

DISTRICT COURT, CITY AND COUNTY OF DENVER COLORADO 1437 Bannock Street Denver, Colorado 80202	FILED: December 7, 2018 7:14 PM
Plaintiff: EVERGREEN ALLIANCE GOLF LIMITED, L.P., d/b/a ARCIS GOLF; v. Defendant: CLAYTON EARLY LEARNING, AS TRUSTEE OF THE GEORGE W. CLAYTON TRUST, a Colorado Trust.	▲ COURT USE ONLY ▲
Attorneys for Defendant: Jonathan G. Pray, #36576 David B. Meschke, #47728 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, Colorado 80202-4432 Phone: 303.223.1100 Fax: 303.223.1111 Email: jpray@bhfs.com; dmeschke@bhfs.com	Case Number: 2018CV31475 Division: 275
DEFENDANT'S ANSWER TO AMENDED COMPLAINT	

Defendant Clayton Early Learning, as Trustee of the George W. Clayton Trust ("Clayton"), submits the following Answer to the claims alleged by Plaintiff Evergreen Alliance Golf Limited, L.P., d/b/a/ Arcis Golf ("Arcis") in its Amended Complaint:

PARTIES, JURISDICTION, AND VENUE

1. Clayton is without sufficient information to admit or deny the allegations in Paragraph 1 of the Amended Complaint and therefore denies the same.
2. Clayton admits the allegations in Paragraph 2 of the Amended Complaint that it is a Colorado nonprofit corporation with its principal office street address at 3801 Martin Luther King Blvd, Denver, CO 80205, and that the George W. Clayton Trust is a Colorado trust whose trustee is Clayton. For purposes of this Answer, Clayton characterizes Clayton and George W. Clayton Trust together as the "Trust," as referenced in Paragraph 2 of the Amended Complaint.
3. Clayton admits that this Court has personal jurisdiction over the Trust, as alleged in Paragraph 3 of the Amended Complaint.

4. Clayton admits that venue is proper in this Court. Clayton denies the remaining allegations in Paragraph 4 of the Amended Complaint.

GENERAL ALLEGATIONS

5. Clayton admits that it, as Trustee of the George W. Clayton Trust, as Lessor, and American Golf Corporation, as Lessee, entered into a Lease dated December 23, 1998 (the "Original Lease"), as amended by that certain First Amendment to Lease dated April 30, 2004 (the "First Amendment"), and that certain Second Amendment to Lease dated February 23, 2013 (the "Second Amendment") (collectively, the "Lease"). Clayton denies the remaining allegations in Paragraph 5 of the Amended Complaint.

6. Clayton states that it changed its name from The Clayton Foundation to Clayton Early Learning, Trustee, George W. Clayton Trust. Clayton denies the remaining allegations in Paragraph 6 of the Amended Complaint.

7. Clayton admits the allegations in Paragraph 7 of the Amended Complaint.

8. The document referred to in Paragraph 8 of the Amended Complaint speaks for itself. To the extent that the allegations contained in Paragraph 8 are construed as inconsistent with that document, Clayton denies them.

9. Clayton admits only that it discussed a possible purchase of the Park Hill Golf Course with the City and County of Denver, Colorado (the "City") in 2016 and 2017. Clayton denies the remaining allegation in Paragraph 9 of the Amended Complaint.

10. Clayton denies the allegations in Paragraph 10 of the Amended Complaint.

11. Clayton admits that the Trust and the City drafted a document entitled "Agreement Concerning Park Hill Land." The document speaks for itself. To the extent that the allegations contained in Paragraph 11 are inconsistent with that document, Clayton denies the allegations in Paragraph 11 of the Amended Complaint.

12. The document referred to in Paragraph 12 of the Amended Complaint speaks for itself. To the extent that the allegations contained in Paragraph 12 are construed as inconsistent with that document, Clayton denies them.

13. Clayton admits only that counsel for the Trust contacted Arcis regarding the Lease in late 2017. Clayton denies the remaining allegations in Paragraph 13 of the Amended Complaint.

14. Clayton admits that Arcis delivered a letter to the Trust on November 28, 2017. The letter speaks for itself. To the extent that the allegations contained in Paragraph 14 of the Amended Complaint are construed as inconsistent with that document, Clayton denies them.

15. Clayton is without sufficient information to admit or deny the allegations in Paragraph 15 of the Amended Complaint and therefore denies the same.

16. Clayton is without sufficient information to admit or deny the allegations in Paragraph 16 of the Amended Complaint and therefore denies the same.

