

RESOLUTION NO. 24-03
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul M. Hresham ON THE
16th DAY OF June, 2003.

A RESOLUTION AUTHORIZING THE CITY
MANAGER, ON BEHALF OF THE CITY OF
CENTERVILLE, TO EXECUTE A FACILITIES
AGREEMENT WITH PGA TOUR, INC.

WHEREAS, The City of Centerville is the owner and operator of a public golf facility, including the course, all associated ranges, tees, greens, maintenance areas, storage areas and buildings (including the clubhouse and parking lots) located at 10000 Yankee Street, Centerville, Ohio, and known as The Golf Club at Yankee Trace, and

WHEREAS, PGA Tour, Inc. desires to hold the 2003 Nationwide Tour Golf Tournament at The Golf Club at Yankee Trace, and

WHEREAS, The City of Centerville desires to host the Nationwide Tour Golf Tournament at the City owned golf course in accordance with terms and conditions contained in a Facilities Agreement executed by both parties.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY
RESOLVES:

Section 1. That the City Manager be and is hereby authorized to execute an Agreement between the City of Centerville and PGA Tour, Inc. for the use of The Golf Club at Yankee Trace for the 2003 Nationwide Tour Golf Tournament, a copy of said Agreement which is marked as Exhibit "A", attached hereto and incorporated herein.

Section 2. That this Resolution shall become effective immediately upon passage.

PASSED this 16th day of June, 2003.

Sally D. Beak
Mayor of the City of Centerville, Ohio

ATTEST:

Maile J. Sough
Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 24-03, passed by the Council of the City of Centerville, Ohio, on the 16th day of June, 2003.

Marie Stangle
Clerk of Council

Approved as to form, consistency
with existing Ordinances, the
Charter and Constitutional Provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney

**NATIONWIDE TOUR
FACILITIES AGREEMENT**

THIS AGREEMENT, dated as of the ____ day of June, 2003 is made by and between **PGA TOUR, INC.**, a Maryland corporation ("TOUR"), and **THE CITY OF CENTERVILLE**, an Ohio municipal corporation ("City").

BACKGROUND

A. TOUR is the organization of certain professional tournament golfers that, among other things, cosponsors, coordinates and approves a series of professional golf tournaments known as the Nationwide Tour, including the annual tournament known as the Dayton Open (the "Tournament").

B. City is the owner and operator of a public golf facility, including the course, all associated ranges, tees, greens, maintenance areas, storage areas and building (including the clubhouse and parking lots) located at 10000 Yankee Street, Centerville, Ohio and known as The Golf Club at Yankee Trace (hereinafter collectively the "Golf Club").

C. TOUR desires to hold the 2003 Tournament at the Golf Club.

D. City desires, on the terms and conditions contained herein, to host the Tournament at the Golf Club in 2003.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, TOUR and City agree as follows:

1. DEFINITIONS.

1.1 *Clubhouse.* The term "Clubhouse" means the Golf Club clubhouse building together with all immediately adjacent decks and patios.

1.2 ***Force Majeure.*** The term “Force Majeure” shall mean acts of God, earthquakes, blizzards, tornadoes, hurricanes, fire, flood, malicious mischief, insurrection, riots, labor disturbances, public enemy, war, landslides, explosions, epidemics, compliance with any order, ruling, injunction or decree by any court, tribunal or judicial authority of competent jurisdiction and any other similar circumstances beyond the reasonable control of the party responsible for such performance. The party affected by such Force Majeure event must give notice specifying the Force Majeure event, in writing, to the other party within forty-eight (48) hours after its occurrence.

1.3 ***“Tournament Week”.*** The term “Tournament Week” means the period of time beginning the end of the day Monday preceding the Tournament (Monday, July 21, 2003) and extending through the later of (i) the end of the day Sunday of the Tournament (Sunday, July 27, 2003) or (ii) the conclusion of the Tournament competition.

2. **TOURNAMENT OPERATION.** TOUR shall have the sole and exclusive right and obligation to conduct the Tournament. TOUR’s Tournament Director will maintain offices at the Golf Club during Tournament Week and will be the primary interface between TOUR and City.

