

GOLF COURSE USE RESTRICTIONS
Conservation Easement on the Park Hill Golf Course
October 1, 2019

Question 1: *What is the basic purpose and effect of the Conservation Easement?*

Answer: The Conservation Easement is a document that requires golf to be the primary and dominant use of the Park Hill Golf Course land. To the extent that any other uses are permitted, such uses must be either (1) accessory or incidental to the golf-related use, or (2) unrelated recreational uses which cannot be detrimental to the golf-related use. The overriding purpose and effect of the Conservation Easement is to limit the use of the land to golf-related purposes only.

Question 2: *Could the City impose a more generalized “open space” use limitation on the Park Hill Golf Course land under the Conservation Easement?*

Answer: No. The Conservation Easement imposes the golf-related use limitation by essentially prohibiting any use that would be detrimental to golf-related uses. Although golf is a recreational activity that necessarily delivers open space, it is a private use that limits access to those who pay a fee. When the City originally acquired the Conservation Easement, golf was a popular recreational activity and the property was already developed and in use as a fee-based golfing enterprise. The City could not unilaterally eliminate that economic opportunity by imposing a broader open space use limitation on the land.

Question 3: *The Conservation Easement seems to express a desire for the property to remain in a “scenic” condition and to be used for “open space” and “recreational” purposes. Aren’t those terms relevant?*

Answer: Yes. Those general expressions of intent give background and context to the specific limitations the parties chose to impose. In this case, under the Conservation Easement, the parties clearly and unequivocally chose to impose a golf course use limitation as the exclusive vehicle to deliver the goal of maintaining open space. However, as a matter of legal interpretation, general expressions of intent cannot control over or undermine the specific operative terms and conditions contained in the document.

Question 4: *How could the City impose a more general open space use requirement?*

Answer: Any such change would require a mutual agreement between the City and the landowner.

Question 5: *What is the history of the Conservation Easement?*

Answer: The City initially acquired a Conservation Easement on the Park Hill Golf Course in 1997 from the owner of the land at that time, The George W. Clayton Trust (Clayton). The City paid Clayton \$2M for the Conservation Easement. In 2000, for reasons unrelated to the Conservation Easement, the City and Clayton entered into an Agency Agreement whereby the City took fee title to the property. In connection with the execution of the Agency Agreement and the City’s acquisition of fee title to the property, the Conservation Easement was released, but the provisions imposing the golf course use limitation were incorporated into the Agency Agreement.

In July 2019, Clayton exercised its unilateral right to terminate the Agency Agreement which triggered a requirement for the City to convey fee title to the property back to Clayton and for the parties to execute and record a new Conservation Easement. The use limitations contained in the original 1997 Conservation Easement, the Agency Agreement, and the new 2019 version of

the Conservation Easement are essentially identical and have been in place as a continuous set of use restrictions since 1997.

Question 6: *How specifically does the language of the Conservation Easement limit the use of the land to golf-related purposes?*

Answer: The best evidence of the intended nature and scope of a real estate interest is contained in the actual operative grant or conveyance language used in the instrument. In this case, the “Grant” provision (Paragraph 2) contains some language that is more general in nature, including the desire to keep the land in a “scenic and open condition” and for the land to be used for “recreational” purposes. Those initial clauses do not specifically refer to golf as the intended purpose. However, the Grant language also clearly refers to and incorporates both the “Purpose” provision (Paragraph 1) and all other “terms and conditions” set forth in the document, which would include the specific “Permitted Uses” (Paragraph 4) within the document. Therefore, those additional and much more specific requirements and limitations in the document are clearly intended to constitute requirements and conditions to the interest conveyed.

The “Purpose” provision (Paragraph 1) contains both an express statement supporting the “continued existence” of a golf course and a specific prohibition against any use of the property that would be a “detriment” to the continuing use of the property for golf-related purposes.

The most specific and limiting language in the document is set forth in the Paragraph 4 (Permitted Uses). Paragraph 4(a) contains an affirmative requirement for the operation of a golf course on the property and allows for certain “accessory or incidental” uses. That provision also allows for certain “unrelated recreational” uses. To the extent that “unrelated recreational” uses could be interpreted to allow for a stand-alone non-golf-related use, Paragraph 4(b) of the document expressly prohibits any use that would be “a detriment to the existence and operation” of a golf course on the property.

Collectively, the Grant, Purpose and Permitted Uses provisions in the document effectively limit the use of the property to golf-related purposes only. Where the words “open space” or “open condition” are used, the reference is merely descriptive of the fact that a golf course on the property would deliver those desired attributes. But nothing in the document would lend support to the City imposing a broader or more general use restriction on the land.

Applicable Provisions from the Conservation Easement (emphasis added):

The primary operative language imposing the golf-focused use restrictions is set forth in Paragraph 4 (“Permitted Uses”) which provides as follows:

- (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 7 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.

Additionally, Paragraph 1 of the Conservation Easement (entitled “Purpose”) states that:

“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, ...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.”

Paragraph 2 of the Conservation Easement contains the operative “Grant” language:

“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.*”