DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street Denver, CO 80202	
Plaintiff: FRIENDS OF DENVER PARKS, INC., a Colorado non-profit corporation; and STEVE WALDSTEIN, an individual; and ZELDA HAWKINS, an individual. **Defendants:** CITY & 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 capacity as clerk and recorder of the City and County of Denver.	**▲COURT USE ONLY▲**
Plaintiff's Attorneys: John Case, Esq. Atty reg. # 2431 Benson & Case, LLP 1660 So. Albion Street, Suite 1100 Denver, Colorado 80222 Phone Number: (303) 757-8300 FAX Number: (303) 753-0444 E-mail: case@bensoncase.com	Case No.: 2013CV032444 Courtroom 376

SECOND AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs, through counsel BENSON & CASE, LLP, submit this Complaint for Declaratory and Injunctive relief.

SUMMARY OF COMPLAINT

Plaintiffs' First Claim for Relief seeks a declaratory judgment that Hampden Heights North Park ("the Property") is park land owned by Defendant City and County of Denver ("the City"). Plaintiffs claim that by signing a contract to trade part of the park land for an office building downtown, the City acted *ultra vires,* in violation of City Charter section 2.4.5, which prohibits the sale of park land without a vote of the people. Plaintiffs ask the Court to enjoin the City from transferring the Property.

Plaintiffs' Second Claim for Relief seeks to enjoin Defendant School District No. 1 in the City and County of Denver ("DPS") from taking title to the Property and from developing the Property.

Plaintiffs' Third Claim for Relief seeks to enjoin Defendant Debra Johnson ("Johnson"), who is the Clerk and Recorder for the City and County of Denver, from

interfering with Plaintiffs' circulation of a lawful referendum petition to repeal Denver Ordinance No. 170, Series of 2013.

EXHIBITS ATTACHED TO COMPLAINT

The following Exhibits are attached to the Complaint and incorporated herein by reference.

1. Exhibit 1 is a City map that shows the Property known as Hampden Heights North Park, and the adjacent Paul A. Hentzell Park, and surrounding area.

2. Exhibit 2 is a DPS map that shows the boundaries of the Property known as Hampden Heights Park North, Paul Hentzell Park, and surrounding area.

3. Exhibit 3 is the deed recorded October 9, 1936 ("the 1936 Deed") by which the City acquired title to the Property.

4. Exhibit 4 is an overlay map from Land Title showing that the Property currently known as Hampden Heights North Park is part of the parcel conveyed by the 1936 Deed.

5. Exhibit 5 is Denver Ordinance 170, series of 2013.

6. Exhibit 6 is the affidavit of petitioner's committee, ballot issue, and referendum petition that Plaintiffs seek to circulate.

7. Exhibit 7 is a letter sent May 17, 2013 by Johnson to Plaintiff's counsel.

8. Exhibit 8 is a letter from Plaintiffs' counsel to Johnson dated May 20, 2013.

9. Exhibit 9 is a letter from Johnson to Plaintiffs' counsel dated May 22, 2013.

10. Exhibit 10 is an accurate transcript of the Denver City Council meeting April 1, 2013.

STANDING OF PLAINTIFFS

11. Plaintiff Friends of Denver Parks, Inc. ("Friends") is a private, non-profit corporation organized and existing under the laws of Colorado with its office located at 10081 E. Cornell Ave. Denver CO 80231. The corporate office is located on real property directly adjacent to Paul A. Hentzell Park and Natural Area.

12. The Members of Friends are Judith M. Case, 10081 E. Cornell Ave. Denver CO 80231; Renee Lewis, 2770 S. Elmira St. Unit 38, Denver CO 80231; David Hill, 2770 S. Elmira St. Unit 38, Denver CO 80231; and Shawn Smith, 3905 S.

Monaco Parkway Denver CO 80237.

