

RESOLUTION NO. 51-01
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Roger W. Krass ON THE 18th
DAY OF June, 2001.

A RESOLUTION RATIFYING THE ACTION TAKEN BY THE CITY
MANAGER ON BEHALF OF THE CITY OF CENTERVILLE
TO EXECUTE A FACILITIES AGREEMENT WITH FAIRWAYS
AND DREAMS FOR GOLF FEST 2001 TO BE HELD AT THE
GOLF CLUB AT YANKEE TRACE.

WHEREAS, The City of Centerville is the owner and operator of The Golf Club at
Yankee Trace, including the course, all associated ranges, tees, greens, clubhouse, and
parking lots, located at 10000 Yankee Street, Centerville, Ohio; and

WHEREAS, Fairways and Dreams has been granted the right to host the 2001
Fairways & Dreams Golf Event from August 4, 2001 through August 5, 2001; and

WHEREAS, The City of Centerville and Fairways and Dreams wish to enter into
an Agreement to define all of their respective rights, duties and obligations relating to the
Event.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY
RESOLVES:

Section 1. That the action taken by the City Manager be and is hereby ratified in
the execution of a Facilities Agreement between the City of Centerville and Fairways and
Dreams for Golf Fest 2001 to be held at The Golf Club at Yankee Trace, said Agreement
marked as Exhibit "A" attached hereto and incorporated herein.

Section 2. This Resolution shall become effective immediately upon passage.

PASSED this 18th day of June, 2001.

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

ATTEST:

Maureen J. Saughel
Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 51-01 passed by the Council of the City of Centerville, Ohio on the 18th day of June, 2001.

Maureen J. Saughel
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 3rd day of NOV, 2001 by and between the City of Centerville, an Ohio municipal corporation (hereinafter "City") and Fairways & Dreams, the Ultimate Golf Event (hereinafter "Fairways & Dreams").

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 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"); and

WHEREAS, Fairways & Dreams has been granted the right to host the 2001 Fairways & Dreams Golf Event (hereinafter "Event") from August 4, 2001 through August 5, 2001; and

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

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 on July 15, 2001 and terminate at 12:00 a.m. (midnight) on August 8, 2001.
2. **RENTAL RATE.** The rental rate for the entire term shall be \$25,000.00, payable with the following payment schedule, \$8,500.00 due June 11, 2001 and \$16,500 due July 20, 2001.
3. **EXCLUSIVE OCCUPANCY; EXCEPTIONS.** From August 4, 2001 through August 5, 2001, Fairways & Dreams 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 scheduled events i.e. weddings/Sunday Brunch and other special events during the duration of the agreement. The parties agree to use their best efforts in order to permit 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 Fairways & Dreams to carry out its obligations in a manner that will cause the least disruption to either third party events or the Event.

Fairways & Dreams will be permitted to set-up for the Event, Friday, August 3, 2001 at 12:00 p.m. Fairways & Dreams agrees to make every effort to accommodate normal business activities of the Golf Club during this time. As a way to off-set any inconvenience to the golf patrons, Fairways & Dreams will offer a discount for the admission into Golf Fest. A trailer will be permitted on-site 14 days prior to the Event, and is permitted 2 days after the Event. The Golf Club will assist in coordinating the location of the trailer.

4. **DISPLAY INFORMATION.** Fairways & Dreams will provide each paid exhibitor with one display space (the "Designated Display Space") which is approximately 10'x 10' in size. Fairways & Dreams shall provide additional exhibit space to each exhibitor at an additional cost. The Golf Club will be provided its own 10'x20' tent, if desired at no cost. Tents shall comply with the rules and regulations of the City.
5. **INSURANCE.** Both parties shall obtain and maintain general comprehensive liability insurance, in a form and with insurance companies licensed to issue comprehensive liability insurance in the State of Ohio and shall cause the other party to be named as an additional insured on said policy. Such insurance shall be maintained with limits of not less than One Million U.S. Dollars (U.S. \$1,000,000) per occurrence and in an aggregate amount of not less than Three Million U.S. Dollars (U.S. \$3,000,000). Copies of the certificate of insurance shall be provided to each party 45 days prior to the Event. Each party and their respective insurance companies shall provide the other party with notices of any changes to the certificate, copies of such changes and notification of any claims made against the policy whether or not such claims name City or Fairways & Dreams. Fairways & Dreams' insurance will cover any damage to the golf course.
6. **SUPPLIES.** Fairways & Dreams will provide all promotions, exhibitor and advertiser recruitment, tents and other reasonable exhibit equipment, including providing the Golf Club with the use of one tent free of charge, if desired. The Golf Club agrees to abide by all rules and regulations generally imposed upon all exhibitors at the Event.
7. **PERSONNEL INFORMATION INCLUDING PARKING AND SECURITY.** Fairways & Dreams will provide personnel, either directly or through its agents, to handle all ticket sales, parking accommodations, traffic control police, basic housekeeping and security throughout the duration of the Event, including security during Friday night and Saturday night. Further, Fairways & Dreams agrees to provide clean up services for the Golf Club after the completion of the event by close of business, Monday, August 6, 2001.