3. **USE OF THE GOLF CLUB.**

3.1 ***Golf Club.*** City hereby agrees to make available to TOUR, its guests, invitees and licensees, the Golf Club during Tournament Week. Specifically, City shall make available to TOUR, its guests, invitees and licensees, access to the Golf Club in the manner set forth below:

(a) Full and total access to the Golf Club for Tournament purposes throughout Tournament Week, except for the following previously scheduled events: Monday-Turfgrass Growers of America golf outing, Tuesday-Centerville Noon Optimist Meeting, Friday –

Rehearsal Dinner, Saturday evening-Wedding Reception, and other events with the prior approval of TOUR.

(b) Total exclusive access to the golf courses and practice facilities at the Golf Club, to include, but not limited to, the driving range, putting greens, other practice areas, new nine holes and other surrounding areas reasonably necessary for the staging and conduct of the Tournament, throughout Tournament Week. Such access will include access to all necessary utilities during Tournament Week. City will be responsible for all normal utility expenses (i.e., existing outlets may be used by TOUR, however additional utility needs, DSL lines, generators, phone lines and other electrical boxes are the responsibility of TOUR).

(c) TOUR shall have the right to deny access to the Golf Club during Tournament Week to any persons other than authorized TOUR personnel, emergency services personnel (e.g. police, fire and medical), participants and contestants, bona fide media representatives and persons holding valid admission badges, tickets or passes issued by TOUR in accordance with this Agreement. TOUR agrees that officers, board members, employees and guests of City, including event attendees for previously booked functions as described in Section 3.1(a), will have access to the Golf Club and TOUR will provide appropriate credentials to allow access to those persons as necessary.

(d) TOUR shall be responsible for the collection of admission fees, if any. TOUR will control access to the Tournament and the lawful denial of access to the Golf Club by the public to the extent necessary for the conduct of the Tournament and related activities.

(e) City agrees that the security of the perimeter and the grounds of the Golf Club, other than property and equipment of the Tournament and/or its vendors and contractors,

shall be patrolled by the City's Police Department. TOUR shall be responsible for the internal security (i.e., locker rooms, etc.).

(f) City acknowledges that TOUR may utilize electronic scoreboards at the Tournament in accordance with the City's sign ordinance. The setup and removal of such scoreboards shall be undertaken by TOUR at no cost or expense to City, except that City shall provide all necessary power, if available, for such scoreboards at no additional cost to TOUR. TOUR agrees to repair any damage to the property occasioned by the setup and/or removal of such scoreboards, reasonable wear and tear excepted.

(g) TOUR acknowledges and agrees that the Golf Club can continue to operate the new nine-hole facility on Monday of Tournament Week, using a remote access that does not involve the clubhouse area, and in a manner that does not interfere with the Tournament or Tournament preparation. TOUR also acknowledges and agrees that the Golf Club may keep the restaurant and patio area open to the public throughout Tournament Week and may host wedding dinners and receptions on Friday and Saturday of Tournament Week, in a manner consistent with past practice and that does not interfere with the Tournament or Tournament preparation.

3.2 **Clubhouse.** Except as set forth in Section 3.1(g), TOUR shall have use of the Clubhouse during Tournament Week and may deny or restrict access to the Clubhouse to any person other than those authorized by TOUR, including TOUR personnel, necessary emergency services personnel, participants, contestants, selected invitees of TOUR and persons with proper Clubhouse credentials. TOUR shall be solely responsible for regulating and enforcing such access restrictions. City employees will be admitted with proper identification.

3.3 **Clubhouse; Food and Beverage.** Notwithstanding the foregoing Section 3.2, City shall retain the exclusive right to conduct, collect and retain all revenues derived from the sale of food and beverage and alcohol and liquor within the Clubhouse building and adjacent decks and patios, all other snack bar/halfway house type facilities and other structures, permanent or temporary, located on or about the Golf Club, as operated in previous years. City shall also have the sole obligation to pay all expenses in connection therewith. City agrees to furnish food and beverages at prices that are reasonable and customary. TOUR agrees that the Tournament will spend a minimum of Sixty Thousand Dollars (\$60,000) on food and beverage connected with the Tournament, including player meals, volunteer meals, sponsor fulfillment of skyboxes and hospitality packages, pro-am functions, media day and charity auction.

