

## AGREEMENT FOR IMMEDIATE POSSESSION

**THIS AGREEMENT FOR IMMEDIATE POSSESSION (“Agreement”)** is made and entered into as of the Effective Date (as hereinafter defined) between the City and County of Denver, a municipal corporation of the State of Colorado (the “City”), and the George W. Clayton Trust (“Clayton” and referred to herein, together with the City, collectively as the “Parties” and individually as a “Party”).

### RECITALS

1. Clayton owns and/or controls a parcel of real property containing approximately 155 acres of land with a street address of 4141 East 35<sup>th</sup> Avenue, Denver, Colorado, commonly known and operated as the Park Hill Golf Course, as more particularly described in Exhibit A attached hereto (the “Property”).

2. Pursuant to Ordinance Number 2017-1396, published on January 5, 2018 (the “Ordinance”), the City has been authorized to and is proceeding with the acquisition of certain property interests associated with its storm water detention and flood control project commonly known as the Platte to Park Hill Storm Drainage Project (the “Project”) by voluntary acquisition or by exercise of its power of eminent domain.

3. In connection with the Project and pursuant to the Ordinance, the City has determined that it will be necessary for the City to acquire the following rights and interests in, to, on, under, about and through the Property for storm water management purposes and construction related thereto (collectively, the “Property Interests”):

- a. A Permanent Easement in that portion of the Property described and depicted in Exhibit B attached hereto (the “PE”) on the terms and conditions set forth therein; and
- b. A Temporary Construction Easement in that portion of the Property described and depicted in Exhibit C attached hereto (the “TCE”) on the terms and conditions set forth therein.

4. Under the authority provided by the Ordinance, the City and Clayton are currently negotiating with regard to the compensation to be provided by the City for the Property Interests.

5. The Parties have not yet reached an agreement on the compensation, but as a partial settlement of legal issues relating to the acquisition of the Property Interests by the City, the Parties now wish to stipulate and provide for the immediate possession of the Property Interests by the City on the date specified in this Agreement and on the other terms and conditions set forth herein.

NOW, THEREFORE, the City and Clayton agree as follows:

1. **Acknowledgement.**

Clayton acknowledges and agrees that the Project constitutes a valid public use and purpose and that the acquisition and use of the Property Interests by the City is necessary and to advance and accommodate such public use and purpose.

2. **Determination of Just Compensation.**

By entering into this Agreement, neither Party shall be deemed to have waived any right to raise any issue, position or argument pertaining to the amount of compensation payable with regard to the Property Interests to be acquired by the City under this Agreement. Unless and until the Parties enter into a separate binding agreement for such compensation, the City may elect at any time to file a Petition in Condemnation (a "**Petition**") in the District Court, in and for the City and County of Denver, State of Colorado (the "**Denver Venue**"), for the sole purpose of determining the compensation payable to Clayton for the Property Interests. Clayton consents to the jurisdiction of the Denver Venue with regard to the filing of any Petition by the City. If a Petition is filed in the Denver Venue, the Parties agree that (1) the only issue to be determined shall be the amount of compensation owed to Clayton as a result of the taking of Property Interests, and (2) this Agreement may be presented to the court in such action as a joint motion for an order for immediate possession of the Property Interests on the terms and conditions set forth herein.

3. **Possession and Use.**

Clayton grants to the City the right to possess, occupy, access, and use the Property Interests as of January 1, 2019, (the "**Possession Date**"), on and subject to the terms and conditions set forth in the PE and TCE.

4. **Date of Value.**

The date of value for the determination of the compensation payable by the City for the Property Interests shall be the Possession Date.

5. **Deposit.**

Not less than thirty (30) days prior to the Possession Date, or within sixty (60) days after the filing of a Petition by the City, the City shall deposit the sum of **\$1,000,000.00** into the Registry of the Court (the "**Deposit**"); provided that, if the Deposit is to be made prior to the filing of a Petition, the Deposit shall be delivered to Land Title Guarantee Company (or another title insurance company, bank or financial institution selected by the City and approved by Clayton) (the "**Escrow Agent**") to be held by the Escrow Agent pursuant to written instructions approved by the City and Clayton. The Parties shall instruct the Escrow Agent to deliver the Deposit into the Registry of the Court within sixty (60) days after the filing of a Petition. In that

case, the City consents to Clayton withdrawing from the Registry 100% of the Deposit as provided in, and pursuant to the terms of, C.R.S. § 38-1-105(6)(b).

**6. Final Settlement.**

If the final agreement, settlement, award, or verdict of compensation for the Property Interests is greater than the Deposit, then (i) the Deposit shall be paid to Clayton as partial payment of the amount owed for the Property Interests, and (ii) the City shall be responsible for the payment of the balance of the total amount determined to be payable. If the final agreement, settlement, award, or verdict of compensation for the Property Interests is less than the Deposit, then (i) the final amount determined to be payable shall be paid to Clayton from the Deposit, and (ii) the balance of the Deposit shall be returned to the City.

