

TOWN BOARD MEETING

March 30, 2022

6:00 P.M.

PRESENT:

Councilpersons: Kevin Armstrong, Patty Wood, Leonard Govern, Luis Rodriguez-Betancourt, Supervisor Joseph Cetta, Attorney Carly Walas, and Town Clerk Ronda Williams

EXECUTIVE SESSION:

RESOLUTION #56

EXECUTIVE SESSION

A motion was made by Councilwoman Wood, seconded by Rodriguez-Betancourt to enter into executive session for the purpose of attorney/client discussion. All in favor, motion carried.

Entered 6:02 p.m.

Motion by Councilwoman Wood seconded by Rodriguez-Betancourt to close executive session. All in favor, motion carried.

Out 6:27 p.m.

As a result of executive session, the following resolution was offered. Councilwoman Wood made the motion, seconded by Govern.

RESOLUTION #57

APPROVAL OF A HOST COMMUNITY AGREEMENT

Resolution of the Town of Walton Approving a Host Community Agreement

WHEREAS, the Uplands Center Foundation (“Uplands”) operates a retreat center in the Town located at 2641 Dunk Hill Road, S.B.L. No. 210.-1-11 and 2410 Dunk Hill Road, S.B.L. No. 210.-1-13.1 (the “Project”); and

WHEREAS, the Uplands Center commenced litigation against the Town concerning the Town’s denial of the Uplands Center’s application for an exemption under Section 420-a of the Real Property Tax Law for the 2021-2022 tax year (the “Litigated Tax Year”); and

WHEREAS, to resolve the litigation, the Parties believe that their mutual interests will be served by the execution of a Host Community Agreement, which specifies their respective rights,

interests, and obligations relative to the operation and maintenance of the Project, subject to the conditions, if any, attached to any approvals that may be issued by the Town; and

WHEREAS, in connection with the Project, the Uplands Center will use certain of the Town's roads and rely upon Town services and the Uplands Center wishes to ensure the Town is properly reimbursed for its expenses in providing services; and

NOW, THEREFORE BE IT RESOLVED by the Town of Walton as follows:

1. The Town Board finds the Host Community Agreement between Uplands and the Town of Walton is hereby approved and Supervisor Cetta is directed to execute said Agreement on behalf of the Town.
2. This resolution shall be effective immediately.

PASSED AND ADOPTED BY THE TOWN OF WALTON on the 30th day of March, 2022.

ADOPTED: Vote

Supervisor Joseph Cetta:	Aye
Councilman Kevin Armstrong:	Aye
Councilman Leonard Govern :	Aye
Councilwoman Patricia Wood:	Aye
Councilman Luis Rodrigue-Betancourt:	Aye

Host Community Agreement
between the
Town of Walton
and
the Uplands Center Foundation

HOST COMMUNITY AGREEMENT

This HOST COMMUNITY AGREEMENT, is made as of the ____ day of March, 2022 by and between the Uplands Center Foundation, a not-for-profit corporation, organized and existing under the laws of the state of Delaware, a tax-exempt charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), and a private operating foundation within the meaning of Section 509 of the Code, and having its offices at 2641 Dunk Hill Road, Walton, New York 13856 and the Town of Walton, New York, a municipal corporation duly organized and existing under the laws of the State of New York, and having its offices at 129 North Street, Walton, New York 13856. The Uplands Center and the Town may sometimes be referred to herein, individually, as a “Party” and, collectively, as the “Parties.”

WHEREAS, the Uplands Center operates a retreat center in the Town located at 2641 Dunk Hill Road, S.B.L. No. 210.-1-11 and 2410 Dunk Hill Road, S.B.L. No. 210.-1-13.1 (the “Project”); and

WHEREAS, the Uplands Center commenced litigation against the Town concerning the Town’s denial of the Uplands Center’s application for an exemption under Section 420-a of the Real Property Tax Law for the 2021-2022 tax year (the “Litigated Tax Year”); and

WHEREAS, to resolve the litigation, the Parties believe that their mutual interests will be served by the execution of this Agreement, which specifies their respective rights, interests, and obligations relative to the operation and maintenance of the Project, subject to the conditions, if any, attached to any approvals that may be issued by the Town; and

WHEREAS, in connection with the Project, the Uplands Center will use certain of the Town’s roads and rely upon Town services and the Uplands Center wishes to ensure the Town is properly reimbursed for its expenses in providing services; and

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

DEFINITIONS

The terms of this Agreement shall have the meanings ascribed to them herein, for all purposes of this Agreement, unless the context clearly indicates some other meaning. Words in singular shall include the plural and words in the plural shall include the singular where the context so requires.