3.4 **Parking.** During the Tournament all paved Clubhouse parking shall be for use as VIP, contestant, staff and media parking, City staff, or other such uses as TOUR may deem appropriate. Parking will also be designated for previously booked events in the Clubhouse lot. City shall assist TOUR in obtaining suitable general Tournament parking in close proximity to the Golf Club. All parking spaces on City property will be provided to TOUR at no charge. Public parking will be available on city property directly across from the Clubhouse at 9955 Yankee Street.

3.5 **Maintenance.** Preparation and conditioning of the golf courses for play shall be subject to approval of the TOUR Tournament Director or his designee beginning the Monday of the calendar week prior to Tournament Week. City shall ensure that the Golf Club are maintained during Tournament Week in accordance with PGA TOUR Course Conditioning Guidelines. City acknowledges that the full maintenance staff of the Golf Club will be required

for each day of Tournament Week. TOUR and City will each designate one individual to be responsible for all communications regarding course conditioning.

(a) City acknowledges that all costs of maintaining the Golf Club under the aforementioned Course Conditioning Guidelines (such costs as chemicals, fertilizers, sod, seed, labor costs, etc.) are the sole obligations of City.

(b) TOUR agrees that the Golf Club will be in substantially the same condition after the Tournament as it was prior to the Tournament, subject to normal wear and tear caused by a competition such as the Tournament.

3.6 **City Services.** City agrees to provide, at no cost to TOUR or Tournament, all necessary police services, as well as lower level Clubhouse office space for the Tournament, excluding the Tournament office trailer. City also agrees to coordinate for EMS services with Washington Township, Ohio and coordinate all necessary bleachers for use with the Tournament with the Centerville-Washington Park District.

4. **MEDIA RIGHTS.**

4.1 **TOUR Rights.** All media rights, including but not limited to the rights for television, radio, computer network/Internet broadcasting, "Interactive Applications" (as defined below) and for production and exhibition, in any form, of motion pictures and all other ancillary rights in the events and practice during Tournament Week, including any such rights of each player which have been assigned by the players to TOUR, are the property of and are expressly reserved by and to TOUR. TOUR shall have sole and exclusive authority to grant the rights for all telecasting, radio broadcasting, Internet exposure, Interactive Applications, motion picture filming and any other type of audio or video coverage at the Golf Club during Tournament Week including any playoff or postponement. "Interactive Applications" shall mean the presentation

of the Tournament in any medium in a way that permits the viewer to interact with or manipulate the presentation or access other relevant information during the presentation.

4.2 ***Golf Club.*** City hereby grants to TOUR in perpetuity the right to use the name, logo and pictures of Golf Club and all City personnel in television, radio, broadcasts, motion pictures, Internet and any other type of audio or video presentation of the Tournament. TOUR shall have the right to use the Golf Club name, logo and photographs and video of the Golf Club appearing in the telecast of the Tournament in perpetuity in any manner and for any purpose. In addition, TOUR shall have the right hereunder to use the name, logo and pictures of the Golf Club in perpetuity in literature or other print concerning the Tournament. TOUR grants City the right to use images from the Tournament in brochures or other promotional materials for the Tournament and the Golf Club and its affiliates. All such uses (i) must be approved in advance by TOUR, (ii) may not constitute an endorsement or implied endorsement by any PGA TOUR or Champions Tour player and (iii) must use multiple players in any image containing PGA TOUR or Champions Tour players.

4.3 ***Television Coverage.*** TOUR, in its discretion, has the right to schedule broadcast coverage of any or all rounds of the Tournament in the United States or elsewhere on The Golf Channel or another carrier.

4.4 ***Announcements, News Releases and Public Relations.*** All Tournament announcements, news releases, and public relations pieces shall be controlled by TOUR in consultation, as applicable, with City. City may issue press releases, including the City Town Crier publication, regarding the Tournament upon prior written approval of TOUR, which shall not be unreasonably withheld.

