

AGREEMENT CONCERNING PARK HILL LAND

THIS AGREEMENT CONCERNING PARK HILL LAND (this “**Agreement**”) is entered into as of the date set forth on the City’s signature page (the “**Effective Date**”) by and between the George W. Clayton Trust, a Colorado trust (the “**Trust**”), through its Trustee, Clayton Early Learning (f/k/a The Clayton Foundation) (“**Clayton**”), and the City and County of Denver (the “**City**” and, together with Clayton, the “**Parties**”).

Background

(a) Dating back to 1899, the Trust has been the legal and/or beneficial owner of an approximately 155-acre tract of real property known as the Park Hill Golf Course, as more particularly described on Exhibit A attached hereto (the “**Property**”). The Property has been operated by the Trust in furtherance of the goals of providing early childhood education services to the community.

(b) The Trust and the City are parties to that certain Agency Agreement dated October 13, 2000 (the “**Agency Agreement**”), pursuant to which the Trust, as the agent for the City, operates and controls the Property, and has the right to receive all income from the Property.

(c) Arcis Golf, the operator of the Property pursuant to a lease (the “**Golf Course Lease**”) dated December 23, 1998, with the Trust, has expressed to Clayton that it does not intend to renew the Golf Course Lease beyond its currently scheduled expiration date of December 31, 2018.

(d) The income from the Golf Course Lease provides essential funds to the Trust to perform its mission of serving the early childhood learning needs of over 17,000 children throughout Denver and the State of Colorado. Clayton has advised the City that, if the Golf Course Lease expires and is not replaced with other revenue sources, the Trust will be forced to dramatically reduce its early childhood learning services.

(e) Clayton has initiated community meetings to provide information to the community on the need to devote the Property to a use other than a failing golf course, and to begin conversations and seek input from the community around the opportunities that may be realized by repurposing the Property.

(f) Both the City and the Trust wish to identify and foster a plan for the Property that will be responsive to the needs and goals of the Trust and the community.

(g) The City and the Trust desire for (i) the City to purchase 50% of the Property (as more particularly set forth in Section 4.3, the “**Acquired Property**”) for purposes beneficial to the community, (ii) the City to lease the remaining 50% of the Property (the “**Leased Property**”) for 30 years, (iii) the Trust to lead efforts to develop a plan and related entitlements designed to gain the input of the community on the future of the Property, and (iv) the Trust to receive a portion of the proceeds from certain future sales of the Property to allow the Trust to continue to serve its essential role in the community.

ARTICLE I
TERMINATION OF AGENCY AGREEMENT

At the Initial Closing (as hereinafter defined), (a) the City shall quit claim its interest in the Property to the Trust, and (b) the Trust and the City shall enter into a mutual termination of the Agency Agreement in the form attached hereto as Exhibit B (the “**Termination of Agency Agreement**”). Following the execution and delivery of the City’s quit claim deed and Termination of Agency Agreement, the Trust shall own all of the interests in title to the Property free and clear of the Agency Agreement, but otherwise subject to the terms and conditions of this Agreement.

ARTICLE II
PURCHASE OF ACQUIRED PROPERTY

Subject to the terms and provisions hereof, the Trust hereby agrees to sell and convey, and the City hereby agrees to purchase and pay for the Acquired Property, together with all improvements, appurtenances and permanent fixtures, if any, currently located on the Acquired Property. The purchase price for the Acquired Property shall equal \$10,000,000 (the “**Acquired Property Purchase Price**”). The Acquired Property Purchase Price shall count toward the ECE Funding Goal under Article VIII. The exact boundaries of the Acquired Property shall be subject to determination and adjustment in accordance with Section 4.3 hereof; provided, however, that any such adjustments to the Acquired Property shall not result in an adjustment to the Acquired Property Purchase Price.

ARTICLE III
LEASE OF LEASED PROPERTY

3.1 Lease. At the Initial Closing, the Trust and the City shall enter into a lease, in the form attached hereto as Exhibit C (the “**Lease**”), pursuant to which the City shall lease from the Trust the Leased Property, on a triple-net basis (with the City being responsible for all expenses associated with the Leased Property, including, without limitation, property tax assessments, if any), for a term of thirty (30) years (the “**Lease Term**”) at an annual rental rate of \$350,000 per year (the “**Lease Payments**”), payable annually in advance on January 15 of each lease year. Notwithstanding anything in the Lease to the contrary, payments of the Lease Payments shall count toward the ECE Funding Goal under Article VIII. The Lease shall give the City the sole and exclusive right to use, operate and manage the Leased Property for any lawful purpose. If the Lease terminates as a result of an uncured monetary default by the City, the Trust will have the right to sell the Leased Property free and clear of any participation by the City in the proceeds of such sales.

