DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Rm. 256 Denver, CO 80202	DATE FILED: April 15, 2019 11:59 AM FILING ID: BC50AC87B703F CASE NUMBER: 2019CV31165
Plaintiffs: EVERGREEN ALLIANCE GOLF LIMITED, L.P., a Delaware limited partnership, d/b/a ACRIS GOLF **v.** **Defendants:** THE CITY AND COUNTY OF DENVER, COLORADO, a municipal corporation of the State of Colorado.	▲ COURT USE ONLY ▲
Attorneys for the City and County of Denver, Colorado KRISTIN M. BRONSON, Denver City Attorney Reneé A. Goble, # 40202* Edward J. Gorman, # 48629* Priscilla Tomescu, Atty. # 46766* Assistant City Attorneys Municipal Operations Section 201 W. Colfax Avenue, Dept. 1207 Denver, CO 80202-5332 Telephone: 720.913.3275; Facsimile: 720.913.3180 E-mail: renee.goble@denvergov.org; Email: edward.gorman@denvergov.org E-mail: pricilla.tomescu@denvergov.org **Counsel of record*	Case No.: 2019CV31165 Div.: 424
CITY'S RESPONSE TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION	

City and County of Denver ("City"), through undersigned counsel, respectfully request that the Court deny Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction ("Motion"). Most fundamentally, Plaintiff is not likely to prevail on the merits of their claims and, therefore, are not entitled to a restraining order or injunction.

C.R.C.P. 121 §1-15(8) Compliance

Plaintiff's counsel failed to confer with counsel for the City regarding this Motion and C.R.C.P. 65(b) does not absolve Plaintiff of this requirement.

Introduction

This matter involves the Park Hill Golf Course (the "Property" or "Golf Course") and the City's Platte-to-Park Hill Storm Drainage Project (the "Project"). Through an Agreement for Immediate Possession ("Possession Agreement"), the City and the owner of the Golf Course, the George W. Clayton Trust ("Trust"), stipulated to immediate possession by the City for a portion of the Golf Course for the construction of a retention pond for the Project. Plaintiff Arcis, the Lessee of the Property and operator of the Golf Course, now seeks to enjoin the City from any part of the Property because it claims the City has no right to exclude it from any portion of its leasehold and that the City must negotiate with it separately from the Trust and/or commence formal condemnation proceedings prior to taking possession. But Plaintiff's Motion is without merit.

The Trust, through its trustee, and Plaintiff have a valid lease (the "Lease") which addresses condemnation, including what occurs upon both a total or partial take by right of eminent domain, as well as the Lessee's entitlement to a condemnation award obtained by right of eminent domain.[1] Notably, the Lease does not provide that the Plaintiff is entitled to dictate when and under what circumstances possession under right of eminent domain may or may not occur between the landowner and a condemnor, such as the City. In addition, the City and the Trust are entitled to stipulate to possession prior to finalizing any such condemnation award. The City is also not required to finalize an award under its power of eminent domain with the Lessee or to initiate a formal condemnation action prior to taking possession of the Property.

In addition, other *Rathke* factors also do not support an injunction here. Plaintiffs cannot demonstrate irreparable harm. One of the main concerns raised in the Motion is that the City's

[1] Plaintiff has never indicated or made an election that it considers the City's taking to be either a partial or total taking. This, despite several requests to do so.

possession has caused damage to Plaintiff's irrigation system. However, this has been addressed in the near-term as the Parties have entered into an agreement to ensure that the component of the irrigation system will be quickly repaired, and that the Property will be watered in the interim.[2] And while Plaintiff cites to overriding trespass concerns, no such claim has been asserted in Plaintiff's complaint, and any infringement upon Plaintiff's property rights is more than adequately addressed by the terms of the Lease. Rather, Plaintiff's Motion demonstrates that the purpose of the requested injunction is to improve their negotiating position with the City regarding the takings at issue, rather than to obtain equitable or legal relief at the end of a lawsuit. Moreover, an injunction against City would disserve the public interest and the balance of the equities does not support an injunction. Plaintiff seeks to enjoin a major public project where the City has already undertaken significant work and where time is of the essence because the issue of compensation has not been finalized. Finally, Plaintiff must post a sufficient bond to halt this Project.