Fairways & Dreams in cooperation with the City shall request access to the grass lots across the street from the clubhouse, owned by Dayton Power and Light and be shuttled to the clubhouse at the expense of Fairways & Dreams. Clubhouse parking shall be available for vendors and VIP's attending the Event, however, parking will be limited due to accommodate third party use (scheduled events Sunday Brunch, etc.) and will be regulated by the City. County sheriff or city police officers will be hired by Fairways & Dreams for directing traffic on and off public roads, including adjacent streets. Fairways & Dreams shall provide on-site first aid equipment.

8. **FOOD AND BEVERAGE SALES.** All food and beverage (alcoholic and non-alcoholic) sales at the clubhouse and the adjoining patio will be the sole profit of

City of Centerville. All other non-alcoholic and food concessions shall be the sole privilege of Fairways & Dreams and subject to the breakout of monies in Exhibit A. In addition, the City shall have the sole right to sell and supply all alcoholic beverages at the Golf Club and/or on the grounds and those revenues and expenses will also be subject to Exhibit A. Fairways & Dreams will provide personnel, equipment, adequate liability insurance for the concession operations and all licenses and permits in accordance with city, county and state regulations. Fairways & Dreams further agrees to pay the Golf Club a portion of net concession sales, as per exhibit "A" attached.

9. **OTHER SALES.** All revenue from the sale of merchandise normally sold by the pro shop at the Golf Club, both in and outside of the clubhouse shall be retained by the City. The Golf Club is permitted to set-up its own tent outside the clubhouse and proceeds from the tent sales be the sole profit of the Golf Club. Any items sold by the Golf Club during the event, related to the event shall be subject to the terms in Exhibit "A". The Golf Club will receive a portion of net equipment/apparel sales, as per Exhibit "A" attached.
10. **DISPUTES.** Fairways & Dreams accepts responsibility for all disputes between attendees and exhibitors, including the resolution of all disputes.
11. **ADVERTISING SCHEDULE.** Fairways & Dreams will promote the event via television, radio, newspaper and other media for at least 4 weeks prior to the event. Due to this being the first relationship between the City and Fairways & Dreams, the City reserves the right to review advertising, in order to uphold the integrity of the Golf Club at Yankee Trace.

Fairways & Dreams will provide the Golf Club (1) full page and each exhibitor with 1/6 page ad in Fairway & Dreams Magazine. Likewise, Fairways & Dreams will provide the Golf Club and exhibitors with a list of registered attendees. This database marketing program will be provided to participating sponsors after the Event for their exclusive use only.

The Golf Club will provide Fairways & Dreams ten (10) 18-hole rounds of golf for their promotional use. Likewise, the Golf Club will provide Fairways & Dreams with access to our member database for one-time use in its effort to solicit volunteers to assist in staffing the Event.

12. **DETAILED SITE PLAN.** Fairways & Dreams will submit a preliminary site plan 30 days prior to the Event, with a detailed site plan for the Event 12 days prior to set-up day, August 10. The site plan should include electric and water line placement, trash receptacles, signage and Port-a-John locations. Fairways & Dreams needs to make every effort to locate all vendors close to existing water and electric hook-up. Costs for additional water and electric hook-up and or any necessary permits is the sole responsibility of Fairways & Dreams. All trash removal is the responsibility of Fairways & Dreams. All signage and attention getting devices are required to meet the municipal code regulations of the City. Likewise, the plan should include vendor placement, including company names.

The site plan is subject to staff approval. Every effort will be taken by the Golf Club and Fairways & Dreams to protect the course and grounds from damage by vendors and/or guests of the event.


