

TAX ADJUSTMENT AGREEMENT

THIS TAX ADJUSTMENT AGREEMENT (hereinafter referred to as the "**Agreement**") is made and entered into as of November __, 2021 (the "**Effective Date**") by and between **ESSEX COUNTY COUNTRY CLUB**, a New Jersey corporation ("**ECCC**"), and **TOWNSHIP OF WEST ORANGE** ("**Township**") (collectively, the "**Parties**").

RECITALS

WHEREAS, the ECCC owns certain parcels of land known as Lot 1, Block 156 on the Tax Map of the County of Essex, West Orange, New Jersey (the "**Property**"); and

WHEREAS, the Parties have agreed to settle certain tax appeals that ECCC has filed regarding the Property which is utilized as a golf course (the "**Tax Reduction Property**") pursuant to the terms of this Agreement;

NOW, THEREFORE, based on the foregoing premises, each of which is hereby incorporated into this Agreement as a material term; and for good and valuable consideration, including the mutual promises, releases, representations, covenants and obligations contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Tax Adjustment.** The Township shall provide ECCC with a reduction of its property taxes on the Tax Reduction Property so that the property taxes for the years 2022, 2023 and 2024 will be reduced in the amount of ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) per year from the final 2021 property tax amount (the "**Annual Tax Reduction**"), representing a total tax reduction for the three (3) years of THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00) (the "**Total Tax Reduction**").

2. **Assessment.** In order to provide ECCC with the Annual Tax Reduction and, at the conclusion of three years, the Total Tax Reduction, the Township shall reduce the current assessment of \$16,323,700.00 for the Tax Reduction Property effective January 1, 2022 to \$14,050,000,¹ which is an estimated amount that will yield a property tax reduction for 2022 in an amount approximately equal to the Annual Tax Reduction (the "2022 Assessment") and which will yield a combined property tax reduction for 2022, 2023, and 2024 of an amount approximately equal to the Total Tax Reduction. The terms of N.J.S.A. 54:3-26 (the "**Freeze Act**") will apply to the 2022 Assessment and the 2022 Assessment will not be increased for 2023 or 2024 unless: (a)

¹ This anticipates a potential tax increase of 1% in the tax rate from 2021 to 2022. This is not intended to limit any increases.

an increase is permitted under the Freeze Act; or (b) ECCC makes material improvements to the Tax Reduction Property qualifying for an added assessment.

3. True-Up.

(a) Reconciliation. The Parties recognize that the 2022 Assessment is an approximation, and that Township's tax rate may increase in 2022, 2023, and 2024. As a result, the actual total amount of the tax reduction that ECCC receives may be greater than or less than the Total Tax Reduction. Accordingly, at or around the time that the 2024 tax rate is finalized, the Township shall provide ECCC with a reconciliation of the 2022, 2023, and 2024 property taxes which includes a calculation of the amount of the reduction each year and the total amount of the reduction for all three years (the "**Reconciliation**"). The Township's failure to provide the Reconciliation at or about the time that the 2024 tax rate is finalized, shall not be a waiver of the Township's right to provide the Reconciliation thereafter.

(b) Dispute Resolution. ECCC shall have twenty-one (21) days to submit a written objection to the Reconciliation setting forth with specificity the reasons it believes the Reconciliation is inaccurate, and providing its own reconciliation (the "**Objection**"). If ECCC fails to submit an Objection with the twenty-one (21) day period, it shall be deemed to have waived its right to object and the Reconciliation shall be final and binding. The Parties shall attempt to resolve the issues raised in the Objection within thirty (30) days of the date that the Objection is served (the "**Mediation Period**"). If the Parties cannot resolve the issues, then either party may file a summary proceeding in the Superior Court of New Jersey, Essex County, Tax or Chancery Court which shall have the exclusive jurisdiction over any disputes arising out of or related to this Agreement.