“**Agreement**” means this Host Community Agreement and any and all exhibits or schedules attached hereto.

“**Parties**” mean the Uplands Center and the Town.

“**Project**” means the real property and improvements owned by the Uplands Center in the Town.

“**State**” means the State of New York.

“**Town**” means the Town of Walton, New York.

“Uplands Center” means, collectively, the Uplands Center Foundation, 2641 Dunk Hill Road, LLC and 2410 Dunk Hill Road, LLC.

REPRESENTATIONS AND WARRANTIES

UPLANDS CENTER REPRESENTATIONS AND WARRANTIES.

The Uplands Center represents, warrants, and agrees as follows:

Existence and Good Standing. The Uplands Center Foundation is, and will continue to be throughout the term hereof, a validly existing not-for-profit corporation, organized and existing under the laws of the state of Delaware, a tax-exempt charitable organization described in Section 501(c)(3) of the Code, and a private operating foundation within the meaning of Section 509 of the Code. The Uplands Center is authorized to do business within the State of New York.

Ownership. As of the date of this Agreement, the Uplands Center has caused the transfer of ownership of certain real property located at 2641 Dunk Hill Road, S.B.L. No. 210.-1-11 and 2410 Dunk Hill Road, S.B.L. No. 210.-1-13.1 to the Uplands Center Foundation.

Approval, Authorization, and Enforcement. The Uplands Center has full power and authority to enter into this Agreement, and to fully perform all of its duties and obligations hereunder. The Uplands Center is duly authorized to execute and deliver this Agreement and perform all of its duties and obligations contained herein.

Signatory. The Uplands Center represents and warrants that its signatory, whose signature appears hereafter, is both duly authorized and empowered to execute and enter into this Agreement on behalf of the Uplands Center.

All Statements True. No statement, information, representation, or warranty of the Uplands Center contained in this Agreement or furnished by or on behalf of the Uplands Center in connection with the transactions contemplated contains any untrue statements of a material fact or omits to state a material fact necessary in order to make a statement contained herein not misleading.

TOWN REPRESENTATIONS AND WARRANTIES.

The Town represents, warrants, and agrees as follows:

Existence and Good Standing. The Town is a validly existing political subdivision of the State of New York.

No Contest. The Town (i) acquiesces and agrees with the Uplands Center’s entitlement to exemption from Real Property Tax pursuant to Real Property Tax Law Section 420-a, and (ii) except as provided in Article VI, shall not take any action to dispute its exemption.

Approval and Authorization. The Town has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Town Board has duly authorized the execution and delivery of this Agreement and the Town’s performance of all of its duties and obligations

contained herein, and this Agreement constitutes a valid and legally binding obligation of the Town, enforceable in accordance with its terms. A copy of the Town Board's resolution approving this Agreement and authorizing its execution by the Town Supervisor is attached hereto as **Exhibit A**.

Signatory. The Town represents and warrants that the Town Supervisor has executed this Agreement pursuant to a resolution adopted by the Town Board, at a meeting thereof, and the Town Supervisor, whose signature appears hereafter, is both duly authorized and empowered to execute and enter into this Agreement on behalf of the Town.

All Statements True. No statement, information, representation, or warranty of the Town contained in this Agreement or furnished by or on behalf of the Town in connection with the transactions contemplated contains any untrue statements of a material fact or omits to state a material fact necessary in order to make a statement contained herein not misleading.

TERM

EFFECTIVE DATE.

This Agreement will become effective (the "Effective Date") upon execution by the Parties.

TERM.

The term of this Agreement shall commence with the Effective Date and shall be in effect for a period of ten (10) years. Thereafter, this Agreement shall automatically renew each year unless either party objects to such renewal by providing notice in accordance with Article IX terminating this Agreement no later than February 1 of any year.

HOST COMMUNITY PAYMENTS

ANNUAL HOST FEE AND OTHER PAYMENTS.

Payment Rate. For each tax year subsequent to the Litigated Tax Year, the Uplands Center shall annually pay to the Town a host community fee (the "Host Fee") of Twenty Thousand Dollars (\$20,000).