3.2 Lease Purchase Options. The Lease shall contain a provision whereby, upon the expiration of the Lease Term, the City shall have the option to acquire from the Trust any remaining portions of the Leased Property owned by the Trust for the sum of Ten and No/100 Dollars (\$10.00). The Lease shall also grant to the City an additional option (the “**Lease Purchase Option**”) to purchase from the Trust any remaining portions of the Leased Property owned by the Trust at any time prior to the expiration or earlier termination of the Lease Term, exercisable upon no less than ten (10) days’ prior written notice, for an amount equal to the sum

of all remaining, unpaid Lease Payments as of the date of the City's exercise of the Lease Purchase Option discounted to present value at the rate of four percent (4%) (the "**Lease Option Price**"). If the City exercises the Lease Purchase Option, the Trust shall continue to receive the proceeds from the sale of the Property as provided in Section 7.4.

ARTICLE IV ENTITLEMENTS

4.1 Vision Plan. The Trust has initiated a neighborhood outreach process and visioning plan for the Property (the "**Visioning Plan**"). The Trust shall also initiate a master plan process (the "**Master Plan**") in collaboration with neighborhood stakeholders. The Vision Plan and the Master Plan will help inform subsequent planning efforts by the City relating to the Property, which are typically adopted by City Council (the "**City Plan**"). As an owner or prospective owner of the Property, the City will participate in and help facilitate the effort to generate the Visioning Plan and Master Plan for the Property; provided that the Trust hereby acknowledges that the City has not, and cannot, make any assurances regarding the outcome of that process. If the City exercises the Lease Purchase Option, the City shall not take any action that would bind the Leased Property to a use that is not consistent with the uses contemplated in the Visioning Plan or the Master Plan without the prior written consent of the Trust unless and until the ECE Funding Goal (as hereafter defined) has been met. The Trust's direct, out-of-pocket costs (excluding attorneys' fees) for preparation of the Vision Plan and the Master Plan which are incurred after July 1, 2017 shall be referred to herein as the "**Clayton Planning Costs**". The City's direct, out-of-pocket costs (excluding attorneys' fees) for preparation of the City Plan which are incurred after July 1, 2017 shall be referred to herein as the "**City Planning Costs**". Upon written request from the City, the Trust shall provide an account of Clayton Planning Costs incurred as of such request date. Upon written request from the Trust, the City shall provide an account of City Planning Costs incurred as of such request date.

4.2 Further Entitlements. Following the development and adoption of the Vision Plan and Master Plan, the City and the Trust shall mutually agree upon whether the Property, or any portions thereof, should be sold without further entitlements, or if it would be in the best interest of the City, the Trust, and the community to put in place potential additional entitlements prior to sale.

4.3 Determination of Acquired Property Boundaries. Prior to the Initial Closing Date, and based upon input from the community, Clayton, and other factors, the City shall identify the specific location of the boundaries of the Acquired Property, and shall cause a legal description of the Acquired Property to be prepared by a professional land surveyor. Notwithstanding the anything herein to the contrary, the boundaries of the Acquired Property established by the City pursuant to this Section 4.3 (i) shall include the area of the Property required by the City for its regional storm water detention footprint; (ii) shall be consistent with the Visioning Plan and, if then completed, the Master Plan; and (iii) shall be approximately (but shall not exceed) fifty percent (50%) of the total acreage of the Property. Following the determination of the boundaries of the Acquired Property, the Trust and the City shall attach the agreed upon legal description hereto as Exhibit D.

ARTICLE V
CLOSING

5.1 Closing Date. The closing of the initial purchase and sale transaction hereunder (the “**Initial Closing**”) shall occur on January 2, 2019 (the “**Initial Closing Date**”) through an escrow with Land Title Guarantee Company (“**Escrow Agent**”). Any subsequent closings hereunder with respect to the Lease Purchase Option or the Accelerated Payment Option (the “**Subsequent Closing**”) and together with the Initial Closing, each a “**Closing**”) shall occur on the date required by the applicable provision of the Lease Purchase Option or Accelerated Payment Option, as applicable (the “**Subsequent Closing Date**”) and together with the Initial Closing Date, each a “**Closing Date**”) through an escrow with Escrow Agent or other mutually acceptable escrow agent.

5.2 City Closing Deliveries. No later than one (1) Business Day (as defined in Section 10.1 below) prior to the applicable Closing Date, the City shall deliver to Escrow Agent each of the following items:

(a) With respect to the Initial Closing, the Acquired Property Purchase Price, subject to any prorations and adjustments hereunder. With respect to any Subsequent Closing, the Lease Option Price or the Accelerated Payment, as applicable.

(b) With respect to the Initial Closing, one (1) original quitclaim deed executed by the City conveying to the Trust, all right, title, and interest of the City, both on its own behalf and in its capacity as a principal or trustee, in and to the Property.

(c) With respect to the Initial Closing, one (1) original quitclaim bill of sale executed by the City conveying to the Trust, all right, title, and interest of the City, both on its own behalf and in its capacity as principal or trustee, in and to any personal property located on, or used in the operation of, the Property.

