

LEASE AGREEMENT

This Lease Agreement made, executed and entered into effective the 15th day of July, 2003, by and between The City of Evansville, Indiana, a municipal corporation, acting by and through its Board of Park Commissioners ("Park Board") and the Evansville Area Tennis Patrons Foundation, an Indiana non-profit corporation, d/b/a the Evansville Community Tennis Association ("ECTA");

WITNESSETH, THAT:

The Park Board, for and in consideration of the rents, covenants and agreement hereinafter set forth to be kept, observed and performed by the ECTA, and subject to the terms and upon the conditions hereinafter set forth, does hereby lease, demise and let unto the ECTA approximately six (6) acres of land and improvements situated thereon within Wesselman Park in the City of Evansville, Vanderburgh County, Indiana, more particularly identified and described upon Exhibit "A", attached hereto and incorporated by reference herein ("Leased Premises");

TO HAVE AND TO HOLD the Leased Premises for the Term of this Lease, hereinafter provided, subject to and upon the following provisions and conditions:

1. **TERM OF LEASE.** This Lease shall commence on July 15, 2003 and shall terminate on July 14, 2028 (the "Initial Term"). Upon the expiration of the Initial Term of the Lease, the Lease shall cease and terminate unless ECTA, within sixty (60) days prior to the termination of this Lease, provides written notice to the Park Board of its intent to renew the Lease for an additional term of ten (10) years (the "Renewal Term").

2. **CONSIDERATION.** Subject to the terms, provisions and conditions of this Lease, the ECTA shall pay unto the Park Board annual rental of One Dollar (\$1.00) per year, which rental shall be paid in advance for the exclusive right to maintain and operate the Leased Premises. In addition, the ECTA shall make the following improvements to the Leased Premises:

A. Phase I

1. Construct four (4) additional post tension concrete tennis courts adjacent to the existing tennis courts.
2. Install appropriate lighting for the four (4) additional post tension concrete tennis courts.
3. Improve the lighting at the existing tennis courts.

- 4. All of the above improvements shall be completed by April 1, 2005.

B. Phase II

- 1. Upon completion of Phase I, ECTA shall construct a 3,000 to 5,000 square foot clubhouse, including locker rooms and concession area, or other similar facilities, and up to twelve (12) additional outdoor post tension concrete tennis courts.
- 2. All of the above improvements shall be completed within four (4) years of completion of Phase I.

3. **ACCEPTANCE OF PREMISES.** ECTA has examined the Leased Premises and accepts the same in its present condition and state of repair.

4. **USE, CONDUCT OF BUSINESS, AND COMPLIANCE WITH LAW.** The Leased Premises is to be used and occupied by the ECTA for the purpose of operating, maintaining, and managing the same for use by the general public and others. The ECTA shall not use or occupy or permit the Leased Premises to be used or occupied, nor to do or permit anything to be done on the Leased Premises, in whole or in part, in any manner, which in any way, may violate any law or regulation affecting the Leased Premises. The Leased Premises shall only be used primarily for tennis-related purposes. Subject to any scheduled tournaments, lessons or other use of the tennis courts by ECTA or its designees, the tennis courts shall remain open to the public for walk-on court time, but subject to imposition of a user fee by ECTA. Any user fees for walk-on court time by the general public, which may be charged by ECTA, shall be approved in advance by the Park Board on an annual basis. The Park Board shall only have the right to reject a proposed fee for walk-on court time by the general public if such fee is not reasonable.

5. **UTILITY CHARGES.** The Park Board shall be responsible for the payment of electric, water, and sewer charges incurred by the ECTA in connection with its operation and maintenance of the Leased Premises, including such electric, water, and sewer charges associated with the Phase I and Phase II improvements to be constructed by the ECTA.

However, the ECTA shall be solely responsible for the payment of all phone, cable, internet, and gas charges incurred by the ECTA during the term of this Lease. In addition, the ECTA shall be solely responsible for any and all utility charges (electric, gas, sewer, water, cable and internet) incurred by the ECTA with respect to any indoor tennis courts and related lighting, during the term of this Lease.

