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AGENCY AGREEMENT BETWEEN
THE CLAYTON TRUST
AND THE CITY AND COUNTY OF DENVER

THIS AGENCY AGREEMENT (this "Agreement"), is made and entered into on the 13 day of Oct, 2000, by and between THE GEORGE W. CLAYTON TRUST, a Colorado Trust (the "Trust"), through its trustee, the Clayton Foundation (the "Foundation"), and the CITY AND COUNTY OF DENVER, a home rule municipality organized and existing under and by virtue of the Constitution of the State of Colorado (the "City").

WITNESSETH THAT:

WHEREAS, the George W. Clayton Trust (the "Trust") was endowed in 1899 to establish an organization for the better care and education of children without fathers and the Trust has continued, through the Foundation, to undertake charitable activities, currently focusing on operating, managing, and funding high-quality, innovative programs for children; and

WHEREAS, as part of its endowment, the Trust has been the beneficial owner of approximately 170 acres of certain lands located within the City and County of Denver ("Land"); and

WHEREAS, to generate revenues for the Trust's charitable activities, a regulation-length 18-hole daily fee public golf course known as the Park Hill Golf Club ("Golf Course") is and has been located and operated on approximately 156 acres of the Land, as more particularly described on Exhibit A attached hereto and incorporated by reference ("Golf Course Land"), and is currently managed by the American Golf Corporation pursuant to a 20-year lease with the Foundation, as trustee for the Trust; and

WHEREAS, the Trust has separately retained ownership of a 14-acre parcel of the Land, as more particularly described on Exhibit B attached hereto and incorporated by reference (the "Commercial Parcel"), and this Commercial Parcel is not subject to this Agreement; and

WHEREAS, the City was the record owner in fee simple of the Golf Course Land as Trustee for the Trust until 1982 when the City determined that it could no longer effectively administer its responsibilities on behalf of the Trust; and

WHEREAS, the City conveyed record title to the Golf Course Land to the Trust in 1982; and

WHEREAS, the Foundation was incorporated in 1984, was appointed by order of the Probate Court for the City and County of Denver (the "Probate Court") on June 29, 1984 to act as the trustee for the Trust, and continues to operate under the terms of George W. Clayton's will and report annually to the Probate Court and Colorado Attorney General's Office; and

WHEREAS, the Golf Course Land was exempt from ad valorem taxation under Article X, Section 4 of the Colorado Constitution before its conveyance to the Trust and the City did not intend that the conveyance would subject the Golf Course Land to ad valorem taxation which creates a financial burden for the Trust and thereby endangers its activities and programs; and

WHEREAS, the City does not desire to force the Trust, through the Foundation, to pay property taxes on the Golf Course Land since such payments would reduce the revenues used by the Trust for charitable purposes and activities, which activities provide benefits to the City and its citizens; and

WHEREAS, the Trust's use and operation of the Golf Course Land as a public golf course provides a desirable recreational activity and aesthetically pleasing type of land use for neighboring communities and surrounding areas, providing benefits to the City, its citizens and the general public; and

WHEREAS, on behalf of the Trust, the Foundation granted the City a conservation easement on November 4, 1997 (recorded Nov. 25, 1997 with the Denver County Clerk and Recorder) (the "Easement") to preserve the benefits of the operation of the Golf Course on the Golf Course Land; and

WHEREAS, notwithstanding the existence of this Easement, pursuant to an order of the Probate Court, the Trust will convey record title to the Golf Course Land to the City, to hold as trustee for the Clayton Trust, *nunc pro tunc* as of December 31, 1996 (the "*Nunc Pro Tunc* Order" attached as Exhibit C); and

WHEREAS, the Trust and the City agree that the most effective and reasonable method by which to preserve the aforementioned benefits to the City and its citizens while shielding the Trust's assets from property taxation is to enter into a relationship where the City will hold the beneficial ownership of the Golf Course Land for the ultimate benefit of the Trust while the Trust, through the Foundation, will operate the Golf Course Land as the City's agent to ensure that the Golf Course Land is preserved as open space and the Golf Course remains a regulation-length 18-hole daily fee public golf course.

AGREEMENT

NOW, THEREFORE, in consideration of the premises set forth above and of the agreements of the parties to be kept and performed as set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of explicitly stating and setting forth the

understandings and agreements between the City and the Trust with respect to the Golf Course and Golf Course Land, the parties hereto agree as follows:

1. Purposes The purposes of this Agreement are: (a) to ensure that the Trust, through the Foundation, will be able to continue its charitable activities without reduction in its revenues due to the imposition of property taxes upon the Golf Course Land; (b) to take such measures as necessary to establish the tax exempt status of the Golf Course Land as provided in Article X, Section 4 of the Colorado Constitution by having the City retain the Trust, through the Foundation, as its managing agent to hold record title to the Golf Course Land, subject to a retained beneficial interest in the City, in accordance with the terms of the Trust; and (c) to ensure that the Golf Course is managed so that (i) the Golf Course Land is preserved as open space, (ii) the Golf Course continues to operate as a regulation-length 18-hole daily fee public golf course in its present location, (iii) any uses of the Golf Course Land which would be a detriment to the continued existence and operation of the Golf Course are prohibited (except as hereinafter provided), and (iv) income generated from the Golf Course operations is dedicated to the charitable purposes of the Trust or used for the expenses of the Golf Course and the Golf Course Land.

