

97-1014

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this "Easement") is granted this 4th day of November 1997, by THE CLAYTON FOUNDATION, AS TRUSTEE FOR THE GEORGE W. CLAYTON TRUST, a Colorado trust ("Grantor"), to the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado ("Grantee").

RECITALS

WHEREAS, Grantor is the record owner in fee simple of approximately 170 acres of certain lands located in the City and County of Denver ("Land"); and

WHEREAS, a regulation-length 18-hole daily fee public golf course known as the Park Hill Golf Club ("Golf Course") is presently located and operated on approximately 156 acres of the Land, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("Golf Course Land"); and

WHEREAS, the use of the Golf Course Land as open space in general and as a golf course in particular provides a desirable recreational activity and a visually appealing and aesthetically pleasing type of land use for neighboring communities and surrounding areas; and

WHEREAS, Grantee has appropriated bond proceeds in the amount of \$2 million (the "Bond Proceeds") to be applied toward acquisition of a real property interest in the Golf Course Land; and

WHEREAS, Grantor and Grantee desire to preserve the Golf Course Land as open space and the Golf Course as a regulation-length 18-hole daily fee public golf course, and for that purpose, Grantor desires to convey and Grantee desires to acquire a conservation easement upon and over the Golf Course Land and the Golf Course pursuant to Title 38, Article 30.5 of the Colorado Revised Statutes unless otherwise provided herein, and subject to the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and agreements set forth in this Easement, and for other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Purpose. The purpose of this Easement is to vest a real property interest in Grantee that provides for the conservation of the Golf Course Land as open space and for the continued existence and operation of a regulation-length 18-hole daily fee public golf course in its present location, or as it may be reconfigured from time to time as provided in

paragraph 5 below, and that prohibits uses of the real property which would be a detriment to the continued existence and operation of the Golf Course except as hereinafter provided.

2. Grant of Easement. Grantor hereby grants, bargains, sells, and conveys to Grantee a perpetual, non-exclusive conservation easement in gross over and upon the Golf Course Land to maintain the Golf Course Land's scenic and open condition and to preserve the Golf Course Land for recreational use, which easement shall be appurtenant to and run with the land, for the purposes stated above and subject to the terms and conditions set forth herein.

3. Payment by Grantee/Value of Easement. Upon execution and delivery of this Easement by Grantor, Grantee shall pay to Grantor \$2 million in cash or other good funds. The parties agree and stipulate that \$2 million reflects the fair value of the conservation easement granted herein.

4. Location of Easement. This Easement shall be located on, over, and above the Golf Course Land, which is described on Exhibit A hereto.

5. Reconfiguration of Easement. In the event that Grantor acquires all or a portion of the 35 acres located immediately adjacent to the Golf Course Land and described in Exhibit B ("Adjoining Land"), Grantor may reconfigure the Easement to include all or a portion of the Adjoining Land, and Grantee shall release the Easement on a portion of the Golf Course Land fronting upon Colorado Boulevard to the extent of the number of acres of the Adjoining Land included by Grantor; provided, however, that (a) at no time shall the total area of the Golf Course Land be less than the total area of the real property described on Exhibit A; (b) after reconfiguration of the Easement, the property fronting upon Colorado Boulevard that is excluded from the Easement shall not exceed 1,650 linear feet; (c) any reconfiguration of the Golf Course shall retain its character as a "regulation-length" 18-hole daily fee public golf course; (d) any reconfiguration of the Golf Course shall retain a landscaped buffer totaling at least 1,500 feet in length along the western edge of any new development along Colorado Boulevard; and (e) this Easement shall be amended, in writing, executed and acknowledged by both parties, to legally describe the real property on which the Golf Course will be reconfigured and to provide for a release from this Easement by the Grantee of the portion of real property on which the Golf Course will no longer be located and a submission to this Easement of the reconfigured property on which the Golf Course will be located. The amendment shall be recorded in the real property records of the Clerk and Recorder for the City and County of Denver prior to commencement of any physical activity or construction on the Golf Course Land in furtherance of any such reconfiguration.

