

PLANNING COMMISSION
 APPROVED
 DISAPPROVED
 APPROVED AS NOTED
 TABLED
 BY Seth DATE 11/4/03
 PLANNING DIRECTOR

AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS

This Amended Declaration of Covenants and Restrictions (the "Declaration") is made as of the 21st day of Oct., 2003, by **TENNIS FOR CHARITY, INC.**, an Ohio non-profit corporation, whose mailing address is 250 East Fifth Street, Cincinnati, Ohio 45202, its successors and assigns, (the "Declarant") and approved and ratified by the City of Mason, Ohio (the "City"). This Declaration is made under the following circumstances:

RECITALS

A. Declarant is the fee simple owner of a tract of real estate containing approximately 88.7 acres divided into five parcels located in Warren County, Ohio, which tract is presently zoned R-6 Residential under the Zoning Code of the City (the "Zoning Code"). The tract is more particularly described on Exhibit A, attached hereto and made a part hereof (the "Entire Tract").

B. Declarant intends to develop the Entire Tract as commercial development, which may consist of certain commercial/retail uses as hereinafter described. The Entire Tract may be constructed in phases. Each Parcel is shown and labeled on the plan prepared by Browning Day Mullins Dierdorf Architects, dated October 10, 2003 labeled Exhibit B, attached hereto and made part hereof.

C. In connection with the development of the Entire Tract, Declarant agrees to declare the following Covenants and Restrictions on the Entire Tract. This Declaration will be placed of record in the Warren County, Ohio Recorder's office and the Covenants and Restrictions herein will run with the land.

NOW, THEREFORE, THE DECLARANT HEREBY DECLARES that the following Covenants and Restrictions will be imposed upon the Entire Tract. These Covenants and Restrictions will be binding on Declarant, its successors and assigns, and will run with the land and, subject only to the right of Declarant to reserve its rights as Declarant hereunder described in Sections 1 and 16 (a) of the Declaration, inure to the benefit of each owner of all or part thereof. Declarant and the City acknowledge that the following Covenants and Restrictions are reasonable and will promote the highest and best use of the Entire Tract. Declarant agrees to

03 081 CP
 03 081 RZ

develop the Entire Tract in accordance with this Declaration and in accordance with the final plan of the development area as approved by the City.

1. LAND USE:

- a. Due to the conceptual nature of this proposal, the designated parcels, size and exact use will be subject to change. Changes will be submitted to the City prior to any planned construction or final plan of the development area. The proposed use and planned parcel layout is prepared per the City's general planned unit development requirements. It is likely that other alternate uses may be proposed in the future, including retail, high tech/light industrial, outdoor stadium, health club, educational facilities and parking. The following uses are specifically prohibited and not included as part of this Declaration: residential, fast food restaurant, noxious uses such as sexually-oriented businesses, massage parlors and flea markets, and I-1 Light Industrial or I-2 Industrial under the Zoning Code. A fast food restaurant for the purpose of this Declaration will be defined as a restaurant which offers prepared meals and beverages which are sold to customers while in motor vehicles in an area designated for drive-in or drive-thru service but will not include a full service restaurant or a food service operation that is a part of or attendant to a tennis stadium complex.

- b. This Declaration outlines potential uses for the parcels as indicated on the attached drawings labeled Exhibit B. Those uses are for future consideration and there is no immediate plan to proceed with development. Consequently, it is unlikely that within 120 days after the approval of the concept plan by the Mason City Council, the detailed design and documentation necessary for a final plan of the development area will exist and that, within one year after such approval, construction of those future potential uses will commence. Declarant requests that an indefinite time extension of the concept plan and those time periods be granted until a final plan of the development area is realized. The City's approval of this Declaration will operate to so extend such time periods. Due to the unusual nature of this property and its impact

on the community, any planned modifications will be submitted to the City and discussed in detail with the City and adjoining land owners during future planning phases.

2. **LOT AREA:**

A conceptual planned unit development is proposed for the approximately 88.7 acre tract of land with a subdivision of 13 parcels. They consist of Parcel 1, an approximately 1.6 acre lot, Parcel 2, an approximately 2.8 acre lot, Parcel 3, an approximately 2.1 acre lot, Parcel 4, an approximately 2.1 acre lot, Parcel 5, an approximately 6.7 acre lot, Parcel 6, an approximately 6.7 acre lot, Parcel 7, an approximately 25 acre lot, Parcel 8, an approximately 2.9 acre lot, Parcel 9, an approximately 8.2 acre lot, Parcel 10, an approximately 6.3 acre lot, Parcel 11, an approximately 6.3 acre lot, Parcel 12, an approximately 7 acre lot, and Parcel 13, an approximately 7 acre lot. The parcels will contain an individual and combined minimum of 20% open space per the City's planned unit development requirements.

