

RESOLUTION NO. 63-99
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER C. Mark Kingseed ON THE
15th DAY OF November, 1999. J

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

WHEREAS, Dayton Open has been granted the right to host the 2000 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, NIKE 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 NIKE Dayton Open for the use of The
Golf Club at Yankee Trace for the 2000 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 November, 1999.

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

ATTEST:

Maureen J. Slaughter
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 63-99, passed by the Council of the City of Centerville, Ohio, on the 15th day of November, 1999.

Maureen J. Slaughter
Clerk of Council

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

Department of Law
Robert N. Farquhar
Municipal Attorney

EXHIBIT "A"

AGREEMENT

THIS AGREEMENT entered into this ____ day of _____, 1999 by and between the City of Centerville, an Ohio municipal corporation (hereinafter "City") and NIKE 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 granted the right to host the 2000 Dayton Open Golf Tournament (hereinafter "Tournament") from June 4, 2000 through June 11, 2000 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 September 1, 1999 and terminate at 12:00 a.m. (midnight) on August 31, 2000.
2. **RENTAL RATE.** The rental rate for the entire term shall be \$65,000.00, payable on June 30, 2000.
3. **EXCLUSIVE OCCUPANCY: EXCEPTIONS.** During June 4, 2000 through June 11, 2000, 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 cooperate in an effort to allow the City to carry out its said obligations to third parties with 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 club house 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 Nike products, both in and outside of the club house 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 the Dayton Opens execution of a Tournament Agreement with the PGA Tour, Inc by January 31, 2000. In the event a Tournament Agreement is not entered into between Dayton Open and the PGA Tour, Inc. before January 31, 2000, 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 4 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. **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.

11. This Agreement shall be governed by the law of the State of Ohio.

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 E. Horn, City Manager

NIKE DAYTON OPEN

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

THIS INSTRUMENT PREPARED BY:

SCOT A. STONE
ATTORNEY AT LAW
RUFFOLO, STONE, DRESSER & LIPOWICZ
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