6. Permitted Uses. Subject to the terms and conditions of this Easement:

(a) The Golf Course Land shall be occupied, used, operated, and maintained as a regulation-length 18-hole daily fee public golf course with such related uses and activities as may be accessory or incidental to the operation of a golf course, including but not limited to a driving range, golf learning center, club house, restaurant and bar, and such unrelated recreational uses such as ball fields, tennis courts, etc.;

(b) No use of the Golf Course Land shall be permitted that would be a detriment to the existence and operation of the Golf Course, except for portions of the Golf Course Land that may be released from the Easement by reconfiguration in accordance with paragraph 5 of this Easement;

(c) The Golf Course shall be managed, operated, and maintained by Grantor or any agent, manager, or lessee of Grantor, consistent with such generally accepted standards as are applied by other regulation-length 18-hole daily fee public golf courses in the Denver metropolitan area;

(d) Buildings presently located on the Golf Course Land, or which may be subsequently constructed upon the Golf Course Land at no expense to Grantee, may be used for purposes related to the operation of the Golf Course at the discretion of Grantor, so long as such uses are not in violation of current or legally amended zoning regulations relating to the Golf Course Land; and

(e) Grantor shall be solely responsible for costs and expenses of the operation, management, and maintenance of the Golf Course, and Grantee shall have no responsibility nor shall bear any cost or expense therefor.

7. Reservation of Rights of Grantor. Other than as specified by the terms and conditions of this Easement, Grantor reserves the full, complete, and uninterrupted right to use, possess, and occupy all portions of the Golf Course Land so long as such use, possession, and occupancy is not a detriment to the existence and operation of the Golf Course. More specifically, Grantor shall have the right in its sole and absolute discretion to (a) make all decisions and carry out all activities on the Golf Course Land related to the operation, management, and maintenance of the Golf Course and related to the retained ownership interests of the Grantor; (b) expand the uses conducted on the Golf Course Land to include additional recreational uses, including without limitation expanded uses of the portions of the Golf Course Land that are currently used as a driving range and golf learning center, provided that Grantor shall obtain the prior approval by Grantee of such expanded uses, which approval shall not be unreasonably withheld, conditioned, or delayed; (c) grant property interests in, and enter into contracts, leases, and other agreements relating to the Golf Course Land and the operation, management, and maintenance of the Golf Course; (d) set all rates and fees relating to use of any facilities of the Golf Course; and (e) regulate access to and use of the Golf Course, provided that the Golf Course shall always be maintained as a daily fee public golf course and will be operated in accordance with the anti-discrimination requirements set forth in paragraph 11 below.

8. Ownership. Grantor warrants that as of the date of this Easement, it has good and marketable title in fee simple to the real property described on Exhibit A hereto, and that this Easement is conveyed free and clear of all liens and encumbrances except for easements, restrictions, and encumbrances of record, and subject to that certain Lease dated November 13, 1996, between Grantor and Park Hill Management Corp. (the "Lease"), and as it may be amended from time to time.

9. Condemnation.

(a) In the event that such portion of the Golf Course Land is taken through the exercise of the power of eminent domain by the City and County of Denver so that it is no longer physically possible to operate a regulation-length 18-hole golf course and driving range on the Golf Course Land, Grantee shall have no claim against Grantor for any portion of the compensation attributable to the value of the Golf Course Land taken, and Grantor shall have the right to terminate this Easement by delivering a written notice of termination to Grantee, which termination shall be effective immediately upon delivery.

(b) In the event that such portion of the Golf Course Land is taken through the exercise of the power of eminent domain by any public entity other than the City and County of Denver, so that it is no longer physically possible to operate a regulation-length 18-hole golf course and driving range on the Golf Course Land, Grantee shall be entitled to 25% of the total compensation attributable to the value of the Golf Course Land taken, and, if the Grantor elects to sell, in an arm's length transaction at fair market value, the remainder of the Golf Course Land and tenders to Grantee a cash amount equal to 25% of the full selling price of the cash equivalent for the value of any trade, the Grantor shall have the right to terminate this Easement upon tendering said amount, along with a written notice of termination, to Grantee.