**7. Authority.**

The City represents to Clayton that the City has obtained any and all consents and approvals necessary to execute this Agreement and perform the actions set forth herein. Clayton represents to the City that Clayton has obtained any and all consents and approvals necessary to execute this Agreement and perform the actions set forth in this Agreement, including, without limitation, any orders or approvals required from the Denver Probate Court and/or the Colorado Attorney General's office.

**8. Lessee.**

The City acknowledges that Clayton has advised the City that Arcis Golf ("Arcis") is the current Lessee of the Property under the Lease dated December 23, 1988, between Clayton Early Learning (f/k/a the Clayton Foundation), as Trustee of the George W. Clayton Trust, a Colorado Trust, and Arcis (as successor-in-interest to American Golf Corporation, a California corporation), as amended by that certain First Amendment to Lease dated as of April 30, 2004 (together with the Original Lease, the "Lease"). Clayton's covenants and agreements herein do not bind Arcis with respect to its interests under the Lease.

**9. No Waiver of Rights Under Agency Agreement.**

Notwithstanding anything in this Agreement to the contrary, neither Clayton nor the City intends to and does not, by this Agreement, waive its respective rights under the Agency Agreement between the Clayton and the City, dated October 13, 2000, and recorded on December 12, 2000, at Reception No. 2000175267, Denver County Clerk and Recorder (the "Agency Agreement"), including, without limitation, Clayton's right under Paragraph 7(a) and 7(b) of Exhibit I to the Agency Agreement, if applicable, to terminate the Conservation Easement under the terms of said paragraphs; provided that, Clayton agrees that it will temporarily forebear from exercising its right to terminate the Agency Agreement under Section 9 of the Agency Agreement for a period of time commencing on the Effective Date and ending on the earlier of (i) the date on which the City files a Petition in Condemnation with respect to the Property, or (ii) July 31, 2018. The City agrees that the temporary forbearance by Clayton will not in any way jeopardize, prejudice or otherwise impact any subsequent exercise by Clayton of any of its rights under or relating to the Agency Agreement.

**10. Payments Under the Arcis Lease.**

The Parties acknowledge that (i) the exercise of the TCE by the City may impact operations on the Property and that, as part of Clayton's claim for just compensation owed to Clayton, Clayton may assert a claim for loss of timely lease payments under the Lease for so long as the City is occupying the TCE, and (ii) nothing contained in this Agreement shall be deemed to be a waiver or release of such a claim by Clayton or a waiver or release by the City to assert a contrary position in the context of determining just compensation pursuant to the terms of Section 2 above.

**11. Notices.** Any notice or demand made under this Agreement by either Party to the other Party shall be in writing and shall be deemed sufficiently given if delivered in person, by prepaid overnight express mail, or national overnight courier service, or if forwarded by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to the City:

Department of Finance  
Attn: Director, Division of Finance  
201 West Colfax Avenue  
Denver, Colorado 80202

With a copy to:

Office of the City Attorney  
Attn: Director, Municipal Operations  
201 West Colfax Avenue, Dept. 1207  
Denver, Colorado 80202

If to Clayton:

Charlotte M. Brantley  
President & Chief Executive Officer  
Clayton Early Learning  
3801 Martin Luther King Blvd.  
Denver, CO 80205  
[cbrantley@claytonearlylearning.org](mailto:cbrantley@claytonearlylearning.org)

With a copy to:

Bruce A. James  
Brownstein Hyatt Farber Schreck, LLP  
410 17<sup>th</sup> Street, Suite 2200  
Denver, CO 80202  
[bjames@bhfs.com](mailto:bjames@bhfs.com)

or to such other address with respect to either Party as such Party may from time to time designate in writing and forward to the other Party as provided in this Section 11. Notices shall be deemed given upon such personal, courier, or express mail delivery, or on the third business day following deposit in the U.S. Mail as provided herein.

**12. Governing Law and Venue.**

Each and every term, provision, or condition of this Agreement is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver, and the applicable ordinances, regulations, executive orders, or fiscal rules, enacted or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

**13. Governmental Immunity Act.**

The Parties agree that the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time.

**14. Entire Agreement.**

This Agreement constitutes the entire agreement between the City and Clayton as to the subject matter hereof, and it replaces all prior written or oral agreements and understandings. It may be altered, amended, or repealed only by a duly executed written instrument.

**15. No Third-Party Beneficiaries.**

Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement shall be strictly reserved to the City and Clayton; nothing contained in this Agreement shall give or allow any such claim or right of action by any other person or third party.

**16. Appropriations.**

The obligations of the City under this Agreement or any renewal shall extend only to monies appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement, for the purposes of this Agreement. The Parties acknowledge that (i) they do not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the Parties, beyond the scope of this Agreement.

**17. Effective Date.**

As used in this Agreement, the term “**Effective Date**” shall mean and refer to the date set out on the City’s signature page of this Agreement.

**18. Electronic Signatures and Electronic Records.**

Clayton consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the grounds that it is an electronic record, an electronic signature, that it is not in its original form, or is not an original.