6. **MAINTENANCE AND REPAIR.** The ECTA shall maintain, replace, and keep in good order and repair, and in a safe and sanitary condition, the entire Leased Premises, structural and non-structural, and all improvements located thereon. The ECTA, at its sole option and expense, shall have the right, in its own name, to make claims against and/or prosecute lawsuits against the person, firm, corporation or other entity whose act or omission in any manner caused or contributed to a cause of, any condition which results any obligation on the part of the ECTA to maintain or repair any portion of the Leased Premises pursuant to the terms of this Lease.

The Park Board shall be responsible for mowing the grass on the Leased Premises until such time as completion of Phase II, described in paragraph 2 above. Upon written request by ECTA, the Park Board shall cause to be removed all baseball screens and fencing prior to the construction of Phase II, as described in paragraph 2 above.

7. **INDEMNIFICATION AND LIABILITY INSURANCE.** ECTA shall keep in effect at its sole expense, comprehensive general liability insurance satisfactory to the Park Board and the City of Evansville, covering the Leased Premises, and providing coverage against all risks of injury or death to persons and property as follows:

- a. Bodily Injury Insurance in an amount not less than \$300,000 for injury to or death of one (1) person in any one (1) occurrence, and in an amount not less than \$5,000,000 for injury to or death of all persons in that same occurrence; and
- b. Property damage insurance in an amount not less than \$300,000 on account of any one (1) occurrence, and in an amount not less than \$5,000,000 in aggregate for all property damage claims arising out of that same occurrence.

All policies of insurance shall list the City of Evansville and the Park Board as additional insureds and ECTA shall provide the Park Board with all Certificates of Insurance upon request.

8. **FIRE AND EXTENDED COVERAGE INSURANCE.** The ECTA shall keep the entire Leased Premises, including additions or improvements, now or hereafter located on the Leased Premises, insured against loss by fire, wind and all other causes, included in an "all risk" policy of insurance. The buildings to be constructed on the Leased Premises shall be insured at an amount equal to the full insurable value thereof, exclusive of foundation and excavation costs. All policies of insurance required hereunder shall be carried in a solvent insurance company, licensed to do business in the State of Indiana.

9. **DAMAGE BY FIRE OR OTHER CASUALTIES.** In the event that the buildings or improvements now or hereafter located upon the Leased Premises are damaged by fire or other casualty, the same shall be repaired and restored by ECTA to value equal to the value of the same prior to such damage, to the extent of any insurance proceeds received by ECTA.
10. **CONSTRUCTION, ALTERATIONS OR ADDITIONS.** The plans and specifications relating to the construction of additional post tension concrete tennis courts, the plans and specifications concerning the construction of a clubhouse and/or the plans and specifications concerning any other structures, including indoor tennis courts which may be constructed upon Leased Premises shall be reviewed and approved by the Park Board prior to the initiation of construction by the ECTA. The time periods in which ECTA is to complete Phase I and Phase II, as set forth in paragraph 2, shall be extended during all the time period that the Park Board is considering the plans and specifications.
11. **RIGHT OF INSPECTIONS.** The Park Board, or its representatives, shall have the right to enter upon the Leased Premises at any time for the purpose of examining and inspecting the same.
12. **WARRANTY OF QUIET POSSESSION.** The Park Board represents and covenants that it has good and marketable title to the Leased Premises and it has full authority to execute this Lease, and no consent is required of any other person whatsoever concerning the execution of this Lease.
13. **ASSIGNMENT.** The ECTA shall not assign this Lease, or any part thereof, without the prior written consent of the Park Board. This paragraph shall not preclude ECTA from entering into a management contract to manage the existing tennis facility and any additional tennis courts or other facilities constructed by ECTA, and such management contract shall not be considered an assignment. No assignment or subleasing shall release the Tenant from any of its primary obligations hereunder.
14. **TERMINATION.** Should the ECTA not complete the Phase I improvements by April 1, 2005, this Lease shall automatically terminate on April 2, 2005. Further, should Phase II not be completed as set forth above, the Park Board may elect to terminate this Lease.
15. **REMEDIES.** All of Tenant's covenants shall be construed as conditions, and upon failure of the ECTA to timely pay rental or make the required improvements to the Leased Premises as provided in paragraph 2, or if any one or more of the following events of default continues for a period of thirty (30) days after written notice of such default is given by the Park Board to the ECTA:

- a. Abandonment of the Leased Premises by the ECTA;
- b. The making by ECTA of an assignment for the benefit of its creditors;
- c. The failure of ECTA to pay a judgment against it, resulting in the levying of a writ of execution or attachment on or against the property of the Park Board;
- d. If proceedings are instituted for its adjudication as a bankrupt or insolvent, or for the appointment of a receiver of the property of the ECTA, and said proceedings are not dismissed and any receiver, trustee or liquidator appointed therein discharged within thirty (30) days after the institution of said proceedings; and
- e. The failure of the ECTA to timely keep or perform any other of its obligations or covenants under this Lease, excepting only that if the circumstances so warrant the thirty (30) day period referred to above shall be extended for such additional time as may be reasonably required for the ECTA to perform such other covenant or covenants, provided the ECTA promptly undertakes such performance and prosecutes the same to conclusion with reasonable diligence;

the Park Board shall have the right to continue this Lease in force and effect, notwithstanding any such default, and to sue for and recover any rental, costs or damages (including attorney's fees) by reason of any such default, or at its election to terminate this Lease and re-enter and take possession of the Leased Premises, all without prejudice to any then existing causes of action on account of any breach of this Lease or default. Any such termination shall become effective on the date specified by the Park Board in its notice to the ECTA. Upon such termination, the Park Board may re-enter the Leased Premises with or without process of law using such force as may be necessary, and remove all persons and chattels therefrom, and the Park Board shall not be liable for damages or otherwise by reason of its re-entry or termination of this Lease.

The ECTA will, at the expiration or termination of this Lease, yield up possession to Park Board.

All rights and remedies of the Park Board herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law or equity, and such rights and remedies may be exercised and enforced concurrently and whenever and as often as the occasion therefor arises. The failure or forbearance on the part of the Park Board to enforce any of its rights or remedies in connection with any default shall not be deemed a waiver of such default, nor a consent to any continuation thereof, nor a waiver of the same default at any subsequent date. Any action taken by the Park Board under the provisions of this Lease, or

to enforce the provisions of this Lease, or to declare a termination of the ECTA's interest under this Lease, or to repossess itself of the Leased Premises (whether through the medium of legal proceedings instituted for that purpose or otherwise) shall not, in any event, release or relieve the ECTA from its continuing obligations. In the event ECTA fails to complete Phase I or Phase II in a timely manner, as described in paragraph 2, termination of this Lease Agreement shall be the Park Board's sole remedy.

16. **ABANDONMENT OF ECTA'S PROPERTY.** If the ECTA fails to remove any property belonging to it within ten (10) days after any termination of this Lease, it shall be deemed to have been abandoned by the ECTA and shall become the property of the Park Board.

17. **HOLDING OVER BY ECTA.** If the ECTA holds over or remains in possession or occupancy of the Leased Premises at the expiration of this Lease, such holding over or continued possession or occupancy, if an agreed rental is paid by the ECTA and accepted by the Park Board for or during the period of time the ECTA holds over or remains in possession or occupancy, shall create only a tenancy from month-to-month upon the same terms and conditions herein contained which may at any time be terminated by either the Park Board or the ECTA giving to the other party thirty (30) days' written notice.

18. **SURRENDER AT TERMINATION.** At the termination of this Lease, for any reason, the ECTA shall quietly and peaceably surrender possession of the Leased Premises and any improvements located thereon to the Park Board free from any and all claims or liens with respect thereto.