(c) In the event that a portion of the Golf Course Land is taken through the exercise of the power of eminent domain by any public entity including the City and County of Denver and the portion taken does not make it physically impossible to operate a regulation-length 18-hole golf course and driving range on the Golf Course Land, Grantee shall have no claim against Grantor for any portion of the compensation attributable to the value of the Golf Course Land taken, and the Conservation Easement shall remain in full force and effect.

10. Abandonment. In the event Grantee shall release, terminate, extinguish, or abandon its rights herein granted, all right, title, and interest of Grantee hereunder shall cease and terminate, and the grant herein shall revert to the Grantor.

11. Anti-Discrimination. The Grantor acknowledges and agrees that, with respect to the operation, management, and maintenance of the Golf Course and access to and use of the Golf Course by the public, the Grantor is subject to, and obligated to comply with, Denver's Anti-Discrimination Ordinance set forth in §§ 28-91 *et seq.*, Denver Revised Municipal Code, as it currently exists or may hereafter be amended. To this end, the Grantor acknowledges and agrees that the Golf Course is a "place of public accommodation" under this Ordinance.

12. Transfer. Nothing contained herein shall restrict the right of Grantor to sell, convey, mortgage, encumber, transfer, assign, or lease all or any portion of the Golf Course Land or any interest therein subject to this Easement. Obligations or restrictions contained herein shall not be a personal covenant of Grantor, but shall run with the land and be enforceable against any owner, lessee, mortgage holder, assignee, or other successor in interest of Grantor.

13. Enforcement/Remedies. This Easement shall be enforceable as follows, without any notice or demand whatsoever:

(a) Actual or threatened injury or impairment of any interest granted or reserved by this Easement may be prohibited or restrained by injunctive relief granted by any court of competent jurisdiction in a proceeding initiated by Grantor or Grantee.

(b) Grantor and Grantee each shall have the right against the other to specific performance of this Easement, and Grantor and Grantee each hereby waives any right or entitlement to recover damages for any injury to any interest protected hereby.

(c) The benefits of this Easement shall run exclusively to Grantee. No right or interest shall benefit any land adjoining the Golf Course Land, any such adjoining landowner personally, or any other third party, and no such adjoining landowners or third parties shall have any claims or rights to enforce this Easement.

14. Estoppel Certificates. Within ten (10) days after request by Grantor, Grantee shall execute and deliver to Grantor estoppel letters or other documents as may be requested by Grantor certifying that Grantor is in compliance with the terms and conditions of this Easement or specifying any such provision as to which Grantee believes Grantor is not in compliance, and stating any other matters which Grantor or its lenders may reasonably require.

15. Governing Law. This Easement and all the terms and provisions hereof shall be governed and construed in accordance with the laws of the State of Colorado.

16. Entire Agreement. This Easement contains the entire agreement between the parties with respect to the grant by Grantor of a real property interest in the Golf Course Land to Grantee, and supersedes all prior agreements, understandings, negotiations, and discussions of the parties, whether oral or written, related thereto.

17. Amendment. No amendment or modification of this Easement shall be valid except by a written agreement executed and acknowledged by both parties hereto and recorded in the real property records of the City and County of Denver.

18. Successors and Assigns. All references to Grantor in this Easement shall be deemed to include references to successors and assigns of Grantor.

19. Recording. This Easement shall be recorded in the real property records of the Clerk and Recorder for the City and County of Denver.

20. Severability. The covenants and agreements obtained herein are several in nature. Should any one or more of the provisions of this Easement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Easement.

21. Subject to Other Approval. This Easement is subject to the approval of the City Council in accordance with the provisions of the City Charter, and this Easement shall not take effect until its final approval by City Council, and until signed by all required City officials, including the Mayor, the Clerk and Recorder, and the Auditor.

