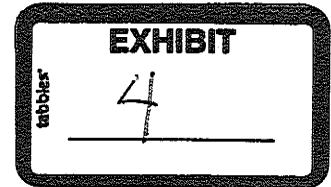


**Friends of Denver Parks et al. vs. City and County of Denver et al.**  
**Denver District Court Case No.: 2013CV032444**

State of Colorado                    )  
County of Denver                    ) ss

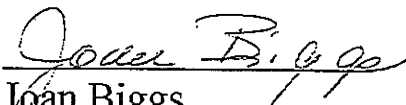


1. My name is Joan Biggs. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge.
  
2. I was born in 1926. I grew up in east Denver at 383 Birch St. I attended Steck Elementary, and Smiley Junior High. In 1933, when I was seven years old, my father walked my mother, me, and my brother down Colorado Boulevard to watch the Cherry Creek flood. It was more water than I ever saw in my life. My father joined the US Army in 1941 immediately after Pearl Harbor. I graduated from East High School in 1944, while my father was serving overseas. I attended the University of Denver for one year. I married in 1945.
  
3. Horseback riding was extremely popular in Denver when I grew up. When I was 12 or 13 I joined the Hottentot riding club. It was before World War II. An army reserve officer named Ralph "Cap" Bitler trained us in equestrian skills and took us on trail rides. Cap taught science at Morey Junior High School and mentored the Hottentots in his spare time. We called Cap's wife "Mommy B." There was a riding ring at Colorado Boulevard and Cherry Creek where we practiced.
  
4. The Hottentots started trail rides from our barn at 3<sup>rd</sup> and Steele St. We rode along Cherry Creek to the Sullivan Dam. There was lots of open space on both sides of Cherry Creek. Near the Sullivan Dam was a large open field north of the dam where we could gallop the horses and let them jump over fallen trees. We packed a lunch and sometimes ate in the open field. The trail rides to

Sullivan Dam took most of the day. There would be five to ten riders in our group of Hottentots. We did not have a name for the open field near Sullivan Dam, but we assumed it was a park because it was always open to the public, everybody used it as a park, and nobody asked us to leave.

5. In 1958 I started teaching horseback riding to children at the Flowing J&J Ranch, located near Syracuse and Iliff. I would take my students on horseback rides along the Highline Canal and Cherry Creek, the same places where I rode on trail rides as a member of the Hottentots. Havana St. was built around that time, but there were still many horseback riders using the bridle paths and the park west of Havana. Once there was a terrible hailstorm and I took my students and horses under the bridge where Havana goes over Cherry Creek.
  
6. On March 3, 2014 I visited the construction site at E. Girard Ave. and S. Havana St. Based on my own observations, I know that the location of the school construction zone at E. Girard Ave. and S. Havana St. was the same park where I rode horses as a young girl in the 1930's and 1940's, and where I took my students on trail rides from the Flowing J&J in the 1950's and 1960's. I am certain that the construction site was used as a public park before and after 1955.

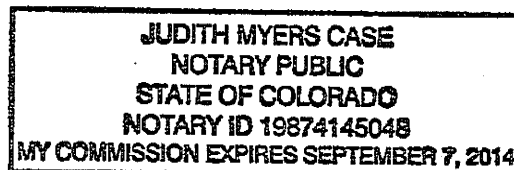
Further, Affiant sayeth not.

  
Joan Biggs

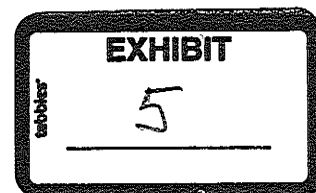
The foregoing Affidavit was acknowledged before me March 3, 2014  
\_\_\_\_\_ 2014 by Joan Biggs, known personally to me.

  
Notary Public

My commission expires:



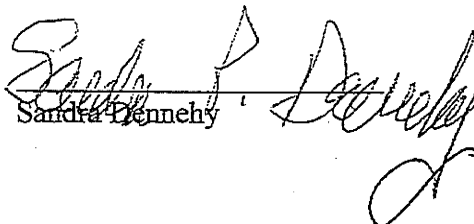
**Friends of Denver Parks et al. vs. City and County of Denver et al.  
Denver District Court Case No.: 2013CV032444**



State of Colorado                    )  
  ) ss  
County of Arapahoe                )

1. My name is Sandra Dennehy. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge.
2. I was born in 1939. I am the daughter of Gerald and Janet Phipps. My father was the owner of Phipps Construction, the Denver Bears minor league baseball team, and the Denver Broncos professional football team. Our family had a house on S. Adams St. in the Belcaro neighborhood west of Colorado Blvd. When I was a child, Colorado Boulevard was one lane in each direction. It was the only paved street in the area. All of the other roads were gravel. My two sisters and I loved horses. We rented horses at Bert's Boulevard Stables near Colorado Blvd. and East Kentucky and went on trail rides along the bridle paths next to Cherry Creek. When we were younger, an adult from the stables would lead the trail ride and supervise us. After I turned 12, I could ride without adult supervision. The trial rides stopped at the Sullivan Dam, which was just north of the Cherry Creek Dam.
3. Horseback riding was an extremely popular outdoor activity in Denver. When we went on trail rides along Cherry Creek, I saw numerous people riding horses, riding bicycles, walking, and playing where we rode. Sometimes there would be as many as twenty people in a group on horseback. There was a large open area northwest of the Sullivan Dam where we liked to ride horses, have picnics, and play games. Nobody ever asked us to leave or get off the property. We assumed it was a park available for public use and we used it as a park. Recently I visited this open area where I used to ride and see other people riding. Part of the open area had been turned into a construction zone for what I have been told will be a new school. I could see piles of dirt in the park where I rode horses and played with my friends in the years 1946-1955. Based on my own observations, I am certain that the location of the school construction zone was used as a park before 1955.

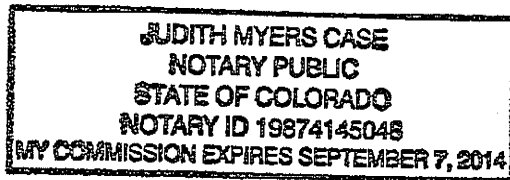
Further, Affiant sayeth not.

  
Sandra Dennehy

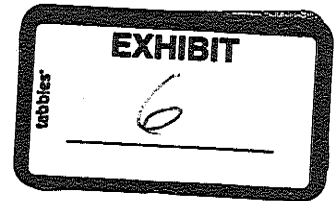
The foregoing Affidavit was acknowledged before me March 3, 2014  
2014 by Sandy Dennehy, known personally to me.

Judith Myers Case  
Notary Public

My commission expires:



**Friends of Denver Parks et al. vs. City and County of Denver et al.  
Denver District Court Case No.: 2013CV032444**



State of Colorado )  
 ) ss  
City and County of Denver )

1. My name is Carolyn Gallagher. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge.
2. My parents moved to southeast Denver in 1953, when I was 11 years old. We lived in a house near S. Dahlia St. and East Florida Ave. I attended elementary school at Ash Grove Elementary on S. Holly St. Many of my classmates rode horses to school and tethered the horses at a hitching rail outside the school.
3. Horseback riding was the most popular outdoor pastime in southeast Denver. My mother, my father, and my younger sister owned horses. My mother competed successfully in national three gaited and five gaited equestrian competitions. My father and sister competed together in the "Drive and Ride" event at the Denver Stock Show. My sister boarded her horse at the stables near S. Dahlia St. and E. Mississippi Ave. I used to walk to the stables. I rode my sister's horse when she was grounded by my parents. At other times I rented horses, using money I earned baby sitting. A place called Glacier's Barn near S. Holly St. and East Kentucky Ave. sponsored hayrides and square dances for pre-teens and teenagers that we enjoyed. The hayrides went along the bridle paths that followed Cherry Creek and the Highline Canal.
4. Before 1955 I rode in the parkland along Cherry Creek. The bridle paths followed the banks of Cherry Creek all the way to the spillway from Cherry Creek Dam. We rode horses along the bridle paths as far as the spillway. The hayrides came there too. There were usually many people using this park area for horseback riding, walking, picnicking, and children playing in the field and the creek. Nobody ever asked us to get off the property. We assumed it was public park land because it was open to the public and used as a park by lots of people. Recently in 2014 I walked along the bicycle trail next to Cherry Creek near Havana and Girard. I saw a construction zone, with a fence, earth moving equipment, and piles of dirt in the park where I rode horses and played with my friends 1953-1955. Based on my own observations, I am certain that the location of the school construction zone was used as a park before 1955.

Further, Affiant sayeth not.

*Carolyn Gallagher*  
Carolyn Gallagher

The foregoing Affidavit was acknowledged before me March 3, 2014  
2014 by Carolyn Gallagher, known personally to me.