Inflation Adjustment to Payment Rate. Starting with the second annual Host Fee payment, the Host Fee shall be adjusted annually fby two percent (2%) annually.

Due Date. Host Fee payments shall be due on or before October 31 of each year during the term hereof. The first Host Fee payment for the tax year subsequent to the Litigated Tax Year hereunder shall be due on or before October 31, 2022.

Other Payments. Upon the Effective Date, the Uplands Center shall pay the Town the additional sum of Seventy-Four Thousand Two Dollars and Twenty-Eight Cents (\$74,002.28), provided, however, that the Parties acknowledge and agree that while the Town may deem the total of such additional payment as payment in full for the taxes assessed in the Litigated Tax Year, the Uplands Center disputes such

characterization and the Parties therefore agree to disagree.

LATE PAYMENT.

Any Host Fee not paid as of the date due shall be deemed late without any requirement of notice from the Town. Late fees shall be assessed at a rate of two percent (2%) for the first month or a portion of a month due, and one percent (1%) for each subsequent month or a portion of a month on the original amount outstanding, until the Host Fee is paid.

NO OFFSET.

No payment due under this Agreement shall be offset against any other fee, payment, tax, or payment in lieu of taxes due under any other agreement, even in the event that any federal, state, county, or local law is enacted which would otherwise allow the Uplands Center to reduce or otherwise discontinue such payments.

DISPUTE RESOLUTION

DISPUTE RESOLUTION.

In the event of a dispute concerning compliance with this Agreement, the Parties agree that they will engage in alternative dispute resolution in the form of non-binding mediation with a mutually agreed upon mediator. The Parties recognize that certain disputes are not amenable to mediation. In the event that either Party determines to proceed with resolution of the dispute through judicial litigation, this agreement to submit disputes to mediation will not be used against any Party in the judicial forum. In the event the dispute concerns the Host Fee payment amount owed, the Uplands Center shall pay the Town the Host Fee amount not in dispute and shall deposit the disputed amount with an escrow agent mutually agreeable to both Parties, pending the outcome of the alternative dispute resolution or litigation.

TERMINATION

TERMINATION BY THE TOWN.

The Town may only terminate this Agreement if the Uplands Center:

- a. Breaches this Agreement;
- b. Does not maintain itself in good standing;
- c. Loses its IRS Determination Letter;
- d. In any fiscal year the Uplands Center reports Unrelated Business Taxable Income on IRS Form 990-T that is equal to, or greater than, twenty-five percent of the Uplands Center's total revenue for such fiscal year; or

e. Otherwise after ten (10) years subsequent to the Litigated Tax Year, with appropriate notice in accordance with Section 3.2. For the avoidance of doubt, year one is the tax year immediately following the Litigated Tax Year *i.e.*, 2022-2023.

TERMINATION BY THE UPLANDS CENTER.

The Uplands Center may terminate this Agreement:

- a. If the Town breaches this Agreement;
- b. If the Town places any portion of the Project on the taxable portion of the tax roll; or
- c. Otherwise after ten (10) years subsequent to the Litigated Tax Year, with appropriate notice in accordance with Section 3.2. For the avoidance of doubt, year one is the tax year immediately following the Litigated Tax Year *i.e.*, 2022-2023.

MUTUAL TERMINATION BY THE PARTIES.

Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated upon the mutual agreement between the parties.

BREACH AND REMEDIES

NOTICE OF BREACH.

In any case where any Party breaches this Agreement, the non-breaching Party shall provide written notice to the breaching Party within ten (10) days of such breach (“Notice of Breach”). Each Notice of Breach shall state the basis therefor and delivered, in writing, to the breaching Party.

UPLANDS CENTER RIGHT TO CURE.

The Uplands Center shall have the right to cure any breach and must cure such breach within thirty (30) days of its receipt of a Notice of Breach, in which event the Town shall give the Uplands Center an additional sixty (60) days to cure provided the Uplands Center has commenced a cure and proceeded diligently to affect such cure.

REMEDIES.

The Uplands Center acknowledges that the Town has no adequate remedy by way of damages in the event that the Uplands Center materially breaches the obligations and restrictions contained within this Agreement, and therefore the Uplands Center agrees that, in such event, the Town may apply to a court of competent jurisdiction

for equitable relief directing the Uplands Center to comply with this Agreement and/or enjoining or restraining the Uplands Center from any material breach hereof.

REMEDIES CUMULATIVE.