3. **INCLUDED DEVELOPMENTS:**

The proposed conceptual development includes the following:

- a. Parcel 1:
one-story restaurant at 3,000 sf
- b. Parcel 2:
three story hotel at 30,000 sf
- c. Parcel 3:
one story restaurant at 3,000 sf
- d. Parcel 4:
one-story restaurant at 3,000 sf
- e. Parcel 5:
up to six-story office building with 23,590 sf per floor
- f. Parcel 6:
up to six-story office building with 23,590 sf per floor
- g. Parcel 7:

08 081 CP

08 081 CP

(1) tennis stadium complex with support facilities including offices, retail stores, restaurants and indoor sport centers

(2) one-story hospitality building at 80,000 sf

h. Parcel 8:

one-story office building at 15,000 sf

i. Parcel 9:

up to three-story office building with 15,000 sf per floor

j. Parcel 10:

three-story hotel at 30,000 sf

k. Parcel 11:

up to six-story office building with 23,590 sf per floor

l. Parcel 12:

up to six-story office building with 23,590 sf per floor

m. Parcel 13:

up to six-story office building with 15,000 sf per floor

4. **GENERAL GUIDELINES:**

General architectural guidelines will be established prior to the completion of a final plan of the development area. Those guidelines will be sympathetic to the neighboring properties and establish a cohesive palette of materials for a consistent set of design parameters within the development of the property.

5. **HEIGHT:**

The height of the buildings other than the tennis stadium is restricted to 75 feet to the top of the highest occupied floor. The tennis stadium height is limited to 200 feet to the top of the structure. The preceding height limitations are measured from the finished elevations in front of such buildings to the roof line, excluding any parapets or antennae.

6. **ROADS:**

All existing recorded easement agreements providing ingress and egress to any part of the Entire Tract, including but not limited to the easement agreements listed on Exhibits B-1 and C, attached hereto and made a part hereof, will remain

in full force and effect in accordance with their terms, subject to the conditions and limitations set forth therein.

Declarant acknowledges that the City has provided Declarant with a copy of its 2001 Thoroughfare Plan. Declarant will discuss such Plan with the City but reserves all of its rights and remedies with respect thereto.

7. **LANDSCAPE GUIDELINES:**

Landscape guidelines will be established prior to completion of a final plan of the development area. The landscape guidelines will comply with the City's landscape ordinance, including perimeter landscaping, screening of service areas and buffering between adjacent properties.

8. **PARKING:**

Parking within the conceptual planned unit development will be determined based on the type of business located on each parcel. Parking will not be included in the definition of open space areas.

9. **BUFFER AREA; GOLF COURSE:**

There will be a 50-foot wide buffer area along the west property line adjacent to the Grizzly Golf Center, in which there will be no parking or occupied use so as to minimize the hazard of personal injury or property damage as a result of golf balls hit from the Grizzly Golf Center. The buffer area also will serve to screen to a reasonable extent from the view of the golf course any permanent parking added to the property as an accessory to such building. Each lot owner acknowledges the existence of the Grizzly Golf Course ("Golf Course") located to the west of the Entire Tract and the fact that the Golf Course is contiguous to several of the parcels in the Entire Tract. Each lot that is adjacent to the Golf Course will be subject to the right and easement on the part of any Golf Course players properly registered to play at the Golf Course, and their caddies, to enter upon the unimproved portion of any lot within 15 feet of the boundary of the Golf Course, to remove golf balls, subject to the official rules of the Golf Course, with such entering not being deemed to be a trespass. Golf Course players or their caddies will not be entitled to enter upon any lot with a golf cart or other vehicle or to spend an unreasonable amount of time on any such lot or in any way commit a

nuisance on any portion of a lot in the Entire Tract. Each lot owner acknowledges the risk of the hazards incident to occupying premises adjacent to a golf course, including but not limited to the potential for errant golf balls to strike persons, automobiles or other property situated on the lot. Such acknowledgement is without prejudice to any claims the lot owner may have against the Golf Course owner or operator or Golf Course players arising from such errant golf balls. By accepting conveyance of title to a lot in the Entire Tract, each lot owner acknowledges that the Golf Course does not constitute a nuisance or otherwise diminish the value of each lot owner's property, and each lot owner, and his, her or its successors and assigns, irrevocably waives all claims against Declarant, and the Golf Course owner, and their respective successors and assigns, that such lot owner may now or in the future have, that the Golf Course or the operation thereof as a Golf Course constitutes a nuisance or otherwise as a golf course diminishes the value of the lot's owner's property or any portion thereof or interest therein.