13. The Members of Friends live in close proximity to the Property.

14. All of Friends' Members are adult voting residents of the City and County of Denver who use and value the Property for its aesthetic beauty and natural state.

15. Plaintiff Steve Waldstein ("Waldstein") is an individual who owns the real property and resides at 3326 S Geneva Street Denver, CO 80231 in the Hampden Heights neighborhood.

16. Waldstein's residence is directly adjacent to the Property.

17. Waldstein purchased his residence in the Hampden Heights neighborhood in 1999 because of its proximity to the beauty and aesthetic value of the Property.

18. When purchasing his residence adjacent to the Property, Waldstein relied to his detriment on City representations that Hampden Heights North Park was park land and open space, and that the Property would remain park land and open space.

19. Plaintiff Zelda Hawkins ("Hawkins") is an individual who owns real property and resides at 3319 S. Galena Street Denver, CO 80231 in the Hampden Heights neighborhood.

20. Hawkins residence is near the Property.

21. Hawkins purchased her residence in the Hampden Heights neighborhood in the year 1996 because of its proximity to the beauty and aesthetic value of the Property.

22. When purchasing her residence near the Property, Hawkins relied to her detriment on City representations that Hampden Heights North Park was park land and open space, and that the Property would remain park land and open space.

23. Unless the Court grants injunctive relief, all Plaintiffs, as well as the citizens of Denver, will suffer imminent injury in fact to a legally protected interest fairly traceable to the Defendants' conduct. *Friends of Black Forest v. County Commissioners of El Paso County* 80 P.3d 871 (Colo. App. 2003).

I. FIRST CLAIM FOR RELIEF

For Declaratory Judgment against the City that Hampden Heights North Park is park land owned by the City; that the City violated City Charter Section 2.4.5 and acted *ultra vires* in contracting to transfer the park land without a vote of the people; and for Injunctive Relief enjoining the City from transferring the Property.

24. Plaintiffs incorporate all other allegations of this Complaint as if fully re-written.

25. Section 2.4.5 of the Denver City Charter states in pertinent part:

> **§ 2.4.5 - Sale and leasing of parks.**
>
> Without the approval of a majority of those registered electors voting in an election held by the City and County of Denver, no park or portion of any park belonging to the City as of December 31, 1955, shall be sold or leased at any time . . . .

(Charter 1960, A4.5; amended May 17, 1955; amended May 17, 1983; amended August 19, 1996)

26. The City owns a parcel of real property consisting of twenty-six acres, more or less, located at the intersection of South Havana Street and East Girard Avenue in the City and County of Denver (the "Property").

27. The City acquired title to the Property on or about October 9, 1936 by deed recorded at Book 379, Page 65, in the records of Arapahoe County ("the 1936 Deed") (Exhibit 3).

28. The Property is part of the parcel conveyed to the City by the 1936 Deed (Exhibit 4).

29. At all times relevant the City showed the Property as park land on its official maps (Exhibit 1).

30. At all times relevant the City named the Property "Hampden Heights North Park" (Exhibit 1).

31. At all times relevant the Property has been owned and managed by the Denver Department of Parks and Recreation.

32. At all times prior to April 1, 2013 the Property was designated as a "Natural Area" by the Denver Department of Parks and Recreation and by Denver municipal ordinance.

33. At all times relevant, City zoning maps listed the Property as "Open Space."

34. Paul A. Hentzell Park and the Property form a continuous, open, unfenced Park and Natural Area within Denver. The Natural Area borders the banks of Cherry Creek. It includes a Historic Trail over which pioneers and gold prospectors traveled along Cherry Creek to Denver. It was formerly used as a Native American hunting ground for bison and deer. Motor vehicles are not allowed. The natural area is home to numerous and fascinating indigenous species of plant and animal life, including deer, fox, coyote, skunk, raccoon, muskrat, prairie dogs, rabbits, beaver, hummingbirds, chickadees, robins, sparrows, magpies, crows, woodpeckers, flickers, finches, doves, blackbirds, other small birds, butterflies, caterpillars, ant colonies, roly poly bugs, insects, crawdads, minnows, bull snakes, garter snakes, ducks, geese, heron, owls, and hawks, all of which are seen, heard and enjoyed on a regular basis by citizens of Denver and their children who walk and play and bicycle in the natural area.

