

MEMORANDUM OF UNDERSTANDING, dated as of June 25, 2010 (the "MOU"), by and between **THE COUNTY OF UNION**, a public body corporate and politic of the State of New Jersey (the "County"), and **THE NEW JERSEY STATE GOLF ASSOCIATION**, a private "not-for-profit" organization (the "NJSGA"). For purposes of this MOU, the County and the NJSGA are collectively referred to herein as the "Parties" and individually as a "Party."

W-I-T-N-E-S-S-E-T-H

WHEREAS, the County owns the Galloping Hill Golf Course ("Galloping Hill"), located in portions of the Township of Union and the Borough of Kenilworth; and

WHEREAS, the NJSGA is a non-profit organization with the mission of promoting and popularizing the game of golf in New Jersey and broadening its appeal to persons from all walks of life; and

WHEREAS, for over a decade, the Parties have discussed development of a golf project at Galloping Hill which would simultaneously improve the facilities and services offered by the County at Galloping Hill and which would allow the NJSGA to further its mission; and

WHEREAS, the County anticipates construction of a new clubhouse facility at Galloping Hill ("Clubhouse Facility") which will be designed, built and operated by the County, or a County designee, for the benefit of the public; and

WHEREAS, the NJSGA desires to lease a portion of the Clubhouse Facility from the County for use as its administrative offices; and

WHEREAS, in advance of entering into a lease agreement, the Parties desire to set forth the framework of the lease agreement and to be bound by the terms of this MOU;

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the Parties, intending to be legally bound hereby, agree as follows:

A. GENERAL

1. The Parties hereto agree that the Recitals set forth above are incorporated into and form a part of this MOU.

2. The Parties agree that the rights and obligations under this MOU are enforceable without regard to whether any future agreements between the Parties relating to the Clubhouse Facility is authorized and executed.

3. The Parties acknowledge that any agreements between the Parties relating to the Clubhouse Facility may be subject to prior review and approval by certain Federal, State or local regulatory agencies with jurisdiction over the Clubhouse Facility, and that the obligation to proceed with construction of the Clubhouse Facility is expressly conditioned upon receipt of any such approvals.

B. DESCRIPTION OF CLUBHOUSE FACILITY PROJECT

Subject to final design, it is anticipated that the Clubhouse Facility will consist of an approximately 35,000 square foot building with required parking to be constructed on or about the area of the existing Galloping Hill clubhouse. It is contemplated that the lowest floor would be utilized for golf cart storage and locker rooms. It is contemplated that a portion of the second floor, other than the common area, will be utilized by the County and/or the County's designee and will include the Galloping Hill clubhouse, pro shop, grill room and kitchen facilities. Approximately 4,000 square feet of space on the third floor will be leased by the County to the NJSGA for use as the NJSGA's administrative offices. It is also contemplated that the third floor will be occupied by the County and/or the County's designee and will include a 300 seat banquet facility with related amenities.

C. COUNTY-NJSGA LEASE AGREEMENT

As will be set forth more fully in the County-NJSGA lease agreement ("County-NJSGA Lease"), the Parties hereto agree as follows:

1. That the County will make available, and NJSGA will lease, approximately 4,000 square feet at the Clubhouse Facility for NJSGA's exclusive use as administrative offices. The NJSGA may also reserve for its use certain shared conference rooms (approximately 800 square feet) and common areas.
2. That the County-NJSGA Lease would be for a term of not less than twenty (20) years.
3. That the monthly rent to be paid by the NJSGA would be set at \$5,000 for the first two (2) years of the lease term. On year three (3), and every third year thereafter, the monthly rent would increase by 3%.
4. That NJSGA will provide to the County a proposed floor plan for its office space. The County will have its architects for this project, Netta Architects, prepare working drawings, including: floor plan, electrical plan, and plumbing plan. The drawings shall be subject to approval by NJSGA, with said approval not to be unreasonably withheld. The cost to build out the NJSGA office space in accordance with the working drawings which will include office partitioning, finished ceiling, lighting, electrical outlets and plumbing shall be borne by the County. The cost of fixtures, cabinetry, carpeting, wall coverings, and the like

E. MOU BINDING UPON PARTIES

This MOU shall be valid and binding upon the Parties as of the date hereof. This MOU is not intended as (and does not constitute) an executory agreement, or an agreement that is subject to conditions being satisfied after the date of this MOU, in order to become effective as to and against the Parties. The Parties agree to work diligently, and in good faith, towards finalizing detailed design plans for the Clubhouse Facility and the County-NJSGA Lease.

F. FURTHER ASSURANCES

Each Party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to the terms of this MOU.

G. RELATIONSHIP OF THE PARTIES

Except as otherwise provided herein, neither Party to this MOU has any responsibility whatsoever with respect to services which are to be provided or contractual obligations which are to be assumed by the other Party and nothing in this MOU shall be deemed to constitute either Party as a partner, agent or legal representative of the other Party or to create any fiduciary relationship between the Parties.

H. MODIFICATION

This MOU contains the complete agreement of the Parties with respect to the subject matter hereof. The provisions of this MOU may be amended and/or supplemented from time to time. Any such amendment and/or supplement shall be effective only if set forth in a written instrument approved and executed by both Parties hereto.

I. SEVERABILITY

In the event that any provision of this MOU shall be determined for any reason to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this MOU or to such other appropriate actions as, to the maximum extent practicable in light of such determination, shall implement and give effect to the intentions of the Parties as reflected herein.

J. NO LIABILITY OF OFFICERS AND EMPLOYEES

No freeholder, commissioner, director, officer, shareholder, agent or employee of the County or the NJSGA shall be held personally liable under any provision of this MOU or as a result of its execution or attempted execution or as a result of any breach or alleged breach hereof.

K. GOVERNING LAW

The obligations of the County and the NJSGA under the terms of this MOU shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey.

L. NEGOTIATED AGREEMENT

The terms and conditions of this MOU have been negotiated by each Party with the assistance of their respective legal counsel. No term or condition hereof shall be construed against its proponent on the basis that it was proposed or drafted by that Party or its legal counsel.

SIGNATUR PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first above written.

WITNESS:

COUNTY OF UNION

By: 

By: 

Name: Nicole DiRado

Name: George Devanrey

Title: Clerk of the board

Title: County Manager

WITNESS:

NEW JERSEY STATE GOLF
ASSOCIATION

By: 

By: 

Name: Michael F. McFadden

Name: John B. Murray

Title: Secretary

Title: President

~~APPROVED AS TO FORM:~~

By: _____

County Attorney