Judith Myers Case  
Notary Public J

My commission expires:

**JUDITH MYERS CASE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19874145048  
MY COMMISSION EXPIRES SEPTEMBER 7, 2014**

**Friends of Denver Parks et al. vs. City and County of Denver et al.  
Denver District Court Case No.: 2013CV032444**

State of Colorado )  
 ) ss  
County of Douglas )



1. My name is Dave Norden. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge.
2. I was born in 1947. When I was seven or eight years old my father leased the Flowing M Cattle Ranch on E. Iliff and turned it into the Flowing J&J Ranch, which was a horse training, boarding and rental operation. My mother had bought a trick horse named Question Mark and gave him to me. He would bow, play dead, and rear up on his hind legs. Mark was like part of our family.
3. At the Flowing J&J we rented horses, boarded horses, and trained riders. After my father bought the Flowing J&J, I attended Sullivan Elementary School at Wabash and Iliff. My father picked me up from school in a horse drawn buckboard. We sometimes ate at the Hitching Post, a restaurant run by Ma & Pa Hatch where you could tie your horse to the hitching rail. It was a popular location for horse people. We enjoyed meeting other horse people at the Hitching Post. From Flowing J&J Ranch I rode Mark and other horses along the Highline Canal. I also rode Mark along the bridle path to Cherry Creek Dam. I went on trail rides with people from Flowing J&J to Cherry Creek Recreation Area. We swam and our horses swam in the reservoir. There was a large open area northwest of Cherry Creek Dam where people galloped horses, played rodeo, played tag on horses, and stopped to rest and talk.
4. In 1963 my father John Norden relocated the Flowing J&J to a new 20 acre location next to the Cherry Creek Meadows real estate development. I took over the barn at age 21. In approximately 1970 I changed the name to Norden Training Center. We boarded horses, gave riding lessons, and rented horses. I rode the bridle paths along the Highline Canal and Cherry Creek the same as I did when I was a boy. Even though there was a lot of residential real estate development in the 1960's, the city of Denver preserved the parks and bridle paths on both sides of Cherry Creek. Horses had the right of way on the bridle paths. The area was flood plain all the way to the spillway at the base of Cherry creek Dam. It was open to public use without restriction. In 1963 it was possible to ride along Cherry Creek from the Norden Training Center all the way to Parker. We always understood that the city of Denver owned the land and was going to preserve it as a park and wildlife area.
5. Based on my own observations, I know that the location of the school construction zone now located at E. Girard Ave. and S. Havana St. was used as a park before and after 1955.

Further, Affiant sayeth not.

Dave Norden

Dave Norden

William D. Norden

The foregoing Affidavit was acknowledged before me Lawrence J Kasinowski  
2014 by Dave Norden, known personally to me.

Lawrence J Kasinowski

Notary Public

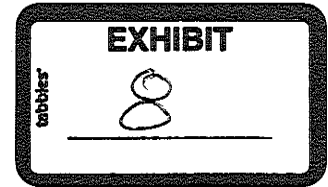
My commission expires:

LAWRENCE JOSEPH KASINOWSKI  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20134069214  
MY COMMISSION EXPIRES NOVEMBER 14, 2017



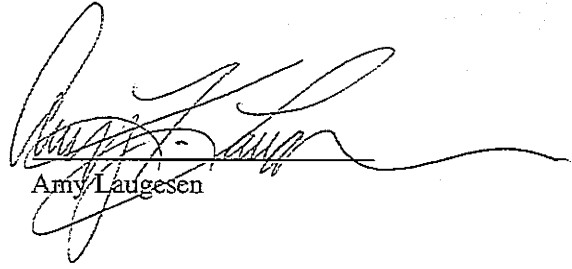
**Friends of Denver Parks et al. vs. City and County of Denver et al.  
Denver District Court Case No.: 2013CV032444**

State of Colorado                    )  
  ) ss  
City and County of Denver    )



1. My name is Amy Laugesen. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge.
  
2. I grew up in the Hampden Heights East neighborhood of southeast Denver during the 1970s and 1980s. Between 1975 and 1981 I played with friends in the park to the east of the neighborhood along Cherry Creek where the creek goes under Havana. We didn't have a name for the park, we just knew it was open for our use. There was a well groomed park in the neighborhood; however, we preferred creatively exploring/ playing in this natural park. We caught crawdads in the creek and found rocks and other interesting things in the large open field next to the creek. We saw wildlife in the park, including foxes, coyotes, prairie dogs, rabbits, ducks, geese, and hawks. We listened to the sounds of the birds. We took off our shoes and enjoyed the sensation on our feet of walking barefoot in the sand of the creek bed. We walked along the twists and turns of Cherry Creek to where it went under the bridge at Havana St. Sometimes on summer days we lay on our backs in the park and looked up at the sky, watching clouds sail overhead, feeling the breeze on our faces. We liked breathing fresh air, and being in a peaceful natural environment away from automobiles and loud noise. Sometimes we played tag, hide and seek, and other games in the park. It was a safe place for children to play and explore without adult supervision.
  
3. In 1981, my parents gave me a horse named Tic Tac that I boarded at the Norden Training Center north of Hampden Heights. Between 1981 and 1984 I rode Tic Tac along Cherry Creek into the park to the east of the neighborhood. The large open field area of the park was beautiful to ride in. On some occasions I rode Tic Tac along the bicycle trail from the park to my parents' home on S. Fulton Court. I often rode Tic Tac along the Cherry Creek bridle path under the bridge at Havana St. to the area near the spillway below Cherry Creek Dam. The bridle path along the banks of Cherry Creek was always open, and was used by many horseback riders, walkers, joggers, and cyclists. On one or two occasions I rode Tic Tac all the way to the Cherry Creek recreation area at Cherry Creek Reservoir.
  
4. At all times that I know of before I left for college in 1986, the park to the east of the Hampden Heights neighborhood was open, unfenced, and used by the public as a park without objection.

Further, Affiant sayeth not.



Amy Laugesen

The foregoing Affidavit was acknowledged before me March 5 2014  
by Amy Laugesen, known personally to me.

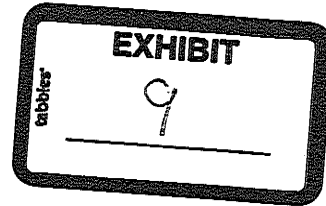


Judith Myers Case  
Notary Public

My commission expires:

JUDITH MYERS CASE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19874145048  
MY COMMISSION EXPIRES SEPTEMBER 7, 2014

Friends of Denver Parks et al. vs. City and County of Denver et al.  
Denver District Court Case No.: 2013CV032444



State of Colorado        )  
                                  ) ss  
County of Arapahoe     )

1. My name is Dawn Mayo. I am over the age of 18 years and competent to testify in all respects. This affidavit is based on my personal knowledge.
2. I was born in 1960. My parents owned land near S. Wabash and E. Hliff in southeast Denver. My father was a farrier. My brother and two sisters and I each owned our own horse. Each of us was responsible for training and caring for our own horse. We loved to ride along the Highline Canal and along Cherry Creek. We used to ride the creek all the way to the bridge at Havana. The horses had to work hard walking in the sandy creek bottom, so it was good training for them, and if a horse bucked one of us off, the sand was a soft place to land. When it rained, we would hang out with the horses under the bridge. Cherry Creek and Highline Canal were popular bridle trails and I often saw groups of other riders there.
3. On Christmas day after the blizzard of 1982, a friend of mine was stranded at her apartment near Havana and Dartmouth. I rode my horse through the deep snow, along the Cherry Creek bridle path, under the bridge at Havana, to my friend's apartment. She met me in the parking lot, got up on the back of my horse, and rode with me to my house, where we spent Christmas together.
4. It was common knowledge that the land along Cherry Creek and the Highline canal was public parkland, open to the public and unfenced. It was not a groomed park with planted grass and sprinklers. It was left in its natural state, even while large tracts of land around Cherry Creek were developed into apartments and housing subdivisions. My sister Debbie owned a trick pony that she trained to bow and lay down and play dead. One day we saw a work crew paving an asphalt bicycle trail next to the bridle path along the Highline Canal. We were upset they were paving along the canal. To interrupt the paving, Debbie made her trick pony lay down in front of the paving machine.
5. There is a large open field along the west side of Cherry Creek near the bridge at Havana. This field is part of the park area where I rode in the 1960's, 1970's, and 1980's. On March 8, 2014, I visited the area. Part of the park was all dug up, with large piles of dirt and construction fencing. The construction site is in the same park where I rode horses.

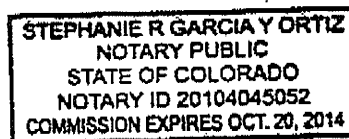
Further, Affiant sayeth not.

*Dawn Mayo*  
Dawn Mayo

The foregoing Affidavit was acknowledged before me MARCH 11th, 2014 by Dawn Mayo, known personally to me.

*Stephanie Garcia Ortiz*  
Notary Public

My commission expires: 10/20/14



1 Next witness?

2 MR. WHEELER: Your Honor, we're going to forego  
3 having anymore witnesses?

4 THE COURT: Pardon?

5 MR. WHEELER: We're going to forego any more  
6 witnesses at this point and we'll stand on what we provided so  
7 far.

8 THE COURT: Music to my ears.

9 MR. WHEELER: I kind of thought so.

10 THE COURT: Now, you're going to strain my ears, Mr.  
11 Case, and tell me you have some rebuttal, right?

12 MR. CASE: I do.

13 THE COURT: Let's go.

14 MR. CASE: Thank you.

15 I call Charles Bonniwell.

16 CHARLES BONNIWELL, PLAINTIFF'S WITNESS, SWORN

17 THE COURT: Make sure you speak up.

18 THE WITNESS: I will.

19 THE COURT: Big guy, soft voice.

20 DIRECT EXAMINATION

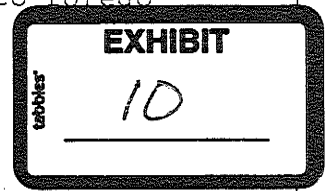
21 BY MR. CASE:

22 Q Mr. Bonniwell, would you please state your full name?

23 A Charles Clayant (phonetic) Bonniwell.

24 Q Where do you live --

25 THE COURT: Excuse me. I need the spelling of the



1 last name.

