duryee North 20 degrees 50 minutes West 674.23 feet to a cross cut on a rock and North 64 degrees 04 minutes West 77 feet to a corner in a stone wall at the northeast corner of Lot No. 7 on map of lands owned by the Estate of Samuel Sloan, deceased, Garrison, Putnam Co., New York, made by Blake & Woodhull, Civil Engineers, Newburgh, N.Y., Feb. 1914; thence along the east line of Lot No. 7 on said map, being along a stone wall, South 23 degrees 27 minutes West 117 feet to an angle in said wall; thence South 0 degrees 21 minutes East 242 feet to an angle in said wall; thence South 20 degrees 55 minutes West 160 feet to an angle in said wall; thence South 38 degrees 34 minutes West 67 feet to an angle in said wall; thence South 16 degrees 19 minutes West 72 feet to a stake at the southeast corner of said Lot No. 7; thence along the north line of Lot No. 5 on said map, being along other lands of Samuel Sloan Duryee North 88 degrees 13 minutes East 41 feet to a stake at the northeast corner of said Lot No. 5; running thence along other land of Samuel Sloan Duryee South 29 degrees 21 minutes East 915.32 feet to an oak tree and South 26 degrees 22 minutes East 253.85 feet to the center line of a private road; running thence generally in a southwesterly direction still along said other land of Samuel Sloan Duryee and along the center line of said private road as it winds and turns to the center line of the Oak Hook Road; running thence along the center line of the Oak Hook Road, South 33 degrees 53 minutes East to the point of place of beginning.

TOWNSMAN with the right to use the private road situated partly on the above described premises and partly on premises of Samuel Sloan Duryee for the purpose of ingress, from and egress to the Oak Hook Road to which such private road extends.

SUBJECT to the right of Samuel Sloan Duryee, his heirs and assigns, in favor of the premises of said Samuel Sloan Duryee lying to the north and to the west of the center line of the private road situated partly on the above described premises and partly on premises of said Samuel Sloan Duryee, to use said private road as it now exists and that portion of the above described premises lying to the south and to the east of the center line of said private road within a line parallel to and

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at all points distant twelve (12) feet from such center line, for the purpose of ingress from and egress to the Cat Hook Road to which such private road extends, and SUBJECT ALSO to the right of said Samuel Sloan Duryee, his heirs and assigns, to enter upon the above described premises for the purpose of widening the said existing private road and improving the same for its entire permitted width and for the doing of everything necessary, useful or convenient for the enjoyment of the rights of said Samuel Sloan Duryee, his heirs and assigns, herein mentioned and subject also to the right of Samuel Sloan Duryee, his heirs and assigns, to convey to the owners from time to time of any portion or portions of the premises now owned by said Samuel Sloan Duryee and lying to the north and to the west of the center line of said private road, the right to use such private road as it now exists or as the same may have been widened and improved as hereinabove provided, as a roadway or driveway of Samuel Sloan Duryee or portions of said premises now with the rights, hereinabove mentioned, for the widening and improvement of said private road. The premises of said Samuel Sloan Duryee in favor of which the aforesaid rights have been reserved, and subject to which rights this conveyance is made are:

1. The premises conveyed to Samuel Sloan Duryee by Hanson B. Sloan and Margaret M. Sloan, his wife, by deed dated October 24, 1946 and recorded in the Clerk's Office of the County of Putnam on October 29, 1946 in Book 322 of Deeds, page 305, except such portion thereof as was conveyed to Frederick Osborn by deed dated April 11, 1957.
2. The premises conveyed to Joseph E. Duryee by William Church Osborn and Alice D. Osborn, his wife, by deed dated May 21, 1919 and recorded in the Clerk's Office of the County of Putnam on June 15, 1919 in Book 101 of Deeds, page 304.
3. The premises shown and designated as Lot No. 5 on Map of Lands owned by the estate of Samuel Sloan, deceased, Garrison, Putnam Co., New York, made by Blake & Woodhull, Civil Engineers, Newburgh, N.Y., Feb. 1914.
4. The premises conveyed to Samuel Sloan Duryee by Frederick Osborn by deed dated July 25, 1956, and recorded in the Clerk's Office of the County of Putnam on August 7, 1956, in Book No. 478 of Deeds, page 363, except such portion thereof as was conveyed by said Samuel Sloan Duryee to Walker O. Cain by deed dated July 30, 1956.
5. The premises conveyed to Samuel Sloan Duryee by Wm. Church Osborn and Alice D. Osborn, by deed dated October 26, 1940 and recorded in the Clerk's Office of the County of Putnam on November 9, 1940 in Book No. 251 of Deeds, page 339, except such portion thereof as was conveyed by said Samuel Sloan Duryee to Walker O. Cain by deed dated July 30, 1956.
6. The premises conveyed to Samuel Sloan Duryee by William H. Osborn by deed dated June 24, 1952.

