

RESOLUTION NO. 14-02
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER James E. Singer
ON THE 18th DAY OF March, 2002.

A RESOLUTION RATIFYING THE ACTION TAKEN BY THE CITY MANAGER TO EXECUTE A FIFTH AMENDMENT TO AN AGREEMENT BETWEEN THE CITY AND THE CORPORATE PREDECESSOR OF YANKEE TRACE DEVELOPMENT, INC. ORIGINALLY EXECUTED ON JUNE 27, 1994.

WHEREAS, the City and the corporate predecessor to Yankee Trace Development, Inc. originally entered into a development agreement on June 27, 1994 for the development of the City owned land in the vicinity of the Golf Club at Yankee Trace which agreement was amended on September 20, 1994, amended again on September 21, 1995, supplemented on December 21, 1998, amended on May 31, 2000 and amended again on November 20, 2000 (collectively the "Agreement"); and

WHEREAS, the parties wish to further amend the Agreement to provide for the expansion of the golf course in accordance with the Community Master Plan approved by the Council of the City of Centerville on October 16, 2000.

NOW, THEREFORE,

THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That the action taken by the City Manager of the City of Centerville is hereby ratified to execute the agreement with Yankee Trace Development, Inc. which is set forth in Exhibit "A" and to do any and everything necessary in order to ensure that the provisions of said agreement are carried into effect.

PASSED THIS 18th day of March, 2002.

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

ATTEST:

Marie J. McLaughlin
Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 14-02, passed by the Council of the City of Centerville, Ohio on the 18th day of March, 2002.

Marie J. McLaughlin
Clerk of Council

Approved as to form, consistency
with the charter and constitutional provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney

FIFTH AMENDMENT TO AGREEMENT

THIS FIFTH AMENDMENT TO AGREEMENT ("Amendment") is entered into this 26th day of February, 2002 between THE CITY OF CENTERVILLE, OHIO (the "City") and YANKEE TRACE DEVELOPMENT, INC., an Ohio corporation (the "Developer"), under the following circumstances:

- A. The City and the Developer are currently parties to a certain Agreement dated June 27, 1994 as previously modified by an Amendment to Agreement dated September 20, 1994; a Second Amendment to Agreement dated September 21, 1995; a Supplemental Agreement dated September 21, 1998; a Third Amendment to Agreement dated May 31, 2000; and a Forth Amendment to Agreement dated November 21, 2000 (collectively, the "Agreement").
- B. Pursuant to the terms of the Agreement, the Developer was to acquire from the City approximately Five and Six Tenths (5.6) acres of the New Residential Property (as depicted on Exhibit A attached hereto and made a part hereof) (the "Subject Property") on or before October 20, 2001.
- C. The City and the Developer have agreed to modify the Agreement pursuant to the terms and conditions contained herein in order to extend the date by which the Developer must purchase the Subject Property from the City.

NOW THEREFORE, in consideration of the mutual agreements contained in the Agreement and this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties, the City and the Developer hereby agree as follows:

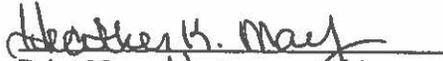
1. The Developer shall close on the acquisition of the Subject Property on or before OCTOBER 20, 2002.
2. The purchase price for the Subject Property shall be Twenty Six Thousand Dollars (\$26,000.00) per gross acre, which shall be calculated by a survey or surveys to be done by Bayer Becker Engineers, as necessary to create the new tax parcel for the Subject Property and to convey the Subject Property to the Developer. The foregoing purchase price represents a four percent (4%) increase over the purchase price for the Subject Property as contained in the Agreement.
3. All capitalized terms contained in this Amendment that are not typically capitalized, unless otherwise defined herein, shall have the meanings assigned to such terms by the Agreement.

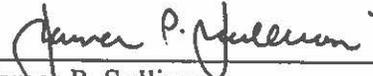
4. Except as specifically modified by the terms of this Amendment, all of the terms and provisions of the Agreement remain in full force and effect and unmodified.

Executed as of the day and year first above written.

WITNESSES:

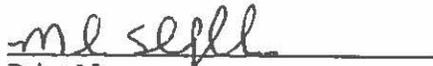
YANKEE TRACE DEVELOPMENT, INC.
an Ohio corporation

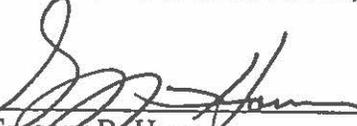

Print Name HEATHER MAY

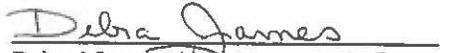
By: 
James P. Sullivan
Its Vice President and Treasurer


Print Name Amjad Nabi

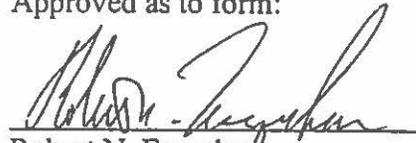
THE CITY OF CENTERVILLE, OHIO


Print Name Mark Schlegel

By: 
Gregory B. Horn
Its City Manager


Print Name Debra James

Approved as to form:


Robert N. Farquhar
Centerville Municipal Attorney

Partnership Ltd.
0764-803
7 Acres
-M-967

Centerville
Township

T.P.O.B.
3.988 ACRES

1434.59'
450.00'

N 00°27'13" W
78.58'

N 16°35'47" E
148.00'

N 73°24'13" W
60.00'