2 THE WITNESS: Sure, B as in Boy, O-N-N-I-W-E-L-L.

3 BY MR. CASE:

4 Q Where do you live?

5 A 1313 Williams, Denver, Colorado.

6 Q What's your occupation?

7 A I'm an attorney. I'm a publisher of a local  
8 newspaper and I'm an historian.

9 Q The newspaper is?

10 A The Glendale Cherry Creek Chronicle.

11 Q How long have you published that newspaper?

12 A Since 1998.

13 THE COURT: So are you the guy that wrote that  
14 editorial I read recently about how we ought to go back to  
15 electing judges instead of --

16 THE WITNESS: Absolutely not. That had to be Ed  
17 Thomas who works for the paper. I had nothing to do with that.

18 THE COURT: I just couldn't resist.

19 Go ahead.

20 MR. CASE: Thank you, Your Honor..

21 THE COURT: But I recall now that was Mr. Thomas.

22 BY MR. CASE:

23 Q So you mentioned you are a historian?

24 A Yes, and I was official historian for the City of  
25 Glendale from 2005 to 2009. I've written a book which is --

1 this one, The History of the Denver Country Club. I published  
2 articles for the Colorado Historical Society now called History  
3 of Colorado. I'm working with Cherry Creek Chamber in an  
4 historical manner and I have various other historical projects  
5 that I'm working on.

6 Q What is your educational background?

7 A I have a BA in history from Vanderbilt University; I  
8 have a JD from the University of Colorado; and have an LM in  
9 taxation from the University of Denver.

10 Q How did you become interested in the history of  
11 Glendale and Denver in general?

12 A Well, I loved history and I like to write about  
13 history and I like to do history, and I was hired -- whatever  
14 you want to call it -- to write the history of the Denver  
15 Country Club, Glendale. I became legal counsel to Glendale.  
16 One of the important projects was understanding Glendale's  
17 history, and the past is prologue'd in some places. Being an  
18 historian maybe just a quaint title Glendale, it's everything.  
19 Glendale, since it was founded in 1859, up through about, I  
20 don't know, maybe about ten years ago was in constant war with  
21 Denver, and so we had to understand all the historical aspects  
22 of Glendale. Why did Denver own all the creeks -- I can't say  
23 all -- a portion of the creek bed that ran through Glendale?  
24 Why did they have an extra territorial road that ran through  
25 Glendale? Why did Glendale own property in Denver? What could

1 Denver do in with property it owned within Glendale? What  
2 could Glendale do with regards to the property it owned in  
3 Denver?

4 Q All right. You said you were counsel to the City of  
5 Glendale.

6 A Yes. Legal counsel to the planning commission.

7 Q When did you hold that office?

8 A Contemporaneously with being the official historian.  
9 I was also fire marshal.

10 Q That was?

11 A 1905 -- 2005 through 2009.

12 Q Thank you. Now then, do you consider yourself to  
13 have special knowledge or expertise in the history of the  
14 Cherry Creek corridor?

15 A I do.

16 Q And the basis for that is?

17 A Years and years of research, years and years of  
18 research of writing this book, years and years of research of  
19 being historian for Glendale.

20 THE COURT: Excuse me, counsel. You said this book.  
21 What book are you referring to? What's the title of the book?

22 THE WITNESS: The history of the Denver Country Club,  
23 1887 to 2006.

24 BY MR. CASE:

25 Q And as attorney for the Glendale planning commission,

1 did you have to look up deeds?

2 A I did. I had to look up the deeds that Denver had  
3 conveyed on Cherry Creek, and I had to look up the deeds for  
4 the parcels in which Denver was not able to obtain the creek  
5 bed and why they hadn't been able to obtain the creek bed. I  
6 also had to look at rights of way that Denver had obtained  
7 through the parcels they were not able to acquire.

8 MR. CASE: Your Honor, at this time we would offer  
9 Mr. Bonniwell as an expert in the history of the Cherry Creek  
10 corridor.

11 THE COURT: Any objection?

12 MR. WHEELER: No objection at this point. I'm  
13 waiting to hear what aspect of our testimony he's going to be  
14 rebutting and I may have an objection as to the scope of this  
15 so-called rebuttal later.

16 THE COURT: Fair enough. I'll have him testify as an  
17 expert, given his apparent special knowledge of the history and  
18 use of this Cherry Creek corridor area. Go ahead.

19 MR. CASE: Judge, to the extent my examination of Mr.  
20 Bonniwell exceeds the pointed rebuttal of Mr. Ellis, I would  
21 ask to reopen my case to that small extent. I found out about  
22 this witness's expertise yesterday after I had rested, so I had  
23 no knowledge of the history that he could provide to the Court,  
24 and I think it's going to be extremely helpful to the Court in  
25 understanding the use Parcel 31 at the time it was acquired by



1 Denver.

2 THE COURT: Well, go ahead.

3 MR. CASE: Thank you, Your Honor.

4 BY MR. CASE:

5 Q Mr. Bonniwell, what did you find as far as Denver's  
6 acquisition of rights of way through properties that it could  
7 not obtain for flood control?

8 A I want to go back maybe to Mr. Ellis's testimony,  
9 which I want to concur with. As you indicated, on August 3,  
10 1933, the Castlewood Dam broke. Tremendous property damage.  
11 It's noted in this book. It's also noted in the history of  
12 Glendale, from 1934 through 1936, Denver acquired numerous  
13 parcels. Some in Glendale, some in unincorporated Arapahoe  
14 County. Part of the time Glendale was unincorporated Arapahoe  
15 County. So there are various parcels. I've looked at all the  
16 parcels, including the deeds at Parcel 31 and all the ones in  
17 Glendale.

18 Q What did you find as far as Denver's ability to  
19 acquire all of the land along Cherry Creek?

20 A It did not. It was unable to acquire various  
21 portions because the landowner was unwilling to sell to them,  
22 which is a little unusual because they were buying floodplain,  
23 other than of a school, I guess, you can't normally build in.  
24 And this was the depression. So they were buying basically the  
25 floodplain, but some owners refused to sell. The Denver

1 Country Club refused to sell its creek bed to the City and  
2 County of Denver. The owners of the property on Colorado  
3 Boulevard where -- Cherry Creek South, refused to sell any  
4 property to the City and County of Denver. City and County of  
5 Denver then later went back and got rights of ways in order  
6 that its citizens could recreate and go through those parcels  
7 unimpeded.

8 Q And when you say rights of way, what do you mean?

9 A That's exactly what they were. They were easements  
10 to allow them to build a path and to allow residents to go  
11 through that path so they could reach all the way from downtown  
12 Denver to Cherry Creek Dam.

13 Q Were those easements acquired to allow people to go  
14 through Parcel 31 for recreational purposes?

15 A To get to Parcel 31, yes, and the other parcels. And  
16 if I can give some background, you must understand that we live  
17 in what is called the Great American Desert. It's not  
18 technically a desert, but if we turned off the irrigation in  
19 Denver today, every tree, every tree would die except those  
20 along Cherry Creek and the South Platte. Because that is the  
21 existence of what happened when the Gold Rush of 1859 occurred.  
22 The corridor, the Cherry Creek corridor, is one of the  
23 incredible recreation ones, and it's been since 1859.

24 People have gone up and down because, as you heard  
25 the testimony yesterday, people love wildlife. They love

1 trees. They love green. And this is the only area that is  
2 green. And they talked about how far. Well, 100 yards, a  
3 couple hundred yards either side of Cherry Creek, it is simply  
4 prairie land. It is simply clumps of grass. Not a single tree  
5 would exist and didn't exist.

6 The Cherry Creek Trail went through Cherry Creek  
7 because if you got off the trail you died. You starved. In  
8 fact, the one trail did not go along the watercourse is called  
9 the Starvation Trail. So this has been one incredible  
10 recreational habitats for the City and County of Denver and  
11 other people, including City of Glendale, for 150 years.

12 Q So prior to the time that Denver acquired this land  
13 in 1936, did people use it for recreational purposes?

14 A Absolutely. Absolutely. This is where the horse  
15 trails went through. This is one beautiful section of Cherry  
16 Creek, where it bends around. People love to go there for 150  
17 years. They'd go there to picnic. They'd go to there to  
18 recreate.

19 Q Thank you. After 1936 and before 1955, did people go  
20 into Parcel 31 along Cherry Creek for recreation --

21 A Yes. if I could I would like to make --

22 Q Just a moment, please. I need you to let my finish  
23 my question.

24 A Sure, sure, sorry.

25 Q After 1936 and before December 31, 1955, did citizens

1 of Denver ride on horseback and walk along Cherry Creek through  
2 Parcel 31 for recreational purposes?