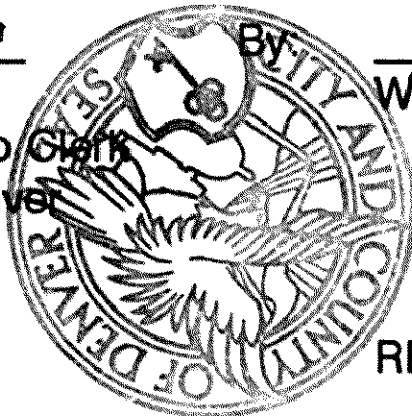
IN WITNESS WHEREOF, the parties hereto have executed this Conservation Easement as of the date first above written.

THE CLAYTON FOUNDATION,
as Trustee for the George W. Clayton Trust

By: Adelle Phelan
ADELE PHELAN, President

ATTEST: CITY AND COUNTY OF DENVER

Rosemary E. Rodriguez
ROSEMARY E. RODRIGUEZ,
Clerk and Recorder, Ex-Officio
of the City and County of Denver



Wellington E. Webb
WELLINGTON E. WEBB, MAYOR

APPROVED AS TO FORM:

DANIEL E. MUSE, Attorney for
the City and County of Denver

Patrick Wheeler
PATRICK WHEELER
ASSISTANT CITY ATTORNEY

REGISTERED AND COUNTERSIGNED:

[Signature]
Auditor

Contract Control No. CE 74039

PARKS & RECREATION
[Signature]
Manager of Parks & Recreation

STATE OF COLORADO)
)
CITY AND COUNTY OF DENVER) SS.

The foregoing document was acknowledged before me this 6th day of October, 1997, by Adele Phelan as President of The Clayton Foundation, as Trustee for the George W. Clayton Trust, a Colorado trust.

WITNESS my hand and official seal.

My commission expires: 7.29.99

Phoebe Lawrence
Notary Public

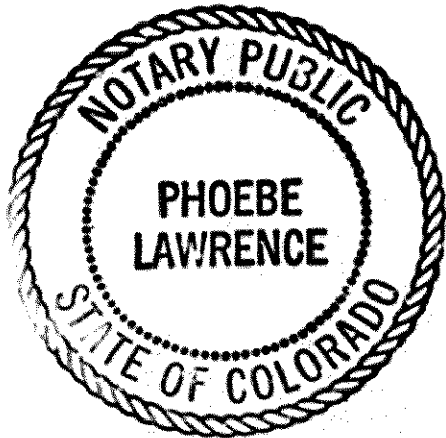


EXHIBIT A

PROPERTY DESCRIPTION
Park Hill Golf Course

A parcel of land in the Southwest Quarter of Section 19 and the North Half of the Northwest Quarter of Section 30, all in Township 3 South, Range 67 West, of the 6th Principal Meridian, City and County of Denver, State of Colorado being more particularly described as follows:

COMMENCING at the Southwest Corner of said Section 19;
THENCE N89°39'51"E along the southerly line of the Southwest Quarter of said Section 19 a distance of 50.00 feet to the POINT OF BEGINNING;

THENCE N00°03'58"W along a line 50.00 feet easterly of and parallel with the westerly line of the Southwest Quarter of the Southwest Quarter of said Section 19 a distance of 909.31 feet;

THENCE the following ten (10) courses along the southerly and easterly lines of parcels of land described in deeds recorded in Book 1034 at Page 482 in the Denver County Clerk and Recorder's Office;

- 1) N03°44'52"E a distance of 150.33 feet;
- 2) THENCE N00°03'58"E along a line 60.00 feet easterly of and parallel with the westerly line of the Southwest Quarter of the Southwest Quarter of said Section 19 a distance of 175.00 feet;
- 3) THENCE N44°57'10"E a distance of 91.95 feet;
- 4) THENCE N89°56'46"E a distance of 290.00 feet;
- 5) THENCE N00°04'34"W a distance of 115.00 feet;
- 6) THENCE N89°55'58"E a distance of 1025.05 feet;
- 7) THENCE N00°04'35"W along a line non-tangent with the following described curve a distance of 1114.17 feet;
- 8) THENCE along the arc of a curve to the right, having a central angle of 9°02'08", a radius of 5607.93 feet, a chord bearing of S84°28'15"E a distance of 883.46 feet, and an arc distance of 884.37 feet;
- 9) THENCE S80°43'32"E non-tangent with the last described curve a distance of 89.72 feet;
- 10) THENCE S79°58'35"E a distance of 28.91 feet;