10. **SIGNAGE:**

Signage will comply with the City's planned unit development requirements. Signage will be constructed of similar materials and design for consistency within the development and will be harmonious with the exterior building materials within the development.

11. **UTILITIES:**

All utility lines included in the final plan of the development area will be located underground.

12. **LIGHTING:**

Lighting fixtures will be designed to illuminate access ways and permanent parking areas. Light will be directed downward in such a manner as to control glare and spill of light onto adjoining private properties.

13. **STORM WATER:**

Storm water detention will comply with the City's minimum requirements and any additional requirements that are imposed by the City in connection with a final plan of the development area.

03 081 CP

03 081 CP

14. **APPLICATION OF ORDINANCES AND ZONING REGULATIONS:**

Except as expressly waived or extended, all applicable provisions of the Mason Codified Ordinances will apply to the Entire Tract.

15. **ENFORCEMENT OF COVENANTS:**

Any costs or expenses, including attorneys or other professional fees, incurred by the City to enforce the Covenants and Restrictions contained in this Declaration will be paid by Declarant or its successors and assigns, as the case may be.

16. **MISCELLANEOUS:**

- a. This instrument may be amended and/or supplemented by Declarant or future owners of lots within the Entire Tract, with the approval of the City and its Planning Commission. The approval of all owners of the Entire Tract will not be necessary for any amendment or supplement to be effective, provided that such amendment or supplement is approved by the owners of those parcels for which modifications are being sought, the City and its Planning Commission and Declarant, if Declarant then owns any portion of the Entire Tract. Any such amendment will be effective upon its proper execution and recording. Although the Covenants and Restrictions contained in this Declaration will run with the land, the rights of Declarant under this instrument will remain personal to Declarant and only to its successors to which such rights are expressly assigned by Declarant by a recorded instrument.
- b. All headings are for ease of reference only and will not be used to construe or in the construction of this instrument.
- c. The recitals and all exhibits are incorporated herein by reference.
- d. This instrument will be construed under Ohio law.
- e. The determination by a court of competent jurisdiction that any provision of this instrument is invalid for any reason will not affect the validity of any other provision hereof.

Signed on OCTOBER 21, 2003.

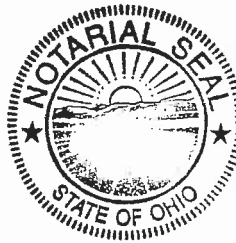
03 081 CP
03 081 RZ

STATE OF OHIO)
) SS
COUNTY OF Hamilton)

Be it remembered that on this 21st day of October, 2003, before me, a notary public in and for said State, personally came ROBERT J. SLATTERY, of Tennis for Charity, Inc., an Ohio non-profit corporation, who acknowledged the signing of the foregoing Amended Declaration to be his and its voluntary act and deed.

In testimony thereof, I have hereunto subscribed my name and affixed my seal on the day and year aforesaid.

Brian Grafton
Notary Public



BRIAN GRAFTON
Notary Public
In and for the State of Ohio
My Commission Expires
August 3, 2008

03 081 CP

03 081 RZ

WITNESSES:

Cesena O'Neill

Print Name CESENA S O'NEILL

Stephen H. Cox

Print Name Stephen H. Cox

DECLARANT:

TENNIS FOR CHARITY, INC.,
an Ohio non-profit corporation

By Robert J. Slattery

Name ROBERT J SLATTERY

Title PRESIDENT

03 08 1 CP

CONSENT OF MASON

The foregoing instrument was adopted and approved by the Mason City Council on _____, 2003, by Ordinance No. _____.

CITY OF MASON

By: _____

Its: _____

The foregoing instrument was incorporated in the final plan of the development area and approved by the Mason Planning Commission on _____, 2003.

CITY OF MASON
PLANNING COMMISSION

By: _____

Its: Chairperson

By: _____

Its: Planning Director

03 01 07 CP

03 01 07