2. Release of Easement Simultaneously with the execution and delivery of this Agreement, the City will release the Easement upon the Golf Course Land, to the extent that the Easement has survived the *Nunc Pro Tunc* Order, and declare that the Easement's provisions no longer bind or run with the Golf Course Land. A copy of this Release is attached as **Exhibit D**.

3. Conveyance of Golf Course Land Immediately following the release of Easement set forth in the previous paragraph, the Trust will convey to the City record title to the Golf Course Land, all improvements thereon and appurtenances thereto, and all personal property and intangible assets held by the Trust for use in connection with the Golf Course Land, *nunc pro tunc* as of December 31, 1996. The Deed and Bill of Sale effecting these conveyances are attached as **Exhibits E and F**.

4. Reconveyance of Title Upon receipt of title from the Trust pursuant to the *Nunc Pro Tunc* Order, the City will convey the Golf Course Land, all improvements thereon and appurtenances thereto, and all personal property and intangible assets held for use in connection with the Golf Course Land to the Trust, as agent of the City, to hold for the benefit of the citizens of the City and the general public, in accordance with the Trust. The Deed and Bill of Sale effecting these conveyances are attached respectively as **Exhibits G and H**.

5. Establishment of Agency The City hereby agrees to employ and does hereby employ the Trust to manage, control and be in charge of the Golf Course and the Golf Course Land, including all buildings, other lands, interests in lands, facilities, structures, equipment and inventories now or hereafter included in the Golf Course or located on the Golf Course Land; and to administer the same for the use and benefit of the citizens of the City and the general public. Except as limited by this

Agreement, the Trust shall have complete and full responsibility, control, discretion, and power:

- (i) to select, develop and arrange all buildings, facilities, structures, equipment and personal property located on the Golf Course Land or which may hereafter be included in and on the Golf Course Land;
- (ii) to accept or reject in whole or in part any and all gifts for the purpose of the Golf Course and Golf Course Land;
- (iii) to employ, fix the compensation of and discharge any and all employees, that may be necessary or desirable to further the purpose of the Golf Course or Golf Course Land;
- (iv) to enter into all contracts, agreements or arrangements necessary for the operation, development and management of the Golf Course and/or Golf Course Land; and
- (v) to take all other actions that the Trust deems necessary or desirable for the operation, development, and management of the Golf Course and Golf Course Land.

6. Ability of Foundation to Act on Behalf of Trust. For all purposes under this Agreement, the Foundation shall act as trustee for and on behalf of the Trust, as set forth in the Probate Court's Order of June 29, 1984 and the Affidavit for Property Held in Joint Venture or Trust recorded with the Denver County Clerk pursuant to that Order on July 20, 1984.

7. Use of Proceeds It is understood and agreed that all income from the lease between the Foundation and the American Golf Corporation, dated December 23, 1998 or from any other source whatsoever arising through and by virtue of the operation of the Golf Course and/or the Golf Course Land will be accepted directly by the Foundation and used in the discretion of the Foundation for the benefit of the Trust, for any of the Trust's maintenance and operating expenses, for the Trust's charitable purposes, or for development, operation and maintenance of the Golf Course and/or Golf Course Land and for expenses incurred in connection therewith.

8. Reversion of Title to City. Upon the termination of this agreement in accordance with the provisions of Paragraph 16 hereof, the Trust shall grant, convey, assign, transfer, and deliver to the City, subject to the terms of the Trust and by good and sufficient instruments of transfer, for the use and benefit of the citizens of the City and the general public, all right, title and interest of the Trust in and to the Golf Course, Golf Course Land, and all buildings, improvements, facilities, and other property, real and personal, tangible and intangible, including all money and accounts receivable and all contract rights and choses in action which are related to the Golf Course and/or Golf Course Land, which the Trust then owns or has, subject to all liens, encumbrances, pledges, charges, leases, and secured and unsecured indebtedness of the Trust that are related to the Golf Course and/or Golf Course Land.

9. Voluntary Termination. The Trust may acquire the interest that would otherwise revert to the City as described in Paragraph 8 of this Agreement ("Reversionary Interest") and terminate its agency relationship with the City at any time by giving at least 30 days prior written notice to the City. Within 60 days of receipt of the Trust's notice to terminate, the City shall execute: (a) a release of all of its rights under this Agreement; (b) a deed, bill of sale, and/or other documents necessary to convey to the Trust the City's entire interest in the Golf Course Land and all buildings, improvements, and facilities, and all personal property and intangible assets held by the Trust for use in connection with the Golf Course, including all money and accounts receivable and all contract rights and choses in action which are related to the Golf Course and/or Golf Course Land, which the Trust then owns or has, subject to all liens, encumbrances, pledges, charges, leases, and secured and unsecured indebtedness of the Trust that are related to the Golf Course and/or Golf Course Land; and (c) any other documents necessary to fully effectuate the parties' intent. As the sole consideration for the acquisition of the City's interest, the Trust simultaneously shall grant a conservation easement to the City (in the form attached hereto as **Exhibit I** with such changes as may be mutually agreed upon by the City and the Trust) that will ensure that the Golf Course Land is used only for the Golf Course and related activities.