THENCE the following three (3) courses along the westerly and northerly lines of parcels of land dedicated for road purposes in the City and County of Denver Ordinance No. 253, Series of 1951;

1) S00°09'10"E along a line 50.00 feet westerly of and parallel with the easterly line of the Northeast Quarter of the Southwest Quarter of said Section 19 a distance of 1086.77 feet;

2) THENCE S00°08'35"E along a line 50.00 feet westerly of and parallel with the easterly line of the Southeast Quarter of the Southwest Quarter of said Section 19 a distance of 1324.66 feet;

3) THENCE S00°08'13"E along a line 50.00 feet westerly of and parallel with the easterly line of the North Half of the Northwest Quarter of said Section 30 a distance of 2.96 feet;

THENCE N82°31'11"W along an existing fence and the prolongation thereof a distance of 28.58 feet;

THENCE S89°39'27"W along an existing fence a distance of 483.58 feet;

THENCE S00°37'56"E along an existing fence and the prolongation thereof a distance of 1263.99 feet;

THENCE S89°38'54"W along a line 59.00 feet northerly of and parallel with the southerly line of the North Half of the Northwest Quarter of said Section 30 a distance of 1891.59 feet;

THENCE N00°00'00"W along a line 50.00 feet easterly of and parallel with the westerly line of the North Half of the Northwest Quarter of said Section 30 a distance of 1263.65 feet to the POINT OF BEGINNING.

Containing 155.413 acres more or less.

EXHIBIT B

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 19;

THENCE SOUTHERLY ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER 1411.31 FEET TO A POINT WHICH IS 88.06 FEET SOUTHERLY FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SOUTHWEST QUARTER OF SECTION 19;

THENCE ON AN ANGLE TO THE LEFT OF 90 DEGREES 00 MINUTES 00 SECONDS A DISTANCE OF 60 FEET TO THE POINT OF BEGINNING;
THENCE ON AN ANGLE TO THE LEFT OF 90 DEGREES 00 MINUTES 00 SECONDS A DISTANCE OF 926.61 FEET;
THENCE ON AN ANGLE TO THE RIGHT OF 04 DEGREES 29 MINUTES 28 SECONDS A DISTANCE OF 255.39 FEET;
THENCE ON AN ANGLE TO THE RIGHT OF 38 DEGREES 31 MINUTES 55 SECONDS A DISTANCE OF 29.31 FEET;
THENCE ON AN ANGLE TO THE RIGHT OF 38 DEGREES 29 MINUTES 03 SECONDS A DISTANCE OF 253.44 FEET;
THENCE ON AN ANGLE TO THE RIGHT OF 04 DEGREES 31 MINUTES 34 SECONDS A DISTANCE OF 604.29 FEET TO A POINT OF CURVE;
THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 5599.65 FEET AND CENTRAL ANGLE OF 04 DEGREES 58 MINUTES 52 SECONDS AN ARC DISTANCE OF 486.82 FEET TO A POINT OF TANGENT;
THENCE ON AN ANGLE TO THE RIGHT OF 88 DEGREES 59 MINUTES 08 SECONDS FROM SAID TANGENT 1114.42 FEET;
THENCE ON AN ANGLE TO THE RIGHT OF 90 DEGREES 00 MINUTES 00 SECONDS A DISTANCE OF 1025.00 FEET;
THENCE ON AN ANGLE TO THE LEFT OF 90 DEGREES 00 MINUTES 00 SECONDS A DISTANCE OF 115.00 FEET;
THENCE ON AN ANGLE TO THE RIGHT OF 90 DEGREES 00 MINUTES 00 SECONDS A DISTANCE OF 290.00 FEET;
THENCE ON AN ANGLE TO THE LEFT OF 45 DEGREES 00 MINUTES 00 SECONDS A DISTANCE OF 91.92 FEET TO THE POINT OF BEGINNING.