35. The City Municipal Code, Sec. 39-191 (2) defines *City park land* as follows:

> *City park land.* Any parks, parkways, mountain parks and other recreational facilities, as well as other land, waterways and water bodies, owned, operated or controlled by the department of parks and recreation.

36. The City Municipal Code 39-191 (1) defines *Natural Area* as follows:

> *Natural area.* A geographical area of land of either geologic or biologic significance which retains, has had reestablished, or has the potential to reestablish many aspects of its natural character. Such an area could now or in the future support native vegetation, associated biological and geological features, or provide habitat for indigenous wildlife or plant species. Such an area could host geological, scenic, or other natural features of scientific, aesthetic, or educational value.

37. At all times relevant, the Property met the above definition of "*City park land.*"

38. At all times relevant, the Property met the above definition of "*Natural Area.*"

39. The Property has remained in its natural state and has been open to the use and enjoyment of the public since the City acquired the Property in 1936.

40. At all times relevant, the City placed the Property under the jurisdiction of the Denver Department of Parks and Recreation.

41. At all times relevant, the City maintained the Property at public expense as a Natural Area and for park purposes.

42. At all times relevant the Property was of the same character and included the same plant life and wild life as Paul A. Hentzell Park.

43. At all times relevant the City zoned the Property as Open Space.

44. At all times relevant the City allowed the Plaintiffs and all citizens of Denver, and members of the public at large, to use the Property and Paul A. Hentzell Park as a single, continuous, open, unfenced Park and Natural Area.

45. The Property has been dedicated by common law use as dedicated park land. *McIntyre v. Board of Commissioners of El Paso County* 15 Colo.App. 78 Colo.App.Ct. (1900)

46. The City owns the Property in trust as trustee for the citizens of Denver. *Id.*

47. In approximately 2011, agents of the City and DPS entered into a secret oral agreement to trade part of the Property for an office building at 1330 Fox St., Denver CO.

48. Defendants entered into the secret oral agreement without notice to the public or other interested parties, including but not limited to the Denver Parks and Recreation Advisory Board, the Inter-Neighborhood Cooperative, and members of the Denver City Council.

49. On April 1, 2013 the Denver City Council adopted Ordinance No. 170 (Exhibit 5), which approved transfer of the southern 10.771 acres of the Property to DPS pursuant to a written contract ("the Contract"). The Contract trades 10.771 acres of the Property for an office building at 1330 Fox St. The City mayor and Defendant Johnson signed Ordinance 170 on April 2, 2013. Notice of Ordinance 170 was published in the Daily Journal March 29 and April 5, 2013. On information and belief, the contract is scheduled to close on or before June 30, 2013.

50. Transfer of the property without a vote of the people violates Charter section 2.4.5.

51. The City acted *ultra vires*, in excess of its lawful authority, by entering into a contract to sell park land acquired prior to December 31, 1955, without a vote of the people.

52. Plaintiffs have a reasonable probability of success on the merits of proving that the Property at issue is a dedicated Park, and that sale or transfer of the Property without a vote of the People violates Denver City Charter Section 2.4. *Combined Communications Corp. v. Denver*, 528 P.2d 249 (1974);

53. The danger of real, immediate, and irreparable injury will be prevented by injunctive relief. See *American Investors Life Ins. Co. v. Green Shield Plan, Inc.,* 358 P.2d 473(1960);

54. Plaintiffs have no other plain, speedy, or adequate remedy available. *American Investors Life Ins. Co*, supra;

55. A preliminary injunction will not disserve any public interest since Plaintiffs are protecting and preserving the public's interest in dedicated and designated City park land, Natural Area, and open space. *American Television and Communications Corp. v. Manning,* 651 P.2d 440 (Colo. App. 1982);