17. Clayton admits that the Trust responded to Arcis's November 28, 2017 letter in a letter dated December 13, 2017. The letter referred to in Paragraph 17 of the Amended Complaint speaks for itself. To the extent that the allegations contained in Paragraph 17 are construed as inconsistent with that document, Clayton denies them.

18. Clayton denies the allegations in Paragraph 18 of the Amended Complaint.

19. Clayton denies the allegations in Paragraph 19 of the Amended Complaint.

20. Clayton denies the allegations in Paragraph 20 of the Amended Complaint.

21. Clayton is without sufficient information to admit or deny the allegations in Paragraph 21 of the Amended Complaint and therefore denies the same.

22. Clayton is without sufficient information to admit or deny the allegations in Paragraph 22 of the Amended Complaint and therefore denies the same.

23. The allegations contained in Paragraph 23 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that the allegations are construed to require a response, Clayton denies them.

24. Clayton denies the allegations in Paragraph 24 of the Amended Complaint.

25. Clayton denies the allegations in Paragraph 25 of the Amended Complaint.

26. Clayton denies the allegations in Paragraph 26 of the Amended Complaint.

FIRST CLAIM FOR RELIEF

(Breach of Lease and Implied Covenant of Good Faith and Fair Dealing)

27. Clayton incorporates its responses to the foregoing paragraphs as though fully set forth herein.

28. The allegations contained in Paragraph 28 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that the allegations are construed to require a response, Clayton denies them.

29. Clayton denies the allegations in Paragraph 29 of the Amended Complaint.

30. Clayton denies the allegations in Paragraph 30 of the Amended Complaint.

31. Clayton denies the allegations in Paragraph 31 of the Amended Complaint.

32. Clayton denies that Arcis is entitled to specific performance to purchase the Park Hill Golf Course. Clayton denies the remaining allegations in Paragraph 32 of the Amended Complaint.

33. The allegations contained in Paragraph 33 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent that the allegations are construed to require a response, Clayton denies them.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment)

34. Clayton incorporates its responses to the foregoing paragraphs as though fully set forth herein.

35. Clayton admits that Arcis Golf contends, and the Trust disputes, that (a) a “bona fide offer” was solicited or received by the City to purchase the Park Hill Golf Course; and (b) Arcis Golf’s first right of refusal under Article 24 of the Lease was triggered by the offer. Clayton denies that the Trust offered the City to purchase the Park Hill Golf Course. Clayton denies the remaining allegations in Paragraph 35 of the Amended Complaint.

36. Clayton admits that Arcis requests in Paragraph 36 of the Amended Complaint “a declaratory judgment from the Court determining, among other things, that a ‘bona fide offer’ was solicited or received by the City to purchase the Park Hill Golf Course; (b) Arcis Golf’s first right of refusal under Article 24 of the Lease was triggered by the offer; (c) the Trust violated Article 24 of the Lease by denying Arcis Golf’s right of first refusal to purchase the Park Hill Golf Course on the same terms as had been offered to the City; and (d) Arcis Golf is entitled to specific performance.” Clayton denies that Arcis is entitled to such relief.

37. Paragraph 37 of the Amended Complaint contains a statement to which no response is required. To the extent that the statements are construed to require a response, Clayton denies them.

PRAYER FOR RELIEF

Clayton denies that Arcis is entitled to the requested relief.

AFFIRMATIVE AND OTHER DEFENSES

1. Arcis’s Amended Complaint fails to state a claim upon which relief may be granted.

2. Arcis’s claims are barred in whole or in part by the doctrines of waiver, laches, and/or estoppel.

3. Arcis's claims are barred in whole or in part by the doctrine of unclean hands.
4. Arcis's claims are barred in whole or in part by Plaintiff's failure to mitigate their damages.
5. Arcis's claims are barred in whole or in part by the parties' course of conduct.
6. Arcis's claims are barred in whole or in part by the terms of the Lease.
7. Arcis's claims are barred because Arcis suffered no damage, injury, or otherwise as a result of any acts or omissions of Clayton.

Clayton reserves the right to amend and/or supplement these affirmative and other defenses as this matter proceeds.

DATED this 7th day of December, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

Original signature on file at offices of Brownstein Hyatt Farber Schreck pursuant to C.R.C.P. 121 § 1-26

By: s/Jonathan G. Pray
Jonathan G. Pray, #36576
David B. Meschke, #47728

Counsel for Defendant Clayton Early Learning, as Trustee
of the George W. Clayton Trust

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of December, 2018, a true and correct copy of the foregoing **DEFENDANT'S ANSWER TO COMPLAINT** was filed with the Court and served via Colorado Courts E-filing System on all counsel of record:

s/Penny G. Lalonde
Penny G. Lalonde, Paralegal

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