No remedy herein conferred upon or reserved to the Town is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any breach shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

TOWN BREACH AND RIGHT TO CURE.

The Town shall cure all breaches within thirty (30) days of its receipt of the notice unless such breach is not capable of cure within thirty (30) days, in which event the Uplands Center shall give the Town an additional sixty (60) days to cure provided the Town has commenced a cure and proceeded diligently to affect such cure. If the Town fails to cure such breach within the time allowed, the Uplands Center's payment obligations under this Agreement shall be suspended until such breach is cured.

Except in the case of a proper termination pursuant to Section 6.1, in the event the Town takes any action to assess the Uplands Center or otherwise places any portion of the Project on the taxable portion of the tax roll prior to the termination of this Agreement, Town shall, within thirty (30) days of such assessment, pay the Uplands Center, as liquidated damages, all amounts previously paid by Uplands Center to the Town pursuant to this Agreement.

SEVERABILITY

SEVERABILITY.

If any clause, provision, section, or article of this Agreement, or a portion thereof, is held invalid, inoperative, or unenforceable by any court or regulatory authority of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by applicable law.

REFORMATION.

Notwithstanding the foregoing, if any clause, provision, section, or article of this Agreement, or a portion thereof, is held invalid, inoperative, or unenforceable by any court or regulatory authority of competent jurisdiction, the Parties shall:

Promptly meet and negotiate a substitute for such clause, provision, section, or article, which will to the greatest extent legally permissible, effect the original intent of the Parties therein.

Negotiate such changes in, substitutions for, or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with Section 8.2(a) hereof to effect the original intent of the Parties in the clause, provision, section, or article declared invalid.

NOTICES

NOTICES.

All notices, demands, requests, consents, or other communications provided for or permitted to be given pursuant to this Agreement shall be in writing and shall be mailed, communicated by electronic mail, or delivered to the Parties at the respective address set forth below:

Notices to the Uplands Center:

The Uplands Center Foundation
2641 Dunk Hill Road
Walton, New York 13856

With a copy to:

Andrew M. Grumet, Esq.
Frank T. Spano, Esq.
Polsinelli PC
600 Third Avenue
New York, New York 10016

Notices to the Town:

Town Supervisor
Town of Walton
129 North Street
Walton, New York 13856

With a copy to:

Carly Walas, Esq.
Carly Walas Attorney at Law
4 Court Street
Delhi, New York 13753

All such notices, demands, requests, consents, or other communications shall be deemed to have been duly given when transmitted by electronic copy or personally delivered or, in the case of a mailed notice, upon receipt, in each case addressed as aforesaid. Each of the Parties may from time to time change its address for notices by providing notice of such change to the other Parties given in accordance with this Section.

MISCELLANEOUS

NO WAIVER.

The failure of any Party to insist on the strict performance of any term or provision hereof will not be deemed a waiver of the right to insist on strict performance of any other term or provision, nor will it be deemed a waiver of any subsequent breach. Unless specifically stated, the selection of any specific remedy hereunder or under the Local Law by either Party shall not be deemed an election of remedies limiting either Party's right to seek any other remedy otherwise allowed by this Agreement or the Local Law.

APPLICABLE LAW AND VENUE.

This Agreement will be governed by the laws of the State of New York. Venue for any dispute arising under this Agreement and not settled by mediation shall be solely in the New York State Supreme Court for Delaware County.

NO RECOURSE.

All obligations of the Parties contained in this Agreement shall be deemed to be the corporate obligations of the respective Parties and not obligations of any member, officer, director, official, agent, servant, employee, or affiliate of the Parties. No recourse upon any obligation contained in this Agreement, or otherwise based on or in respect of this Agreement, shall be had against any past, present, or future member, officer, director, official, agent, servant, employee, or affiliate of the Parties.

ENTIRE AGREEMENT.

Unless supplemented or otherwise amended in writing by the Parties in accordance with the laws of the State, this Agreement constitutes the Parties' entire agreement with respect to the subject set forth herein, and no other agreements, written or unwritten, implied or express, will be deemed effective.

AMENDMENT.

No amendment, modification, or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in a writing that specifically references this Agreement and that is duly executed by the Parties.

BINDING EFFECT.

This Agreement shall inure to the benefit of and shall be binding upon each of the Parties and, as permitted by this Agreement, their respective successors and permitted assigns.

HEADINGS.