10. Permitted Uses. Subject to the terms and conditions of this Agreement:

(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;

(c) The Golf Course shall be managed, operated, and maintained by the Trust, 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, may be used for purposes related to the operation of the Golf Course at the discretion of the Trust, so long as such uses are not in violation of current or legally amended zoning regulations relating to the Golf Course Land; and

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

11. Operation The Trust agrees that the Golf Course shall be opened to the general public within reasonable hours designated by the Trust, its agent, manager, or lessee consistent with such generally accepted hours for operation as are followed by other regulation-length 18-hole daily fee public golf courses in the Denver metropolitan area. The Trust further agrees that the Golf Course's facilities will be furnished to the general public at costs designated by the Trust, its agent, manager, or lessee consistent with those generally charged by other regulation-length 18-hole daily fee public golf courses in the Denver metropolitan area.

12. Acceptance The Trust agrees to accept and it does hereby accept the employment from the City as the managing agent for the City of the Golf Course and Golf Course Land as herein set forth and will perform such services as herein required.

13. Insurance The Trust agrees to ensure that fire extended coverage, worker's compensation, and general liability insurance shall be carried on all buildings, facilities and equipment located on the Golf Course Land, with such insurers authorized to do business in the State of Colorado as it may select and in amounts that the Trust deems reasonable and adequate to cover possible liabilities. Upon request by the City, the Trust will furnish evidence of such insurance.

14. Indemnification The Trust agrees to indemnify, save harmless and defend the City from all damages, suits, claims, demands and actions of any kind or nature including workman's compensation claims of or by anyone whomsoever arising out of the operation of the Golf Course under this Agreement.

15. Anti-Discrimination The Trust 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 Land by the public, the Trust 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 Trust acknowledges and agrees that the Golf Course is a "place of public accommodation" under Denver's Anti-Discrimination Ordinance.

16. Term Except as provided in Paragraph 9, this Agreement shall be binding upon the parties hereto and their successors in interest from this day forward to and including October 13, 2099.

17. Entire Agreement This Agreement contains the entire agreement between the parties with respect to the ownership, operation and management of the Golf Course and Golf Course Land, and supercedes all prior agreements, understandings, negotiations, and discussions of the parties, whether oral or written, related thereto.

18. Authority to Execute The Trust represents and the parties agree that the president of the Foundation is authorized to bind the Trust to this Agreement.

19. Recording This Agreement and the deeds and release of easement executed hereto shall be recorded in the real property records of the Clerk and Recorder for the City and County of Denver.

20. Survivability of Agreement The Trust and the City agree that the provisions, rights, and/or obligations of this Agreement shall not merge into a deed issued by either party pursuant to this Agreement and shall continue to bind both parties through the term of this Agreement.

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

22. Severability The invalidity of any provision of this Agreement shall not affect the validity of any other provision of this Agreement. If any provision of this Agreement or the application thereof to either party shall be found by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to the other party shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

23. Subject to Other Approval This Agreement has been approved by the Probate Court. This Agreement is subject to the approval by ordinance of the Denver City Council in accordance with the provisions of the Denver City Charter and this Agreement shall not take effect until such approval is final and effective.

24. Amendments and Assignments No alterations, amendments or modifications of this Agreement shall be valid unless evidenced by a written agreement executed by the Trust and the City, and approved by the Denver City Council and the Probate Court.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the date first written above.

THE GEORGE W. CLAYTON TRUST
By: The Clayton Foundation, Trustee

By: Meera Mani
MEERA MANI, President

ATTEST:

By: Rosemary Rodriguez
Secretary

THE CITY AND COUNTY OF DENVER



By: Wellington E. Webb
Wellington E. Webb, Mayor

ATTEST:

By: Rosemary Rodriguez
Rosemary Rodriguez, Clerk and
Recorder, Ex-Officio Clerk
of the City and County of Denver

APPROVED AS TO FORM:

J. Wallace Wortham, Jr., City Attorney

By: Pat A. Wells
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: Donald J. Mares
Donald J. Mares, City Auditor
Contract Control No. XC04027

LEGAL DESCRIPTION OF GOLF COURSE LAND
(excluding 14-acre Commercial Parcel)

A PARCEL OF LAND IN THE SOUTHWEST ONE-QUARTER OF SECTION 19 AND THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 30, ALL IN TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 67 WEST; THENCE NORTH $89^{\circ}40'10''$ EAST ALONG THE SOUTHERLY LINE OF THE SOUTHWEST ONE-QUARTER OF SECTION 19 A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH $00^{\circ}04'08''$ WEST ALONG A LINE 50.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 19 A DISTANCE OF 909.31 FEET; THENCE NORTH $03^{\circ}44'42''$ EAST A DISTANCE OF 150.33 FEET; THENCE NORTH $00^{\circ}04'08''$ WEST ALONG A LINE 60.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE QUARTER OF SECTION 19 A DISTANCE OF 175.00 FEET; THENCE THE FOLLOWING (5) COURSES:

- 1) NORTH $44^{\circ}57'00''$ EAST A DISTANCE OF 91.95 FEET;
- 2) NORTH $89^{\circ}56'36''$ EAST A DISTANCE OF 290.00 FEET;
- 3) NORTH $00^{\circ}04'44''$ WEST A DISTANCE OF 115.00 FEET;
- 4) NORTH $89^{\circ}55'48''$ EAST A DISTANCE OF 1025.05 FEET;
- 5) NORTH $00^{\circ}04'45''$ WEST A DISTANCE OF 1114.17 FEET TO ITS

INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SMITH ROAD AND A POINT OF NON-TANGENT CURVATURE; THENCE THE FOLLOWING (3) COURSES ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SMITH ROAD:

- 1) ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 5607.93 FEET, A CENTRAL ANGLE OF $09^{\circ}02'08''$ AND AN ARC LENGTH OF 884.37 FEET (THE CHORD OF WHICH BEARS SOUTH $84^{\circ}28'25''$ EAST A DISTANCE OF 883.46 FEET) TO A POINT OF NON-TANGENCY;

- 2) SOUTH $80^{\circ}43'42''$ EAST A DISTANCE OF 89.72 FEET;
- 3) SOUTH $79^{\circ}58'45''$ EAST A DISTANCE OF 28.82 FEET;

THENCE SOUTH $00^{\circ}09'32''$ EAST ALONG A LINE 50.00 FEET WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 19 A DISTANCE OF 1086.52 FEET; THENCE SOUTH $00^{\circ}09'08''$ EAST ALONG A LINE 50.00 FEET WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 19 A DISTANCE OF 1324.84 FEET; THENCE, SOUTH $00^{\circ}08'13''$ EAST ALONG A LINE 50.00 FEET WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE NORTH

ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 30 A DISTANCE OF 2.96 FEET; THENCE THE FOLLOWING (3) COURSES:

- 1) NORTH $82^{\circ}31'11''$ WEST A DISTANCE OF 28.58 FEET;
- 2) SOUTH $89^{\circ}39'27''$ WEST A DISTANCE OF 483.58 FEET;
- 3) SOUTH $00^{\circ}37'56''$ EAST A DISTANCE OF 1264.16 FEET;

THENCE SOUTH $89^{\circ}38'54''$ WEST ALONG A LINE 59.00 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTHERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 30 A DISTANCE OF 1891.72 FEET; THENCE NORTH $00^{\circ}00'00''$ WEST ALONG A LINE 50.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 30 A DISTANCE OF 1263.62 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION OF COMMERCIAL PARCEL

(adjacent to Park Hill Golf Course)

A PARCEL OF LAND IN THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 30, TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 30; THENCE NORTH $00^{\circ}08'13''$ WEST ALONG THE EASTERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 30 A DISTANCE OF 59.00 FEET; THENCE SOUTH $89^{\circ}38'54''$ WEST ALONG A LINE 59.00 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTHERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 30 A DISTANCE OF 72.59 FEET TO THE POINT OF BEGINNING; THENCE SOUTH $89^{\circ}38'54''$ WEST ALONG A LINE 59.00 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTHERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 30 A DISTANCE OF 478.68 FEET; THENCE THE FOLLOWING (3) COURSES:

- 1) NORTH $00^{\circ}37'56''$ WEST A DISTANCE OF 1264.16 FEET;
- 2) NORTH $89^{\circ}39'27''$ EAST A DISTANCE OF 483.58 FEET;
- 3) SOUTH $82^{\circ}31'11''$ EAST A DISTANCE OF 28.58 FEET;

THENCE SOUTH $00^{\circ}08'13''$ EAST ALONG A LINE 50.00 FEET WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 30 A DISTANCE OF 1089.19 FEET TO AN ANGLE POINT; THENCE SOUTH $07^{\circ}17'27''$ WEST A DISTANCE OF 172.52 FEET TO THE POINT OF BEGINNING.

PROBATE COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO

CASE NO. 86 PR 1593

ORDER PROVIDING AUTHORITY AND APPROVAL

IN THE MATTER OF THE ESTATE OF

GEORGE W. CLAYTON,

Deceased.

CITY & COUNTY OF DENVER, COLO.
JUL 13 2000
MM

This matter came on for hearing on the joint Petition of the Attorney General for the State of Colorado, the City and County of Denver, and the Clayton Foundation, a non-profit corporation in its capacity as Trustee of the George W. Clayton Trust, this 12th day of July, 2000.