3 A Yes.

4 Q How do you know that?

5 A I'd like to refer to the history of Glendale, which  
6 makes a reference, and this is one of thousands, the  
7 independent Dairy, which --

8 Q Hold on hold. You're reading from?

9 A The History of Glendale.

10 THE COURT: This is your book?

11 THE WITNESS: No, it is not. This is a book by Jack  
12 Patricia Fletcher, who are the experts on the Cherry Creek  
13 Trail. They also wrote History of Glendale.

14 MR. CASE: Your Honor, this testimony is admissible  
15 as an exception to the rule against hearsay under 8-03-20,  
16 reputation concerning boundary or general history, and also 8-  
17 03-18 learned treatises.

18 BY MR. CASE:

19 Q Sir, the book you are reading from is what?

20 A History of Glendale.

21 Q Who wrote it?

22 A Jack E. and Patricia A. Fletcher.

23 Q Is it a recognized authoritative treatise on the  
24 history of Glendale?

25 A It is.

1 Q Read and tell us the page that you're reading from,  
2 please.

3 A Sure. Page 90, second full paragraph.

4 "The independent Dairy, which has been  
5 prevalent in Glendale since the late 1980s declined  
6 in number over the years, but even more swiftly after  
7 War World II. On the south side of Cherry Creek,  
8 horse stables and riding clubs replaced many of the  
9 dairies, some of them public, some of them private,  
10 some rode English, some rode western. One of the  
11 groups owned and maintained a railroad car for a  
12 clubhouse and a bridle path, which ran east on Cherry  
13 Creek and up Cheery Creek as far as Kenwood Dam."

14 Kenwood Dam is slightly, I guess it would be --  
15 Parcel 31 is -- Kenwood Dam is southwest of Parcel 31. It's  
16 about, I don't know, half mile or a mile, maybe a little  
17 longer.

18 Q So you would have to ride, if you were coming from  
19 Denver, from the Denver Country Club and you were riding to  
20 Kenwood Dam, you would ride through Parcel 31 to get there?

21 A Yes. And all the riding clubs, you mean, just to  
22 correct the record, Denver Country Club had stables from 1905  
23 to 1923. From 1923 to 1942, there were stables at the polo  
24 clubs grounds. After that, all of riding clubs were located in  
25 Glendale. They were less regulated and it's a place where you

1 could go park your horse or have your horse there and then you  
2 could ride up the trail, the four miles from Four Mile House up  
3 to what is today Cherry Creek Dam.

4 Q And that activity went on from the '20s all the way  
5 up through when? Present?

6 A Today. Today people tend to use bikes as preferable  
7 transportation. You don't to a feed a bike.

8 Q Tell us where the stables were in Glendale.

9 A They were all over the place in Glendale. There were  
10 six, seven ten stables. One of the more prominent ones, if  
11 somebody's lived Denver, was the Riviera. The Riviera was the  
12 Glendale Riding Club. Today that structure has been torn down,  
13 but a lot people ate at the Riv, and that was one of the  
14 stables. It was the Glendale Riding Club.

15 Q And that would have been located at East Kentucky and  
16 Colorado Boulevard?

17 A Colorado boulevard, correct.

18 Q And it's now --

19 THE COURT: Excuse me, is that near where the former  
20 Mexican restaurant, the Riviera, used to be?

21 THE WITNESS: The former restaurant known as the  
22 Riviera was the Glendale Riding Club, and then the Mexican  
23 restaurant took it over. Took over the clubhouse for Glendale  
24 Riding and changed the name to the Riviera.

25 THE COURT: Now it's Las Delicias?

1 THE WITNESS: That's correct. And the only thing  
2 that exists from that time period is the sign.

3 BY MR. CASE:

4 Q Now, were there other stables and riding clubs to the  
5 east, more toward Parcel 31?

6 A Yes.

7 Q Are you familiar with a ranch, a horse ranch that  
8 rented horses to people called the flying J&J Ranch?

9 A Yes, vaguely.

10 Q Was that one of the stables that rented horses to  
11 people who wanted to ride out through Parcel 31?

12 A Yes, that would be correct.

13 Q Now, Mr. Bonniwell, have you -- you've written some  
14 articles critical of the City's decision to do this land swap;  
15 is that true?

16 A I have written an editorial that was critical. I  
17 wrote some objective articles, which indicated both sides, at  
18 least in my mind.

19 Q Now, although you may have a point of view and  
20 opinion about the land/swap, are the facts that you've told us  
21 today historical facts?

22 A Yes. Writing articles -- I'm writing an article  
23 today about the hearing, quite frankly, that's why I originally  
24 came down here, there are people out there from the  
25 Examiner.com and others who will write about the hearing.

1 Q The point that I'm getting at is notwithstanding your  
2 personal opinions about the land swap, are the facts that you  
3 have told us about the history of Cherry Creek corridor, and in  
4 particular the recreational use of Parcel 31 from 1936 past  
5 1955, are those all true facts?

6 A Those are all true facts.

7 MR. CASE: Thank you Your Honor. That concludes my  
8 direct examination.

9 THE COURT: Cross?

10 MR. BROADWELL: Just a couple of quick questions.

11 CROSS-EXAMINATION

12 BY MR. BROADWELL:

13 Q Mr. Bonniwell, I'm going to ask you as a historian,  
14 would you agree that the land we've been talking about is  
15 depicted in yellow in Exhibit I? Is that yellow or orange?

16 A I can't tell.

17 Q On Exhibit I was not in the boundaries of the City  
18 and County of Denver in 1955?

19 A No, it was owned by the City and County of Denver in  
20 1955.

21 Q As a historian, I'm sure you're aware that in 1955  
22 and before, for a long period of time the City did own  
23 extraterritorial parks known as mountain parks.

24 A It still does. That's what Red Rocks is, that's what  
25 Evergreen Park is. In fact you still own, although you



1 conveyed all the real rights to it, to Winter Park. You still  
2 own it, technically, since you didn't put it to a vote, and  
3 therefore it couldn't be transferred. So the City and County  
4 of Denver today technically owns Winter Park.

5 Q Hopefully I'm going to ask you just a couple more  
6 yes-or-no questions.

7 A Sure.

8 Q To the extent we owned extraterritorial parks back in  
9 1955 and before, would you agree that they all had a distinct  
10 identity as a named park that you could find on a park map of  
11 our mountain parks?

12 A Absolutely not.

13 Q To the best of your knowledge, is the triangular  
14 parcel located on this 1955 aerial map recorded anywhere by  
15 name as a park, acknowledged anywhere officially as park, as of  
16 December 31, 1955?

17 A I know it was repeatedly referred to as a park after  
18 1955. I know of no designations, per se, I just know it was  
19 used as a park.

20 MR. BROADWELL: Thank you.

21 THE COURT: Used as a park before 1955?

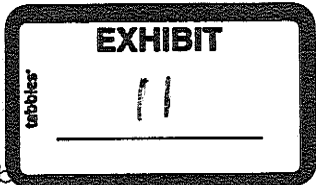
22 THE WITNESS: Correct.

23 THE COURT: Anything else?

24 MR. CASE: No, Your Honor.

25 THE COURT: Thank you, sir. You may step down. Does

1 offer two school board members to discuss the need for the  
2 school as well as the process by which the site



3 THE COURT: Thank you.

4 MR. CASE: Plaintiffs call David Longbrake

5 DAVID LONGBRAKE, PLAINTIFF'S WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. CASE:

8 Q Good morning, Mr. Longbrake. Would you please  
9 introduce yourself to the Court?

10 A I am David Longbrake.

11 Q Spell your last name?

12 A L-O-N-G-B-R-A-K-E.

13 Q Where do you live?

14 A 3016 South Geneva Street, Denver, Colorado, 80231.

15 Q Do you own that property?

16 A Yes.

17 Q When did you buy it?

18 A August 1976.

19 Q How close is it to the property that's in dispute  
20 here?

21 A It abuts onto the property.

22 Q Can we see Exhibit 1. So, where is your house on  
23 this map? Can you see the exhibit okay?

24 THE COURT: Here.

25 THE WITNESS: Oh. Where am I pointing to?

1 underneath Havana flood?

2 A Yes.

3 Q With water during heavy storms?

4 A Yes.

5 Q And you mentioned impervious services -- surfaces.

6 What did you mean by that?

7 A Well, by all the development that has gone in with  
8 streets and sidewalks and paving of all sorts. And --

9 Q And that tends to force more runoff toward the creek?

10 A Yes.

11 Q Whereas before, it would just get -- some of it would  
12 get soaked up in the dirt?

13 A That's right. Yes.

14 Q Now, then, in making your decision to purchase this  
15 home did you rely on the statements that were made to you by  
16 the Planning Office that this was a park and was going to  
17 remain a park?

18 A Yes. I think I've already indicated that that was  
19 the determining factor.

20 Q Would you have purchased this home if you had not  
21 been assured that this open space would remain in perpetuity?

22 A Absolutely not.

23 Q Why not?

24 A Who knows what would happen? And again, it was the  
25 character of the site itself as an open space and a place for

1 A Yes.

2 Q And do people --

3 A There are still some horses. Many fewer, because all  
4 the stables are gone now. And all -- much of the land along  
5 Syracuse as I drove down there, which originally got my  
6 attention when I was driving out to the site, is all gone. But  
7 at the same time, my wife and I could still walk out there, and  
8 down by the creek you still -- it was quiet, it was a  
9 sanctuary. It's still the sense of being in the country in the  
10 middle of a city.