[END OF AGREEMENT – SIGNATURE PAGE(S) FOLLOW]

Contract Control Number: FINAN-201842694-00

Contractor Name: George Clayton Trust

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of July 01, 2018.

SEAL



CITY AND COUNTY OF DENVER

ATTEST:

Debra Johnson  
Debra Johnson, Clerk and Recorder,  
Ex-Officio Clerk of the City and  
County of Denver

By Michael B. Hancock  
Michael B. Hancock, Mayor

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of  
Denver

By John G. McGrath  
John G. McGrath, Assistant City  
Attorney

By Beth Machann  
Beth Machann, City Controller

By Timothy M. O'Brien  
Timothy M. O'Brien, Auditor



**Contract Control Number:** FINAN-201842694-00

**Contractor Name:** George Clayton Trust

**By:** Charlotte M. Brambley

**Name:** Charlotte M. Brambley  
(please print)

**Title:** President and CEO  
(please print)

**ATTEST: [if required]**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_  
(please print)

**Title:** \_\_\_\_\_  
(please print)





**EXHIBIT A**

[Legal Description – Park Hill Golf Course Property]

A PARCEL OF LAND IN THE SOUTHWEST ONE-QUARTER OF SECTION 19 AND THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 30, ALL IN TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 67 WEST; THENCE NORTH 89°40'10" EAST ALONG THE SOUTHERLY LINE OF THE SOUTHWEST ONE-QUARTER OF SECTION 19 A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°04'08" WEST ALONG A LINE 50.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 19 A DISTANCE OF 909.31 FEET; THENCE NORTH 03°44'42" EAST A DISTANCE OF 150.33 FEET; THENCE NORTH 00°04'08" WEST ALONG A LINE 60.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 19 A DISTANCE OF 175.00 FEET; THENCE THE FOLLOWING (5) COURSES:

- 1) NORTH 44°57'00" EAST A DISTANCE OF 91.95 FEET;
- 2) NORTH 89°56'36" EAST A DISTANCE OF 290.00 FEET;
- 3) NORTH 00°04'44" WEST A DISTANCE OF 115.00 FEET;
- 4) NORTH 89°55'48" EAST A DISTANCE OF 1025.05 FEET;
- 5) NORTH 00°04'45" WEST A DISTANCE OF 1114.17 FEET TO ITS INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SMITH ROAD AND A POINT OF NON-TANGENT CURVATURE; THENCE THE FOLLOWING (3) COURSES ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SMITH ROAD:

- 1) ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 5607.93 FEET, A CENTRAL ANGLE OF 09°02'08" AND AN ARC LENGTH OF 884.37 FEET (THE CHORD OF WHICH BEARS SOUTH 84°28'25" EAST A DISTANCE OF 883.46 FEET) TO A POINT OF TANGENCY;
- 2) SOUTH 80°43'42" EAST A DISTANCE OF 89.72 FEET;
- 3) SOUTH 79°58'45" EAST A DISTANCE OF 28.82 FEET;

THENCE SOUTH 00°09'32" EAST ALONG A LINE 50.00 WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 19 A DISTANCE OF 1086.52 FEET; THENCE SOUTH 00°09'08" EAST ALONG A LINE 50.00 FEET WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 19 A DISTANCE OF 1324.84 FEET; THENCE, SOUTH 00°08'13" EAST ALONG A LINE 50.00 FEET WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 30 A DISTANCE OF 2.96 FEET; THENCE THE FOLLOWING (3) COURSES:

- 1) NORTH 82°31'11" WEST A DISTANCE OF 28.58 FEET;
- 2) SOUTH 89°39'27" WEST A DISTANCE OF 483.58 FEET;
- 3) SOUTH 00°37'56" EAST A DISTANCE OF 1264.16 FEET;

THENCE SOUTH 89°38'54" WEST ALONG A LINE 59.00 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTHERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 30 A DISTANCE OF 1891.72 FEET; THENCE NORTH 00° 00'00" WEST ALONG A LINE 50.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 30 A DISTANCE OF 1263.62 FEET TO THE POINT OF

**BEGINNING,**

**LESS AND EXCEPT THAT PORTION CONVEYED TO THE REGIONAL TRANSPORTATION DISTRICT  
BY QUITCLAIM DEED RECORDED MARCH 4, 2013 UNDER RECEPTION NO. 2013029217.**

## EXHIBIT B

### PERMANENT EASEMENT

**THIS PERMANENT EASEMENT** (this "Easement") is granted as of January 2, 2019 (the "Effective Date") by **CLAYTON EARLY LEARNING**, Trustee of the George W. Clayton Trust, as Agent for the City and County of Denver, whose address is 3801 Martin Luther King Boulevard, Denver, Colorado 80205 ("Grantor"), to the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation and home rule city of the State of Colorado, with an address of 1437 Bannock Street, Denver, Colorado 80202 ("Grantee" or "City").