Based upon the allegations in the Petition, made on behalf of all the interested parties, the Court finds as follows:

1. The Foundation proposes to enter into agreements with the City to cure mistakes made eighteen years ago regarding the ownership of parcels of property held at various times by the City and the Foundation as trustee for the Trust.
2. Pursuant to the terms of George W. Clayton's will, the Trust was established over one hundred years ago to endow and operate an orphanage for children in Denver. In 1986, this Court reformed the will pursuant to the *cy pres* doctrine and expanded the Trust's mandate to permit a range of charitable activities.
3. Pursuant to the terms of Mr. Clayton's will, from 1899 to 1982, the City served as the Trust's trustee and held "legal title" to all of the Trust's properties. Since the City is a subdivision of the State, all properties that it holds are exempt from property tax under Article X, Section 4 of the state constitution. Therefore, all of the Trust properties "legally held" by the City were not subject to property tax for 83 years. See City and County of Denver v. Gunter, 163 P. 1118 (Colo. 1916).
4. Based on concerns with the City's management of the Trust's assets, the Colorado Attorney General filed suit in this Court in 1982 seeking to remove the City as trustee for the Trust. In 1982, this Court approved a settlement of this suit whereby the City resigned as trustee and an individual interim trustee was appointed.

5. In 1984, the Foundation was incorporated for the single purpose of serving as the Trust's permanent trustee. Subsequently, the individual interim trustee resigned and this Court appointed the Foundation to serve as the new trustee.

6. However, since neither the interim trustee nor the Foundation are "subdivisions of the state," they are not protected by Article X, Section 4 of the state constitution. Therefore, all of the Trust's properties became subject to property taxation upon the City's resignation as trustee.

7. Based upon review of the pleadings and orders entered during the 1982 proceeding, none of the parties ever addressed or considered the tax consequences of the City's resignation. Further, we are unaware of any public statement by any party during the individual interim trustee's term or the next fifteen years that noted that the City's resignation would subject the Trust's properties to property taxes. In fact, from 1982 to 1999, the Denver County Assessor (the "Assessor") did not add these properties to the City's tax rolls, apparently assuming that they were exempt.

8. In 1997, the Foundation granted an easement to the City (the "Conservation Easement") to ensure that the Trust properties at the Park Hill Golf Course (the "Golf Course Parcels") would continue to be used exclusively as a golf course, in exchange for a payment of \$2 million from the City. Although most grants of easement explicitly discuss property tax considerations, the Conservation Easement documents did not mention such taxes because both parties to the transaction assumed that the Golf Course Parcels remained exempt from taxation.

9. In 1999, the current Assessor realized that the Trust's properties had lost their exemption 17 years earlier and issued Notices of Valuation (for 1997, 1998 and 1999) for five parcels "legally held" by the Foundation for the Trust. Three of these parcels comprise the Clayton College Campus ("Campus Parcel")¹ where the Trust operated its orphanage for seventy years and the Foundation currently administers its numerous charitable activities. The other two parcels comprise the Golf Course Parcels, which generate income for the Foundation's charitable efforts and preserve open space and recreational opportunities in northeast Denver.

10. Three years of property taxes upon the parcels covered by the Notices of Valuation generate an estimated total tax bill to the Foundation of approximately \$550,000. Such a "surprise" tax bill would seriously impair the Foundation's ability to carry out its charitable activities.

11. The Foundation filed a Petition for Abatement of taxes with the Denver Board of County of Commissioners (the "Board") on December 15, 1999. The Foundation's Petition requested that the Board abate the taxes because none of the parties to the 1982 proceeding had intended that the City's resignation would force the Trust to pay large tax bills. Indeed, the Attorney General brought its action to protect and preserve the Trust's assets. The Petition

¹ These three properties have since been consolidated into a single parcel.

asserted that this "mutual mistake" -- which continued for years -- led to taxes being "levied erroneously" that should be abated under C.R.S. § 39-10-114(1).

12. At a hearing before the Board on March 24, 2000, the Foundation and the City presented the following evidence in support of their Petition:

- An affidavit from former interim trustee Chester M. Alter (attached as Exhibit A) stated that Mr. Alter never heard any discussion of a possibility that the 1982 suit could subject the Trust to property taxes;
- An affidavit from former Assistant Attorney General Howard Kenison (attached as Exhibit B) stated that the Attorney General's Office had brought the 1982 lawsuit seeking the City's removal as trustee in order to preserve the Trust's assets and revenues;
- Testimony from Foundation President Meera Mani stating that a \$550,000 tax bill would seriously damage the Foundation
- Testimony from Assistant City Attorney Patrick Wheeler stating that the City did not wish to force the Foundation to pay any property taxes and therefore supported the Petition; and
- Testimony from Carol Boigan, the Chief of Staff for the Mayor's Office of Education and Children and Acting Director of the Head Start Program, stating that, in accordance with conversations with the President of the Board of Education of Denver Public Schools, the School Board did not wish to force the Foundation to pay any property taxes; and that the Foundation's charitable activities provide many benefits to the City and save the City from the expense of providing similar services.

13. At the conclusion of the March 24 hearing, the Board voted unanimously to abate all taxes against the Campus Parcel and Golf Course Parcels and no assessment has issued against the Foundation.