11 Q Now, in the 36 years since you purchased your home  
12 have you seen the Denver Department of Parks and Recreation  
13 maintain and improve the park behind your house?

14 A Yes. On many occasions over the extended period of  
15 time that I've lived there. And again, I didn't teach in the  
16 summer. I was more involved in research and so forth. I was  
17 at home more. I could see people out working in the park. I  
18 would go out and talk to them and ask them what they were  
19 doing. And they did mowing, of course, of the fields  
20 especially behind the residential properties and the paths, but  
21 also came and sprayed noxious weed and did cleanup, picking up,  
22 trash or major things that people tend to sometimes dump there.  
23 And in all of this, I never notices that there was any  
24 distinction between the two parcels of land. It just seemed  
25 like all one big park land area, and they did same things in

1 both parcels. The only -- and of course they did improve the  
2 bicycle trails as well.

3 The only other thing that was a major and very  
4 interesting activity, and I don't know whether this was  
5 associated with the time that it was declared a natural area,  
6 is the park brought in goats. And this went on for about two  
7 weeks or so, or much of the summer. And this is down on the  
8 southern triangular wedge-shaped property that they put pens in  
9 and they brought goats in in the morning, and they were taken  
10 out in the evening, and the goats eat everything.

11 Q Can you show us where the goats where in Exhibit 1  
12 with the laser pointer?

13 A Okay. All up and down there here.

14 Q So that would be the area where this DPS proposes to  
15 build the school now?

16 A Yes.

17 Q When were the goats --

18 A And I guess the idea was that this was a natural way  
19 to improve the land or conserve things. The goats would eat  
20 all of the noxious plants and weeds that had invaded the area,  
21 and at the same time they seeded it with native grasses. And  
22 the idea was that the goats sharp hooves would punch these  
23 grass seeds and so forth into the ground so that would  
24 germinate. And I did spend some time out talking with the  
25 individual who was doing this, and they would move each -- move

1 MR. BROADWELL: No objection.

2 THE COURT: Admitted.

3 (Plaintiff's Exhibit 35-1 and 35-2 admitted into evidence)

4 BY MR. CASE:

5 Q So where exactly is this sign, Mr. Longbrake?

6 A I said it's on the fence as you enter, go through the  
7 fence into the park land from the parkway on Hampden Heights  
8 east development.

9 Q Does this indicate whether or not Hampden Heights  
10 North Park is a park?

11 A One would certainly think so.

12 Q Does it say it's a park?

13 A Yes. It talks about Denver Parks and Recreational  
14 park rules, the following are not allowed in the park.

15 Q It has the City ever posted anything on this property  
16 saying it is not a park?

17 A No.

18 Q Since you've lived, has it been always open, unfenced  
19 and available to the public for use as open space park land?

20 A Yes. I have never, in all the time that I've  
21 interacted with various City agencies, et cetera, ever heard it  
22 referred to otherwise or been corrected and told it's not a  
23 park.

24 Q I'd like you to look now in the last few minutes here  
25 at some photographs that were taken along Cherry Creek, and see

1 THE COURT: All right. What was it, 40?

2 MR. CASE: Yes.

3 THE COURT: It will be admitted.

4 (Plaintiff's Exhibit 40 admitted into evidence)

5 BY MR. CASE:

6 Q Mr. Longbrake, could you look at Exhibit Number 41.

7 A Yes.

8 Q And 42 and 43, please.

9 A Yes.

10 Q All right. What is Exhibit 41?

11 A That's the junction of the entrance to Hampden  
12 Heights North Park coming down from the parkway and crossing  
13 over the bicycle path. There's a dirt path that goes down to  
14 the drop structure.

15 THE COURT: Off to the left?

16 THE WITNESS: To the left.

17 BY MR. CASE:

18 Q And then it says Cherry Creek Trail South. Where  
19 does that lead?

20 A Cherry Creek Trail South goes up over the dam to  
21 Cherry Creek Reservoir Park about 20 miles further south, and  
22 eventually down to the Castlewood Park.

23 Q And does Cherry Creek Trail South run through Hampden  
24 Heights North Park?

25 A Yes, it does.

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street Denver, CO 80202	<div style="text-align: right;"> <p>2013 MAY 30 AM 8:07</p> <p>RECEIVED CLERK &amp; RECORDER CITY &amp; COUNTY DENVER</p> </div> <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p>Case No.: 2013CV032444</p> <p>Div.:                      Ctrm.:</p> <div style="border: 2px solid black; padding: 5px; margin-top: 10px;"> <p style="text-align: center;"><b>EXHIBIT</b></p> <p style="text-align: center; font-size: 2em;">12</p> </div>
<p><b>Plaintiff:</b> FRIENDS OF DENVER PARKS, INC., a Colorado non-profit corporation.</p> <p><b>Defendants:</b> CITY &amp; COUNTY OF DENVER, a municipal corporation; and SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER, a public entity, and DEBRA JOHNSON, in her official capacity as clerk and recorder of the City and County of Denver.</p>	
<p>Plaintiff's Attorneys:</p> <p style="padding-left: 40px;">John Case, Esq. Atty reg. # 2431          Benson &amp; Case, LLP          1660 So. Albion Street, Suite 1100          Denver, Colorado 80222</p> <p>Phone Number: (303) 757-8300          FAX Number: (303) 753-0444          E-mail: case@bensoncase.com</p>	
<p><b>NOTICE OF LIS PENDENS</b></p>	

**FRIENDS OF DENVER PARKS, INC.**, a Colorado non-profit corporation, ("Plaintiff") files this **NOTICE** that an action has been commenced and is pending in the District Court for the County of Denver, City of Denver, Colorado, the caption and case number of which are shown above, in which Plaintiff brought a civil action against certain Defendants, including the **CITY AND COUNTY OF DENVER** ("Denver") and **SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER** ("DPS") and **DEBRA JOHNSON**, in her official capacity as clerk and recorder of the City and County of Denver. (collectively "Defendants").

The action concerns the disputed status and title of certain real property located at the Northwest corner of South Havana Street and East Girard Avenue in the City and County of Denver, more particularly described in Exhibit A attached hereto and incorporated herein by reference ("the Property"). The Property adjoins Paul A. Hentzell Park, and is commonly referred to as Hampden Heights North Park. The Property is part of the "Hentzell Park Designated Natural Area."

Plaintiff claims that the subject property was dedicated as a park by common law dedication, and is dedicated park land, subject to the protection of Denver Charter Section 2.4.5, and subject to the full protections given to dedicated parks under the Denver City Charter and the Denver Revised Municipal Code. Plaintiff claims that at all times relevant the Defendant City and County of Denver owned and owns the Property as Trustee in Trust for the citizens of the City and County of Denver. Plaintiff claims that the Property has been designated as a Natural Area and Open Space subject to

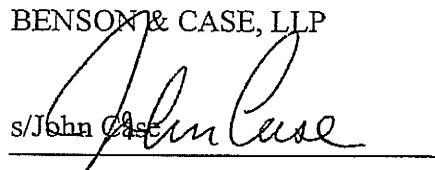


the protection accorded Natural Areas by Denver Municipal Code and the Department of Parks and Recreation. Plaintiff claims that Defendants secretly agreed to change de facto zoning and use of the Property without public notice and public hearing. Plaintiff claims that in 2011 the Defendants entered into a secret oral agreement to trade the Property for an office building at 1330 Fox St. without notice to the public or other interested parties including the Parks and Recreation Advisory Board. Plaintiff claims that the secret oral agreement culminated in a written contract executed by DPS March 21, 2013 and executed by Denver April 10, 2013, which calls for Denver to transfer title to DPS on or before June 30, 2013. Plaintiff claims that Plaintiff, its members, and the citizens and wildlife of Denver will suffer irreparable harm if DPS takes title to the Property and begins construction of improvements that forever change the character of the land. Plaintiff seeks, among other things, Declaratory Judgment that the Property is a Denver Park, Natural Area, and Open Space. Plaintiff seeks injunctive relief enjoining the transfer of title to DPS, enjoining DPS from developing the Property, and commanding all defendants to restore the Property to its natural state.

Respectfully submitted May 29, 2013.

BENSON & CASE, LLP

s/John Case

  
John Case, # 2431



# LEGAL DESCRIPTION

A parcel of land in the Northeast Quarter and Southeast Quarter of Section 34, Township 4 South, Range 67 West of the 6th Principal Meridian, City and County of Denver, State of Colorado, being more particularly described as follows:

For the purposes of this description the bearings are based on the City and County of Denver map projection, with the easterly line of the Northeast Quarter of Section 34, Township 4 South, Range 67 West, bearing North 00°26'41" East, a distance of 2639.69 feet, monumented by a 1" Iron Rod in a Denver Range Box at the Southeast Corner of said Northeast Quarter and a 3" Brass Cap in a City of Aurora monument box at the Northeast Corner of said Northeast Quarter.

