

RESOLUTION NO. 56-16

A RESOLUTION APPROVING MODIFICATIONS TO A
DECLARATION OF PROTECTIVE COVENANTS AND
AUTHORIZING EXECUTION OF SUCH MODIFIED
DECLARATION OF PROTECTIVE COVENANTS

WHEREAS, the City Council of the City of Colorado Springs, Colorado ("City Council") previously in Resolution No. 64-96, approved the sale of two hundred acres of real property to Raceway Associates, LLC, (the "Real Property") subject to that certain Declaration of Protective Covenants recorded at Instrument Number 096143052, and re-recorded at Instrument Number 205166057 in the records of the Clerk and Recorder of El Paso County; and

WHEREAS, North Park 200 LLC, as successor in interest to Raceway Associates, LLC, and current owner of the Real Property has requested that the City modify the Declaration of Protective Covenants to allow for use of the Real Property as a public safety training facility; and

WHEREAS, at the time of the sale of the Real Property, the Declaration of Protective Covenants was intended to ensure that the property would continue to serve as a buffer to and not develop in a manner that would be inconsistent with the use of adjacent property by Colorado Springs Utilities ("Utilities"); and

WHEREAS, if City Council approves modifications to the Declaration of Protective Covenants to allow development of a public safety training facility, the facility will be used primarily by the Colorado Springs Police Department and other Pikes Peak area public safety agencies for tactical law enforcement and other public safety training as well as other uses identified in the attached Modification to Declaration of Protective Covenants, attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, Colorado Springs Utilities has no objection to the proposed public safety training facility and has determined that use of the property for such purposes is not inconsistent with Utilities' use of adjacent City-owned property; and

WHEREAS, City Council finds that approval of the Modification to Declaration of Protective Covenants is in the best interests of the citizens of the City of Colorado Springs and the ratepayers of Colorado Springs Utilities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council hereby approves on behalf of the City and Colorado Springs Utilities, the Modification to Declaration of Protective Covenants in substantially the form attached hereto as Exhibit "A" and incorporated herein by reference.

Section 2. The City Council hereby authorizes the City's Real Estate Services Manager to obtain the Mayor's signature on the Modification to Declaration of Protective Covenants.

Dated at Colorado Springs, Colorado, this 14th day of June, 2016.



Council President

ATTEST:



Sarah B. Johnson, City Clerk



Prepared by and return to:
City of Colorado Springs
Real Estate Services Office
30 S. Nevada Ave, Suite 502
Colorado Springs, CO 80901

**MODIFICATION TO DECLARATION OF
PROTECTIVE COVENANTS**

THIS MODIFICATION OF DECLARATION OF PROTECTIVE COVENANTS (the "Modification") is hereby agreed to by and between the City of Colorado Springs, a Colorado home rule city and municipal corporation ("Declarant"), on behalf of its utility enterprise, Colorado Springs Utilities ("Utilities"), and North Park 200 LLC, a Colorado limited liability company and successor in interest to Raceway Associates, L.L.C. ("Owner") to modify and amend that certain Declaration of Protective Covenants (the "Original Declaration") dated June 18, 1996 attached to and incorporated in that certain Warranty Deed, and recorded at Instrument Number 096143052, and re-recorded at Instrument Number 205166057 in the records of the Clerk and Recorder of El Paso County, Colorado, conveying the real property described in Attachment "A", attached hereto and incorporated herein (the "Real Property"), to Raceway Associates, L.L.C. Except as expressly provided herein, the Original Declaration shall remain in full force and effect.

RECITALS:

WHEREAS, Declarant previously conveyed the Real Property to Raceway Associates, L.L.C., subject to the Original Declaration; and

WHEREAS, the Original Declaration was intended to ensure that the Real Property is not used in a manner that is inconsistent and incompatible with Declarant's use and ownership of adjacent real property; and

WHEREAS, Raceway Associates, L.L.C., or its successors in interest, conveyed the Real Property to Owner, subject to the Original Declaration; and

WHEREAS, Article VIII of the Original Declaration provides that the Original Declaration may be amended by an instrument in writing executed and acknowledged by Declarant; and

WHEREAS, Declarant and Owner agree that modification of the Original Declaration in the manner provided in this Modification will allow Owner to utilize the Real Property in a manner that is consistent and compatible with Declarant's use of the adjacent real property, and is in the best interests of Declarant and Owner.