Background

The Trust was endowed in 1899 to establish an organization for the better care and education of at-risk children. Through its trustee, the Clayton Foundation (now "Clayton Early Learning"), the Trust has undertaken various charitable activities, with a focus on underprivileged youth and early childhood development. Of note, the Trust currently operates the Clayton Early Learning Center on the corner of Colorado and Martin Luther King Boulevards, just southwest of the Golf Course. As part of its endowment, the Trust has been the beneficial owner of the Golf Course and to generate revenues for its charitable activities, it operates the Golf Course on the

[2] The April 9, 2019 "Agreement for Reimbursement of Temporary Watering Expenses" is attached as **Ex. A**. The Agreement provides that, by entering into this Agreement, neither Party waives any rights to the underlying Action. However, the Agreement is relevant to the issue of whether an injunction is proper at this stage.

Property through the Plaintiff. Arcis has operated the Golf Course pursuant to the Lease with the Trust. The Lease's original term was 20-years and, by information and belief, Arcis executed its option to renew the Lease on July 1, 2018.

Under Section 19, the Lease contains provisions that address condemnation and powers of eminent domain, including the Lessee's (Arcis') rights in the event there is a total or a partial taking, as well as the terms by which the Lessee may be entitled to a portion of a condemnation award. For instance, if there is a total taking, the Lease is terminated, and Lessee is entitled to a rent abatement; and under a partial taking, Lessee is entitled to a partial abatement of rent. In addition, if there is a taking by right of eminent domain, the award belongs to the Lessor, except that the Lessee shall receive a portion of the award that is attributable to the value of the leasehold estate. (Lease and assignment to Arcis attached as **Ex. 1** to Motion).

On January 2, 2018, the Denver City Council adopted Ordinance No. 20171396, Series of 2018 ("Ordinance") in which it designated certain property as being required for the Project, and authorized the acquisition thereof by negotiation and condemnation for the Project. (Ordinance attached as **Ex. 2** to Motion). The Project addresses flooding hazards and seeks to improve water quality in the Montclair and Park Hill Drainage Basins. It consists of a series of improvements, including detention facilities at Park Hill and City Park, an open water channel along 39th Avenue, and an outfall structure in Globeville Landing Park. The Notice to Proceed for the design/build contract occurred in the fall of 2017 with a target completion date of May 2020.

In support of the Project, the City sought to acquire a parcel of land located within the Golf Course for a drainage basin or retention pond. This includes a permanent easement of approximately 1,087,000 square feet or 25 acres, and a temporary construction easement of

approximately 2,030,000 square feet or 47 acres. Both parcels are located in the northeastern portion of the Golf Course ("the Property Interests").

On February 26, 2018, the City sent a "Preliminary Notice of Intent of Acquire," to Charlotte Brantley, President and Chief Executive Officer of Clayton Early Learning, informing Ms. Brantley of its intent to acquire interests on the Property. (**Ex. B**). That Preliminary Notice was followed by an April 9, 2018 formal "Notice of Intent to Acquire" from the City to Ms. Brantley which included a detailing of, and legal descriptions for, the property interests that the City sought to acquire – the permanent easement and temporary construction easement – maps of those easements, and the applicable eminent domain statutory authority pertaining to the appraisal and negotiation process, C.R.S. 38-1-121. (**Ex. C**). The Notice informed Ms. Brantley that the City intended to perform an appraisal of the Property and informed her that she was entitled to obtain an appraisal pursuant to the statute, as well.

Thereafter, the City and the Trust negotiated and entered into the Immediate Possession Agreement on July 1, 2018. The Possession Agreement acknowledged that the City and Clayton were currently negotiating the compensation owed by the City to the Trust for the Property Interests and provided for the City to deposit in escrow the sum of $1,000,000.00 to Land Title Guarantee Company, as escrow agent. The Possession Agreement contemplated the possibility that the City may need to file a Petition in Condemnation for the sole purpose of determining the compensation payable to the Trust for the Property Interests. (Agreement attached as **Ex. 3** to Motion). Of note, the Possession Agreement granted the City the right to possess, occupy, access, and use the Property Interests as of January 1, 2019, on and subject to the terms and conditions set forth in the permanent and temporary construction easements.