Commencing at the Northeast Corner of the Southeast Quarter of Section 34;  
THENCE North 89°37'07" West, a distance of 166.51 feet, along the northerly line of the Southeast Quarter of said Section 34;

THENCE South 01°12'19" West, a distance of 350.48 feet, along the westerly right of way line of Havana Street, also being State Highway 30 to the POINT OF BEGINNING;

THENCE South 01°12'19" West, a distance of 799.81 feet, along said westerly right of way line to a point of curvature;

THENCE along a curve to the right, with a radius of 15.04 feet, an arc length of 23.62 feet, having a delta angle of 89°58'08", with a chord bearing of South 46°11'23" West, and a chord length of 21.26 feet, being the northerly right of way line of Girard Avenue, as describe in Ordinance No. 81, Series of 1972, to a point of reverse curvature;

THENCE along a reverse curve to the left, with a radius of 430.00 feet, an arc length of 117.75 feet, having a delta angle of 15°41'21", with a chord bearing of South 83°19'46" West, and a chord length of 117.38 feet, continuing along said northerly right of way;

THENCE North 28°29'23" West, a distance of 1379.40 feet, along the northeasterly line of Cherry Creek Greens, P.B.G and along the northeasterly line of Block 21, Hampden Heights Third Filing;

THENCE North 61°32'58" East, a distance of 263.38 feet;

THENCE South 28°29'23" East, a distance of 363.47 feet;

THENCE North 66°30'43" East, a distance of 118.88 feet;

THENCE South 27°01'58" East, a distance of 180.00 feet;

THENCE South 69°50'26" East, a distance of 224.70 feet, to the POINT OF BEGINNING.

Containing an area of 469,181 Square Feet, or 10.771 Acres, more or less

ASI JOB NO.: 2306-019.1

DATED: March 20, 2013

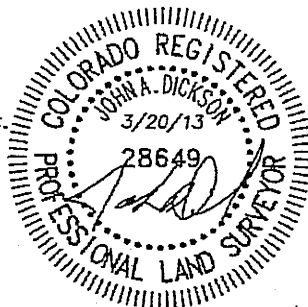
For and on Behalf of ALTA SURVEYING, Inc.

2603 Payne Ct

Erie CO 80516

303-726-3939

John A. Dickson, PLS 28649



JOB NO.: 2306-022
SCALE: 1" = 200'
DATE: 3/20/13
SURVEYOR: JD
DRAWN BY: JD

NE 1/4 & SE 1/4  
SEC. 34, T-4-S, R-67-W  
CITY & COUNTY OF DENVER



WHEN RECORDED RETURN TO:

Catherine A. Hance  
Davis Graham & Stubbs LLP  
1550 17th Street, Suite 500  
Denver, CO 80202



QUIT CLAIM DEED  
(Hampden Heights)

THE CITY AND COUNTY OF DENVER, a Colorado municipal corporation and home rule city ("Grantor"), whose address is 1437 Bannock Street, Denver, Colorado 80202, for good and valuable consideration, in hand paid, hereby sells and quitclaims to SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO ("DPS" or "Grantee"), whose address is 900 Grant Street, Room 401, Denver, Colorado 80203, the following real property, together with all improvements thereon, in the City and County of Denver, State of Colorado, to-wit ("Property"):

See legal description attached hereto as Exhibit A, and located within the City and County of Denver, Colorado

Also known by street and number as: NA

RESTRICTIVE USE COVENANT

This grant and deed is subject to the restrictive use covenant benefiting Grantor, set forth herein. Grantee, its successors and assigns, agree that, from the date of this deed until the date that is forty (40) years from the date of this deed (the "Restrictive Period"), the Property may only be used for an Educational Facility. "Educational Facility" shall mean a public, private or charter school, early childhood education center, or other related educational facility, including but not limited to administrative uses and activities related to education and/or storage of education related materials and supplies. In the event Grantee, its successors, assigns or lessees, ceases to operate an Educational Facility on the Property prior to the end of the forty (40) year time period, Grantor, by written notice signed by the Mayor, at its sole option, and as its exclusive remedy for the cessation of such operations, shall be entitled to repurchase the Property for the then fair market value of the Property, unless the Property has been put in use for an Educational Facility within the Cure Period. The fair market value of the Property shall be determined by an MAI certified appraiser jointly chosen by Grantee and Grantor or, if Grantee and Grantor fail to agree upon an MAI certified appraiser within thirty (30) days after the expiration of the Cure Period, each of Grantee and Grantor shall select within forty (40) days after the expiration of the Cure Period an MAI certified appraiser and such MAI certified appraisers shall meet and jointly select, within fifteen (15) days thereafter, an MAI certified appraiser to appraise the Property. The cost of the jointly selected MAI certified appraiser shall be split equally by Grantor and Grantee; the cost of each appraiser representing a single party shall be paid by the party selecting such appraiser. Prior to Grantor exercising its right to repurchase the Property, Grantee shall be given the right to cure any deficiencies noted within sixty (60) days (or one hundred twenty

(120) days as described below) (the "Cure Period") after notice from Grantor. If such cure is effected within the sixty (60) day period, or in the event the cure cannot be fully completed within sixty (60) days, and Grantee has started making good faith efforts to cure any violations, and has completed such actions within one hundred twenty (120) days, the repurchase right shall not be exercised. Determination of whether a cure has been effected shall be at the sole discretion of the Mayor.

Grantor, at its sole option, through the Mayor, may waive or modify the restrictive use covenants set forth in this deed, upon request by Grantee. Upon any waiver or modification of the restrictive use covenant by Grantor, Grantor shall execute an appropriate document in recordable form to waive, modify or relinquish the covenant and/or the right of entry set forth herein.

If the failure to operate an Educational Facility has not been cured within the Cure Period, Grantor shall cause the appraisal of the Property to be performed within ninety (90) days thereafter and shall deliver a copy thereof to Grantee. Grantor shall complete the repurchase of the Property within ninety (90) days thereafter. Notwithstanding any provision of this grant and deed to the contrary, if Grantor has not completed the repurchase of the Property within one (1) year after the Property has ceased to be used for an Educational Facility, Grantor shall be deemed to have waived the restrictive covenant set forth herein and the restrictive covenant shall be of no further force or effect and Grantor shall have no further right to enforce the restrictive covenant hereunder.

#### MISCELLANEOUS

In any event, the restrictive use covenant set forth herein shall terminate forty (40) years from the date of this deed. This restrictive use covenant runs with the land.

In addition to the restrictive use covenant, subject to the terms hereof, Grantee shall not sell the Property without first giving Grantor notice of such proposed sale, as hereinafter provided, and the first right to purchase the Property on the terms and conditions provided herein. Any contract to sell the Property shall be made specifically subject to the rights of Buyer provided herein. In the event that Grantee enters into a contract to sell the Property, or any part thereof, Grantee shall, within three (3) business days thereafter, give Grantor written notice thereof (the "Offer Notice") which shall include the following information: (i) a description of the Property; (ii) a copy of the contract of sale (the "Sale Contract") setting forth all terms of the sale; and (iii) the name and address of the prospective purchaser. Grantor shall have the optional right, which may be exercised within fifteen (15) business days from the date of receipt of the Offer Notice, to express its intent to purchase the Property on the terms specified in the Offer Notice. Such optional right may be exercised by Grantor by giving written notice executed by the Mayor (the "Acceptance Notice") thereof to Grantee, stating Grantee's intent to purchase the Property on the terms set forth in the Sale Contract (as such terms are modified as provided herein). The Mayor shall present such contract to City Council for approval in a timely manner and Grantor shall promptly notify Grantee upon receipt of such City Council approval. If Grantee timely delivers the Acceptance Notice, Grantee and Grantor shall have a contract for the sale of the Property on the terms and subject to the conditions stated in the Sale Contract and such other terms as agreed to between Grantee and Grantor (if any), subject to City Council

approval, except that notwithstanding any provision in the Sale Contract to the contrary, closing on the sale of the Property from Grantee to Grantor shall occur on the sixtieth (60<sup>th</sup>) day after approval by City Council. If Grantor fails to deliver the Acceptance Notice within said fifteen (15) business day time period, or delivers the Acceptance Notice but fails to obtain City Council approval within sixty (60) days after delivery of the Acceptance Notice or close on the purchase of the Property in accordance with the Sale Contract as modified above, Grantee shall thereafter be free to sell the Property in its sole discretion and free from Grantor's right of first refusal as set forth herein. Grantor shall promptly execute, following request therefor from Grantee, such documentation as reasonably requested by Grantee to evidence the termination of Grantor's right of first refusal as set forth herein. To the fullest extent permitted by law, Grantor will indemnify, defend and hold harmless Grantee, its officers, agents, employees, successors and assigns, from and against any and all losses, damages, costs or expenses (including any judgment, award, settlement, reasonable attorneys' fees and other costs and expenses incurred in connection with the institution or defense of any actual or threatened action, proceeding or claim including appellate proceedings, and any collection costs or enforcement costs) arising out of, or in connection with any failure to by Grantor to deliver any acknowledgment of the termination of the right of first refusal set forth herein. Grantee shall be entitled to recover any and all attorneys' fees and costs incurred by Grantee in enforcing Grantor's obligation to deliver any acknowledgment of the termination of the right of first refusal set forth herein.

#### RESERVATION OF STORM SEWER EASEMENT

Grantor hereby reserves unto itself a permanent non-exclusive easement ("Easement") to locate, install, construct, inspect, operate, maintain, repair, remove, replace, relocate and reconstruct, at Grantor's sole expense, facilities for storm water, sewage, and related purposes, including related underground and, subject to the terms hereof, surface facilities, and appurtenances thereto ("Public Improvements"), into, within, over, upon, across, through and under the following described parcel of land ("Easement Property"): an area fifteen (15) feet on either side of those certain center lines depicted on the attached Exhibit B, subject to modification and adjustment as provided herein.