5. **GOLF SHOP.** During Tournament Week, City shall have the right to sell merchandise in the City golf shop at the Golf Club and one outside tent, as in previous years, and retain all revenue collected therefrom including items bearing a TOUR trademark or logo, provided that City must purchase all items bearing a TOUR trademark or logo from TOUR licensees at licensees standard wholesale costs.

6. **ACCESS TO THE GOLF FACILITY BEFORE AND AFTER EVENT.** TOUR shall have reasonable access to the Golf Club for the three (3) week period preceding Tournament Week for purposes of preparation for the Tournament and for the two (2) week period following Tournament Week for purposes of tear down and cleanup activities. TOUR will use best efforts to ensure that such access shall not unreasonably hinder or impair normal golf operations at the Golf Club.

7. **PAYMENTS TO CITY.**

7.1 *Payments to City.* TOUR shall pay City a total site fee of Sixty Five Thousand Dollars (\$65,000) (inclusive of green fees, cart fees and all applicable taxes, including state and local sales taxes). The amount due City by TOUR includes all uses of the Golf Club contemplated hereunder. Payment shall be wired into the City's designated bank account on the Wednesday prior to Tournament Week.

7.2 *Charity Dollars.* TOUR will contribute the charity dollars arising from the Tournament, if any, to local Dayton charities.

8. **INSURANCE.** TOUR shall procure and maintain, and provide evidence to City of, liability insurance coverage having limits of liability not less than Three Million Dollars (\$3,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate. Such insurance shall not be canceled or materially changed without thirty (30) days prior written

notice to City. TOUR shall name City as additional insured under such policy for the Tournament. Such insurance shall be in force during the period of preparation for, conduct of and any applicable cleanup period following the Tournament and in no event shall such insurance commence later than 6 weeks prior to and cease earlier than 6 weeks after completion of the Tournament. Such insurance shall cover liability for, losses or claims in connection with the Tournament asserted by spectators, contestants, caddies, employees, invitees or any other person on or about the Golf Club or Clubhouse whether or not authorized. TOUR shall also require that all contractors and subcontractors of any party to this Agreement and affiliates thereof procure and maintain at their own expense and provide evidence to City, of liability insurance having limits of liability on not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability for, losses or claims arising from operations and/or services that such parties are contracted to perform. In addition TOUR shall procure and maintain, and provide evidence to City of automobile liability insurance coverage having limits of liability not less than Five Hundred Thousand Dollars (\$500,000) per occurrence and Five Hundred Thousand Dollars (\$500,000) in the aggregate. TOUR shall also require that all contractors and subcontractors of any party to this Agreement procure and maintain at their own expense and provide evidence to City, of automobile liability insurance having the same limits of liability as set forth above. In addition, TOUR shall procure and maintain Workers Compensations insurance as required under applicable law.

9. INDEMNIFICATION.

9.1 **By TOUR.** TOUR agrees to release, indemnify, defend and hold harmless City, its subsidiaries, and affiliates and their respective officers, directors, agents, servants, and employees of and from any and all liability, claims, liens, demands, actions and causes of action

whatsoever (including reasonable attorneys' fees and costs) arising out of or related to any loss, cost, damage or injury, including death, caused by or arising from TOUR's breach or default hereof and/or TOUR's misconduct or negligent acts, errors or omissions of TOUR, its employees, agents, independent contractors or subcontractors in connection with this Agreement.

9.2 **By City.** City agrees to release, indemnify, defend and hold harmless TOUR, its subsidiaries and affiliates and their respective officers, directors, agents, servants, and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorneys' fees and costs) arising out of or related to any loss, cost, damage or injury, including death, caused by or arising from City's breach or default hereof and/or City's misconduct or negligent acts, errors or omissions, of City, its employees, agents, independent contractors or subcontractors in connection with this Agreement.

9.3 **Survival.** TOUR's and City's obligations under this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. **VOLUNTEERS.** City shall assist TOUR in organizing a volunteer organization comprised of sufficient amount of volunteers necessary for the conduct of the Tournament. TOUR staff shall work directly with such volunteers and designate, in consultation with City.

