

UNION COUNTY BOARD OF CHOSEN FREEHOLDERS

RESOLUTION NO. 2007-944
DATE:

9/27/2007

WHEREAS, the County of Union ("County") is a public body corporate and politic of the State of New Jersey; and

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 New Jersey State Golf Association ("NJSGA") and the New Jersey section of the Professional Golf Association ("NJPGA") are "not-for-profit" organizations with the shared mission of promoting and popularizing the game of golf in New Jersey and broadening the game's appeal to persons from all walks of life, races and economic levels; and

WHEREAS, the NJSGA and the NJPGA previously approached the County about developing a project at Galloping Hill which would allow the NJSGA and NJPGA to realize their shared mission and which would simultaneously improve the services offered by the County at Galloping Hill; and

WHEREAS, the project proposed by the NJSGA and the NJPGA generally entails: (a) construction of a state-of-the-art training facility at the location of Galloping Hill's existing pitch and putt course, and (b) construction of a new building at the location of Galloping Hill's existing clubhouse, the lower floor of which would serve as the County's new Galloping Hill's clubhouse and the upper floors of which would serve as administrative offices for the NJSGA and the NJPGA ("Proposed Project"); and


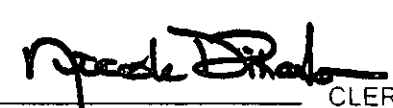
WHEREAS, the Union County Improvement Authority (the "UCIA") has been created by a resolution of the Board of Chosen Freeholders of the County as an independent public body corporate and politic of the State of New Jersey, pursuant to, and in accordance with the County Improvement Authorities Law, N.J.S.A. 40:37A-44, et seq., and the acts amendatory thereof and supplemental thereto (the "Improvement Authorities Law"); and

WHEREAS, the County, by Resolution No. 2114-2002, designated the UCIA as the entity responsible, on behalf of the County, for undertaking any and all of the necessary tasks associated with the Proposed Project including, but not limited to, negotiating all agreements with the NJSGA and/or the NJPGA necessary to effectuate the Proposed Project; and

CONTINUED...

SUFFICIENCY OF FUNDS
Frank W. Pedersen
9-26-07

RECORD OF VOTE																		
FREEHOLDER	Aye	Nay	Abs	Pass	Res.	Mot	Sec	NP	FREEHOLDER	Aye	Nay	Abs	Pass	Res.	Mot	Sec	NP	
HOLMES	X								SULLIVAN	X					X			
MAPP	X								WARD	X							X	
MIRABELLA	X						X		ESTRADA VICE-CHAIRMAN	X								
PROCTOR	X								KOWALSKI CHAIRWOMAN	X				X				
SCANLON	X																	

APPROVED AS TO FORM  COUNTY ATTORNEY	I hereby certify the above to be a true copy of a resolution adopted by the Board of Chosen Freeholders of the County of Union on the date above mentioned.
	 CLERK

WHEREAS, Resolution No. 2114-2002 requires that all agreements negotiated by the UCIA, on behalf of the County, to effectuate the Proposed Project are subject to review and approval by the County prior to finalization and execution by the UCIA; and

WHEREAS, the UCIA and the NJSGA have negotiated a Memorandum of Understanding (“MOU”) which generally outlines the Proposed Project and sets forth the UCIA’s and the NJSGA’s rights and obligations in the initial phase (i.e., design phase) of the Proposed Project; and

WHEREAS, the MOU obligates the UCIA to engage an engineering consulting firm to undertake the preliminary engineering necessary to determine the most advantageous design of the clubhouse facility and to finance the cost of such engineering work in an amount not to exceed \$100,000.00:

NOW, THEREFORE, BE IT RESOLVED by the Union County Board of Chosen Freeholders as follows:

Section 1. The Union County Board of Chosen Freeholders hereby approves the UCIA’s execution of a MOU between the UCIA and the NJSGA as relates to Galloping Hill in a form substantially consistent with the partially-executed MOU attached hereto.

Section 2. The Union County Board of Chosen Freeholders hereby authorizes the County’s expenditure of \$100,000.00 to the UCIA to allow UCIA to engage an engineering consulting firm to undertake the preliminary engineering necessary to determine the most advantageous design of the clubhouse facility.

Section 3. Said amount of \$100,000.00 shall be charged to the following Account Nos. C-04-55-912-201-020 (\$58,186.00); C-04-55-912-216-020 (\$20,100.00) and C-04-55-912-224-020 (\$21,714.00)

Section 4. The Clerk shall forward a copy of this resolution to the Executive Director of the UCIA.

Section 5. This resolution shall take effect immediately.