14. However, the Board's decision is not final until the State Property Tax Administrator (the "Administrator") determines that the Petition is "in proper form and recommended in conformity with the law." C.R.S. § 39-2-116. We have been informed that the Administrator intends to reject the Board-approved Petition because she believes that the Board did not have authority under state law to abate the taxes completely. We have been further informed that the Administrator wishes to help relieve the Foundation from the unexpected tax burden and cure the 18-year-old mistake, but she believes that such a solution requires assistance from this Court's equitable powers.

15. To achieve this solution, the Foundation proposes to enter into three seriatim transactions with the City (the "Agreements"):

- (a) Bargain and sale deeds and bills of sale whereby the Foundation would convey the Campus Parcel, Golf Course Parcels and related personal property to the City,

to hold as trustee for the Clayton Trust, for nominal consideration *nunc pro tunc* as of December 31, 1996, pursuant to an Order of this Court.

- (b) Bargain and sale deeds and bills of sale whereby the City would convey the Campus Parcel and related personal property to the Foundation for nominal consideration *nunc pro tunc* as of December 31, 1999, pursuant to an Order of this Court.
- (c) An agency agreement whereby the City would convey the Golf Course Parcels to the Foundation to hold as agent for the City as of a current date.

16. Upon execution of the Agreements:

- (a) The Campus Parcel and Golf Course Parcels will be exempt from the taxes assessed for 1997, 1998 and 1999 based on the City's ownership. This exemption should remain unchallenged since state law does not grant the Administrator any authority to determine exemptions claimed under Article X, Section 4 of the state constitution;
- (b) The Foundation would hold title to the Campus Parcel where it conducts most of its activities. The Foundation applied for a charitable exemption as of January 1, 2000 that is pending before the Administrator. The application may be granted in whole or in part. If granted in whole, the Campus Parcel will be shielded from property taxes as long as it is used solely and exclusively for charitable purposes. If granted in part, then that part of the parcel determined not to be used solely and exclusively for charitable purposes will be subject to taxation; and
- (c) As agent for the City, the Foundation will hold title to the Golf Course Parcels for the benefit of the citizens of the City and the general public, while utilizing the revenues from the Golf Course's operation for its charitable activities. Following the structure of a similar agreement between the City and the Winter Park Recreational Association ("WPRA"),² the City's beneficial ownership of the Golf Course Parcel under the agency agreement will shield the parcels from future property taxes. If the Foundation elects to terminate this agency relationship, the agreement will call for a variant of the Conservation Easement on the Golf Course Parcels to be granted to the City.

² The Colorado Court of Appeals has determined that, pursuant to the agency agreement between the WPRA and the City, WPRA holds "legal title" to land within the ski resort, but the City is the "beneficial owner" of all such property. Therefore, this real property is exempt from property taxation under Article X, Section 4 of the State constitution. See City and County of Denver v. Board of Assessment Appeals, 782 P.2d 817 (Colo. Ct. Ap. 1989).

18. Approval of the seriatim transactions and *nunc pro tunc* effect of certain of the Agreements is in the best interest of the Trust, the Foundation, the Foundation's charitable beneficiaries, and the general public.

1. The Court authorizes and directs the Foundation and the City to enter into the transactions described above.

B. Including the execution of the Agency Agreement, the format of which is attached ^{to the petition} as Exhibit C.

2. The Court confirms the *nunc pro tunc* effect of the Agreements, as generally described in the above findings.

3. The Court orders that no modifications may be made to any of the Agreements without the approval of this Court, following notice and hearing.

Signed this 17th day of July, 2000.

By:

Probate Judge

Probate Magistrate

WIDE

serve copies of	shall
on all parties	ORDER
C. F. L.	to
copies	only

RELEASE OF EASEMENT

WHEREAS, THE GEORGE W. CLAYTON TRUST, a Colorado Trust (the "Trust"), is the record owner in fee simple of approximately 156 acres of certain lands located within the City and County of Denver, as more particularly described in Exhibit A (the "Golf Course Land"); and

WHEREAS, a regulation-length 18-hole daily fee public golf course known as the Park Hill Golf Course is presently located and operated on the Golf Course Land; and

WHEREAS, THE CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the "City") acquired a conservation easement upon the Golf Course Land on November 4, 1997, which was recorded with the Denver Clerk and Recorder's Office (the "Easement"); and

WHEREAS, the City no longer has a need or desire to hold the Easement in light of the Probate Court's *nunc pro tunc* Order of July 17, 2000 since it will beneficially own the Golf Course land.

NOW THEREFORE, in consideration of these premises above and execution of the Agency Agreement between the City and the the Trust, on this ____ day of _____, 2000, the City hereby releases, remises, cancels, and forever discharges all of the rights, title, and interest which it had under and by virtue of the aforesaid Easement in the real estate described therein.