TRACT 9
3.988 ACRES

2.735 Acres in Section 35
1.253 Acres in Section 34

DEED 01-0663 E03

663 E03

Centerville
-0376-A04
6 ACRES
The City of Centerville
Washington Township
in Section 35
in Section 34

N 49°16'59" W
488.89'

Found
1" Iron Pin

L-27

Found
1-1/2" Tr

241.58'
S 02°43'43" W 291.34'

Yankee Trac
4
M.F. C

64
8
RES

Section 35
Section 34

S 60°31'12" E
197.62'

149.76'

Found
1" Iron Pin

City of Centerville
Tract J
1.820 Ac.
M.F. 01-

552.12'
S 89°37'37" W

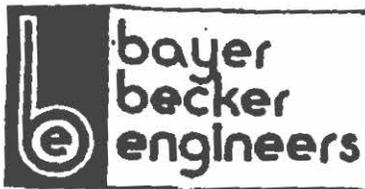
328.79'

880.91'

IRVE TABLE

LINE TABLE

DIST



engineers
planners
architects
surveyors

6900 Tylersville Road, Suite A
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mason@bayerbecker.com

Rev. July 23, 2001

DESCRIPTION:

To Yankee Trace Development
Tract 9
3.988 Acres

LOCATION:

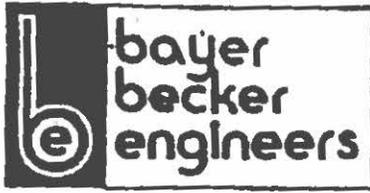
City of Centerville
Montgomery County, Ohio

Situate in Sections 34 & 35, Town 3, Range 5, MRs, City of Centerville, Montgomery County, Ohio and being part of a 23.236 acre tract owned by the City of Centerville as recorded in M.F. 01-0376-A04 of the Montgomery County Recorder's Office containing 3.988 acres of land being further described as follows:

Begin at a found 1" iron pipe at the northwest corner of said Section 34 and an easterly corner of an original 309.426 acre tract owned by the City of Centerville as recorded in M.F. 94-0678-A10 of the Montgomery County Recorder's Office; thence, with the west line of said Section 35 and said City of Centerville land; North 02°48'24" East, passing an existing 5/8" iron pin on the southeast corner of a 0.455 acre tract owned by Yankee Trace Development, Inc. as recorded in M.F. 01- - at 174.91 feet, a total distance of 199.90 feet to a set 5/8" iron pin on the southwest corner of a 6.032 acre tract owned by Yankee Trace Development, Inc. as recorded in M.F. 99-0381-C08; thence, departing said section line with said Yankee Trace Development Inc. land, North 87°49'16" East, 1302.36 feet to a set 5/8" iron pin on the southwest corner of a 0.024 acre tract owned by the City of Centerville as recorded in M.F. 01-0154-D06 and the westerly right-of-way of Paragon Road and the City of Centerville Corporation line; thence, with said right-of-way, said corporation line and said City of Centerville land, North 03°07'17" East, 63.21 feet to a set 5/8" iron pin; thence, departing said right-of-way and said corporation line, North 89°32'47" East, passing a found spike on the centerline of said Paragon Road and the southwest corner of a 12.1037 acre tract owned by Turner Family Partnership, Ltd. as recorded in M.F. 92-0764-B03 at 16.53 feet, passing the easterly right-of-way of said Paragon Road and the City of Centerville Corporation line at 33.06 feet, a total distance of 984.59 feet to a set 5/8" iron pin and the true point of beginning;

- thence from the true point of beginning, continuing with said corporation line and said Turner Family Partnership land, North 89°32'47" East, 450.00 feet to a found 1" iron pin on the southeast corner of said Turner Family Partnership land and the west line of Rose Estates, Section 14, as recorded in Plat Book 107, Page 47;
- thence departing said Corporation line, South 02°08'03" West, 330.29 feet to a found 1-1/2" iron pin on the southwest corner of a 5.697 acre tract owned by John & Mary Reese as recorded in M.F. 78-0276-A06 and a north line of a 74.091 acre tract owned by Yankee Trace Development, Inc. as recorded in M.F. 01-0375-E07;
- thence with said Yankee Trace Development Inc. land, the following 2 courses: North 71°27'47" West, 41.98 feet to a found 1" iron pin;

O:\Yankee\99\M011\Legal\99M011-ToYTD-Tract9-3988Ac.dwg



engineers
planners
architects
surveyors

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mason@bayerbecker.com

Rev. July 23, 2001
Page 2 of 2
3.988 Acres

thence South 02°43'43" West, 241.58 feet to an existing 5/8" iron pin on the northerly corner of a 1.820 acre tract owned by The City of Centerville as recorded in M.F. 01- - ;
thence departing said Yankee Trace Development Inc. land and said City of Centerville land, with the new division line the following four courses: North 49°18'59" West, 488.89 feet to a set 5/8" iron pin;
thence North 73°24'13" West, 80.00 feet to a set 5/8" iron pin;
thence North 16°35'47" East, 148.00 feet to a set 5/8" iron pin;
thence North 00°27'13" West, 76.56 feet to the true point of beginning containing 1.253 acres in Section 34 and 2.735 acres in Section 35 for a total of 3.988 acres of land subject to all easements and rights of way of record.

Basis of Bearing: M.F. 94-0678-A10 (North 02°48'24" East, 199.90')

The above description is the result of a survey prepared by Jeffrey O. Lambert with Bayer Becker Engineers, Ohio Registered Surveyor No. 7588, dated 4/20/01.