(c) Payment. If the Reconciliation discloses that the actual total reduction for 2022, 2023, and 2024 was greater than the Total Tax Reduction, then ECCC shall pay the Township the excess amount. If the Reconciliation discloses that the actual total reduction for 2022, 2023, and 2024 was less than the Total Tax Reduction, then the Township shall pay ECCC the amount of the shortfall. The party who is obligated to make payment shall remit payment within thirty (30) days of the date that the Reconciliation is final. The Reconciliation shall be deemed final on the twenty-second (22) day after it is served, unless an Objection is served in accordance with paragraph 3(b) above. If an Objection is served, the Reconciliation shall be deemed final either: (i) on the date the parties reach agreement on the amount of the Reconciliation; or (ii) on the date that an Order of the Court is entered.

(d) Right to File Lien. In the event that ECCC owes the Township a payment as a result of the true-up required by this paragraph 2, and fails to pay within the time frame provided herein, then the Township shall have the right to file a municipal lien against the Tax Reduction Property in the amount that ECCC owes, which shall accrue interest at the statutory rate for delinquent taxes until paid in full.

4. Dismissal of Tax Appeals/Covenant not to Sue. ECCC and the Township shall cause a Stipulation of Dismissal with Prejudice and Without Costs to be filed of each tax appeal that ECCC has filed which remains pending as of the date hereof. ECCC covenants and agrees that it will not file a tax appeal for 2022, 2023, or 2024 so long as the terms hereof are complied with.

5. Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New Jersey without regard to its conflict of laws principles. Each of the Parties hereto irrevocably submits and consents to the exclusive subject matter jurisdiction and personal jurisdiction of the State Courts of the State of New Jersey, Essex County Vicinage, Chancery Division or Tax Court, with respect to any and all disputes arising out of or related to this Agreement. Each of the Parties hereto irrevocably consents to the jurisdiction of the State Courts of the State of New Jersey in any such suit, action or proceeding and to the laying of venue in such court. EACH PARTY WAIVES ANY AND ALL RIGHTS HE MAY HAVE TO A TRIAL BY JURY IN CONNECTION WITH ANY CLAIMS OR DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

6. Completeness of Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement.

7. Severability. If any portion or provision of this Agreement is held unconstitutional, invalid or unenforceable by any court of competent jurisdiction, the remainder of the Agreement will be considered severable, will not be affected, and will remain in full force and effect.

8. Titles and Headings. The headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

9. Construction. This Agreement is the product of negotiation by the Parties and all Parties' counsel participated in the drafting and revision of all of these documents. Therefore, none of these documents shall be construed or interpreted more strictly against any party based on that Party's counsel having drafted them.

10. No Waiver. The failure of any Party to insist upon the strict performance of any of the provisions of this Agreement or to exercise any of the rights afforded under any of these documents shall in no way constitute a waiver of any subsequent default of the same or similar nature or a waiver of that Party's right to insist on strict performance in the future.

11. Voluntary Execution. The Parties acknowledge that they have all thoroughly read this Agreement, understand it, and are entering into it of their own free will. No Party is relying on any statements or representations or advice of any other party or their counsel in entering into this Agreement. All Parties acknowledge and represent that they have had sufficient time to consider all aspects of this Agreement and that no promises or representations have been made other than as specifically set forth in this Agreement.

12. Amendment and Modification. This Agreement may only be amended or modified in writing signed by the Party against whom enforcement of the amendment or modification is sought.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original agreement, but all of which shall constitute one and the same instrument.

14. Signatures. Facsimile or other electronic signatures, including by DocuSign or similar electronic signature service, shall be as effective as original signatures on this Agreement. Each of the individuals executing this Agreement on behalf of an entity hereby represents and warrants that such person is authorized to execute this Agreement on behalf of the entities for which it is signing.

[Signatures On Following Page]

WHEREFORE, the parties have executed this Agreement as of the date first written above.

Township of West Orange

Essex County Country Club

By: _____
Robert D. Parisi, Mayor

By: _____

ATTEST:

WITNESS:

Karen Carnevale
Municipal Clerk
Township of West Orange