For and in consideration of \_\_\_\_\_ AND 00/100 DOLLARS (\$ \_\_\_\_\_ .00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants, conveys, and transfers unto Grantee, its contractors, subcontractors, and its successors and assigns, an exclusive, perpetual easement in, on, over, under, and through that real property which is legally described and depicted in **Exhibit A** attached hereto and incorporated herein by this reference ("Easement Area"), which real property is located in the City and County of Denver, State of Colorado, for the purpose of the construction, maintenance, operation, use, repair, replacement, or reconstruction of a storm water detention facility, including associated channels, pipes, and related improvements and appurtenances within the Easement Area (the "Improvements").

Grantor shall have the right to use and enjoy the Easement Area, subject to the rights herein granted. Grantor agrees not to build, create, construct or permit to be built, created or constructed, any obstruction, building, fence, or other structures over, under, on or across the Easement Area without prior written consent of Grantee's Executive Director of Public Works. Nothing herein shall impair Grantee's police powers.

Grantor further understands and agrees that with respect to the Easement Area, all laws, ordinances, and regulations pertaining to stormwater drainage, streets, sidewalks, and public places, as may be applicable, shall apply so that the public use of the Improvements and the Easement Area is consistent with the use and enjoyment of any dedicated public right-of-way or public stormwater drainage systems, as may be applicable.

In the event the terms of this Easement are violated, such violation shall immediately be corrected by Grantor upon receipt of written notice from the City or, if Grantor does not correct the violation within the time designated in such notice, the City may elect to correct or eliminate such violation at the Grantor's expense. The Grantor shall promptly reimburse the City for all costs and expenses incurred by the City in enforcing the terms of this Easement.

All obligations of the Grantee are subject to prior appropriation of monies expressly made by City Council and paid into the Treasury of the City. Grantee shall have all rights, privileges and benefits necessary or convenient for the full use and enjoyment of the Easement Area subject to the terms of this Easement.



**Exhibit A**  
**(Legal Description of Easement Area)**

**EXHIBIT "A"**

**PERMANENT EASEMENT AREA  
PAGE 1 OF 3  
MARCH 23, 2018**

A PARCEL OF LAND CONTAINING 1,087,720 SQUARE FEET, MORE OR LESS, LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, SAID PARCEL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE CENTER-SOUTH ONE-SIXTEENTH CORNER OF SAID SECTION 19, WHENCE THE CENTER ONE-QUARTER CORNER OF SAID SECTION 19 BEARS N00°03'09"E, A DISTANCE OF 1,324.50 FEET.

THENCE N89°56'42"W, A DISTANCE OF 50.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF DAHLIA ST. (74' R.O.W.) AND THE **POINT OF BEGINNING**.

THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF DAHLIA ST. (74' R.O.W.) S00°03'27"W, A DISTANCE OF 449.32 FEET;

THENCE DEPARTING SAID WEST RIGHT-OF-WAY LINE N90°00'00"W, A DISTANCE OF 226.60 FEET;

THENCE N02°24'53"W, A DISTANCE OF 651.77 FEET;

THENCE N90°00'00"W, A DISTANCE OF 742.85 FEET TO THE EAST LINE OF PARK HILL TOWN CENTER SUBDIVISION, FILING NO. 1, RECORDED AT RECEPTION NO. 2004129062, CITY AND COUNTY OF DENVER RECORDS;

THENCE ALONG SAID EAST LINE OF PARK HILL TOWN CENTER SUBDIVISION, FILING NO. 1, RECORDED AT RECEPTION NO. 2004129062, CITY AND COUNTY OF DENVER RECORDS, N00°07'53"E, A DISTANCE OF 992.87 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SMITH RD. (R.O.W. VARIES);

THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE OF SMITH RD. (R.O.W. VARIES) AND THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 5,607.93 FEET, A DELTA ANGLE OF 02°14'41", AN ARC LENGTH OF 219.71 FEET, A CHORD BEARING S87°40'03"E, A DISTANCE OF 219.70 FEET;

THENCE DEPARTING SAID SOUTH RIGHT-OF-WAY LINE OF SMITH RD. (R.O.W. VARIES) AND ALONG THE SOUTH LINE OF A PARCEL OF LAND RECORDED AT RECEPTION NO. 2013029217 (R.T.D. PARCEL EC-78A), CITY AND COUNTY OF DENVER RECORDS, THE FOLLOWING SEVEN (7) COURSES;

- 1) S02°57'59"W, A DISTANCE OF 3.25 FEET;
- 2) S81°53'56"E, A DISTANCE OF 369.97 FEET;
- 3) S78°37'22"E, A DISTANCE OF 260.34 FEET;
- 4) S67°38'27"E, A DISTANCE OF 49.23 FEET;
- 5) N89°20'13"E, A DISTANCE OF 81.19 FEET;

**EXHIBIT "A"**

**PERMANENT EASEMENT AREA CONT.**

**PAGE 2 OF 3**

**MARCH 23, 2018**

- 6) S47°17'33"E, A DISTANCE OF 22.71 FEET;
- 7) S15°06'52"E, A DISTANCE OF 45.07 FEET TO SAID WEST RIGHT-OF-WAY LINE OF DAHLIA STREET (74' R.O.W.);

THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF DAHLIA ST. (74' R.O.W.) S00°03'09"W, A DISTANCE OF 1,002.36 FEET TO THE **POINT OF BEGINNING**.

