

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
POUGHKEEPSIE REGIONAL OFFICE

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In the Matter of

Assurance No. 21-033

**Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of**

FALKIRK ESTATE  
COUNTRY CLUB, INC.

Respondent,

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law § 63(12) and General Business Law (“GBL”) §§ 349 and 350 into the COVID-19 pandemic business practices of Falkirk Estate Country Club, Inc. (“Respondent” or “Falkirk”). Initially, in 2020 the OAG commenced an investigation after receiving consumer complaints regarding the business practices of Respondent that included its alleged refusal to refund certain consumer deposits during the COVID-19 pandemic, and Respondent’s alleged refusal to reschedule weddings despite governmental restrictions on event capacity which made its performance under the contract impossible on the contract dates.

This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondent, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries, etc. (collectively, the “Parties”).

## OAG's FINDINGS

1. Wayne Corts is an owner and officer of Falkirk Estate Country Club, Inc. located at 206 Smith Clove Road, Central Valley, New York 10917.

2. Falkirk maintains a website at <https://www.falkirkestate.com/>.

3. Falkirk offers its venue for weddings, showers, bar/bat mitzvahs, golf outings and corporate events. Its primary business is holding wedding receptions.

4. Effective June 26, 2020, through March 15, 2021, New York's Governor Andrew Cuomo issued Executive Order 202.45 which ordered that all gatherings, inclusive of weddings, be limited to fifty (50) or fewer guests to help stop the spread of the novel coronavirus (the "Gathering Order"). The Gathering Order was extended several more times thereafter and impacted many events scheduled during that time period.

5. This limitation on gatherings was in effect on the following dates relevant to this Assurance of Discontinuance, as discussed *infra*: April 4, 2020, July 18, 2020, September 26, 2020, October 4, 2020 and November 7, 2020.

6. Nicole Talamini and Matthew Galvin (the "Talaminis"), provided Falkirk with a \$12,500 deposit (the "Talamini Deposit"), pursuant to a wedding contract (the "Talamini Contract") dated August 31, 2019. As stated in the Talamini Contract, the Talamini wedding reception was scheduled for November 7, 2020, with 150 guests in attendance.

7. Jhunaissy Hidalgo and Ethan Goldman (the "Goldmans"), provided Falkirk with a \$10,000 deposit (the "Goldman Deposit"), pursuant to a wedding contract dated June 19, 2019 (the "Goldman Contract"). As stated in the Goldman Contract, the Goldman wedding reception was scheduled for October 4, 2020, with 125 guests in attendance.

8. Sarina Vasta and Dane Perez (the "Vastas"), provided Falkirk with a \$15,000 deposit

(the “Vasta Deposit”) pursuant to a wedding contract dated August 14, 2019 (the “Vasta Contract”). As stated in the Vasta Contract, the Vasta wedding reception was scheduled for July 18, 2020, with 150 guests in attendance.

9. Elizabeth Smith and Frank Vega (the “Vegas”), provided Falkirk with a \$12,500.00 deposit (the “Smith Deposit”) pursuant to a wedding contract dated January 25, 2019 (the “Smith Contract”). As stated in the Smith Contract, the Smith wedding reception was scheduled for September 26, 2020 with 150 guests in attendance.

10. Michael and Janette Sammon (the “Sammons”) provided Falkirk with a \$15,000 deposit pursuant to a letter Agreement dated May 10, 2019 (the “Sammon Agreement”) for the wedding reception of Melanie Dilascio and Brian Constanza (the “Constanzas”). As stated in the Sammon Agreement, the Constanza wedding reception was scheduled for April 4, 2020 with 150 guests in attendance.

11. Initially, on August 30, 2020 Ethan Goldman filed a consumer complaint with the OAG in which, under penalty of perjury, he set forth the following:

Due to the COVID-19 Pandemic and the restrictions put forth by the Governor of the State of New York, the wedding that I have planned for October 4, 2020 with my fiancé cannot take place. I have notified the subject, Falkirk Estate and Country Club, via telephone and email, and they have refused to refund our deposit of \$10,000. Furthermore, we had requested that our event be postponed to a later time when the health concerns were no longer an issue, and the owner of the venue, Wanye (sic) Courts, relayed to us that this was not an option because he was expecting to be out of business. Please assist me in obtaining a refund for our deposit for services that have not and cannot be rendered. Thank you.

