

RESOLUTION NO. 17-02
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Roger Kraas ON THE
15th DAY OF April, 2002.

A RESOLUTION AUTHORIZING THE CITY MANAGER,
ON BEHALF OF THE CITY OF CENTERVILLE, TO
EXECUTE A CONTRACT WITH DAYTON OPEN.

WHEREAS, Dayton Open has been granted the right to host the 2002 BUY.COM Dayton Open Golf Tournament and proposes to hold same at The Golf Club at Yankee Trace, and

WHEREAS, The City of Centerville is the owner and operator of The Golf Club at Yankee Trace, including the course itself, all associated ranges, tees, greens and buildings located at 10000 Yankee Street, and

WHEREAS, Dayton Open and the City of Centerville wish to enter into an Agreement to define all respective rights, duties and obligations relating to the Tournament.

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 Dayton Open for the use of The Golf Club at Yankee Trace for the 2002 BUY.COM Dayton Open 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 15th day of April, 2002.

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

ATTEST:
Debra A. James, Assistant
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 17-02, passed by the Council of the City of Centerville, Ohio, on the 15th day of April, 2002.

Debra A. James, Assistant
Clerk of Council

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

Department of Law
Robert N. Farquhar
Municipal Attorney

FACILITIES AGREEMENT

THIS FACILITIES AGREEMENT entered into this ____ day of _____, 2002 by and between the City of Centerville, an Ohio municipal corporation (hereinafter "City") and The Dayton Open, an Ohio not for profit corporation (hereinafter "Dayton Open").

WITNESSETH:

WHEREAS, City is the owner and operator of a public golf facility, including the course, all associated ranges, tees, greens and building (including the club house and parking lots) located 10000 Yankee street, Centerville, Ohio and known as The Golf Club at Yankee Trace (hereinafter collectively the "Golf Club"); and

WHEREAS, Dayton Open has been offered the right to host the 2002 Buy.Com Dayton Open Golf Tournament (hereinafter "Tournament") from July 8th through July 14th 2002 from the PGA Tour, Inc. and proposes to hold the same at the Golf Club; and

WHEREAS, the Dayton Open's right to host the Tournament is contingent upon receipt of a Tournament Agreement from the PGA Tour, Inc.; and

WHEREAS, the parties wish to enter into this Agreement to define all of their respective right, duties and obligations relating to the Tournament.

NOW, THEREFORE, in consideration of the foregoing recitations and the benefits to them mutually accruing, the parties agree as follows:

1. **TERM.** The term of this Agreement shall commence retroactively on October 1, 2001 and terminate at 12:00 a.m. (midnight) on September 30, 2002.
2. **RENTAL RATE.** The rental rate for the entire term shall be \$65,000.00, payable on June 30, 2002.
3. **EXCLUSIVE OCCUPANCY; EXCEPTIONS.** From July 8th through July 14th 2002, the Dayton Open shall have exclusive occupancy of the Golf Club, subject to the right of the City to fulfill its prior contractual obligations to third parties to accommodate weddings and receptions. The parties agree to use their best efforts in order to allow the City to carry out its prior obligations to third parties to use the Golf Club, complete construction of an additional nine (9) holes at the Golf Club and to allow The Dayton Open to carry out its obligations with the PGA Tour, Inc. pursuant to the terms and conditions of the BUY.COM TOUR Tournament Agreement executed between the PGA Tour, Inc. and the Dayton Open in a manner that will cause the least disruption to either third party events or the Tournament.

4. **FOOD AND BEVERAGE SALES.** The City shall have the sole right to sell and supply all alcoholic beverages at the Golf Club and all food sales at the clubhouse and adjoining patio. All other non-alcoholic food concessions shall be the sole privilege of Dayton Open.
5. **OTHER SALES.** Sales of merchandise normally sold by the pro shop at the Golf Club and related to the Tournament or merchandise, both in and outside of the clubhouse shall be the privilege of the City except for items related to the Tournament, which may also be sold by Dayton Open.
6. **PROCEEDS FROM SALES.** All proceeds from all sales shall belong solely to the party having the privilege of making the sale that produces the proceeds.
7. **INDEMNIFICATION AND HOLD HARMLESS.** Dayton Open agrees to indemnify and hold City, its employees, council members, volunteers, agents and representatives, harmless from and against any and all claims, causes of action, suits or demands arising out of the Tournament or use of the Golf Club by any third party which is the direct and proximate result of any intentional or negligent act, error or omission by Dayton Open, its trustees, members, employees, advisory board, volunteers, agents and representatives. City shall be entitled to be reimbursed for any expenses, costs, judgments, interest, court costs and/or attorney fees it incurs by virtue of any such claim. At City's request, Dayton Open shall undertake the full defense of any such claim. This indemnification and hold harmless protection for City shall include, but not limited to, any claims of negligence, breach of warranty, patent and copyright infringement or any other tort or contract action arising out of any intentional or negligent act, error or omissions by Dayton Open as described above and shall survive any termination of this Agreement.
8. **TERMINATION.** This Agreement is contingent upon Dayton Open's execution of a Tournament Agreement with the PGA Tour, Inc. by March 30, 2002. In the event a Tournament Agreement is not entered into between Dayton Open and the PGA Tour, Inc. before March 30, 2002, then at anytime thereafter either party may terminate this Agreement by giving written notice of termination to the other to be effective ten (10) days after receipt by the other party. This Agreement shall automatically terminate on the date the PGA Tour, Inc. cancels the Tournament Agreement with Dayton Open. Any termination shall operate prospectively only.
9. **PROCEDURE ON TERMINATION.** In the event of termination in accordance with section 8 above, both parties shall work together to conclude all matters between them in an expeditious manner and the City shall deliver all files and documents relating to the Tournament to Dayton Open; provided, however, the City shall be permitted to make and retain copies of any files or documents delivered in accordance with this section.

10. **NAME AND LIKENESS RIGHTS.** The City hereby grants to the Dayton Open and shall permit the Dayton Open to grant to the PGA Tour, Inc. the right to use and permit others designated by the Dayton Open and/or the PGA Tour, Inc. the right to use the name and pictures of the Golf Club and pictures of all personnel, spectators and other related subjects at the Tournament, in television, radio broadcast, motion pictures or any other type of audio or video coverage in advertising, publicizing and promoting the Tournament.
11. **MISCELLANEOUS PROVISIONS.** This Agreement contains the entire agreement between the parties and supersedes any prior oral or written understandings. No modification or amendment shall be effective unless in writing, signed by both parties. No assignment of the rights and duties hereunder shall be effective unless agreed to in writing by both parties. Time is of the essence with respect to all of the provisions hereof.
12. The law of the State of Ohio shall govern this Agreement.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives have executed this Agreement on the date first above written.

WITNESS:

CITY OF CENTERVILLE

By: _____
Gregory B. Horn, City Manager

THE DAYTON OPEN

By: _____
Jack Kindler
Chairman and President,
Board of Trustees