MEMORANDUM OF UNDERSTANDING, dated as of June ___ 2007 (the "MOU"), by and between **THE UNION COUNTY IMPROVEMENT AUTHORITY**, a public body corporate and politic of the State of New Jersey (the "UCIA"), and **THE NEW JERSEY STATE GOLF ASSOCIATION**, a private "not-for-profit" organization (the "NJSGA"). For purposes of this MOU, the UCIA and the NJSGA are collectively referred to herein as the "Parties".

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

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

WHEREAS, Galloping Hill is subject to certain requirements of the Green Acres Act, N.J.S.A. 13:8A-1 et seq.; 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, the County and the NJSGA are desirous of developing 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 Parties contemplate developing a project that would generally consists of two elements: (1) a practice range training facility (individually the "Training Facility"); and (2) a clubhouse and golf center facility (individually the "Clubhouse Facility"), all as more particularly described herein (collectively, the "Proposed Project"); and

WHEREAS, in cooperation with the County, its Department of Engineering, the Department of Parks, Recreation and Facilities, the NJSGA has employed consultants and expended considerable time, effort and resources to consider and evaluate alternative locations and designs for the Proposed Project; and

WHEREAS, by Resolution No. 2114-2002 the County designated the UCIA as the entity responsible, on behalf of the County, for undertaking any and all of the necessary tasks associated with the Proposed Project, including negotiating any and all agreements necessary to effectuate the Proposed Project; and

WHEREAS, the Parties acknowledge that in order to construct and operate the Proposed Project or its component elements at Galloping Hill, certain agreements will be necessary between the County, the UCIA and the NJSGA; and

WHEREAS, the Parties further acknowledge that Resolution No. 2114-2002 requires that all agreements negotiated by the UCIA, on behalf of the County, to effectuate the Proposed Project are subject to review and approval by the County prior to finalization and execution; and

WHEREAS, the Parties further acknowledge that all agreements governing the construction and/or operation of the Proposed Project or its component elements may be subject to review and approval by the New Jersey Department of Environmental Protection's ("NJDEP") Green Acres Program; and

WHEREAS, the Parties further acknowledge that before the terms and conditions of any agreements necessary to construct and/or operate the Proposed Project or its component elements can be finalized, a feasibility study/marketing analysis for the Training Facility, preliminary design and construction cost estimates for the Training Facility, engineering studies for the Clubhouse Facility, and preliminary concept drawings and construction cost estimates for the Clubhouse Facility must first be prepared; and

WHEREAS, the Parties are willing to engage professional consultants to undertake such studies and to prepare such documents, consistent with the terms and conditions set forth herein; and

WHEREAS, the Parties desire 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 Proposed Project or its component elements is authorized and executed.
3. The Parties agree that the effectiveness of this MOU and any other agreements between the Parties relating to the Proposed Project or its component elements is subject to prior review and approval by the County.
4. The Parties agree that any agreements between the Parties relating to the Proposed Project or its component elements may be subject to prior review and approval by the NJDEP's Green Acres Program, and that the obligation to proceed with the Proposed Project or its component elements is expressly conditioned upon receipt of that approval.
5. The Parties agree that construction of the Proposed Project, or its component elements may require one or more approvals from NJDEP's Land Use Regulation Program ("LURP"), and that the obligation to proceed with the Proposed Project or its component elements is expressly conditioned upon receipt of those approvals.

B. DESCRIPTION OF PROPOSED PROJECT

The Proposed Project consists of two independent elements, the Phase I Training Facility and the Phase II Clubhouse Facility, each of which will be designed, built and operated by the NJSGA in connection with Galloping Hill for the benefit of the public. The cost for the design and construction of each element may be funded from the proceeds of bonds to be issued by the UCIA. It is anticipated that the revenue from operations of the Training Facility and rents from the Clubhouse Facility will be utilized for amortization and repayment of the bonds. The Parties agree that the projected revenue for repayment of said bonds must be confirmed by a feasibility study/market analysis which will be undertaken by a consulting firm retained by the NJSGA.

Training and Practice Facility

The Training Facility element would be constructed on approximately 15 acres of the existing Galloping Hill site (on the existing pitch and putt course) which would be leased to the NJSGA or if designated by the NJSGA, to the New Jersey State Golf Youth Foundation, a non-profit corporation. This site will consist of a lighted range approximately 300 yards long and wide enough to accommodate approximately 30 bays and will include several target greens identified on Exhibit A attached hereto. It is contemplated that the initial term of the lease would be for twenty (20) years with four renewal options of five (5) years each. The annual rent to be paid by the NJSGA to the County from the revenues of the Training Facility would be in an amount sufficient to cover debt service on the financing provided by the UCIA for this element of the Proposed Project. The lease would also provide for an amount equal to twenty (20%) percent of the net cash flow from operation of the Training Facility after the payment or provision for all expenses of the Facility, debt service and adequate provision for all reserves, including reserves for maintenance and replacement to be set aside in a separate reserve account.