19. **NOTICES.** Any notices, requests, elections or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or courier (including Federal Express and other such courier services) or deposited with the United States Postal Service for delivery by registered or certified mail, return receipt requested, postage fully prepaid and properly addressed to the Party to whom the communication is directed at its address set forth below:

TO PARK BOARD:

City of Evansville
Board of Park Commissioners
c/o Department of Parks and Recreation
100 E. Walnut Street, Lower Level
Evansville, IN 47713
City of Evansville Law Department
c/o The Office of the Mayor
302 Civic Center Complex
1 N.W. Martin Luther King, Jr. Blvd.
Evansville, IN 47708

TO ECTA:

**Evansville Community Tennis Association
1516 Southfield Road
Evansville, IN 47715
ATTN: Jim Whipkey, President**

Any such notice, request, election or other communication shall be considered given on the date of such hand or courier delivery or deposit with the United States Postal Service, and shall be considered received on the date of hand or courier delivery or on the third (3rd) day following deposit with the United States Postal Service in the manner provided above. Rejection or other refusal to accept or inability to deliver because of a changed address as to which no notice was given shall nevertheless be deemed to have been received by the addressee. Either party may by like notice at any time, and from time to time, designate a different address to which communications shall be sent.

20. **GENERAL.** No waiver of any default of the ECTA hereunder shall be implied from any omission by the Park Board to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers of any covenant, term or condition of this Lease by the Park Board shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by the Park Board to or of any act by the ECTA requiring the Park Board's consent or approval shall not be deemed to waive or render unnecessary the Park Board's consent or approval to or of any subsequent similar act by the ECTA. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions. The laws of the state in which the Leased Premises is located shall govern the validity, performance and enforcement of this Lease. The headings of the several sections contained herein are for convenience only and do not define, limit or construe the contents of such sections.

21. **FORCE MAJEURE.** Whenever this Lease requires any act to be performed by a certain time or within a certain period of time, the time for the performance of such act shall be extended by the period of any delays in such performance caused by war, strikes, lockouts, civil commotion, unpreventable material shortages, casualties, acts of God or other conditions or events beyond the control of the ECTA required to perform such act.

22. **SUCCESSORS AND ASSIGNS.** Except as otherwise herein provided, this Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, agents, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Lease this 9 day of

July 2003.

PARK BOARD

City of Evansville Board of Park Commissioners

ATTEST:

[Signature]

By: [Signature]
Its Pres

ECTA

Evansville Area Tennis Patrons Association d/b/a The Evansville Community Tennis Association

ATTEST:

[Signature]

By: [Signature]
Jim Whippley
Its President

EXHIBIT "A"