NOW, THEREFORE, Declarant and Owner agree the Original Declaration is hereby modified as follows:

1. Article I of the Original Declaration is hereby deleted in its entirety and replaced with the following. Furthermore, all references to the defined term "Hanna Ranch property" in the Original Declaration shall be replaced with the newly defined term "Utilities Property".

ARTICLE I
Definition of Terms

The following terms and words as used hereinafter shall be defined as follows:

(a) Declarant – shall mean the City of Colorado Springs, a Colorado home rule municipality and municipal corporation.

(b) Owner – shall mean and include the current owner of the Real Property.

(c) Utilities Property – shall mean and include that property owned by Declarant on behalf of Utilities also known in the records of El Paso County, Colorado, by Tax ID Numbers 5600000177, 5700000132, and 5700000007.

2. Article II of the Original Declaration is hereby deleted in its entirety and replaced with the following:

ARTICLE II
Permitted Uses

The Real Property may only be used for the following purposes (the "Permitted Uses"):

(a) an overflow parking lot for spectators and participants attending motor vehicle and other scheduled activities at the adjacent racetrack known as Pikes Peak International Raceway and parking lots for trainees, staff, spectators and participants attending permitted uses on the Real Property;

(b) a public safety training facility for military, law enforcement, fire protection, emergency medical services, and security training, including classrooms, weapons ranges, storage areas and buildings, vehicle garages, seating/observation areas, and motor vehicle training areas such as highways, urban street courses, drag strips, road courses and vehicle skills pads;

(c) sports, motorsports, recreational, and entertainment uses of the classrooms, storage areas and buildings, vehicle garages,

seating/observation areas, and motor vehicle training areas identified in subparagraph (b), above; and

(d) uses accessory or appurtenant to those uses identified in subparagraphs (b) and (c), above, and other similar support activities, including, but not limited to, facilities for the storage, research, testing, fabrication, and modification of vehicles and equipment, restrooms, temporary lodging, and temporary food and beverage service.

Declarant, by and through Utilities, may approve additional uses incidental to those described in this Article in a writing executed by Utilities' Chief Executive Officer or designee and recorded in the public records of the El Paso County Clerk and Recorder's Office, so long as such uses do not materially change the type or character of the Permitted Uses from those otherwise described in this Article. Notwithstanding anything else in this Article to the contrary, in no event shall the Real Property be used for residential purposes or for a hotel or any other long-term lodging use or restaurant, nor shall the weapons ranges be utilized as public ranges. Owner shall not permit individuals using the Real Property to otherwise use or trespass on property owned by Declarant.

3. Article IV of the Original Declaration is hereby deleted in its entirety and replaced with the following:

ARTICLE IV
Structures

The only permanent structures permitted to be built on the Real Property shall be those structures associated with the Permitted Uses described in Articles II and III. Declarant, by and through Utilities, may approve additional structures incidental to those described in Articles II and III in a writing executed by Utilities' Chief Executive Officer or designee and recorded in the public records of the El Paso County Clerk and Recorder's Office, so long as such structures do not materially change the type or character of the Permitted Uses or structures from those otherwise described herein. Owner shall ensure that natural, historical drainage flows from the Utilities Property onto the Real Property shall not be hindered or impaired by Owner. No encroachment of any structure shall be permitted on the Utilities Property. Owner shall, at its sole expense, and after submitting design plans to Utilities for approval and after actually obtaining Utilities' written approval of such designs, construct a fence out of mutually agreeable materials, along the perimeter of the Real Property adjacent to Utilities Property. Owner shall keep such fence in good repair at all times. "No Trespassing" signs shall be prominently displayed at fifty (50) foot intervals along said fence on the Owner-side of the fence. Owner shall complete construction of such fence

prior to using the Real Property for any of the Permitted Uses described in Article II, above. Declarant, on behalf of Utilities, agrees that it will complete the review of any design plans within sixty (60) days of submittal of such design plans for review. Prior to completion of construction of said fence, Owner shall employ security guards to patrol the Real Property in sufficient quantities to ensure that no trespassing occurs during use of the Real Property. Owner shall be permitted to construct, in accordance with structural designs which must be approved by Declarant in writing prior to construction, a water tank to be used solely to store water to be supplied to the Real Property and no other property. Additionally, to facilitate construction of the improvements authorized herein, Owner may construct or install a drainage crossing, lighting, directional signs, transportation shelters, and restroom facilities. In addition, Owner may construct a pump house for protection of the wells on the Real Property subject to prior approval of Declarant, which will not be unreasonably withheld. No additional wells shall be permitted to be drilled on the Real Property without the express written approval of Declarant, except for replacement wells as provided in the well sale agreement between Declarant and the City of Fountain. Any such replacement wells shall conform with all applicable laws, rules, and regulations. Lastly, Owner shall ensure that any new structures placed on the Real Property do not interfere with the business operations of Utilities.