The City's appraiser completed his appraisal of the Property Interests on July 26, 2018. On August 7, 2018, counsel for Plaintiff sent an email to the City asking that Plaintiff be involved in discussions regarding the Golf Course taking and the Project. On August 15, 2018, the City sent Plaintiff a letter advising it of the City's interest in acquiring property that Plaintiff currently occupied for the Project and the nature and extent or Plaintiff's potential rights under the Uniform Relocation Assistance Act. On November 13, 2018, the City met with Plaintiff and the Trust to discuss operation and maintenance of the Golf Course. At issue in the meeting and the weeks that followed, was Plaintiff's demand that the City be responsible for the maintenance of the entire Golf Course. Indeed, on November 30, 2018, counsel for Plaintiff sent a demand for compensation associated with the City's taking that included claims for lost income, reimbursement of fixed costs, and other potential losses projected at least three years in the future. As noted in its Motion, one of the main concerns of Plaintiff is irrigation of the Golf Course during the period that the City will occupy the Golf Course. (Relevant correspondence attached as **Ex. D**).

On January 2, 2019, the City's contractor took possession of the permanent easement containing approximately 25-acres of the Golf Course to begin construction of its retention pond for the Project. On or about January 1, 2019, Plaintiff fired its staff, relinquished its obligations to maintain the Golf Course and, by information and belief, has ceased making rental payments.

Currently, the City has begun significant work on the Property, and in addition to fencing off the approximately 25-acres, its contractor has undertaken significant earthwork. Currently, the northeast corner of the Golf Course resembles a retention pond much more so than a Golf Course. The remaining Golf Course area has not been fenced off or occupied by the City.

With its current Motion, Plaintiff Arcis has also filed a complaint asserting inverse condemnation and declaratory relief against the City. Through this Motion, Plaintiff also seeks a

temporary restraining order and preliminary injunction against the City's occupation of any part of the Golf Course asserting that it has no legal right to exclude Plaintiff from any portion of the Golf Course. Through its complaint and Motion, Plaintiff asserts that the City requires its consent for occupation and construction of its Project.

After Plaintiff filed its Motion and Complaint, on April 4, 2019, the City sent to Plaintiff a "Notice of Intent to Acquire," informing Plaintiff of its rights under §38-1-121 to have an appraisal obtained for the Property. In addition and as noted above, subsequent to the filing of Plaintiff's complaint and Motion, on April 9, 2019, the Parties entered into an agreement for the temporary watering of the Golf Course during the next several weeks and an informal plan for the City to ensure that the irrigation system is operational within the month. As of this date, the City has not instituted formal condemnation proceedings through the filing of a Petition in Condemnation, but may do so if they cannot reach an agreement about compensation with the Trust.

Legal Standard

The standard for a preliminary injunction is set forth in *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1997). A preliminary injunction is extraordinary relief. *Id.* at 651. "Because equitable relief in the nature of an injunction constitutes a form of judicial interference with continuing activities, the courts have generally been reluctant to grant such relief where 'the actions complained are those of departments of the executive and legislative branches of government, in the exercise of their authority.'" *Id.* To obtain an injunction, the moving party must show: a reasonable probability of success on the merits; a danger of real, immediate, and irreparable injury which may be prevented by the injunction; that there is no plain, speedy, and adequate remedy at law; that the granting of a preliminary injunction will not disserve the public interest; that the

balance of the equities favors the injunction; and that the injunction will preserve the status quo pending a trial on the merits. *Id.* at 652.

Argument

A. Plaintiff Does Not Have a Reasonable Probability of Success on the Merits.

Plaintiff's Motion provides little attention or support for the claim that it has a reasonable probability of success on the merits – the first required showing under *Rathke*. Rather, Plaintiff asserts that it has a recorded leasehold interest and because it has exclusive possession of the property under the Lease, it must grant the City permission to "occupy" any portion of the property. Plaintiff cites no authority for the proposition that a lessee is entitled to dictate whether and to what extent a condemning authority must obtain the lessee's permission, separate and apart from the property owner, to "occupy" a property. The assertion is all the more confusing given that the Lease in this instance speaks to what the Lessee is entitled to under both total and partial takings. In actions involving competing compensation claims from a Lessee, the terms of the lease dictate over common law. *See Fibreglas Fabricators, Inc. v. Kylberg*, 799 P. 2d 371, 375 (Colo. 1990).