The final location of the Easement and any needed surface facilities to be installed by Grantor as part of the Public Improvements will be as agreed upon by Grantor and DPS, so that the Easement location alignment will not adversely impact the building to be built by DPS on the Property. Final as built drawings and legal descriptions of the Easement Property will be prepared and a correction deed reflecting said final legal descriptions and drawings for the Easement Property will be executed (and acknowledged) by Grantor and DPS) and recorded within sixty (60) days after the completion of construction of the Hampden Heights Phase II-Girard Project ("Project"). Such sixty (60) day time period may be extended by mutual agreement of the Manager of Public Works for Grantor and Chief Operating Officer (or his designee) for DPS. DPS acknowledges that Grantor will be constructing the Project on the Easement Property and, subject to the terms hereof, has granted its explicit authority for Grantor and its contractors to do so, provided such construction and installation is done in a manner which minimizes any interference with DPS' use and enjoyment of the Property.

Notwithstanding any provision hereof to the contrary, in the event that Grantor does not commence construction of the Project by July 10, 2028, this Reservation of Storm Sewer Easement and Grantor's rights in the Easement shall terminate and be of no further force or effect. Grantor shall execute such notices, acknowledgments and other documentation as reasonably requested by DPS to reflect such termination of this Reservation of Storm Sewer Easement and Grantor's rights in the Easement, if applicable. Once the Project is built, this Easement shall remain in full force and effect thereafter until such time as it is relinquished.

Except as otherwise provided herein, DPS, its successors and assigns, reserve the right to fully use and enjoy the Easement Property, so long as such use and enjoyment shall not materially interfere with the location, installation, construction, inspection, operation, maintenance, repair, removal, replacement, relocation, and reconstruction of the Public Improvements installed or permitted to be installed by Grantor. DPS covenants and agrees that, effective as of the date of this Easement, DPS shall not erect, install, place, or permit any building, structure, wall, fence, tree, or other below- or above- ground obstruction upon the Easement Property, except as otherwise approved by the Grantor's Manager of Public Works in writing. Notwithstanding the foregoing or any provision hereof to the contrary, DPS shall have the right to place asphalt or concrete pavement over the Easement Property for drive lanes, parking and other uses and Grantor expressly consents thereto. Further, Denver Water may collocate utility improvements within the Easement area in locations satisfactory to Grantor, acting reasonably. Grantor agrees to restore the Easement Property and any DPS' facilities permitted hereby to be installed thereon or otherwise approved by the Manager of Public Works as provided above within the Easement Property to a condition substantially similar to what it was prior to Grantor's activities, except as necessarily modified to accommodate the Public Improvements, at no cost to DPS.

The provisions of this Reservation of Storm Sewer Easement shall inure to the benefit of and bind the successors and assigns of the Grantor and DPS. All covenants stated in this Easement shall apply to and run with the land.

#### CORRECTION DEED

A portion of the Property inadvertently includes a Colorado Department of Transportation (CDOT) pond area. Upon determination of the revised legal description of the Property, excluding such CDOT pond area, Grantor and DPS shall promptly execute acknowledge and record a correction deed reflecting this minor adjustment of approximately 19,150 square feet.

(SIGNATURE PAGE TO HAMPDEN HEIGHTS QUIT CLAIM DEED TO  
SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER STATE OF  
COLORADO)

SIGNED this 8<sup>th</sup> day of July, 2013.

ATTEST:

CITY AND COUNTY OF DENVER

By: Debra Johnson  
DEBRA JOHNSON, Clerk and Recorder,  
Ex-Officio Clerk of the  
City and County of Denver

By: [Signature]  
Mayor

APPROVED AS TO FORM:  
DOUGLAS J. FRIEDNASH,  
Attorney for the City and County of Denver

By: [Signature]  
Assistant City Attorney

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

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of July,  
2013 by Michael B. Hancock, Mayor of the City and County of Denver.

Witness my hand and official seal.  
My commission expires: JUNE 8, 2014

Valerie Yvette Sanchez  
Notary Public

**Valerie Yvette Sanchez**  
Notary Public  
State of Colorado  
Notary ID 20104017421  
My Commission Expires June 8, 2014

(SIGNATURE PAGE TO OBLIGATIONS REGARDING RESERVATION OF STORM  
SEWER EASEMENT)

SCHOOL DISTRICT NO. 1 IN THE CITY  
AND COUNTY OF DENVER

By: David A. Suppes  
Print Name: David Suppes  
Its: COO

STATE OF COLORADO )  
 ) ss.  
CITY & COUNTY OF DENVER )

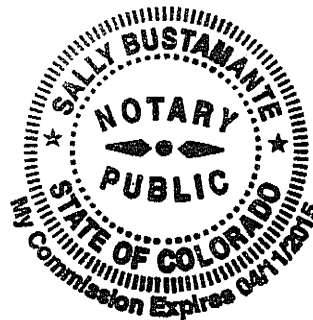
The foregoing instrument was acknowledged before me by David A. Suppes as  
COO of School District No. 1 in the City and County of Denver this 10<sup>TH</sup>  
day of July, 2013.

Witness my hand and official seal.

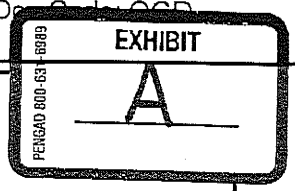
Sally Bustamante  
Notary Public

My commission expires 4-11-2015

**APPROVED**  
By Michael J Hickman at 9:30 am, Jul 10, 2013  
DPS General Counsel Office







# LEGAL DESCRIPTION

A parcel of land in the Northeast Quarter and Southeast Quarter of Section 34, Township 4 South, Range 67 West of the 6th Principal Meridian, City and County of Denver, State of Colorado, being more particularly described as follows:

For the purposes of this description the bearings are based on the City and County of Denver map projection, with the easterly line of the Northeast Quarter of Section 34, Township 4 South, Range 67 West, bearing North 00°26'41" East, a distance of 2639.69 feet, monumented by a 1" Iron Rod in a Denver Range Box at the Southeast Corner of said Northeast Quarter and a 3" Brass Cap in a City of Aurora monument box at the Northeast Corner of said Northeast Quarter.

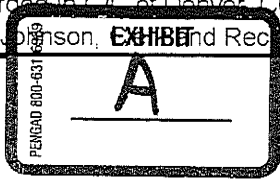
- Commencing at the Northeast Corner of the Southeast Quarter of Section 34;
- THENCE North 89°37'07" West, a distance of 166.51 feet, along the northerly line of the Southeast Quarter of said Section 34;
- THENCE South 01°12'19" West, a distance of 350.48 feet, along the westerly right of way line of Havana Street, also being State Highway 30 to the POINT OF BEGINNING;
- THENCE South 01°12'19" West, a distance of 799.81 feet, along said westerly right of way line to a point of curvature;
- THENCE along a curve to the right, with a radius of 15.04 feet, an arc length of 23.62 feet, having a delta angle of 89°58'08", with a chord bearing of South 46°11'23" West, and a chord length of 21.26 feet, being the northerly right of way line of Girard Avenue, as describe in Ordinance No. 81, Series of 1972, to a point of reverse curvature;
- THENCE along a reverse curve to the left, with a radius of 430.00 feet, an arc length of 117.75 feet, having a delta angle of 15°41'21", with a chord bearing of South 83°19'46" West, and a chord length of 117.38 feet, continuing along said northerly right of way to the intersection with the northeasterly line of Cherry Creek Greens, P.B.G.;
- THENCE North 28°29'23" West, a distance of 1379.40 feet, along said northeasterly line and along the northeasterly line of Block 21, Hampden Heights Third Filing;
- THENCE North 61°32'58" East, a distance of 263.38 feet;
- THENCE South 28°29'23" East, a distance of 363.47 feet;
- THENCE North 66°30'43" East, a distance of 118.88 feet;
- THENCE South 27°01'58" East, a distance of 180.00 feet;
- THENCE South 69°50'26" East, a distance of 224.70 feet, to the POINT OF BEGINNING.