12. On October 16, 2020, Thomas Talamini filed a consumer complaint with the OAG in which, also under penalty of perjury, he set forth the following:

My daughter Nicole Talamini and her fiancé Matthew Galvin met with Karen Corso on Sunday August 30<sup>th</sup> to discuss their upcoming wedding reception. They were informed that at the present time they are only allowed to have 50 guests

(sic). The contract called for at least 150 guests. They came and spoke with me and said they no longer want to have the reception at Falkirk, because they did not want to be limited to that number. My daughter sent an email on Monday evening, September 14<sup>th</sup> that they were cancelling the reception. I called Karen and offered my sincere apologies but offered Falkirk to keep the initial \$5,000 deposit for their troubles, but please reimburse the \$7,500 I just sent them in July 2020. She said the owner said he cannot now, **because he needs these funds to operate his business. I did not know that these funds for a specific date are permissible to be used for other business operating expenses.** These funds are meant to be for that specific date and event. I thought that I was being more than reasonable allowing them to keep \$5,000. Now since they refused my more than generous offer and forced me to retain an attorney, I am now requesting that the full \$12,500 be returned. (emphasis supplied).

13. After receiving these complaints from Goldman and Talamini, the OAG's consumer frauds representative contacted Falkirk and attempted to mediate these two disputes. In response, Falkirk through its principal, Wayne Corts, sent a letter dated November 13, 2020, which stated, in pertinent part "we are protecting our future 70 brides who have rescheduled... We are just not in a cash flow position like many other businesses to fold." Although the verbiage of this correspondence was confusing, it appears that Mr. Corts was indicating that the money paid by consumers for future weddings was being used to fund ongoing operations, and not being preserved to fund the specific event for which they were earmarked, as would be the reasonable expectation of a consumer making such a deposit.

14. Thereafter, on January 19, 2021, the OAG sent a letter to Falkirk, seeking an equitable resolution of the complaints filed by the Goldmans and the Talaminis, which stated in pertinent part:

In finding an equitable resolution to this and other similar types of disputes, the NYAG is supportive of venues such as Falkirk first offering a credit or replacement event of comparable value when addressing event postponements, which Falkirk appears to have already provided to the Talaminis, although not the Goldmans. However, when a credit or replacement event is not an option and refund of deposit money is sought by a consumer having had no services performed, or performance would truly be unfeasible or illegal, rather than simply inconvenient or more costly, under these circumstances a refund of deposit money to the consumer seems proper, just and

equitable. To otherwise retain a money deposit where no services have been performed would be unconscionable. Certainly any event that is not being rescheduled as requested by the consumer should result in an immediate refund of their deposit.

Under the facts of this dispute, the Talaminis have rejected Falkirk's offer of a credit or replacement event and instead have opted for a full refund of the Talamini Deposit. The Goldmans also elect, in the face of being told they cannot reschedule, for a return of their Deposit. Falkirk's failure under these circumstances to provide a refund of the Deposits is improper, for the reasons provided in the preceding paragraphs, and can be challenged as a violation of a New York's consumer protection law or as a breach of contract under common law. In balancing the equities, however, consideration should be given to whether Falkirk has indeed incurred expenses in reliance upon the Contracts and the Deposits that was placed against the Contracts. Therefore, expenses that are actual, reasonable and legitimate will be considered by the NYAG and credited to the Goldmans. In the event Falkirk refuses to return the balance of the Deposits, such refusal would constitute unjust enrichment and will be illegal under the doctrine of unconscionability or adhesion.