THE CITY AND COUNTY OF DENVER

By: _____
Mayor

ATTEST:

By: _____
Rosemary Rodriguez, Clerk and Recorder

APPROVED AS TO FORM:

J. Wallace Wortham, Jr.
City Attorney

Assistant City Attorney

LEGAL DESCRIPTION OF GOLF COURSE LAND
(excluding 14-acre Commercial Parcel)

A PARCEL OF LAND IN THE SOUTHWEST ONE-QUARTER OF SECTION 19 AND THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 30, ALL IN TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 67 WEST; THENCE NORTH $89^{\circ}40'10''$ EAST ALONG THE SOUTHERLY LINE OF THE SOUTHWEST ONE-QUARTER OF SECTION 19 A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH $00^{\circ}04'08''$ WEST ALONG A LINE 50.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 19 A DISTANCE OF 909.31 FEET; THENCE NORTH $03^{\circ}44'42''$ EAST A DISTANCE OF 150.33 FEET; THENCE NORTH $00^{\circ}04'08''$ WEST ALONG A LINE 60.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE QUARTER OF SECTION 19 A DISTANCE OF 175.00 FEET; THENCE THE FOLLOWING (5) COURSES:

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BARGAIN AND SALE DEED

KNOW ALL BY THESE PRESENTS, That I,

THE GEORGE W. CLAYTON TRUST

whose address is 3801 Martin Luther King Boulevard
Denver, Colorado 80205

*County of Denver

and State of Colorado, for the consideration of
ten (10) and 00/100 dollars,

in hand paid, hereby sell(s) and convey(s) to

THE CITY AND COUNTY OF DENVER

whose legal address is 1437 Bannock, Denver, Colorado 80203

County of Denver, and State of Colorado

the following real property situate in the City and County of Denver

and State of Colorado, to wit:

See Exhibit A attached hereto and made a part
hereof in its entirety

~~Also known by street and number as
also by its section or parcel number
with all its appurtenances.~~

Signed and delivered as of 31st day of December 31, 1996, pursuant to a
Nunc Pro Tunc Order from the Probate Court for the City and County of Denver.

STATE OF COLORADO,
County of } ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
by _____

Witness my hand and official seal.

My commission expires:

Notary Public

*If in Denver, insert "City and".

Name and Address of Person Creating Newly Created Legal Description (§38-35-106.5, C.R.S.)

LEGAL DESCRIPTION OF GOLF COURSE LAND
(excluding 14-acre Commercial Parcel)

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BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, That THE
GEORGE W. CLAYTON TRUST of the
City and *County of Denver, State of Colorado,
(Seller), for and in consideration of ten (10) and 00/100
Dollars,
to him in hand paid, at or before the ensealing or delivery of these presents by

THE CITY AND COUNTY OF DENVER of the City and *
County of Denver, in the State of Colorado,
(Buyer), the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does grant and convey unto
the said Buyer, his personal representatives, successors and assigns, the following property, goods and chattels, to wit:

All personal property used in connection with
the real property described on the attached
Exhibit A.

located at

TO HAVE AND TO HOLD the same unto the said Buyer, his personal representatives, successors and assigns, forever. The
said Seller covenants and agrees to and with the Buyer, his personal representatives, successors and assigns, to WARRANT AND
DEFEND the sale of said property, goods and chattels, against all and every person or persons whomever. When used herein, the
singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the Seller has executed this Bill of Sale as of 31st day of December, 19 96,
pursuant to a Nunc Pro Tunc Order from the Probate Court for the City and County
of Denver.

STATE OF COLORADO,

County of _____

ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 19 _____,
by _____

Witness my hand and official seal.

My Commission expires _____

Notary Public

*If in Denver, insert "City and."

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(excluding 14-acre Commercial Parcel)

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whose address is 1437 Bannock, Denver, Colorado 80203

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in hand paid, hereby sell(s) and convey(s) to
THE GEORGE W. CLAYTON TRUST, as agent for the City and County of Denver
whose legal address is 3801 Martin Luther King Blvd., Denver, Colorado 80205

County of Denver, and State of Colorado

the following real property situate in the City and County of Denver

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See Exhibit A attached hereto and made a part
hereof in its entirety

~~/also known by street and number/as~~
~~/assessors/schedule/or/parcel number/~~
~~/with all its appurtenances/~~

Signed and delivered this day of, 19 2000.

STATE OF COLORADO,

County of

} ss.

The foregoing instrument was acknowledged before me this day of
19, by

My commission expires, 19. Witness my hand and official seal.

*If in Denver, insert "City and".

Notary Public

Name and Address of Person Creating Newly Created Legal Description (§ 38-35-106.5, C.R.S.)

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(excluding 14-acre Commercial Parcel)

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BILL OF SALE

KNOW ALL BY THESE PRESENTS, That

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of the

City and *County of Denver, State of Colorado,
(Seller), for and in consideration of ten (10) and 00/100

Dollars,

to him in hand paid, at or before the ensembling or delivery of these presents by

THE GEORGE W. CLAYTON TRUST, as agent for the

City and County of Denver

of the City and *

County of Denver

, in the State of Colorado,

(Buyer), the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does grant and convey unto the said Buyer, his personal representatives, successors and assigns, the following property, goods and chattels, to wit:

See Exhibit A attached hereto and made a part
hereof in its entirety

located at

TO HAVE AND TO HOLD the same unto the said Buyer, his personal representatives, successors and assigns, forever. The said Seller covenants and agrees to and with the Buyer, his personal representatives, successors and assigns, to WARRANT AND DEFEND the sale of said property, goods and chattels, against all and every person or persons whomever. When used herein, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the Seller has executed this Bill of Sale this _____ day of _____, 19 2000 .