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7. The premises conveyed to Samuel S. Duryea by Frederick Osborn and Nancy Foster, as surviving Trustees, etc., by deed dated December 13, 1954 and recorded in the Clerk's Office of the County of Putnam on January 10, 1955 in Book No. 455 of Deeds, page 176, except such portion thereof as was conveyed by said Samuel Sloan Duryea to the party of the first part by deed dated July 10, 1956 and recorded in the Clerk's Office of the County of Putnam on September 14, 1956 in Book No. 480 of Deeds, page 199.

PARCEL II.

BEGINNING at a point on the westerly line of Parcel I of lands conveyed by the party of the first part to the party of the second part by deed dated the 20th day of December, 1956 and recorded in the Clerk's Office of the County of Putnam on the 21st day of December, 1956, in Book No. 484 of Deeds, page 69, said point marking the apex of a triangular piece of land belonging to the party of the first part lying between Parcel I and Parcels II and III described in said deed of December 20, 1956; running thence along the westerly line of Parcel I described in said deed of December 20, 1956, South 5 degrees 08 minutes East 56.59 feet and South 5 degrees 13 minutes East 730.01 feet to the southwest corner of the premises hereby conveyed; running thence along land now or formerly of Fred Turner North 66 degrees 33 minutes West 386.27 feet to a point in the easterly line of Parcel III described in said deed of December 20, 1956; running thence along the easterly line of said Parcel III and along the easterly line of Parcel II described in said deed of December 20, 1956, North 24 degrees 13 minutes East 690.00 feet to the point or place of beginning.

TOGETHER with all the right, title and interest of the party of the first part in and to any and all strips and gores of land abutting the easterly and westerly boundaries of the above described premises.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

The said premises shall be used by the party of the second part and its successors hereinafter mentioned in conjunction with the premises heretofore conveyed by the party of the first part to the party of the second part as aforesaid for the purposes of forestry and as a public recreation area and for no other purposes, subject to such rules and regulations for their proper use as may from time to time be adopted by majority vote of the board of education of the party of the second part.

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... or by majority vote of the governing body of such successors to the party of the second part. Such board of education or governing body may, however, appoint an administrative committee to operate and manage the combined premises, lay down rules and regulations for their proper use and receive and spend monies for their care, all under the authority of the party of the second part or its successors herein mentioned. It is suggested that such committee be known as The Garrison Forest Committee and that it comprise five or seven members, two to be ex officio the principal of the school at Garrison and the Garrison Postmaster and the others to be selected from among the residents of the area of the present community of Garrison for three or five-year terms so arranged that one such term shall expire each year.

No permanent buildings shall be erected on any of the land hereby conveyed but nothing herein contained shall be deemed to prohibit the erection of open lean-tos or open shelters. No roads shall be built on the premises and no automobiles or other motor vehicles except such as are necessary for fire protection or other forestry purposes shall be used or permitted on the premises, but nothing herein contained shall be deemed to limit or otherwise affect the rights of Samuel Bloom Duryee, his heirs and assigns, hereinabove mentioned. Except where necessary for the widening and improvement of the roadway or driveway by Samuel Bloom Duryee, his heirs and assigns, as hereinabove mentioned or for the construction of trails for walking, riding or skiing or for clearing incident to the use of the premises for recreational purposes, trees shall not be cut down except in a normal forestry operation on a sustained yield basis. It is hoped that the maintenance of the wildlife of the area will be taken into account in all aspects of the development of the forest and of the recreational activities on the premises.