Clubhouse and Golf Center Facility

The Clubhouse Facility element would consist of a 20,000 sq. ft. 4-story building with required parking to be constructed on or about the area of the existing clubhouse. This site is identified on Exhibit B attached hereto and would be leased to the NJSGA. It is contemplated that most of the first floor, other than the common area, would be occupied by the County as a clubhouse for Galloping Hill with the NJSGA and other golf related organizations and other tenants occupying the second and third floors of the facility. The plan may also include a New Jersey golf museum and meeting rooms on the fourth floor. The term of the lease would be for twenty (20) years with four renewable options of five (5) years each. The annual rent to be paid by the NJSGA and its subtenants, the other golf related organizations, and other tenants would be an amount sufficient to pay the debt service for the financing necessary to fund the costs of construction of the Clubhouse Facility. Each subtenant would, in addition, pay its pro rata share of operating costs, including its pro rata share of common area charges.

C. MATERIAL TERMS RELATING TO THE TRAINING FACILITY

1. The Parties each recognize that, in order for the Proposed Project to proceed, one or more permits may be required from the NJDEP LURP. To obtain such permits, it will be necessary to engage environmental consultants to examine and address issues which relate to the two elements of the Proposed Project but which may impact on the entire Galloping Hill site.

NJSGA agrees to engage a firm which must first be approved by the UCIA for this purpose and to advance the cost of such consultant in an amount not to exceed \$10,000.00.

2. The Parties also recognize that, in order for the Proposed Project to be economically viable, the revenue from operations of the Training Facility and rents from the Clubhouse Facility must be sufficient to amortize repayment of the bonds. Within thirty (30) days of the effective date of this MOU, the NJSGA will submit to UCIA a feasibility study/market analysis for the Training Facility.

3. Within thirty (30) days of receiving the feasibility study/market analysis for the Training Facility from the NJSGA, the UCIA shall provide written comments to said feasibility study/market analysis.

4. Within thirty (30) days of receiving the UCIA's written comments to the feasibility study/market analysis for the Training Facility, NJSGA shall submit a revised feasibility study/market analysis to the UCIA and/or provide a written response to the UCIA's comments, whichever is determined by the Parties to be more appropriate.

5. The Parties also recognize that, in order to determine whether the Training Facility is economically viable, detailed design plans and a cost estimate to construct the Training Facility must be developed. Unless extended in writing, within ninety (90) days of the effective date of this MOU, NJSGA shall submit to the UCIA detailed design plans for, and a cost estimate to construct, the Training Facility. The design plans and cost estimate shall be undertaken by an architectural firm which must be approved in advance by the UCIA.

6. Within thirty (30) days of receiving the detailed design plans for and cost estimate to construct the Training Facility from the NJSGA, the UCIA shall provide written comments to said design plans and construction cost estimate.

7. Within thirty (30) days of receiving the UCIA's written comments to the NJSGA's detailed design plans for and cost estimate to construct the Training Facility, the NJSGA shall submit revised detailed design plans and a revised cost estimate to construct the Training Facility to the UCIA for review and consideration.

8. The NJGA has also previously engaged a consultant to prepare a survey which will be updated and submitted to the UCIA.

9. Within forty-five (45) days of receiving the NJSGA's revised detailed design plans and construction cost estimate for the Training Facility from the NJSGA, the UCIA shall notify the NJSGA, in writing, whether the UCIA intends to proceed with the next phase of the Training Facility -- negotiation of the agreements necessary to effectuate the Training Facility.

10. If the UCIA elects to proceed with the Proposed Project, the Parties mutually agree to enter into a separate MOU which outlines the general structure of the transaction, including the material terms and conditions of the agreements necessary to effectuate the Training Facility.

D. MATERIAL TERMS RELATING TO THE CLUBHOUSE FACILITY

1. The Parties each recognize that, in order to determine whether the Clubhouse Facility will be economically viable, a cost estimate to construct the Clubhouse Facility must first be developed. The Parties also recognize that before a cost estimate to construct the Clubhouse Facility can be developed, certain preliminary engineering work must be undertaken to determine the most advantageous design of the Clubhouse Facility. The UCIA agrees to engage an engineering consulting firm to undertake the preliminary engineering necessary to determine the most advantageous design of the Clubhouse and to finance the cost of such engineering work in an amount not to exceed \$100,000.00.