Containing an area of 469,181 Square Feet, or 10.771 Acres, more or less

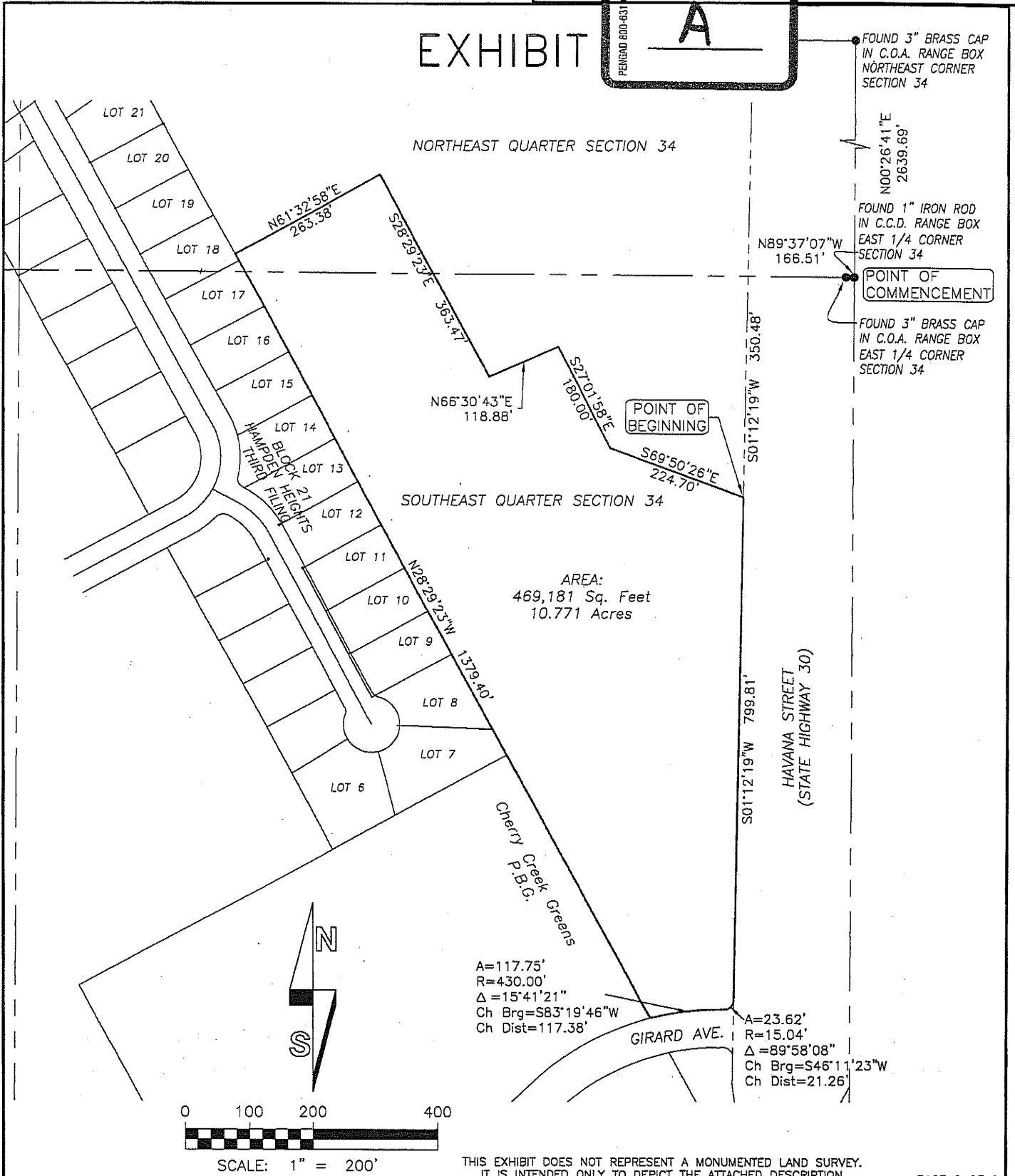
ASI JOB NO.: 2306-019.1  
 REVISED: April 5, 2013  
 For and on Behalf of ALTA SURVEYING, Inc.  
 2603 Payne Ct  
 Erie CO 80516  
 303-726-3939  
 John A. Dickson, PLS 28649



JOB NO.: 2306-019.1	<b>NE 1/4 &amp; SE 1/4          SEC. 34, T-4-S, R-67-W          CITY &amp; COUNTY OF DENVER</b>	 2603 PAYNE CT. ERIE, CO 80516 PH. 303-726-3939 FAX 720-208-9469
SCALE: 1" = 200'		
DATE: 4/05/13		
SURVEYOR: JD		
DRAWN BY: JD		



# EXHIBIT



THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY.  
 IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION

JOB NO.: 2306-019.1
SCALE: 1" = 200'
DATE: 4/05/13
SURVEYOR: JD
DRAWN BY: JD

SE 1/4  
 SEC. 34, T-4-S, R-67-W  
 CITY & COUNTY OF DENVER

**ALTA**  
 SURVEYING INC.

2803 PAYNE CT.  
 ERIE, CO 80516

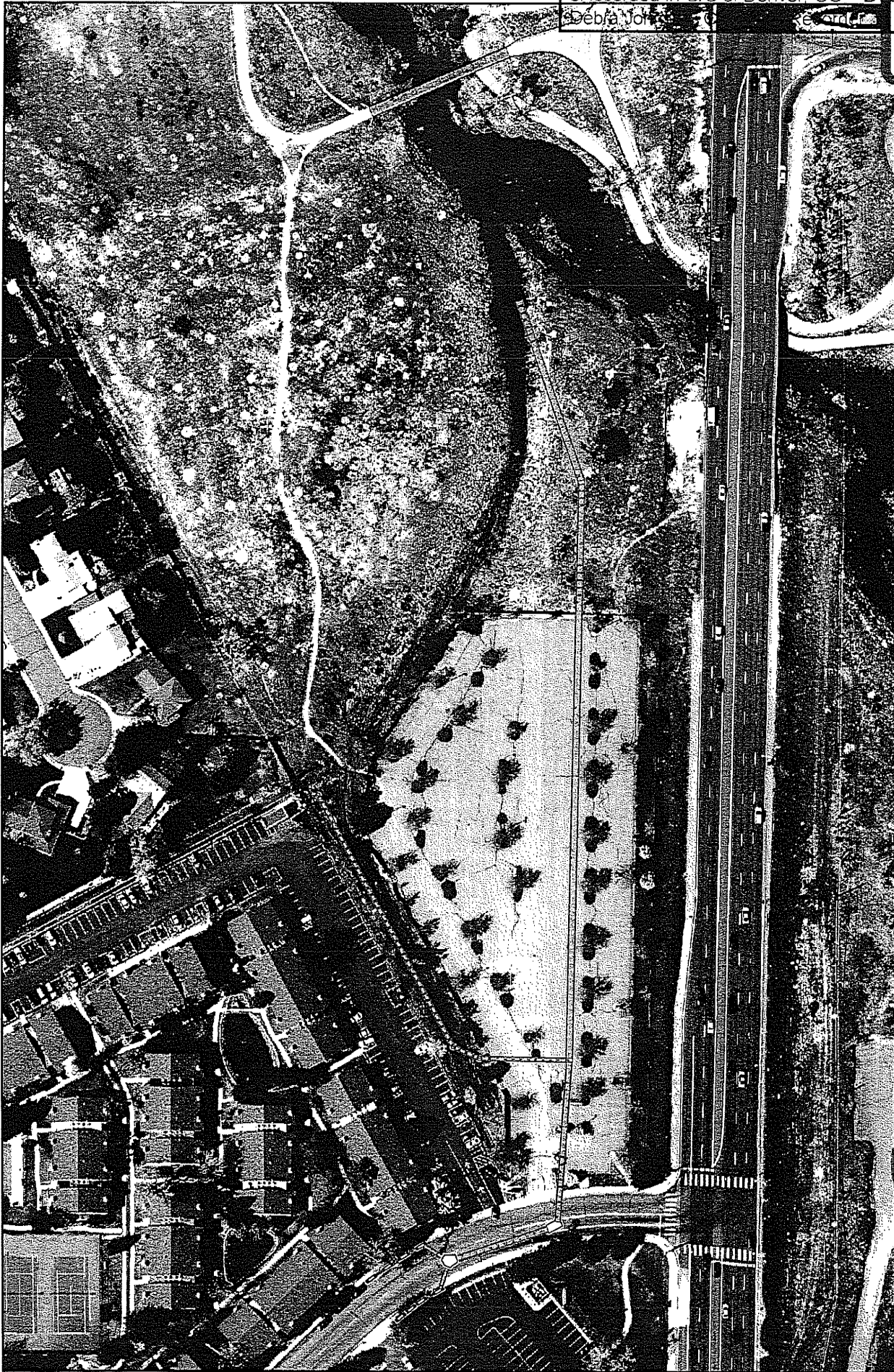
PH. 303-726-3939  
 FAX 720-208-9469

Debra Jones

Seal

PERIOD: 00-603

EXHIBIT  
B



1 as if we have in the unbroken chain of definitive  
2 promises and representations made by City officials  
3 through the years.

4 And, you know, in our opening we said the fact that  
5 it's called Hampden Heights North Park came as news to us until  
6 we started studying the maps ourselves and we believe that's on  
7 a Google map that's been overlaid with some City information.

8 We don't think there are -- that the moral question you're  
9 raising was raised I think more dramatically than the facts of  
10 this case. It's not as if we have official city maps or an  
11 unbroken chain of assurances that nail it quite as much as  
12 you're describing in this particular case.

13 But you said you didn't want me to give the legal  
14 answer, but unfortunately kind of have to lapse into that a  
15 little bit. As a municipal attorney for 33 years, I can't tell  
16 you how many times I've had to answer for something somebody  
17 said 15 years ago. Right? And this happens a lot in local  
18 government. So and so told me 15, 20 years ago.

19 THE COURT: And the law says basically we're sorry  
20 that that person made that representation, and we're sorry that  
21 you relied on it.

22 MR. BROADWELL: And I lapse into Civics 101, which is  
23 where government of law is not man; that you have to look to  
24 the official record, you have to look to the laws of the city  
25 in terms of the representations made by any individual