11. **TERM.** The term of this Agreement shall commence as of the date hereof and shall terminate upon conclusion of Tournament Week; provided, however, each party will be obligated to fulfill its obligations which are accrued but unpaid or not performed as of the conclusion of the Tournament.

12. **THE PARTIES.**

12.1 Parties Nothing herein shall be construed to make any party the partner, employee, joint venturer or agent of the other or to establish fiduciary or other confidential

relationship between the parties. This Agreement may not be assigned by any party without the prior written consent of the other, and any attempted assignment shall be null and void.

12.2 *First Right of Refusal.* The Tour agrees to provide the City the right to host the 2004 Tournament at the Golf Club, if the Tour elects to host a 2004 Nationwide Tour event within a 30-mile radius of the City

13. **DEFAULT.**

13.1 *Default.* In the event either party defaults in its obligations provided herein, the other party shall give the defaulting party written notice of such default. If the defaulting party does not cure such default within thirty (30) days after receipt of such notice or, in the event such cure cannot be completed within such period, if the defaulting party does not within thirty (30) days after receipt of notice commence such action as may be necessary to cure the default in a timely manner, this Agreement shall be immediately terminable by the non-defaulting party.

13.2 *Insolvency.* Either party may terminate this Agreement effective upon written notice to the other in the event of the other's insolvency, adjudication of bankruptcy or the filing of a petition for voluntary or involuntary bankruptcy of the other; or the other's making of an arrangement with or an assignment for the benefit of creditors or the appointment of a receiver or trustee for the assets of the other.

13.3 *Effect of Termination.* Termination of this Agreement shall not prohibit a party from seeking payment of amounts owed to it hereunder and all other damages to which it may be entitled.

14. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement represents the entire understanding between the parties and supersedes any prior oral or written understandings or agreements between them regarding the Tournament. The parties hereby agree that this

Agreement shall not supersede, modify or alter any prior agreements between the parties concerning the use of certain trademarks or logos of TOUR by City outside of the Tournaments. Any modification of this Agreement shall be in writing and executed by both parties.

15. WAIVER; NOTICES.

15.1 *Waiver.* The failure of either party at any time to require performance by the other of any provision of this Agreement shall in no way affect that party's right to enforce such provision, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver or any further breach of the same provision or any other provision.

15.2 *Notices.* Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) delivered personally, (ii) transmitted by guaranteed overnight delivery services, or (iii) sent by certified mail, return receipt requested, postage prepaid, addressed as shown below, or to such other address as the party concerned may substitute by written notice to the other. All notices personally delivered or sent by overnight delivery service shall be deemed received on the date of delivery. All notices forwarded by mail shall be deemed received on the date of the return receipt.

TOUR: PGA TOUR, Inc.
 112 PGA TOUR Boulevard
 Ponte Vedra Beach, FL 32082
 Attn.: Ed Moorhouse
 Executive Vice President and
 Co-Chief Operating Officer

City: City of Centerville
 100 W. Spring Valley Road
 Centerville, OH 45458-3759
 Attn.: Greg Horn
 City Manager

Any party may, by written notice to the other, change the address to which such communication shall be sent, and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes.

16. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each counterpart shall be deemed an original.

17. **GOVERNING LAW.** Any dispute arising out of this Agreement, and all matters or issues collateral thereto, shall be governed by the laws of the State of Florida, without giving regard to conflict of laws or Principles.

18. **NO GAMBLING.** Neither City nor any of its employees, agents or representatives shall be associated with any form of organized or unorganized gambling in connection with the Tournament during Tournament Week, either at or removed from the Golf Club.

19. **NONDISCRIMINATORY MEMBERSHIP RULES.** City hereby represents and warrants to TOUR that the membership practices and policies of the Golf Club do not discriminate on the basis of race, sex, religion, national origin or other class protected under applicable law.

20. **PREVAILING PARTY.** In any action related to this Agreement, the prevailing party shall be entitled to recover from the other the prevailing party's costs, including reasonable attorneys' fees, whether such fees and costs be incurred at trial, on appeal or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CITY OF CENTERVILLE

By: _____
Name: _____
Title: _____

PGA TOUR, INC.

By: _____
Edward L. Moorhouse
Executive Vice President and
Co-Chief Operating Officer