15. In response, on March 15, 2021, the OAG received correspondence from counsel for Falkirk, Ben Ostrer, in which Mr. Ostrer indicated: "...based upon relief that is being provided through the stimulus package it appears that Falkirk will be able to offer a satisfactory refund or other adjustment to each of these consumers...." Thereafter, on or about June 7, 2021, Falkirk made payment in full to both the Talaminis and the Goldmans. At the time of this payment, however, Falkirk declined to sign an Assurance of Discontinuance with the OAG.\* The OAG closed the matter as both consumers had been paid in full.

16. On September 16, 2021, nearly three months after Falkirk had refunded the deposits to the Talaminis and Goldmans, Elizabeth Smith filed a consumer complaint with the OAG in which, under penalty of perjury, she set forth the following:

[Seeking] refund of deposits placed. **Wedding cancelled by venue** due to covid (sic) pandemic. †

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\* According to information provided by Ethan Goldman, and while the OAG was negotiating the terms of the AOD and final payment pursuant thereto with counsel for Falkirk, Wayne Corts contacted him directly and offered to settle the matter by refunding \$7,000 of their \$10,000 deposit. Thomas Talamini informed the office of the OAG that a similar offer was made to him. After consultation with counsel Ben Ostrer, the original agreement between counsel was honored and both consumers refunded their deposits in full.

† Ms. Smith has further informed the OAG that she was only offered one possible date to reschedule her event, September 11, 2021, which is the anniversary of the death of her fiancé's father, and not a date the couple would ever consider as a wedding anniversary or to have a celebration.

17. One month later, on October 22, 2021, Frank Vasta filed a consumer complaint with the OAG in which he set forth, under penalty of perjury, the following:

My daughter's wedding was scheduled for 7/18/20. Payments were made to Falkirk Estates in the amount of \$6,000 and \$9,000 in August 2019 and January 2020, respectively. The wedding was cancelled on 05/26/20 due to Covid 19 (sic) and restrictions. Falkirk said that they intended to reimburse us but has not made any attempt and **seems to be acting in bad faith** so I believe we need help at this time. **Absolutely no services has (sic) been provided to us.**<sup>‡</sup> (emphasis supplied).

18. In sum, by October 2021, the OAG had received multiple consumer complaints alleging both that refunds of deposits were not offered, and that Falkirk's principal and agents had represented that the deposited funds earmarked for specific weddings were being used to fund ongoing operations at Falkirk.

19. On November 4, 2021, the OAG issued a subpoena duces tecum seeking discovery regarding weddings and other events scheduled during the pandemic. The documents requested pursuant to the investigatory subpoena duces tecum were due by November 30, 2021. Falkirk's counsel, Ben Ostrer, contacted the OAG and sought a two-week extension of his time to respond, to which the OAG consented. Thereafter, on December 2 and 7, 2021, respectively, the OAG was provided with two spreadsheets, responsive to requests (1) and (3) on the subpoena duces tecum, to wit:

a spreadsheet containing all events scheduled, setting forth the number of guests contracted to attend said event, the names, street address, email information and phone numbers of all consumers who entered into contracts with Falkirk Estate and Country Club, Inc. for said events, and the amount of any deposits received by Falkirk and the status of said event, i.e. canceled or rescheduled; if rescheduled, please provide the date of said event and if held;

With regard to requests for refunds of deposits for events scheduled during the above-referenced time period, please provide information regarding all such requests in a spreadsheet containing the following information:

- the name and contact information for the consumer(s) requesting the refund,
- amount of deposit paid,

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<sup>‡</sup> Subsequent to filing the complaint with the OAG, Frank Vasta accepted \$9,000 to settle his dispute with Falkirk.

- date of event,
- date of refund request (whether in writing or otherwise),
- date of refund, if any,
- alternatively, if a refund was denied, with or without response, please provide justification for such denial...

20. Counsel for Falkirk indicated in three separate emails that additional documents would be forthcoming within one week; the last such correspondence was received on December 9, 2021. The additional time to respond to the subpoena expired on December 15, 2021.