13. **FIRST RIGHT OF REFUSAL.** The City shall have the first right of refusal for the next five years if the Event is scheduled to take place again within a 35 mile radius of Dayton, Ohio.
14. **CANCELLATION OF THE EVENT.** Fairways & Dreams will not be liable for cancellation of the Event prior to June 8, 2001. After June 8, 2001 (the first due date of 1/3 of payment), the City shall retain all payments.
15. **TICKET SALES.** Fairways & Dreams shall be exclusively entitled to all receipts and proceeds from any and all admission tickets and passes to the Event.
16. **REJECTION OF EXHIBITS.** Fairways & Dreams reserves the right to reject, or prohibit an exhibitor from including in the Event, any exhibit, proposed exhibit, or part of any exhibit, including, but not limited to, any person, article, conduct, printed matter, catalogue, or souvenir, that, in its reasonable business judgement, is not suitable to and in keeping with the character of the Event.
17. **INDEMNIFICATION AND HOLD HARMLESS.** Fairways & Dreams agrees to indemnify and hold the 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 Event or use of the Golf Club by any third party which is the direct and proximate result of any negligent act, error or omission by Fairways & Dreams, 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 the City's request, Fairways & Dreams shall undertake the full defense of any such claim. This indemnification and hold harmless protection for City shall include, but not be 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 Fairways & Dreams as described above and shall survive any termination of this Agreement.
18. **NAME AND LIKENESS RIGHTS.** The City hereby grants to the Fairways & Dreams and shall permit the right to use the name and visual images of the Golf Club and pictures of all personnel, spectators and other related subjects at the Event, in television, radio broadcast, motion pictures or any other type of audio or video coverage in advertising, publicizing and promoting the Event. Likewise, Fairways & Dreams shall permit the City the right to use the name and visual images of the Golf Club and pictures of all personnel, spectators and other related subjects at the Event, in television, radio broadcast, motion pictures or any other

type of audio or video coverage in advertising, publicizing and promoting the Event.

19. **FACILITY RULES & REGULATIONS.** The Golf Club will provide each exhibitor the rules and regulations governing use of the facility as shall be provided to Fairways & Dreams.
20. **NON-DISCRIMINATION.** Fairways & Dreams hereby agrees that in the hiring of employees for the performance of work under this Agreement, it and its sub-contractors shall not, by reason of race, color, religion, sex, age, handicap, sexual orientation, national origin or ancestry, discriminate against any citizen of this State in the employment of a person qualified and available to perform the work to which the Agreement relates, and that no contractor or other person acting on behalf of Fairways & Dreams shall, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, creed, sex, age, disability, national origin, genetic predisposition or carrier status, or marital status. Fairways & Dreams is required to include a similar provision in all subcontracts which shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. Fairways & Dreams agrees to post in conspicuous places available for employees and applicants for employment notices to be provided by the City pertaining to the provisions of the non-discrimination clause.
21. **ASSIGNMENT.** Neither party may freely assign its rights under this Agreement to any entity controlling it, controlled by it, or under common control with it, or to any entity that is a successor by merger to or the purchaser of all or substantially all of the assets of such party. No exhibitor shall sublet the whole or any part of any Designated Display Space without the prior written consent of Fairways & Dreams.
22. **NON-WAIVER.** The failure of Fairways & Dreams to insist upon the strict performance of the terms and conditions contained in the Agreement shall not constitute or be construed as a waiver or relinquishment of Fairways & Dreams right thereafter to enforce any such term or condition.
23. **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.
24. **GOVERNING LAW.** This Agreement shall be governed by the law of the State of Ohio.


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

WITNESS:



Carol A. Lister

CITY OF CENTERVILLE

By: 

Gregory B. Horn, City Manager

FAIRWAYS & DREAMS, INC.

By: _____

Exhibit "A"

The following example is a breakout of concession revenue:

Expected attendance -	25,000
Expected concession rev. per person	<u>x \$15</u>
Gross Concession	\$375,000.

Breakout of gross concessions:

75% to Food vendor/restaurant(s)	\$281,250
25% to others (listed below)	\$93,750

25% of concessions is to be divided equally among 3 entities after costs are deducted.

25% gross	\$93,750
Less costs	<u>-18,750</u>
net revenue	\$75,000

of the \$75,000 net revenue:

1/3 to host course	\$25,000
1/3 to Fairways & Dreams	\$25,000
1/3 to S & C Ent.	\$25,000

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The following example is a breakout of equipment/apparel revenue:

Expected attendance -	25,000
Expected buying attendees	<u>x 25%</u>
Buying attendees	6,250
Average equipment sale	<u>x \$250</u>
Total Equipment Sales	\$1,562,500

Breakout of Equipment Sales:

75% of gross to Equipment Manufacturer	\$1,171,875
25% of gross to others (listed below)	\$390,625

25% of equipment/apparel sales are to be divided among 3 entities after sales costs are deducted.

25% gross	\$390,625
Less 20% costs	<u>-78,125</u>
net revenue to distribute	\$312,500

of the \$312,500 net revenue:

24% to Host course	\$75,000
40% to Fairways & Dreams	\$125,000
36% to Golf course or Golf retailer consumer selects	\$112,500