56. A balance of the equities favors granting preliminary and permanent injunctive relief. Transfer of the Property without a vote of the people violates City Charter Section 2.4.5. Further, construction of a school in a floodplain will unnecessarily endanger students. Construction of an elementary school next to a 45 mph four lane highway (S. Havana St.) will unnecessarily endanger students attempting to cross the highway on foot, it will unnecessarily endanger motorists traveling 45 mph on the highway, and it will create serious traffic problems on S. Havana St. and East Girard Ave. *Combined Communications Corp. v. Denver*, supra;

57. Entry of a preliminary injunction will preserve the status quo pending a trial on the merits of the Complaint. See *Graham v. Hoyl*, 402 P.2d 604 (1965); *Rivera v. Civil Service Commission*, 529 P.2d 1347 (1974).

58. The City is estopped from denying the dedication and designation of the Property as a Park and Natural Area.

59. Allowing the City or DPS to develop the Property would be utterly inconsistent with the purpose for which the Property was dedicated.

60. If the Property is developed, its intended and dedicated use as a Park and Natural Area will be destroyed forever, not only for Plaintiffs, but also for all future generations of Denver citizens.

61. Unless the Court grants the relief requested by Plaintiffs, all Plaintiffs, and the citizens of Denver, will suffer imminent injury in fact to a legally protected interest fairly traceable to the Defendants' conduct.

WHEREFORE, on their First Claim for Relief, Plaintiffs pray that this Honorable Court enter Declaratory Judgment that the Property is and at all times was a dedicated park, owned by the City as trustee in trust for the benefit of Denver citizens; that the Property is and at all times was a designated Park and Natural Area under the jurisdiction of the Department of Denver Parks and Recreation; that transfer of the property without a vote of the people violates Charter section 2.4.5; that the City acted

ultra vires, in excess of its lawful authority, by entering into a contract to transfer park land without a vote of the people; and that Ordinance 170, series 2013 and the Contract are null and void because they violate Section 2.4.5 of the Denver Charter. Plaintiffs pray further that the Court grant preliminary and permanent injunctive relief enjoining the City from selling, transferring, leasing, developing, or alienating the Property. Plaintiffs pray further that the Court grant preliminary and permanent injunctive relief enjoining the City from using, zoning, or listing the Property in any way that is inconsistent with its intended and dedicated use as a Park, Natural Area, and Open Space; and commanding the City to restore the Property to its intended state as a Park, Natural Area, and Open Space. Plaintiffs pray further for costs including expert witness fees, for reasonable attorney fees, and for all other appropriate relief.

II. SECOND CLAIM FOR RELIEF

For Declaratory and Injunctive Relief against DPS

62. Plaintiffs incorporate all other allegations of this Complaint as if fully re-written.

63. DPS intends to take title to 10.771 acres of the Property and construct a two story elementary school for 500 students K-5, and an early learning center for 250 students pre-K.

64. DPS lacks good title to the 10.771 acres, because the proposed conveyance to DPS is an *ultra vires* act by the City in violation of Charter Section 2.4.5.

65. At all times relevant, the Property has been zoned Open Space.

66. Development of the Property violates its zoning classification as Open Space.

67. The 10.771 acres lies in a flood plain.

68. The 10.771 acres is bordered on the east by South Havana Street.

69. South Havana St. is a four lane highway with a 45 mph speed limit.

70. The location is unsafe and inappropriate for an elementary school.

71. DPS has other suitable locations to construct an elementary school, if there is an actual need for a new elementary school.

72. Development of the Property by DPS will impair use of the historic Cherry Creek Trail by cyclists.

73. Approximately 2000 cyclists per week currently use the Cherry Creek Trail on the Property and will be adversely affected by DPS's planned development.