21. On January 3, 2021, an additional consumer, Melanie Dilascio, contacted the OAG via email, and indicated the following:

My husband and I were set to have our wedding reception on April 4th, 2020 at the Falkirk County Club and Estate. Around March 16th, 2020, the governor imposed restrictions on events that made this wedding reception no longer possible. At this time we had already given the Falkirk Estate around \$15,000 in deposits.

We reached out to the Falkirk the day the strictest restrictions were imposed and asked them if we could be refunded the deposit. My husband, and my parents knew at this time that we did not want to reschedule, that it would be unsafe and too challenging to replan an event that we already spent a year planning. The Falkirk, unfortunately denied us a refund of our deposit.

After we were denied our first request for a cancellation and a refund, we decided that we would attempt to have the wedding reception on 7/2/2020 as we could not afford to lose such a large sum of money. The Falkirk agreed to this date. In this round of discussions, we asked the Falkirk that if this 7/2/2020 date was not able to happen due to Covid 19 restrictions, that we would then be refunded our \$15,000 deposit. We did our part in trying to reschedule, and thought it would only be right that if this second date got cancelled again we be refunded all funds.

7/2/2020 came and went, and we were still unable to have our wedding reception. Once again we pleaded with the Falkirk for a refund and we were denied.

After much stress and fighting with multiple vendors, including the Falkirk, we decided to get married on 8/8/2020. Due to the fact that the Falkirk would not refund our deposit, we had a 50 person lunch at the Falkirk Estate after the wedding ceremony. We spent around \$9,000 of our \$15,000 deposit on the Luncheon, and we were issued a credit to the Falkirk Estate for the remaining \$5,800 of our deposit. We were not happy with this outcome, and as we explained to the Falkirk, when would we ever use a \$5,800 credit to a reception hall. For us it has totaled a \$5,800 loss. The venue did tell us, that if wedding business picked back up, they would issue us a refund for the amount of the \$5,800 credit, the remaining portion of our deposit. We have reached out to the Falkirk and Wayne multiple times in hopes of any sort of refund or resolve for the credit amount, and they have not answered any of our inquiries.

22. Further communication with the Dilascio family, including Ms. Dilascio's mother,

Janette Sammon, revealed that Ms. Sammon spoke with “Karen,” a manager at Falkirk, who informed her in June 2020 that Falkirk did not have any money, but “when they start booking new weddings, they will be able to refund her the money.” The inference here again is that the incoming deposits for future events would be used to pay off existing or past expenses, rather than used to fund the weddings for which they were intended.

23. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of GBL §§ 349 and/or 350 based on the conduct described above during June 26, 2020 through March 15, 2021.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

**RELIEF**

24. General Injunction: Respondent shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to GBL §§ 349 and/or 350, and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph [23], *supra*, in addition to any other appropriate investigation, action, or proceeding.

- a. Acceptance of this Assurance by the OAG is not an approval or endorsement by OAG of any of Respondent’s policies practices or procedures, and the Respondent shall make no representation to the contrary.
- b. Respondent expressly agrees and acknowledges that a default in the performance of any obligation under this paragraph is a violation of the Assurance, and that the



OAG thereafter may commence the civil action or proceeding contemplated in paragraph [23], *supra*, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described above, pursuant to Executive Law § 63(15).

25. Monetary Relief

- a. *Monetary Relief Amount*: Respondent shall pay to the State of New York \$18,300.00 in restitution (the “Restitution Amount”). Payment of the Monetary Relief Amount shall be made in full upon execution of this Assurance. Attached to this Assurance as Exhibit 1 is a list provided by the Respondent of consumers who planned events at Falkirk between June 26, 2020 and May 19, 2021. If these consumers, or other consumers not listed in Exhibit 1, file *bona fide* claims with the OAG within 180 days following execution of this Assurance as outlined under paragraph 27, the Respondent shall pay additional restitution to such consumers;
- b. As part of this Assurance, the following consumers are owed the sums indicated (not including interest) as of February 17, 2022 :
- |                                                                                |          |
|--------------------------------------------------------------------------------|----------|
| Elizabeth Smith<br>477 Hopi Court<br>Suffern, New York 10901                   | \$12,500 |
| Michael and Janet Sammon<br>7E Lawrence Park Drive<br>Piermont, New York 10968 | \$ 5,800 |
- c. Payments shall be made by attorney check, corporate or certified check, or bank draft, which shall be made payable to the “State of New York”, and shall

reference Assurance No. 21-033; payments shall be addressed to the attention of AAG Cheryl J. Lee, State of New York, Office of the Attorney General, Poughkeepsie Regional Office, One Civic Center Plaza, Suite 401, Poughkeepsie, NY 12601.