The headings of sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement or to affect the construction hereof.

ASSIGNMENT BY THE UPLANDS CENTER.

The Uplands Center may, without the consent of the Town: (a) assign this Agreement to any (x) purchaser or successor in and to the Project, (y) affiliate or subsidiary of the Uplands Center that is controlled by, controlling, or under common control with the Uplands Center, or (z) persons or entities providing financing for the Project (“Lender”, and such purchaser, affiliate, and Lender are collectively defined as a “Successor”), provided such Successor is a qualified entity in good standing insofar as it is a non-profit entity under the Code and is eligible for the Real Property Tax Law § 420-a exemption, and the Successor assumes and agrees to be bound by this Agreement by executing and submitting to the Town a notice of assignment and assumption of this Agreement, and (b) pledge, encumber, hypothecate, mortgage, grant a security interest in and collaterally assign this Agreement to any to any Lender as security for the repayment of any indebtedness and/or the performance of any obligation whether or not such obligation is related to any indebtedness (a “Lender’s Lien”). A Lender shall have the absolute right to: (a) assign its Lender’s Lien; (b) take possession of and operate the property where the Project is located or any portion thereof in accordance with this Agreement and perform any obligations to be performed by Uplands Center or a Successor hereunder; or (c) exercise any rights of Uplands Center hereunder. The Town shall cooperate with the Uplands Center, its affiliates, any Successor from time to time, including, without limitation, by entering into a consent and assignment or other agreements with such Successor and the Uplands Center in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by such Successor, including execution of a consent to the assignment of this Agreement. In the event this Agreement is assigned to a Successor, the Uplands Center shall have no further obligations hereunder, except for any obligations outstanding on the date of the transfer. Nothing herein shall limit in any way the right of the owners of the Uplands Center to sell or otherwise transfer (including by merger or consolidation with any other entity) all or a portion of their ownership interests in the Uplands Center.

ASSIGNMENT BY THE TOWN.

Except in the context of financing or securitizing revenues from the Project under this Agreement, the Town may not transfer or assign any of its rights or obligations under this Agreement without the prior written consent of the Uplands Center and any such transfer or assignment shall be null and void and of no force and effect. The Uplands Center shall cooperate with the Town from time to time, including, without limitation, by entering into a consent and assignment or other agreements with the Town and the financing parties involved with any such financing or securitization in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by the involved financing parties.

COUNTERPARTS.

This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

FILING WITH THE TOWN.

The Town shall file and maintain a copy of this Agreement in the office of the Town Clerk.

FORCE MAJEURE.

Notwithstanding any other provision of this Agreement, if a Party’s performance of this Agreement or of any obligation hereunder is interfered with, delayed, restricted or prevented, in whole or in part, by reason of an event of Force Majeure (as defined below), then that Party, upon giving notice to other Party, shall be excused

from such performance (but not from its financial obligations due prior to such Force Majeure event, or said financial obligations for that portion of the Project continuing to operate, if any, after the Force Majeure event) to the extent and for the duration of such interference, delay, restriction or prevention, and the term and any other time periods set forth herein shall continue and be extended for a like period of time. "Force Majeure" means any act or condition beyond the reasonable control of either Party, whether or not similar to the matters or conditions herein specifically enumerated, and includes: acts of God or the elements (including fire, earthquake, explosion, flood, high winds, ice, epidemic or any other casualty or accident related to weather conditions), strikes, lock-outs or other labor disputes, delays in transportation, inability to secure labor or materials in the open market, transmission system power failure or power surge, war, terrorism, sabotage, civil strife or other violence, declared public health emergencies, such as epidemics and pandemics, the failure of any governmental authority to issue any permit, entitlement, approval or authorization within a reasonable period of time after an application for the same has been submitted, the effect of any law, proclamation, action, demand or requirement of any government agency or utility, or litigation contesting all or any portion of the right, title, and interest of the Town in the roads and/or the road structures, and/or of the Uplands Center in the Project.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year above written.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year above written.

THE UPLANDS CENTER FOUNDATION

By: _ _ _ _ _

Name: _ _ _ _ _

Title: _ _ _ _ _

TOWN OF WALTON

By: Joseph M. Cetyo

Name: Joseph M. Cetyo

Title: Town Supervisor

With no further business before the Board, the meeting was adjourned 6:27 p.m.

Respectfully submitted,

Ronda Williams
Town Clerk