The Lease also addresses to what extent a Lessee is entitled to a condemnation award, which follows Colorado law and the well-established "undivided basis rule." *See Montgomery Ward & Co. v. Sterling*, 523 P.2d 465, 468 (Colo. 1974)(condemnor provides payment for the entire value of the land as a whole and assumes land is owned by one party). Following payment of just compensation to the landowner, a tenant such as Arcis, may be entitled to an apportionment of the award. But this apportionment is between the landowner and tenant and is of no concern to the condemnor. *E.g. Direct Mail Services, Inc. v. Best*, 729 F. 2d 672, 676 (10th Cir. 1984)(citing Colorado cases). Thus, under both the Lease and common law, Plaintiff is, at most, entitled to an apportionment of a condemnation award and an abatement of rent. However, Plaintiff is not entitled to dictate the terms of possession or receive a separate compensation award. *See Direct*

Mail, 729 F. 2d at 676, fn.2 (noting impossibility if acquisition of property for public benefit were contingent upon separate settlement of each and every competing property interest).

At another point in the Motion, Plaintiff cites to C.R.S. § 38-1-121 and *City and Cty. Of Denver v. Eat Out Inc.*, 75 P.3d 1141 (Colo. App. 2003) for the proposition that the government must provide notice to a tenant with recorded leasehold interest of its intention to condemn and enter into good faith negotiations with such tenant. Even assuming this is correct, Plaintiff omits reference to the other particularly relevant section of C.R.S. § 38-1-121(5), which clearly states:

> Nothing in this section shall be construed to limit the right of the condemning authority to institute eminent domain proceedings or to obtain immediate possession of property as permitted by law . . . . (emphasis added).

Thus, while the statute requires notice to the lessee of a recorded interest, it does not provide the lessee with the right to dictate possession of property it does not own. This is consistent with *Montgomery Ward* and its progeny. *Montgomery Ward, 523 P.2d at 469 (*well-settled law that a lessee's compensable leasehold rights are not affected by lessor's settlement with condemnor).

The statute also does not provide a lessee with rights over and above those contained within the operable lease. Indeed, as with the entire condemnation statute, the purpose is to facilitate negotiations and settlement between parties, not to prevent those parties from settlement. *E.g. City of Colo. Springs v. Berl*, 658 P. 2d 280 (Colo. App. 1982). At this stage of the proceedings, there is nothing preventing Plaintiff from obtaining an appraisal and negotiating what it deems it's due from any condemnation award. No award has yet been finalized between the City and the Trust. Plaintiff is not being "shut out" from obtaining an apportionment and an abatement of rent – which is all it would be entitled to under its Lease.

In addition, to the extent Plaintiff asserts that the City's occupation is illegal, Plaintiff has not asserted trespass claims against the City in its Complaint. Again, the Lease specifically

contemplates eminent domain and what it would be entitled to, as Lessee, under these circumstances. *See Gifford v. Colo. Springs*, 815 P.2d 1008, 1012 (Colo. App. 1991)(looking to lease to determine whether trespass action could lie). In *Gifford*, 815 P.2d 1008, the Court of Appeals summarily rejected similar claims raised by a lessee who attempted to bring an inverse condemnation and trespass lawsuit against the City of Colorado Springs, the condemning authority. There, the landowner and Colorado Springs reached an agreement on the fair market value of a portion of the property to be acquired for a road project. Following this, the lessee attempted to challenge the fair market value award between the City and the landowner and argued that it was entitled to damages for loss of parking and access restrictions occasioned by the takings. But the Court rejected these claims, recognizing the limited rights the lessee had under Colorado law, as well as its lease. *Id.* at 1011-12. While there was a fair market valuation agreed to in *Gifford* as opposed to here, the Court noted that the lessee was paid out of the condemnation award, their entitlement under the lease. *Id.* at 1011.

The assertion that the City's Possession Agreement with the Trust requires Plaintiff's approval, consent or knowledge finds no support, factually or legally, and such an assertion would provide Plaintiff additional rights that it does not have under its Lease. The issue of fair market valuation has not yet been determined, but that is not a condition precedent to such an agreement for possession. Nor is Plaintiff entitled to negotiate separately with the City regarding the terms of possession or a separate award of compensation from the City for its leasehold interest. Such a concept would turn the well-established "undivided basis rule" on its head.