## MISCELLANEOUS

### Subsequent Proceedings.

26. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 35, and agrees and acknowledges that in such event:
  - a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
  - b. the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
  - c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
  - d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).
27. Respondents shall pay restitution to any additional consumers who have filed *bona fide* claims for restitution with the Attorney General or file a *bona fide* claim within 180 days of execution of this Assurance of Discontinuance. A *bona fide* claim shall be defined as a claim having a basis in law and fact. The OAG agrees that settlements between Falkirk

and any of its customers not included in this AOD and which were entered into prior to the execution of this AOD, shall not be a basis for further restitution under the terms of this agreement, and any complaint by a customer who had previously settled with Falkirk shall not be a violation of the injunction set forth above, or a violation of this Assurance.

28. As to any claims for restitution from consumers against Respondents, such claims shall be in writing and the Attorney General shall forward them to Respondent, by first class mail addressed as follows: Wayne Corts, Falkirk Estates and Country Club, 206 Smith Clove Road, Central Valley, NY 10917. Falkirk shall have fifteen days from the date of notice from the Attorney General to provide a written response contesting the validity of the claim. Thereafter, the Attorney General shall, in her sole discretion, determine whether the claim should be pursued.
29. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

30. This Assurance is not intended for use by any third party in any other proceeding.
31. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

32. Nothing contained herein shall be construed as to deprive any person of any private right under the law.
33. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

34. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21-033, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to: Wayne Corts, Falkirk Estate Country Club, 206 Smith Clove Road, Central Valley, New York 10917, or in his/her absence, to the person holding the title of owner of said venue.

If to the OAG, to: AAG Cheryl J. Lee, One Civic Center Plaza, Suite 401, Poughkeepsie, NY 12601, or in his/her absence, to the person holding the title of AAGIC, Poughkeepsie Bureau.

Representations and Warranties:

35. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and their counsel and the OAG's own factual investigation as set forth in Findings, paragraphs (1)-(22) above. The

Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

36. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.
37. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that Respondent, by Wayne Corts, as the signatory to this AOD, is a duly authorized officer acting at the direction of the Board of Directors of Respondent.

General Principles:

38. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.
39. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.
40. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.
41. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

42. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.
43. Respondent acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.
44. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
45. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.
46. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.
47. The effective date of this Assurance shall be March 15, 2022.

LETITIA JAMES  
Attorney General of the State of New York  
28 Liberty Street  
New York, NY 10005

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

Cheryl J. Lee, Esq.  
Assistant Attorney General  
Poughkeepsie Regional Office

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

Joseph J. Haspel, Esq.  
Attorney for Respondent

FALKIRK ESTATE & COUNTRY CLUB, INC.

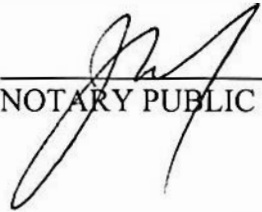
By: Wayne Corts

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

On this 8<sup>th</sup> day of March, 2022, Wayne Corts, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and acknowledged to me that he/she executed the within instrument by his/her signature on the instrument.

Sworn to before me this  
8<sup>th</sup> day of March, 2022

**JOSEPH J HASPEL**  
Notary Public, State of New York  
No. 02HA6056394  
Qualified in Orange County  
Commission Expires March 19, 20  

  
\_\_\_\_\_  
NOTARY PUBLIC

FALKIRK ESTATE COUNTRY CLUB

By: \_\_\_\_\_  
Wayne Corts