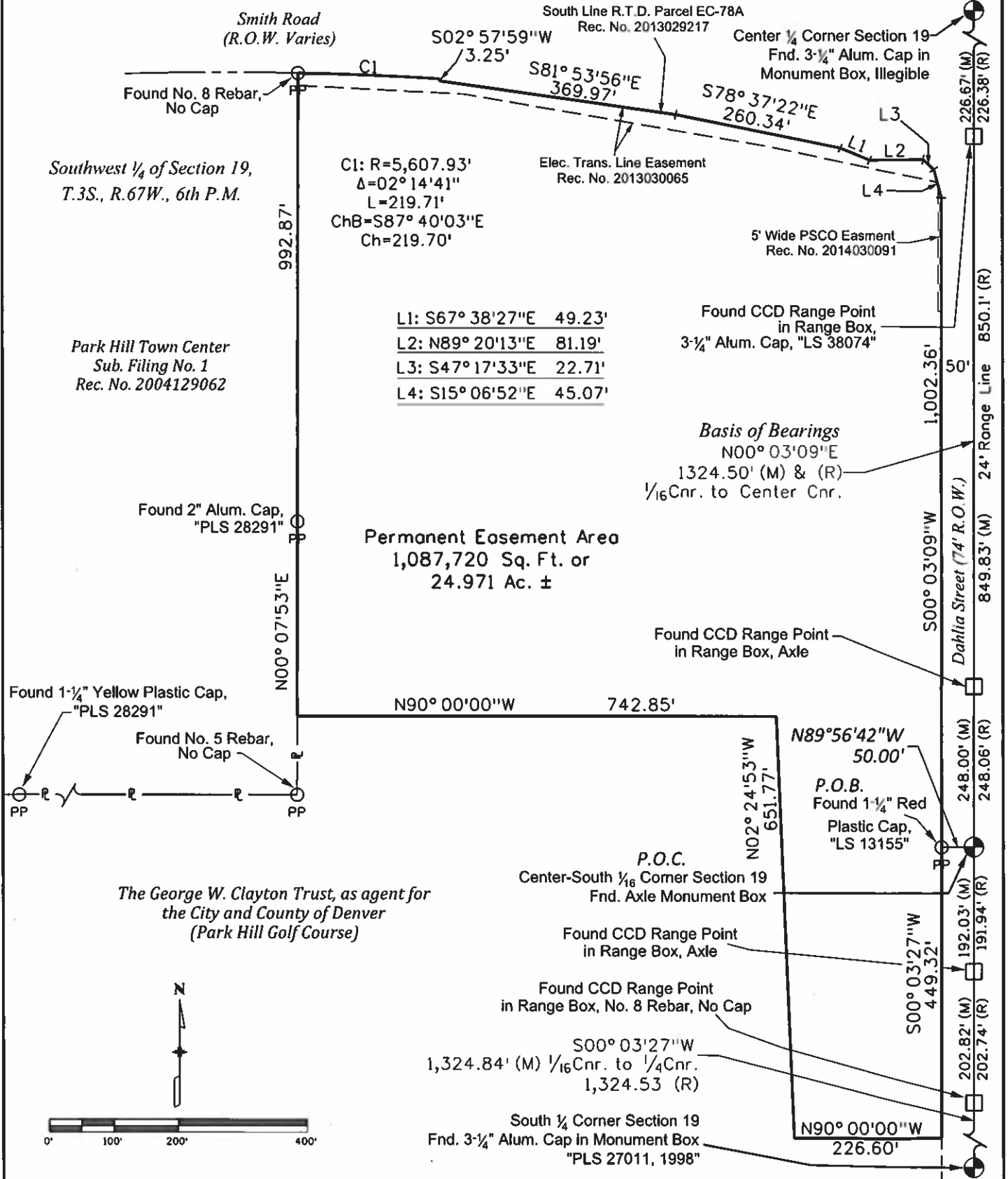
THE ABOVE DESCRIBED PARCEL CONTAINS 1,087,720 SQUARE FEET OR 24.971 ACRES, MORE OR LESS.

**BASIS OF BEARINGS:** ALL BEARINGS ARE BASED ON A LINE CONNECTING THE CENTER-SOUTH ONE-SIXTEENTH CORNER OF SAID SECTION 19 (FOUND AXLE IN MONUMENT BOX), AND THE CENTER ONE-QUARTER CORNER OF SAID SECTION 19 (FOUND 3-1/4" ALUMINUM CAP IN A MONUMENT BOX, ILLEGIBLE), BEARING N00°03'09"E.