74. Plaintiffs have a reasonable probability of success on the merits of proving that the Property at issue is a dedicated Park, and that sale or transfer of the Property without a vote of the People violates Denver City Charter Section 2.4. *Combined Communications Corp. v. Denver*, 528 P.2d 249 (1974);

75. The danger of real, immediate, and irreparable injury will be prevented by injunctive relief. See *American Investors Life Ins. Co. v. Green Shield Plan, Inc.*, 358 P.2d 473(1960);

76. Plaintiffs have no other plain, speedy, or adequate remedy available. *American Investors Life Ins. Co*, supra;

77. A preliminary injunction will not disserve any public interest since Plaintiffs are protecting and preserving the public's interest in dedicated and designated City park land, Natural Area, and open space. *American Television and Communications Corp. v. Manning,* 651 P.2d 440 (Colo. App. 1982);

78. A balance of the equities favors granting preliminary and permanent injunctive relief. Transfer of the Property without a vote of the people violates City Charter Section 2.4.5. Further, construction of a school in a floodplain will unnecessarily endanger students. Construction of an elementary school next to a 45 mph four lane highway (S. Havana St.) will unnecessarily endanger students attempting to cross the highway on foot, it will unnecessarily endanger motorists traveling 45 mph on the highway, and it will create serious traffic problems on S. Havana St. and East Girard Ave. *Combined Communications Corp. v. Denver*, supra;

79. Entry of a preliminary injunction will preserve the status quo pending a trial on the merits of the Complaint. See *Graham v. Hoyl*, 402 P.2d 604 (1965); *Rivera v. Civil Service Commission*, 529 P.2d 1347 (1974).

80. Allowing DPS to develop the Property would be utterly inconsistent with the purpose for which the Property was dedicated.

81. If the Property is developed, its intended and dedicated use as a Park and Natural Area will be destroyed forever, not only for Plaintiffs, but also for all future generations of Denver citizens.

82. Unless the Court grants the relief requested by Plaintiffs, all Plaintiffs, and the citizens of Denver, will suffer imminent injury in fact to a legally protected interest fairly traceable to the Defendants' conduct.

WHEREFORE, on their Second Claim for Relief, Plaintiffs pray that this Honorable Court find that the Property is and at all times was a dedicated park, owned by the City as trustee in trust for the benefit of Denver citizens; that the Property is and at all times was a designated Park and Natural Area under the jurisdiction of the

Department of Denver Parks and Recreation; that transfer of the property without a vote of the people violates Charter section 2.4.5; that the City acted *ultra vires*, in excess of its lawful authority, by entering into a contract to transfer park land without a vote of the people; and that Ordinance 170, series 2013 and the Contract are null and void because they violate Section 2.4.5 of the Denver Charter. Plaintiffs pray further that the Court grant preliminary and permanent injunctive relief enjoining DPS from acquiring or developing the Property. Plaintiffs pray further that the Court grant preliminary and permanent injunctive enjoining DPS from using the Property in any way that is inconsistent with its intended and dedicated use as a Park, Natural Area, and Open Space; and that the Court command DPS to restore the Property to its intended state as a Park, Natural Area, and Open Space. Plaintiffs pray further for costs including expert witness fees, for reasonable attorney fees, and for all other appropriate relief.

III. THIRD CLAIM FOR RELIEF

For Review of the Decision of the Clerk and Recorder pursuant to CRCP 106 (a) (4); and for Declaratory and Injunctive Relief against the Clerk and Recorder

83. Plaintiffs incorporate all other allegations of this Complaint as if fully re-written.

84. Ordinance 170 is a defacto re-zoning of part of the Property.

85. In adopting Ordinance 170, series 2013, the City Council acted in its capacity as a legislative body.

86. COLO. CONST. Art. 5, § 1(9) creates a fundamental right of the Plaintiff, its members, and citizens to repeal legislation through referendum, and to initiate legislation through petition initiative. *Bernzen v. Boulder*, 525 P.2d 416, 419 (1974) ("We view recall, as well as initiative and referendum, as fundamental rights of a republican form of government which the people have reserved unto themselves.").