4. Article V of the Original Declaration is hereby deleted in its entirety and replaced with the following:

ARTICLE V
Reserved

5. Article VI of the Original Declaration is hereby deleted in its entirety and replaced with the following:

ARTICLE VI
Preservation of the Property

Owner shall take whatever steps are necessary, including, but not limited to, irrigation and maintenance of natural grasses, to ensure that particulate standards for air quality on the Real Property are kept at all times within required legal limits. Owner shall be permitted to place impervious surfacing, if required, on areas within the Real Property used for the purposes permitted under Articles II, III, and IV of this Declaration of Protected Covenants, as modified. Natural, historic drainage flows from the Utilities Property shall not be hindered or impaired by Owner. Nothing contained herein is intended to prevent Owner from constructing drainage improvements on the Real Property which are reasonably necessary for Owner's use of the Real Property.

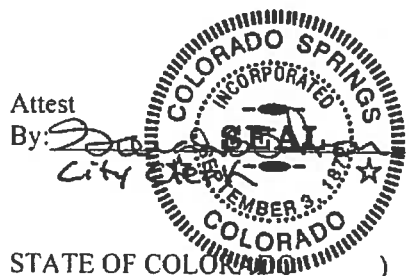
6. Article IX of the Original Declaration is hereby deleted in its entirety and replaced with the following:

ARTICLE IX
Enforcement

The conditions, covenants, restrictions, and reservations herein contained shall run with the land, and be binding upon and inure to the benefit of the Declarant and the Owner of the Real Property. These conditions, covenants, restrictions, and reservations may be enforced, as provided in this Article, by Declarant. Violation of any condition, covenant, restriction, or reservation contained in this Declaration, as it may be modified pursuant to Article VIII of this Declaration, shall give to Declarant the right, but not the obligation, to bring proceedings in law or at equity against the party or parties violating or attempting to violate any of said covenants, conditions, restrictions, and reservations, to enjoin them from so doing, to cause any such violation to be remedied, or to recover damages resulting from such violation.

7. Except as provided expressly in this Modification, all other covenants and restrictions included in the Original Declaration shall remain in full force and effect.

Acknowledged and agreed to by the Parties this 21st day of June, 2016.



CITY OF COLORADO SPRINGS

Attest

By:

[Signature]
City

By:

[Signature]
John W. Suthers, Mayor

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

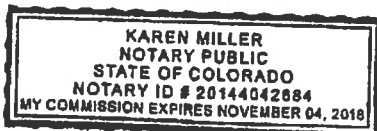
The foregoing instrument was acknowledged before me this 21st day of June, 2016, by John W. Suthers, Mayor of the City of Colorado Springs, Colorado.

Witness my hand and official seal.

My Commission Expires: Nov. 4, 2018

[Signature]
Notary Public

(SEAL)



[Handwritten mark]

NORTH PARK 200 LLC

Attest

By: [Signature]

By: [Signature]

Title: Manager

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 14 day of June, 2016, by Guy Kathe, Manager of North Park 200 LLC.

Witness my hand and official seal.

My Commission Expires: February 04, 2019

[Signature]
Notary Public

(SEAL)

DONNIELLE L. DAVIS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20164004739
MY COMMISSION EXPIRES FEBRUARY 04, 2019

ATTACHMENT "A"
DESCRIPTION OF REAL PROPERTY

A TRACT OF LAND BEING THOSE PORTIONS OF SECTIONS 32 AND 33, TOWNSHIP 16 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, AND SECTIONS 4, 5 AND 8, TOWNSHIP 17 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS; THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 17 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE SOUTHEAST SECTION CORNER BY A NO. 6 REBAR WITH A 3-1/4 INCH ALUMINUM SURVEYOR'S CAP STAMPED "JR ENG LTD RLS 10377 1995" AND AT THE SOUTH SIXTEENTH CORNER BY A NO. 6 REBAR WITH A 3-1/4 ALUMINUM SURVEYOR'S CAP STAMPED JR ENG LTD RLS 10377 1995", IS ASSUMED TO BEAR NORTH 00 DEGREES 22 MINUTES 50 SECONDS WEST, A DISTANCE OF 1294.32 FEET.