PREPARED BY: RICHARD D. MUNTEAN, CO PLS 38189  
FOR AND ON BEHALF OF:  
105 WEST, INC.  
4201 E. YALE AVE., SUITE 230  
DENVER, CO 80222

**EXHIBIT A**

THIS EXHIBIT IS A GRAPHIC DEPICTION OF THE PARCEL DESCRIBED ON THE ATTACHED LEGAL DESCRIPTION AND IS NOT INTENDED TO INCLUDE SURVEY PLAT REQUIREMENTS AS DEFINED IN CRS 38-51-106.



**EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION**

Job No.: 133-0007
Scale: 1" = 200'
Date: March 23, 2018
Page 3 of 3
Drawn By: SDB

**PARK HILL GOLF COURSE PERMANENT EASEMENT**  
 SW 1/4 SECTION 19, T. 3 S., R. 67 W., 6TH P.M.  
 CITY & COUNTY OF DENVER, COLORADO

**105WEST**  
 INCORPORATED  
 4201 E. Yale Ave., Suite 230  
 Denver, CO 80222  
 303.859.4491



## EXHIBIT C

### TEMPORARY EASEMENT

#### Platte to Park Hill Storm Water Systems Project

**THIS TEMPORARY EASEMENT** (this "TE") is granted as of January 2, 2019 (the "Effective Date"), by **CLAYTON EARLY LEARNING**, Trustee of the George W. Clayton Trust, as Agent for the City and County of Denver, whose address is 3801 Martin Luther King Boulevard, Denver, Colorado 80205 ("Grantor"), to the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado, whose address is 1437 Bannock Street, Denver, Colorado 80202 ("Grantee" or "City").

In consideration of the sum of \_\_\_\_\_, and the covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, Grantor sells, conveys, transfers, and delivers to the Grantee, and its successor and assigns, an exclusive temporary easement (the "Temporary Easement") for use of the real property described in **Exhibit A** attached hereto and incorporated herein by this reference, excepting and excluding therefrom all land covered by the Barrier Net Easement, dated May 4, 2001, and recorded June 15, 2001 in the real property records of the City and County of Denver under Reception Number 2001076265 ("Temporary Easement Area"), for the construction of a storm water detention facility, including associated channels, pipes, and related improvements and appurtenances ("Project") upon, through, over, under, and along the Temporary Easement Area, subject to and in accordance with the following terms and covenants:

1. The term of the Temporary Easement will commence on the Effective Date and will terminate twenty-four (24) months from the Effective Date. In the event that the Project is not completed within the term of the Temporary Easement, Grantee, through its contractor, may give notice to Grantor thirty (30) days prior to the expiration of the term that it is extending the term of the Temporary Easement for up to an additional six (6) months and the Grantor shall be paid for such extended Temporary Easement term. The Grantor also grants to the City the right to reenter the Temporary Easement Area after expiration of the term of the Temporary Easement to correct any defects, perform repairs, replace landscaping and perform any other work necessary for the Project. The City, through its contractor, shall give Grantor fifteen (15) days' notice prior to the reentry. Unless written notice is provided by the City to extend the period of reentry, the reentry period shall end no later than (1) year after the end of the term of the Temporary Easement.

2. Grantee shall cause its contractors to return the Temporary Easement Area free from all construction debris and in a condition as nearly as practicable to its original condition, taking into consideration the nature of the work being performed. If certain impediments to accessing the Temporary Easement Area, including without limitation, bumpers, temporary curbs, or cables ("Access Impediments"), currently exist upon the Temporary Easement Area, the Access Impediments may be removed and Grantee shall cause its contractor to re-install Access Impediments before expiration of this Temporary Easement.

3. The Temporary Easement allows Grantee, and its successors, assigns contractors, consultants, subcontractors, sub-consultants, materialmen, suppliers, and workers, to perform

construction and related activities on the Temporary Easement Area, including: (a) performing construction activities and work for the Project; (b) entering on and having exclusive use of and access to the Temporary Easement Area; (c) storing materials; (d) operating construction equipment; (e) performing utility work; (f) removing asphalt and concrete, grading, paving, and landscaping; and (g) performing any other work incidental to the construction of the Project. Notwithstanding any term or provision of this TE to the contrary, Grantee shall cause its contractor to provide a buffer and take any further steps necessary to protect in place the existing netting currently located along the eastern portion of the Temporary Easement Area and Grantee shall be responsible for the repair or replacement of the net if it is damaged in any way in connection with the Project.

4. Grantor, and its successors and assignees, covenants that as of the date of execution of this TE it has good title to the Temporary Easement Area and has good and lawful right to grant the Temporary Easement.

5. Grantor shall not place, erect, install or permit to be placed any building, structure, or other above or below ground obstruction that may interfere with the purposes of the Temporary Easement during its term without the prior written consent of the City's Manager of Public Works or his designee ("Project Manager").

6. In the event the terms of this TE are violated, at the election of the Project Manager, the Grantor shall immediately correct or cause to be corrected any violations or the Project may correct or cause to be corrected any violations at the Grantor's sole expense. If the Project Manager elects to correct, or causes to be corrected, the violation(s), Grantor shall reimburse the Project for all costs incurred in the correction and in enforcing the terms of this TE within thirty (30) days of receipt of an invoice.