87. Plaintiffs intend to circulate petitions to repeal Ordinance No. 170, Series of 2013 by voter referendum. Exhibit 6 is the affidavit of petitioner's committee, ballot issue, and referendum petition that Plaintiffs seek to circulate.

88. On May 13, 2013 at 2:58 p.m. Members of Friends submitted to the Defendant Debra Johnson, acting in her capacity as clerk and recorder of the City and County of Denver ("Johnson"), an Affidavit of Petitioner's Committee, petition sample, and ballot title to repeal Ordinance 170.

89. Denver Clerk and Recorder Rule 6.4.1 states:

> The clerk and recorder will have *three (3) full working days from the time of the filing of the affidavit* to review the affidavit, petition sample, and ballot title. At the end of three (3) working days, the

clerk and recorder will either accept or reject the affidavit, petition sample, and ballot title. If the affidavit, petition sample, or ballot title is rejected, the clerk and recorder will make written findings specifying the defects. (emphasis added).

90. Johnson failed to accept or reject the affidavit, petition sample, and ballot title within three full working days from the time of the filing of the affidavit.

91. On May 17, 2013 at 9:01 a.m. Johnson issued a letter which purported to reject the affidavit, petition sample, and ballot title. A copy of Johnson's May 17 letter is attached as Exhibit 7.

92. The duration of time from 2:58 p.m. on May 13, 2013 until 9:01 a.m. on May 17, 2013 is more than three full working days.

93. Johnson exceeded her jurisdiction because she failed to act within three full working days of the time the original affidavit, petition sample, and ballot title were submitted.

94. Johnson's stated reason for rejecting the affidavit, petition sample, and ballot title is that the City Council acted in an administrative capacity when it adopted ordinance 170.

95. Johnson exceeded her jurisdiction and abused her discretion because the City Council acted in a legislative capacity when it adopted ordinance 170.

96. On May 20, 2013 Members of Friends re-submitted their original affidavit, petition sample, and ballot title, with revisions suggested by Johnson's letter.

97. Plaintiff's counsel, in his capacity as attorney for Plaintiffs and Primary Contact for the Petitioner's Committee, informed Johnson by letter dated May 20, 2013 that Johnson's ruling was issued after the expiration of the time allowed, and was therefore void and of no effect, and further informed Johnson that the City Council acted in a legislative capacity when it adopted ordinance 170. A copy of counsel's letter dated May 20 is attached as Exhibit 8.

98. On May 22, 2013 Johnson issued Exhibit 9, a letter re-stating Johnson's position that the City Council acted in an administrative capacity when it adopted ordinance 170. Johnson instructed Plaintiffs that their only remedy was to file this lawsuit:

> **"The petitioners' committee, if not satisfied with the decision of the clerk and recorder, may institute legal proceedings with the appropriate court."** (Exhibit 7, page 2)

99. The actions of the clerk and recorder were *ultra vires.*

100. The actions of the clerk and recorder caused unnecessary delay in the referendum process of obtaining signatures.

101. An audio/video recording of the City Council Meeting April 1, 2013 has been available on the City website at all times since April 1, 2013 and is part of the record before the clerk and recorder.

102. An accurate transcript of the relevant portions of the City Council Meeting April 1, 2013 is attached as Exhibit 10.

103. A review under C.R.C.P. 106(a)(4) is necessary since the Office of the Clerk and Recorder, a governmental body, has abused its discretion through its exercise of judicial or quasi-judicial functions.

104. Plaintiffs and the citizens of Denver have no plain, speedy and adequate remedy at law to prevent the transfer of park property without a vote of the people in violation Charter section 2.4.5.