2. Unless extended in writing, within sixty (60) days of receiving the engineering firm's findings and recommendations the NJSGA shall submit to the UCIA, for its review and consideration, concept drawings for and a preliminary cost estimate to construct the Clubhouse Facility. The concept drawings for, and preliminary cost estimate to construct, the Clubhouse Facility shall be undertaken by an architectural firm which must be approved in advance by the UCIA.

3. Within thirty (30) days of receiving the concept drawings for, and preliminary cost estimate to construct, the Clubhouse Facility from the NJSGA, the UCIA shall provide written comments to said concept drawings and preliminary cost estimate.

4. Within thirty (30) days of receiving the UCIA's written comments to the NJSGA's concept drawings for, and preliminary cost estimate to construct, the Clubhouse Facility, the NJSGA shall submit revised concept drawings and a preliminary construction cost estimate for the Clubhouse Facility to the UCIA for review and consideration.

5. The NJGA has also previously engaged a consultant to prepare a survey which will be updated and submitted to the UCIA.

6. Within forty-five (45) days of receiving the NJSGA's revised concept drawings and preliminary construction cost estimate for the Clubhouse Facility from the NJSGA, the UCIA shall notify the NJSGA, in writing, as to whether the UCIA intends to proceed with the next phase of the Clubhouse Facility - - negotiation of the agreements necessary to effectuate the Clubhouse Facility.

7. If the UCIA elects to proceed with the Clubhouse Facility, the Parties mutually agree to enter into a separate MOU which outlines the general structure of the transaction, including the material terms and conditions of the agreements necessary to effectuate the Clubhouse Facility.

E. COSTS ASSOCIATED WITH THE PROPOSED PROJECT

1. Although the NJSGA has limited resources, because of the importance of moving the Proposed Project forward and the confidence which it has in the success of this Project, NJSGA has advanced monies to engage consultants for the feasibility and design phase of the Proposed Project. Once the financing is in place, the monies advanced by the NJSGA for the

design and construction of each element would be repaid from the proceeds of bonds to be issued by the UCIA.

2. The Parties acknowledge that, in order for the Proposed Project to proceed, one or more permits may be required from the NJDEP LURP. To obtain such permits it will be necessary to engage one or more environmental consultants to examine and address issues which relate to the two elements of the Proposed Project. NJSGA agrees to engage a firm which must first be approved by the UCIA for this purpose and to advance the cost of such consultant in an amount not to exceed \$10,000.00.

3. The NJSGA's financial commitment to advance monies must of necessity be limited as follows:

(a) With respect to the Training Facility, the financial commitment to advance monies is limited to the consultants engaged to provide the feasibility study/market analysis, a current survey, detailed design plans and a cost estimate to construct the Training Facility, and costs for environmental consultants to examine and address permit issues which relate to the two elements of the Proposed Project.

(b) With respect to the Clubhouse Facility, the financial commitment to advance monies is limited to the consultants engaged to provide concept drawings and a preliminary cost estimate to construct the Clubhouse Facility, and to provide a current survey. The Parties acknowledge that, in order for NJSGA to develop concept drawings, it is necessary to designate a contractor to work with a designated architect in developing a cost efficient design/build process. The NJSGA agrees to engage an architectural firm and a contractor for the Clubhouse Project that is first approved by the UCIA.

4. The UCIA's financial commitment to advance monies must of necessity be limited as follows:

(a) Retaining an engineering consulting firm to undertake the preliminary engineering necessary to determine the most advantageous design of the Clubhouse and to finance the cost of such engineering work in an amount not to exceed \$100,000.00.

F. DISPUTE RESOLUTION

Any dispute arising between the Parties under the terms of this MOU shall be resolved (i) first through negotiations between the Parties, or (ii) in the event any such negotiations are not successful, through the institution of a lawsuit in the Superior Court of New Jersey, Law Division, Union County.

G. 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 the detailed design plans for the Proposed Project.

H. 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.

I. 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.

J. 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.

K. 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.

L. NO LIABILITY OF OFFICERS AND EMPLOYEES

No commissioner, director, officer, shareholder, agent or employee of the UCLA 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.

M. GOVERNING LAW

The obligations of the UCIA 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.

N. 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.

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

WITNESS:

**UNION COUNTY IMPROVEMENT
AUTHORITY**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

WITNESS:

**NEW JERSEY STATE GOLF
ASSOCIATION**

By: Adrian M. Foley

By: Jay Scott Mac Well

Name: Adrian M. Foley

Name: Jay Scott Mac Well

Title: An Attorney-At-Law
of The State of New Jersey

Title: _____