B. Plaintiff Cannot Show Irreparable Harm.

Plaintiff asserts that its property rights are being significantly interfered with and that the irreparable harm they will suffer is incurred maintenance costs, especially in the form of restrictions on its ability to water the golf course. First, the City and Plaintiff have an agreement

in place to address the irrigation issues, which are the primary maintenance costs highlighted in Plaintiff's motion describing the damage. Second, the other claimed damages relate to interference with plaintiff's property rights. Here again, Plaintiff relies heavily upon cases pertaining to trespass, a claim not asserted in this action. Moreover, Plaintiff's remedy in the case of a partial taking, such as what it seems to be claiming here, is governed by its Lease. Plaintiff is entitled to a partial abatement of rent and an apportionment of a condemnation award. That is easily discernible and can be readily quantified. *Cf. Gitlitz v. Bellock*, 171 P.3d 1274, 1278-79 (Colo. App. 2007)(injury may be irreparable where monetary damages are difficult to ascertain or there exists no pecuniary standard for measurement of damages).

There is nothing foreclosing Plaintiff's right to seek compensation from the Trust as a result of the City's taking. Unlike the trespass cases cited by Plaintiff's motion, Plaintiff here has clear contractual rights, along with the opportunity to seek apportionment from the Trust. Under these circumstances, an injunction would be inappropriate.

C. Plaintiff has a Plain, Speedy and Adequate Remedy at Law and an Injunction Would Not Preserve the Status Quo.

Once again, Plaintiff has an adequate remedy at law because they are entitled to, at most, an abatement of rent under their lease and/or an apportionment hearing with the Trust regarding the compensation due them because of the City's taking. Here, Plaintiff alludes to the special nature of property rights that can be compromised by various trespasses, but here, Plaintiff can seek enforcement of the Lease provisions and/or apportionment against the Trust.

Nor is there merit to Plaintiff's assertion that an injunction will maintain the status quo. The City, through its contractor, has already undertaken major earthwork. The City has not simply fenced off the subject area. Construction vehicles are on the Property and work has begun in

earnest. Enjoining the City at this stage would not balance the positions of the Parties in a state of status quo, but would simply serve to create an unfair position of leverage on the part of Plaintiff.

D. The Injunction Disserves the Public Interest.

While Plaintiff acknowledges that courts are generally reluctant to enjoin the executive and legislative branches of the government, it argues that injunctive relief is appropriate where property rights are being threatened or destroyed. But that is not the case, here. Plaintiff has a well-established path to being made whole through its landlord, the Trust, and pursuant to its Lease. However, enjoining this project which, indisputably serves a public purpose, so that Plaintiff can receive the compensation it believes it's entitled to prior to a final agreement between the Trust and the City, serves Plaintiff's interest, but no one else's. It does not serve the overall public interest to allow a private tenant to obtain injunctions to stop projects from proceeding when the genesis of their claim is that they want to ensure that they are paid first and separately, when neither the Lease nor well-established law contemplates such a condition.

E. The Balance of the Equities Does Not Favor an Injunction.

In arguing that the equities favor it, Plaintiff indicates that it made numerous attempts to negotiate the terms of the City's occupation of the Golf Course and to work with it to minimize the effects of the City's occupation. However, the City informed Plaintiff in August of 2018 of its intention to acquire the property and met with Plaintiff in November of 2018 to discuss the taking. The City also met with Plaintiff on February 28, 2019 to discuss Arcis's maintenance obligations during the City's possession of the 25-acre portion of the Property and even discussed a potential timeline for condemnation. Because Plaintiff would prefer the City and the Trust to have a finalized compensation number or the City to have instituted formal eminent domain proceedings against the Trust so that it can potentially be paid sooner, does not equate to a legal entitlement to enjoin this Project. In addition, by information and belief, since January 2019, Plaintiff has ceased

making any rental payments. This fact is omitted from the Motion. Nothing in the Lease permits Plaintiff to cease making rental payments in a partial taking situation such as what Plaintiff appears to be claiming here.

As to the claim that the City has refused to negotiate with Plaintiff and/or commence condemnation proceedings, the City took possession of the Property only after agreeing to terms with the Trust, the landowner. Plaintiff's motion freely mixes the concepts of possession and compensation. First, the City reached an agreement with the Trust on possession and has not finalized the issue of just compensation. Moreover, the City cannot institute a statutory condemnation proceeding where there has not been a failure to agree upon compensation, since this is a prerequisite to commencement of a statutory condemnation proceeding in Colorado. Colo. Rev. Stat. § 38-1-102; *see also Direct Mail Services*, 729 F. 2d 672 at 675 (citing Colorado cases).