7. Grantor understands that construction activities relating to the Project on, or in the vicinity of, the Temporary Easement Area, may restrict access to the remainder of Grantor's property for short periods of time, but the Grantor understands at all times the Grantee will assure continued access to the remainder of Grantor's property.

8. Grantor reserves all rights attendant to its ownership of the Temporary Easement Area, including: (a) the right to the use and enjoyment of the Temporary Easement Area for all purposes so long as these uses are consistent with, and do not impair, the rights herein granted to the Grantee, and (b) the right to sell and convey the Grantor's property or any portion of it subject to the terms of this TE.

9. Any obligations of Grantee under this TE, whether direct or contingent, extend only to funds appropriated or otherwise lawfully made available by the Denver City Council for the purpose of this TE and paid into the Treasury of the City.

10. All notices provided for herein must be in writing and personally delivered or mailed by registered or certified United States mail, postage prepaid, return-receipt requested, to the Grantor at the address identified above and if to Grantee at the addresses given below. Notices delivered personally are effective when delivered. Notices sent by certified or registered mail are

effective upon receipt. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered; however, these substitutions will not become effective until actual receipt of written notification.

If to Grantee:

Lisa L. Lumley  
Division of Real Estate  
Department of Finance  
201 West Colfax Avenue, Department 1010  
Denver, Colorado 80202  
e-mail: [lisa.lumley@denvergov.org](mailto:lisa.lumley@denvergov.org)

and

Sam Stevens  
Project Manager  
City and County of Denver  
Department of Public Works  
201 West Colfax Avenue, Department 608  
Denver, Colorado 80202  
e-mail: [sam.stevens@denvergov.org](mailto:sam.stevens@denvergov.org)

With copies to:

Mayor  
City and County of Denver  
1437 Bannock Street, Room 350  
Denver, Colorado 80202

and

Denver City Attorney's Office  
201 West Colfax Avenue, Department 1207  
Denver, Colorado 80202

If to Grantor:

Charlotte M. Brantley  
President & Chief Executive Officer  
Clayton Early Learning  
3801 Martin Luther King Blvd.  
Denver, CO 80205  
[cbrantley@claytonearlylearning.org](mailto:cbrantley@claytonearlylearning.org)



With a copy to:

Bruce A. James  
Brownstein Hyatt Farber Schreck, LLP  
410 17<sup>th</sup> Street, Suite 2200  
Denver, CO 80202  
[bjames@bhfs.com](mailto:bjames@bhfs.com)

11. This TE is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in this TE in writing. No subsequent novation, renewal, addition, deletion, or other amendment may have any force or effect unless embodied in a written amendment to this agreement properly executed by the parties. No oral representation of any kind preceding the date of this TE by any officer, employee, or agent of Grantee at variance with the terms and conditions of this Agreement, or with any written amendment to this Agreement, may have any force or effect nor bind Grantee.

12. This TE is subject to and is to be construed in accordance with the laws of the State of Colorado, the Denver Charter and the Denver Municipal Code, which are incorporated into this TE by this reference. Venue for any action arising out of this TE will be in the District Court for the City and County of Denver.

13. Grantee has the right to assign its rights and obligations set forth in this TE, with the prior written consent of Grantor, which consent shall not be unreasonably withheld.

14. During the term, this TE runs with the land and the benefits and burdens thereof inure to any and all successors in interest and become binding upon the parties hereto and their respective successors and assigns without further action.

15. This Temporary Easement is subject to the following rules of construction:

- a. The words "party" and "parties" refer only to a named party to this TE.
- b. The words "include," "includes," and "including" are to be read as if they were followed by the phrase "without limitation."
- c. Unless otherwise specified, any reference to a law, statute, regulation, charter or code provision, or ordinance means that statute, regulation, charter or code provision, or ordinance as amended or supplemented from time to time and any corresponding provisions of successor statutes, regulations, charter or code provisions, or ordinances.

16. This TE may be recorded in the real property records of Denver County.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties have executed the Temporary Easement intending that it be valid and effective from and after the Effective Date defined above.

**ATTEST:**

**CITY AND COUNTY OF DENVER**

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

By: \_\_\_\_\_  
Michael B. Hancock, Mayor

**APPROVED AS TO FORM:**

Kristin M. Bronson  
Attorney for the City and County of Denver

**REGISTERED AND COUNTERSIGNED:**

By: \_\_\_\_\_  
Assistant City Attorney

By: \_\_\_\_\_  
Brendan J. Hanlon, CFO

By: \_\_\_\_\_  
Timothy O'Brien, Auditor





**Exhibit A**  
**(Legal Description of Temporary Easement Area)**

**EXHIBIT "A"**

**TEMPORARY EASEMENT AREA  
PAGE 1 OF 3  
MARCH 23, 2018**

A PARCEL OF LAND CONTAINING 2,030,674 SQUARE FEET, MORE OR LESS, LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 19 AND THE NORTHWEST ONE-QUARTER OF SECTION 30, TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, SAID PARCEL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE CENTER ONE-SIXTEENTH CORNER OF SAID SECTION 19, WHENCE THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 19 BEARS S00°03'27"W, A DISTANCE OF 1,324.84 FEET.

