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## Analysis of the Park Hill Golf Course Land Conservation Easement

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The starting point for analyzing the Park Hill Golf Course ("PHGC") land conservation easement is the Colorado Conservation Easement Statute, C.R.S. §38-30.5-101 *et seq.* The conservation easement states explicitly that it was created pursuant to this Colorado statute. Although Clayton Early Learning and its attorney Bruce James, during Clayton's ownership of the land, and now Westside Investment Partners, Inc. have always wanted to try to diminish the legal effect of the conservation easement by calling it a "use agreement," it is in fact a conservation easement created under and governed by this Colorado statute.

In relevant part, the statute defines a conservation easement as follows:

a right in the owner of the easement to prohibit or require a limitation upon...a land area...appropriate to the retaining or maintaining of such land...predominantly in a natural, scenic or open condition, or for wildlife habitat...or recreational...or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity.... C.R.S. §38-30.5-101.

An interpretation of the PHGC land conservation easement must begin with an analysis of the conservation purposes that are consistent with this statutory definition of a conservation easement. These overarching conservation purposes are "for the conservation of the [land] as open space" (paragraph 1) and "to maintain the [land's] scenic and open condition and to preserve the [land] for recreational use" (paragraph 2). These conservation purposes are completely consistent with the statutory definition of a conservation easement and they are the legal essence of the PHGC land

conservation easement.

Permitted uses of the land that are consistent with the conservation purposes are another matter. And, the PHGC land conservation easement contains some imprecise language about the permitted uses of the land. Paragraph 4(a) titled "Permitted Uses" states that the permitted uses are

a regulation 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.

There are some internal inconsistencies and ambiguities regarding these permitted uses. On the one hand, the document allows these broad permitted uses but, on the other hand, the document seems to say that

a permitted use must always be a regulation 18-hole golf course. Since the PHGC land is only 155 acres, a regulation 18-hole golf course is not compatible with "unrelated recreational uses

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such as ball fields, tennis courts, etc." The ambiguities also include fleshing out the scope of the term "unrelated recreational uses such as ball fields, tennis courts, etc." As a matter of legal interpretation, it is necessary to interpret a document in consideration of all its terms, including the term "unrelated recreational uses such as ball fields, tennis courts, etc." But, if Westside chooses not to operate a golf course on the PHGC land, it and the City can modify and clarify the permitted uses language to clear up any inconsistencies and ambiguities as long as the modifications and clarifications are consistent with the conservation purposes of the easement.

Why are the conservation purposes of the PHGC land conservation easement important? First, and foremost, the conservation purposes explain how the easement complies with the statutory definition of a conservation easement, and the conservation purposes of the PHGC conservation easement identified above are entirely consistent with C.R.S. §38-30.5-101. Second, the conservation purposes of the PHGC land conservation easement are critical because the easement cannot be terminated, released, extinguished, or abandoned without compliance with the following "release-termination" provisions of the Colorado Conservation Easement Statute:

If it is determined that conditions on or surrounding a property encumbered by a conservation easement in gross change so that it becomes impossible to fulfill its conservation purposes that are defined in the deed of conservation easement, a court with jurisdiction may, at the joint request of both the owner of property encumbered by a conservation easement and the holder of the easement, terminate, release, extinguish, or abandon the conservation easement. [Emphasis added] C.R.S. §38-30.5-107

Therefore, the City and Westside cannot legally take any action that would be tantamount to defeating the conservation purposes of the PHGC conservation easement unless they convince a court that since July 10, 2019, when the easement was created, conditions on or surrounding the PHGC land have changed in a manner so that it has become impossible to fulfill the conservation purposes. There have been no such changes that arguably could permit a court to approve termination, release, extinguishment, or abandonment of the PHGC land conservation easement.

That said, as stated above, if Westside chooses not to operate a golf course on the PHGC land, it and the City can modify and clarify the permitted uses of the PHGC land conservation easement as long as the modifications and clarifications are consistent with the conservation purposes of the easement. Alternatively, consistent with the recent Parks and Recreation Advisory Board recommendations to the Department of Parks and Recreation, Westside can sell the land to the City for a designated park.

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