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If and when there is established an incorporated village of Garrison or an incorporated village embracing the present community known as Garrison or Garrison-on-Hudson, the party of the second part may, by majority vote of its board of education, convey the combined premises to such incorporated village, subject to all of the provisions herein contained relating to the use of the premises, to be held by such incorporated village for so long as the premises shall be used by it for the purposes and in the manner herein set forth. If the party of the second part shall be merged into or consolidated with any other school district or districts, then upon such merger or consolidation, if the incorporated village hereinbefore mentioned shall have been established or upon the establishment of such incorporated village after such merger or consolidation, title to the premises shall vest in and be given over to such incorporated village, subject to all of the provisions herein contained relating to the use of the premises, to be held by such incorporated village for so long as the premises shall be used by it for the purposes and in the manner herein set forth.

If at any time the party of the second part or its successor by merger or consolidation shall cease to use the premises for the purposes herein directed or shall convert the same to any other use, and if, at the time of such cessation or conversion, there shall have been established the incorporated village mentioned in the preceding paragraph hereof, title to the premises shall vest in and be given over to such incorporated village, subject to all of the provisions herein contained relating to the use of the premises, to be held by such incorporated village for so long as the premises shall be used by it for the purposes and in the manner herein set forth. If such incorporated village shall not be established, the premises shall be held by the party of the second part or its successor by merger or consolidation for the purposes and in the manner herein set forth.

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having acquired the premises as hereinabove provided, shall cease to use the premises for the purposes herein directed or shall convert the same to any other use, title to the premises shall vest in and be given over to The Hudson River Conservation Society, subject to all of the provisions herein contained relating to the use of the premises, to be held by it for so long as the premises shall be used by it for the purposes and in the manner herein set forth, and if the said The Hudson River Conservation Society shall not then be in existence or if said The Hudson River Conservation Society, having acquired the premises as hereinabove provided, shall cease to use the premises for the purposes herein directed or shall convert the same to any other use, title to the premises shall vest in and be given over to The New York Community Trust, absolutely and forever, in the hope that it will put the premises to uses consistent with the principles prompting this gift.

At any time after December 31, 2026, the premises may be converted to other uses provided that any Court of appropriate jurisdiction in the County of Putnam, State of New York, shall approve such other uses as being in the public interest.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part and its successors hereinabove mentioned for the purposes, in the manner and upon the estates hereinabove set forth.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

Frederick Baborn

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(FAX)

No. 1887 P. 16 P.016/016

STATE OF NEW YORK  
SUPREME COURT COUNTY OF PUTNAM

---

GARRISON UNION FREE SCHOOL DISTRICT,

Plaintiff,

-against-

Index No.: 251/2015

CARY DOWNEY,

Defendant.

For a Judgment Pursuant to Article 30 and 63 of the Civil  
Practice Law and Rules of the State of New York.

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STIPULATION OF DISCONTINUANCE

It is hereby stipulated and agreed, by and between the undersigned, the attorneys of record for all the parties to this Stipulation, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, all of Plaintiff's claims in the above-entitled action be, and the same hereby are discontinued, with prejudice, and without costs or attorneys' fees to any party as against the other. This Stipulation may be filed without further notice with the Clerk of the Court.

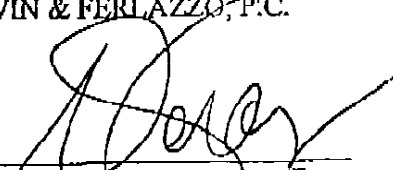
Dated: September 16, 2016

Dated: September 18, 2016

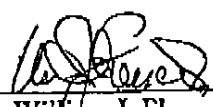
GIRVIN & FERLAZZO, P.C.

LAW OFFICES OF  
WILLIAM J. FLORENCE, ESQ.

By:

  
Salvatore D. Ferlazzo, Esq.  
Attorneys for Plaintiff  
Garrison Union Free School District  
20 Corporate Woods Blvd.  
Albany, New York 12211

By:

  
William J. Florence, Esq.  
Attorney for Defendant  
Cary Downey  
One Park Place, Suite 300  
Peekskill, New York 10566