THENCE N89°56'42"W, A DISTANCE OF 50.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF DAHLIA ST. (74' R.O.W.);

THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF DAHLIA ST. (74' R.O.W.) S00°03'27"W, A DISTANCE OF 449.32 FEET TO THE **POINT OF BEGINNING**.

THENCE CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE OF DAHLIA ST. (74' R.O.W.) S00°03'27"W, A DISTANCE OF 875.68 FEET TO THE SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 19;

THENCE S00°02'24"W, A DISTANCE OF 3.46 FEET TO THE NORTHEAST CORNER OF THE OVERLOOK AT PARK HILL, FILING NO. 1, RECORDED AT RECEPTION NO. 2001067475, CITY AND COUNTY OF DENVER RECORDS;

THENCE ALONG THE NORTH LINE OF SAID OVERLOOK AT PARK HILL, FILING NO. 1, RECORDED AT RECEPTION NO. 2001067475, CITY AND COUNTY OF DENVER RECORDS, N81°54'10"W, A DISTANCE OF 24.14 FEET TO SAID SOUTH LINE OF THE SOUTHWEST ONE-QUARTER OF SECTION 19;

THENCE CONTINUING ALONG SAID NORTH LINE OF THE OVERLOOK AT PARK HILL, FILING NO. 1, RECORDED AT RECEPTION NO. 2001067475, CITY AND COUNTY OF DENVER RECORDS AND SAID SECTION LINE, S89°52'00"W, A DISTANCE OF 487.07 FEET TO THE NORTHWEST CORNER OF SAID OVERLOOK AT PARK HILL, FILING NO. 1, RECORDED AT RECEPTION NO. 2001067475, CITY AND COUNTY OF DENVER RECORDS;

THENCE DEPARTING SAID SECTION LINE AND ALONG THE WEST LINE OF SAID OVERLOOK AT PARK HILL, FILING NO. 1, RECORDED AT RECEPTION NO. 2001067475, CITY AND COUNTY OF DENVER RECORDS, S00°25'28"E, A DISTANCE OF 198.49 FEET;

THENCE DEPARTING SAID WEST LINE N90°00'00"W, A DISTANCE OF 562.99 FEET;

THENCE N45°11'23"W, A DISTANCE OF 408.00 FEET;

THENCE N12°23'56"W, A DISTANCE OF 704.85 FEET;

THENCE N21°53'29"E, A DISTANCE OF 261.71 FEET;

**EXHIBIT "A"**

**TEMPORARY EASEMENT AREA CONT.**

**PAGE 2 OF 3  
MARCH 23, 2018**

THENCE N45°18'56"E, A DISTANCE OF 549.53 FEET TO THE SOUTH LINE OF PARK HILL TOWN CENTER SUBDIVISION, FILING NO. 1, RECORDED AT RECEPTION NO. 2004129062, CITY AND COUNTY OF DENVER RECORDS;

THENCE ALONG SAID SOUTH LINE OF PARK HILL TOWN CENTER SUBDIVISION, FILING NO. 1, RECORDED AT RECEPTION NO. 2004129062, CITY AND COUNTY OF DENVER RECORDS, S89°57'26"E, A DISTANCE OF 28.69 FEET TO THE SOUTHEAST CORNER OF SAID PARK HILL TOWN CENTER SUBDIVISION, FILING NO. 1, RECORDED AT RECEPTION NO. 2004129062, CITY AND COUNTY OF DENVER RECORDS;

THENCE ALONG THE EAST LINE OF SAID PARK HILL TOWN CENTER SUBDIVISION, FILING NO. 1, RECORDED AT RECEPTION NO. 2004129062, CITY AND COUNTY OF DENVER RECORDS, N00°07'53"E, A DISTANCE OF 121.35 FEET;

THENCE DEPARTING SAID EAST LINE S90°00'00"E, A DISTANCE OF 742.85 FEET;

THENCE S02°24'53"E, A DISTANCE OF 651.77 FEET;

THENCE S90°00'00"E, A DISTANCE OF 226.60 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 2,030,674 SQUARE FEET OR 46.618 ACRES, MORE OR LESS.

**BASIS OF BEARINGS:** ALL BEARINGS ARE BASED ON A LINE CONNECTING THE CENTER-SOUTH ONE-SIXTEENTH CORNER OF SAID SECTION 19 (FOUND AXLE IN A MONUMENT BOX), AND THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 19 (FOUND 3-1/4" ALUMINUM CAP IN A MONUMENT BOX, "PLS 27011, 1998"), BEARING S00°03'27"W.

PREPARED BY: RICHARD D. MUNTEAN, CO PLS 38189  
FOR AND ON BEHALF OF:  
105 WEST, INC.  
4201 E. YALE AVE., SUITE 230  
DENVER, CO 80222