105. Plaintiffs and the citizens of Denver have no plain, speedy and adequate remedy at law to prevent the destruction of the Natural Area. The decision made by the Office of the Clerk and Recorder may be stayed, pursuant to C.R.C.P. 65.

106. An injunction under C.R.C.P. 65 is necessary since no other adequate remedy exists at law.

107. Plaintiffs have a reasonable probability of success on the merits of proving that the Property at issue is a dedicated Park, that sale or transfer of the Property without a vote of the People violates Denver City Charter Section 2.4.5, that the City acted *ultra vires* in adopting Ordinance 170 and in contracting to transfer the Property without a vote of the people, and that the Plaintiffs have a right to petition for repeal of Ordinance 170. *Combined Communications Corp. v. Denver*, 528 P.2d 249 (1974);

108. The danger of real, immediate, and irreparable injury will be prevented by injunctive relief. See *American Investors Life Ins. Co. v. Green Shield Plan, Inc.*, 358 P.2d 473(1960);

109. Plaintiffs have no other plain, speedy, or adequate remedy available. *American Investors Life Ins. Co*, supra;

110. A preliminary injunction will not disserve any public interest since Plaintiffs are protecting and preserving the public's interest in dedicated and designated City park land, Natural Area, and open space. *American Television and Communications Corp. v. Manning,* 651 P.2d 440 (Colo. App. 1982);

111. A balance of the equities favors granting preliminary and permanent injunctive relief. Transfer of the Property without a vote of the people violates City Charter Section 2.4.5. The Constitution and the City Charter require that the public must vote before park land can be transferred. *Combined Communications Corp. v. Denver*, supra;

112. Entry of a preliminary injunction will preserve the status quo pending a trial on the merits of the Complaint. See *Graham v. Hoyl*, 402 P.2d 604 (1965); *Rivera v. Civil Service Commission*, 529 P.2d 1347 (1974).

113. Plaintiffs and the citizens of Denver will suffer immediate and irreparable harm as a result of the Office of the Clerk and Recorder's decision.

WHEREFORE, Plaintiffs pray that this Honorable Court find that the Property is and at all times was a dedicated park, owned by the City as trustee in trust for the benefit of Denver citizens; that the Property is and at all times was a designated Natural Area under the jurisdiction of the Department of Denver Parks and Recreation; and that Ordinance 170, series 2013 and the Contract are null and void because they are *ultra vires* acts which violate Section 2.4.5 of the Denver Charter. Plaintiffs pray that this Court find that the City Council acted in a legislative capacity, not in an administrative capacity when it enacted Ordinance 170; that the clerk and recorder acted *ultra vires* and exceeded her jurisdiction and abused her discretion when she rejected the Affidavit of Petitioner's Committee, petition sample, and ballot title to repeal Ordinance 170; that the clerk and recorder exceeded her jurisdiction because she failed to act within three full working days of the time the original affidavit, petition sample, and ballot title were submitted; that Article V Section 1(9) of the Colorado Constitution guarantees the Plaintiffs and the citizens of Denver the right to seek repeal of Ordinance 170 by voter referendum; that the actions of the clerk and recorder to prevent a referendum were *ultra vires* acts that exceeded her jurisdiction and unnecessarily interfered with the rights of Plaintiffs, and the citizens of Denver, causing delay in the referendum process. Plaintiffs pray that the Court enjoin the clerk and recorder from interfering with Plaintiffs rights to petition; that the Court extend the time for Plaintiffs to obtain signatures on the Referendum Petition until 90 days after entry of a preliminary injunction; that the Court determine that signatures obtained by Plaintiffs on the Referendum Petition are valid and sufficient in number; and that the voters of Denver may repeal Ordinance 170 in the next election after judgment enters. Plaintiffs pray further for costs including expert witness fees, for reasonable attorney fees, and for all other appropriate relief.

Respectfully submitted June 5, 2013.

BENSON & CASE, LLP

s/John Case

John Case #2431