STATE OF COLORADO,

County of _____

ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 19 _____,
by _____

Witness my hand and official seal.

My Commission expires _____ .

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- 5) NORTH $00^{\circ}04'45''$ WEST A DISTANCE OF 1114.17 FEET TO ITS

INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SMITH ROAD AND A POINT OF NON-TANGENT CURVATURE; THENCE THE FOLLOWING (3) COURSES ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SMITH ROAD:

- 1) ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 5607.93 FEET, A CENTRAL ANGLE OF $09^{\circ}02'08''$ AND AN ARC LENGTH OF 884.37 FEET (THE CHORD OF WHICH BEARS SOUTH $84^{\circ}28'25''$ EAST A DISTANCE OF 883.46 FEET) TO A POINT OF NON-TANGENCY;

- 2) SOUTH $80^{\circ}43'42''$ EAST A DISTANCE OF 89.72 FEET;
- 3) SOUTH $79^{\circ}58'45''$ EAST A DISTANCE OF 28.82 FEET;

THENCE SOUTH $00^{\circ}09'32''$ EAST ALONG A LINE 50.00 FEET WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 19 A DISTANCE OF 1086.52 FEET; THENCE SOUTH $00^{\circ}09'08''$ EAST ALONG A LINE 50.00 FEET WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 19 A DISTANCE OF 1324.84 FEET; THENCE, SOUTH $00^{\circ}08'13''$ EAST ALONG A LINE 50.00 FEET WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE NORTH

EXHIBIT A

ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 30 A DISTANCE OF 2.96 FEET; THENCE THE FOLLOWING (3) COURSES:

- 1) NORTH $82^{\circ}31'11''$ WEST A DISTANCE OF 28.58 FEET;
- 2) SOUTH $89^{\circ}39'27''$ WEST A DISTANCE OF 483.58 FEET;
- 3) SOUTH $00^{\circ}37'56''$ EAST A DISTANCE OF 1264.16 FEET;

THENCE SOUTH $89^{\circ}38'54''$ WEST ALONG A LINE 59.00 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTHERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 30 A DISTANCE OF 1891.72 FEET; THENCE NORTH $00^{\circ}00'00''$ WEST ALONG A LINE 50.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 30 A DISTANCE OF 1263.62 FEET TO THE POINT OF BEGINNING.

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this "Easement") is granted this ____ day of _____, 20__, by 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 the Golf Course Land was previously subject to and released from a separate conservation easement held by Grantee, 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 4 below, and that prohibits use 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. Location of Easement. This Easement shall be located on, over, and above the Golf Course Land, which is described on Exhibit A hereto.

4. 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 4 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.

5. 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 facilities of the Golf Course; and (e) regulate access to and use of the Golf Course, provided 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 10 below.

6. 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.

7. 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 entry 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% 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

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

18. 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 of unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Easement.

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

THE GEORGE W. CLAYTON TRUST
By: The Clayton Foundation

By: _____
MEERA MANI, President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 2000
by Meera Mani.

WITNESS my hand and official seal.

My commission expires:

Notary Public

LEGAL DESCRIPTION OF GOLF COURSE LAND
(excluding 14-acre Commercial Parcel)

A PARCEL OF LAND IN THE SOUTHWEST ONE-QUARTER OF SECTION 19 AND THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 30, ALL IN TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 67 WEST; THENCE NORTH 89°40'10" EAST ALONG THE SOUTHERLY LINE OF THE SOUTHWEST ONE-QUARTER OF SECTION 19 A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°04'08" WEST ALONG A LINE 50.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 19 A DISTANCE OF 909.31 FEET; THENCE NORTH 03°44'42" EAST A DISTANCE OF 150.33 FEET; THENCE NORTH 00°04'08" WEST ALONG A LINE 60.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE QUARTER OF SECTION 19 A DISTANCE OF 175.00 FEET; THENCE THE FOLLOWING (5) COURSES:

- 1) NORTH 44°57'00" EAST A DISTANCE OF 91.95 FEET;
- 2) NORTH 89°56'36" EAST A DISTANCE OF 290.00 FEET;
- 3) NORTH 00°04'44" WEST A DISTANCE OF 115.00 FEET;
- 4) NORTH 89°55'48" EAST A DISTANCE OF 1025.05 FEET;
- 5) NORTH 00°04'45" WEST A DISTANCE OF 1114.17 FEET TO ITS

INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SMITH ROAD AND A POINT OF NON-TANGENT CURVATURE; THENCE THE FOLLOWING (3) COURSES ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SMITH ROAD:

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RETURN TO:

ATTN: _____
DENVER, COLORADO 80505
1437 BANNOCK STREET, ROOM 323
DENVER CITY ATTORNEY'S OFFICE