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 5, SAID POINT BEING THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 57 MINUTES 49 SECONDS EAST, ON THE EAST LINE OF SAID SECTION 8, A DISTANCE OF 343.87 FEET; THENCE SOUTH 89 DEGREES 02 MINUTES 11 SECONDS WEST, A DISTANCE OF 354.40 FEET; THENCE NORTH 00 DEGREES 35 MINUTES 17 SECONDS WEST, A DISTANCE OF 1640.50 FEET; THENCE NORTH 08 DEGREES 49 MINUTES 07 SECONDS EAST, A DISTANCE OF 950.60 FEET; THENCE NORTH 23 DEGREES 10 MINUTES 00 SECONDS WEST, A DISTANCE OF 2813.15 FEET; THENCE NORTH 11 DEGREES 34 MINUTES 00 SECONDS WEST, A DISTANCE OF 400.64 FEET; THENCE NORTH 42 DEGREES 50 MINUTES 00 SECONDS EAST, A DISTANCE OF 207.92 FEET; THENCE NORTH 03 DEGREES 30 MINUTES 19 SECONDS EAST, A DISTANCE OF 46.67 FEET; THENCE NORTH 48 DEGREES 30 MINUTES 19 SECONDS EAST, A DISTANCE 1100.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 25; THENCE SOUTHERLY, ON SAID RIGHT-OF-WAY LINE, THE FOLLOWING FIVE (5) COURSES: 1. SOUTH 30 DEGREES 48 MINUTES 38 SECONDS EAST, A DISTANCE OF 98.05 FEET; 2. SOUTH 33 DEGREES 53 MINUTES 56 SECONDS EAST, A DISTANCE OF 1391.45 FEET; 3. SOUTH 26 DEGREES 58 MINUTES 37 SECONDS EAST, A DISTANCE OF 1246.80 FEET TO A POINT OF CURVE; 4. ON THE ARC OF A CURVE TO THE RIGHT, HAVING A DELTA OF 03 MINUTES 27 SECONDS 00 SECONDS, A RADIUS OF 5580.00 FEET, A DISTANCE OF 335.99 FEET TO A POINT; 5. SOUTH 23 DEGREES 27 MINUTES 48 SECONDS EAST, NON-TANGENT TO THE LAST COURSE, A DISTANCE OF 2362.60 FEET; THENCE SOUTH 89 DEGREES 24 MINUTES 43 SECONDS WEST, A DISTANCE OF 2046.00 FEET TO THE EASTERLY SOUTH SIXTEENTH CORNER OF SAID SECTION 5; THENCE SOUTH 00 DEGREES 22 MINUTES 50 SECONDS EAST, ON THE EAST LINE OF SAID SECTION 5, A DISTANCE OF 1294.32 FEET TO THE POINT OF BEGINNING.

RESOLUTION NO. 56-16

A RESOLUTION APPROVING MODIFICATIONS TO A
DECLARATION OF PROTECTIVE COVENANTS AND
AUTHORIZING EXECUTION OF SUCH MODIFIED
DECLARATION OF PROTECTIVE COVENANTS

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WHEREAS, at the time of the sale of the Real Property, the Declaration of Protective Covenants was intended to ensure that the property would continue to serve as a buffer to and not develop in a manner that would be inconsistent with the use of adjacent property by Colorado Springs Utilities ("Utilities"); and

WHEREAS, if City Council approves modifications to the Declaration of Protective Covenants to allow development of a public safety training facility, the facility will be used primarily by the Colorado Springs Police Department and other Pikes Peak area public safety agencies for tactical law enforcement and other public safety training as well as other uses identified in the attached Modification to Declaration of Protective Covenants, attached hereto and incorporated herein by reference as Exhibit "A"; and

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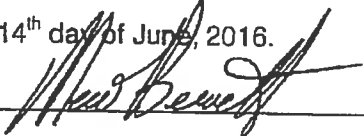
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Dated at Colorado Springs, Colorado, this 14th day of June, 2016.



Council President

ATTEST:



Sarah B. Johnson, City Clerk