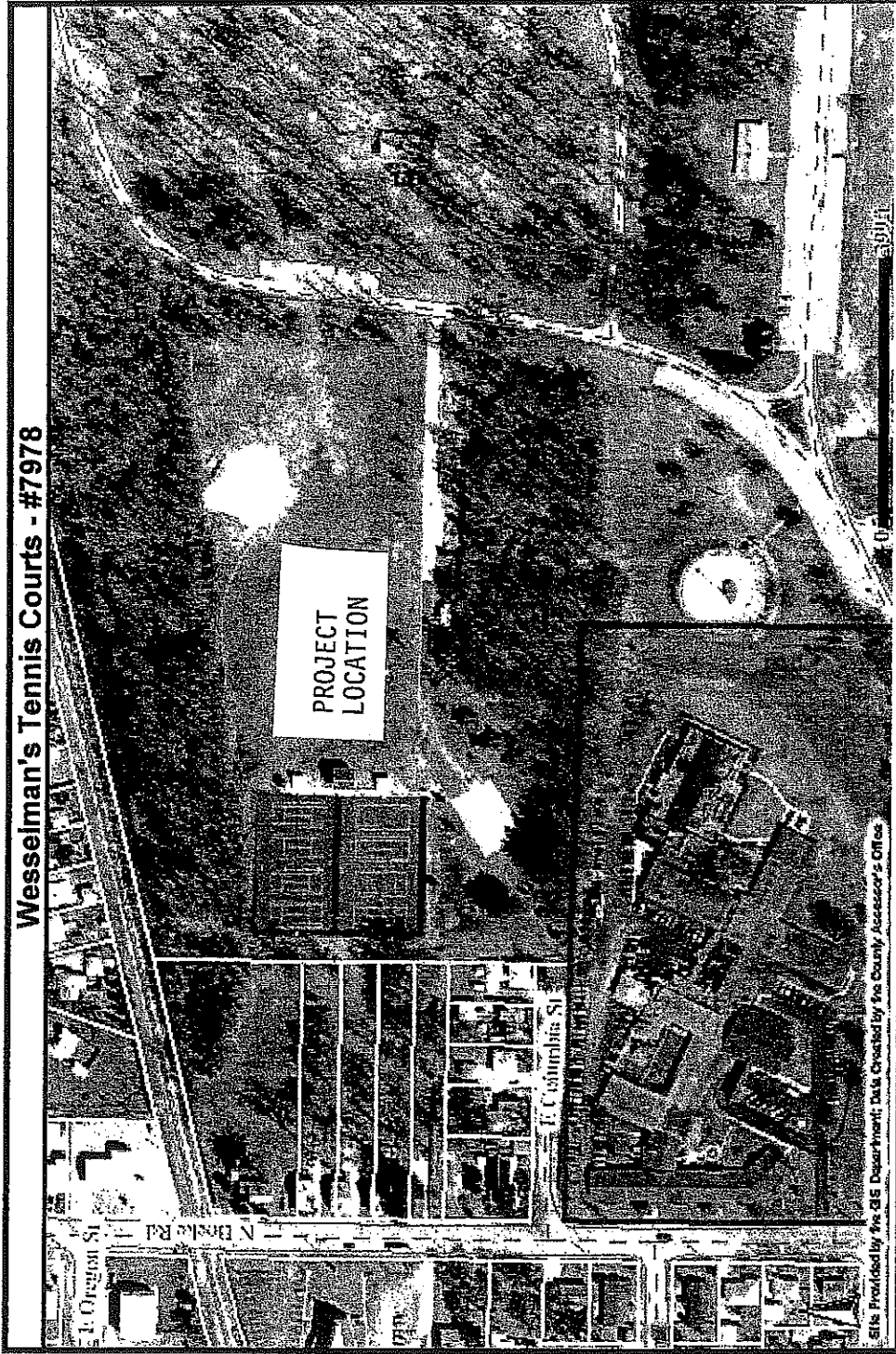
That part of Northeast Quarter of Section 22, Township 6 South, Range 10 West, Vanderburgh County, Indiana, more particularly described as follows:

Beginning at Northwest Corner of said quarter section, thence S 00-56-27 W Two thousand one hundred ninety-one and ninety-six hundredths (2191.96) feet, thence N 90-00-00 E Four hundred fourteen and five hundredths (414.05) feet to POINT OF ORIGIN, thence N 82-46-38 E Nine hundred forty-eight and forty-nine hundredths (948.49) feet, thence S 4-43-55 W Three hundred sixty-eight and fifty-one hundredths (368.51) feet, thence S 89-23-04 W One hundred eighty-nine and fifty-three hundredths (189.53) feet, thence N 88-38-02 W Two hundred eighty-eight and thirty-two hundredths (288.32) feet, thence N 88-38-11 W Thirty and forty-three hundredths (30.43) feet, thence S 87-33-07 W Twenty-nine and forty hundredths (29.40) feet, thence S 68-47-59 W Forty-one and forty-seven hundredths (41.47) feet, thence S 57-32-46 W Five and ninety-three hundredths (5.93) feet, thence N 87-16-32 W Forty-seven and eighty-one hundredths (47.81) feet, thence S 58-36-56 W One hundred sixty-one and forty-three hundredths (161.43) feet, thence S 36-50-19 E Thirty-one and forty-seven hundredths (31.47) feet, thence S 60-39-49 W One hundred eighty-four and ninety-six hundredths (184.96) feet, thence N 1-54-30 W Forty-one and ninety-nine hundredths (41.99) feet, thence N 0-00-00 E Four hundred seventeen and fifty-six hundredths (417.56) feet to POINT OF ORIGIN.

Containing Seven and twenty-seven hundredths (7.27) acres.



Wesselman's Tennis Courts - #7978



Site Provided by the GIS Department; Data Checked by the County Assessor's Office

Andy Easley Engineering, Inc.
1133 W. Mill Road, Suite 205
Evansville, IN 47710