

RESOLUTION NO. 64-99
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER James T. Repperto ON THE
15th DAY OF November, 1999.

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 sponsor 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, City personnel have heretofore managed the day to day tasks of
making the Tournament a success, and

WHEREAS, The parties believe that it would be in the best interests of all
concerned to have the City continue to supply management and other services necessary
or desirable to assure the success of 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 to provide for the
management of day to day tasks and other services necessary to assure the success of the
2000 Dayton Open Golf Tournament at The Golf Club at Yankee Trace, 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. Bish
Mayor of the City of Centerville, Ohio

ATTEST:

Marie Ann Saugher
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 64-99, passed by the Council of the City of Centerville, Ohio, on the 15th day of November, 1999.

Marie Ann Saugher
Clerk of Council

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

Department of Law
Robert N. Farquhar
Municipal Attorney

EXHIBIT "A"

MANAGEMENT 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, City personnel have heretofore managed the day to day tasks of making the Tournament a success; and

WHEREAS, the parties believe that it would be in the best interest of all concerned to have the City continue to supply the management and other services necessary or desirable to assure the success of the Tournament.

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

1. SCOPE AND DUTIES AND AUTHORITY. The City, under the direction and control of its city manager or his designee shall have all of the necessary authority to do any and everything reasonably necessary in order to promote and carry into execution a successful Tournament. Those duties are more fully described in the Tour Guide issued by the PGA Tour (hereinafter the "Guide") which is incorporated in this section as if fully rewritten and shall at a minimum include the same services and duties furnished and assumed by the City for the 1999 Tournament. The City will designate a staff member to direct the Tournament and will hire a part-time independent contractor or employ an administrative assistant to manage the tournament office whose services shall be subject to reimbursement pursuant to Paragraph 6, below. Dayton Open, acting through its board of trustees, shall establish all committees and name all charities as it, in counsel with the City, shall deem necessary. The City shall furnish monthly

financial reports to the Dayton Open no later than the fifteenth day of the following month during the term of this Agreement.

2. **INDEPENDENT CONTRACTOR STATUS.** When acting under this Agreement, the City shall be acting as an independent contractor and not as an employee of the Dayton Open. Like wise, the employees of the City when acting hereunder shall be acting only as employees of the City and not as employees of the Dayton Open. City understands that it is solely responsible for:

(a) Payment of any federal, state or local income taxes which may be due as a result of compensation earned as an independent contractor per the terms of this Agreement on behalf of itself or on behalf of its employees.

(b) Providing and paying for all state and federal workers' compensation and unemployment benefits and premiums for all services furnished by the City and its employees pursuant to the terms of this Agreement.

City further understands that it and its agents and employees shall not be eligible for workers' compensation or unemployment benefits and expressly assumes all risk of loss and harm, including personal injury and property damage arising, out of the services provided herein for claims made by any of its employees or agents for workers' compensation or unemployment benefits and shall indemnify and hold Dayton Open, its trustees, members, employees, advisory board volunteers, agents and representatives harmless therefrom.

3. **INSURANCE.** The parties acknowledge that the City presently carries sufficient general liability insurance so that no further coverage is needed. If it is deemed necessary or desirable to have Dayton Open, its officers and directors, listed as an additional named insured on any applicable insurance policies, the City shall undertake same upon the request of Dayton Open.

4. **TERM AND TERMINATION.** This Agreement shall commence upon the date of execution and continue indefinitely until terminated by either party. Any party desiring to terminate may do so by giving a written notice of termination to the other no later than October 1st, in any given year. 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.

5. **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.

6. COMPENSATION AND EXPENSES. The City shall not be entitled to any compensation for its management services hereunder but it may receive reimbursement for its reasonable expenses incurred in connection with the execution of its duties hereunder upon the presentation of written evidence of any such expenses to Dayton Open. Reimbursement shall be made within thirty (30) days after the presentation of the documentary support for same. The authority of the City to contract and/or incur any expense for the Tournament shall be expressly limited to the budget authorized by the Dayton Open Board of Trustees. City shall not contract and/or incur any additional expense on behalf of the Dayton Open in excess of the budget without first obtaining the express written consent of the Dayton Open's Board of Trustees.

7. FINANCIALS. Dayton Open shall maintain a separate bank account and separate financial records and pay for all of its expenses.

8. INDEMNIFICATION AND HOLD HARMLESS. City agrees to indemnify and hold Dayton Open, its trustees, members, employees, advisory boards, volunteers, agents and representatives, 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 the City, its employees, agents and representatives. Dayton Open 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 action. At Dayton Open's request, the City shall undertake the full defense of any such claim. This indemnification and hold harmless protection for the Dayton Open 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 the City as described above and shall survive any termination of this Agreement.

9. 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.

10. GOVERNING LAW. 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 B. 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, BRESSEL & LIPOWICZ
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DAYTON, OHIO 45459
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