In addition, while C.R.S. § 38-121(1) speaks to the notice requirement to someone with a recorded interest, it also explicitly qualifies that notice requirement within the eminent domain statutory framework. C.R.S. § 38-121(1) does not limit the requirement that a condemning authority negotiate in good faith with a landowner under § 38-1-102, nor does it limit the right of the condemning authority to institute eminent domain proceedings or obtain immediate possession. *See* C.R.S. § 38-121 (3) and (5). To the extent Plaintiff is arguing that *Eat Out*, 75 P.3d 1141, stands for the proposition that a condemning authority must negotiate with the tenant with a recorded lease prior to instituting condemnation proceedings, the City notes that, first and foremost, it has not yet instituted formal condemnation proceedings. Moreover, C.R.S. § 38-121 clearly distinguishes between possession and compensation, and in the *Eat Out* case, the Court did not address the possession issue, finding it moot. *Id*. at 1142. Plaintiff is entitled to pursue what it deems it is due under the Lease as a result of the takings, including an apportionment action, if

applicable. And it has the opportunity to do just that. Granting Plaintiff an injunction on the issue of possession would not be equitable but would award Plaintiff more than it is entitled to under both the Lease and the governing law.

F. A Substantial Bond Would Be Necessary.

In the Motion, Plaintiff dismisses the bond issue in perfunctory fashion. However, Rule 65(c) *requires* that an applicant post a bond approved by the court at any time before either a restraining order or a preliminary injunction can be issue. The precise amount of the bond is within the discretion of the trial court, "so long as it bears a reasonable relationship to the potential costs and losses occasioned by a preliminary injunction." *Apache Village, Inc. v. Coleman Co*., 776 P.2d 1154 (Co. App. 2001). The failure of the trial court to set or require any security may render the injunction a nullity. *Renner v. Williams*, 344 P.2d 966 (Colo. 1959).

If the Court were to grant any type of injunctive relief in this matter, Plaintiff must post a bond pursuant to C.R.C.P. 65(c), especially where, as here, it seeks to enjoin a $298 million-dollar large-scale public works project where significant work has already begun, and time is of the essence. Indeed, the City, through its intergovernmental agreement with the State of Colorado (CDOT) regarding the nearby I-70 expansion project, could face potential liquidated damages on this Project if it is delayed beyond the time that the City's contractor has committed to complete the work. In addition, the City would face claims from its contractor for down-time, idle and redundant labor and equipment, de-mobilization, re-mobilization, and related costs in an amount of $520,000 as a one-time delay penalty, including, additionally, an estimated $7,000 per day of delay penalties. This is in addition to the $5,000 per day of delay penalties the City would face under its agreement with CDOT. Therefore, if for instance, the Project were delayed for 30 days, the City would face the following:

$360,000 ($12,000 per day for 30 days)
$520,000 (lump sum damages)

$880,000 TOTAL

Given this, the City requests a bond of $1 million-dollars, as that would be reasonable and sufficient under these circumstances.

Conclusion

For the reasons discussed above, Plaintiffs are not entitled to a restraining order or injunction. Plaintiffs cannot satisfy the *Rathke* standard of showing that the factors weigh in favor of an injunction. While the City recognizes that Plaintiff wants to ensure its maintenance issues are addressed and that it would prefer the issue of compensation be finalized, Plaintiff is bound by its Lease and applicable law and is not entitled to dictate the terms by which the City and the Trust have agreed to possession. The issue of just compensation has not been agreed to yet and Plaintiff has well-established pathways to ensure it is compensated for its leasehold interest that are, contrary to this lawsuit and Motion, consistent with both the Lease and applicable law. Plaintiff should not be able to use this lawsuit, including the requested injunction, to obtain negotiating leverage with Denver and/or the Trust. This is not the proper purpose of the courts.

WHEREFORE, the City and County of Denver, Colorado respectfully request that the Court deny Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction and any other relief the Court deems just and appropriate.

Respectfully submitted this 15th day of April 2019.

KRISTIN M. BRONSON,
City Attorney

/s/ Edward J. Gorman
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CERTIFICATE OF SERVICE

I certify that on this 15th day of April, 2019 a true and correct copy of the foregoing **CITY's RESPONSE TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** was filed and served via Colorado Courts E-Filing to the following parties:

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In accordance with C.R.C.P. 121 §1-26(7) a printable copy of this document with electronic signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.