(d) With respect to the Initial Closing, two (2) counterparts to the Termination of Agency Agreement.

(e) With respect to the Initial Closing, two (2) executed counterparts to the Lease.

(f) An executed counterpart to closing settlement statement in connection with such Closing.

5.3 Trust Closing Deliveries. No later than one (1) Business Day prior to the applicable Closing Date, the Trust shall deliver to Escrow Agent each of the following items:

(a) With respect to the Initial Closing, one (1) original special warranty deed executed by the Trust, conveying to the City all right, title and interest of the Trust, in and to the Acquired Property, subject to all matters of record. With respect to any Subsequent Closing, one (1) original special warranty deed (subject to all matters of record) executed by the Trust conveying to the City all right, title and interest of the Trust, in and to the applicable portion of

the Leased Property being purchased by the City pursuant to the Lease Purchase Option or the Accelerated Payment Option, as applicable.

(b) With respect to the Initial Closing, one (1) original quitclaim bill of sale executed by the Trust conveying to the City all right, title and interest of the Trust, in and to any personal property located on the Acquired Property. With respect to any Subsequent Closing, one (1) original quitclaim bill of sale executed by the Trust conveying to the City all right, title and interest of the Trust, in and to any personal property located on the portion of the Leased Property being purchased by the City pursuant to the Lease Purchase Option or the Accelerated Payment Option, as applicable.

(c) With respect to the Initial Closing, two (2) counterparts to the Termination of Agency Agreement.

(d) With respect to the Initial Closing, two (2) executed counterparts to the Lease.

(e) With respect to the Initial Closing, one (1) original Sale Participation Memo to be recorded, prior to conveyance to the City, against the Acquired Property.

(f) With respect to any Subsequent Closing, one (1) original Sale Participation Memo to be recorded, prior to conveyance to the City, against such portion of the Leased Property being acquired by the City at such Subsequent Closing.

(g) An executed counterpart to closing settlement statement in connection with such Closing.

5.4 Prorations. General real estate taxes and assessments for the year in which a Closing occurs, based on the most recent levy and the most recent assessment, rents, water, sewer and other utility charges shall be prorated as of 11:59 P.M. on the night prior to date of such Closing, and paid at such Closing, with all amounts accruing from and after the date of such Closing being payable by the City.

ARTICLE VI CONDITIONS

It shall be a condition precedent to the execution of this Agreement by the City that the following approvals be obtained: (i) consent to and approval of this Agreement by the Denver City Council; and (ii) approval of this Agreement by the applicable probate court with jurisdiction over the Agency Agreement as required by the Agency Agreement and the Order, dated July 17, 2000, which proceeding shall include a notification to the Office of the Attorney General for the State of Colorado; provided that the Parties may agree to provide for the execution of this Agreement prior to obtaining probate court approval, in which case such approval shall be a condition subsequent to the execution of this Agreement and a condition precedent to the consummation of the Initial Closing hereunder.

ARTICLE VII
FUTURE SALES OF
ACQUIRED PROPERTY AND LEASED PROPERTY

7.1 Alternating Control Periods. The parties have agreed that, following the Initial Closing, the City shall initially have the right to initiate and direct any sales of the Leased Property for a period of approximately four (4) years, following which the Trust shall have the right to initiate and direct any sales of the Leased Property for the following fifteen (15) years (unless the ECE Funding Goal is met prior the end of such fifteen (15) year period) and thereafter, the City shall again retain the right to initiate and direct any sales of the remaining Leased Property, all as more fully set forth below.

7.2 City Control Period.

(a) During the periods (i) commencing January 2, 2019, and continuing through December 31, 2022 (the “**Target Date**”), and (ii) following the earlier of (a) the date on which the ECE Funding Goal is met, or (b) December 31, 2037 (the “**Outside Date**”) (collectively, the “**City Control Periods**”), the City shall have the exclusive right (without the prior approval of the Trust) to initiate and direct the terms of all potential sales of all or portions of the Property; provided, however, that (I) the City shall not accept any offers at a price lower than the then “as-entitled” appraised market value of the portion of the Property being sold; (II) the City shall not initiate or permit any sale that would be inconsistent with the Master Plan (in the Trust’s reasonable determination); (III) the City shall inform and consult with the Trust with respect to any sales involving the Leased Property; and (IV) the City shall provide written notice to the Trust no later than fifteen (15) Business Days after entry into any term sheet or agreement for such sales, which written notice shall include a copy of any appraisal prepared in connection with such sale. During the City Control Periods, the Trust shall take such reasonable steps as are necessary to facilitate the closing of any sales of portions of the Leased Property still owned by the Trust that satisfy the foregoing conditions of this Section 7.2 (each, a “**City-Controlled Sale**”), including, without limitation, executing letters of intent, purchase and sale agreements, and deeds to convey title to the relevant portion of the Leased Property, in each case on the City’s then-current forms.

(b) Notwithstanding anything in this Section 7.2 to the contrary, if, prior to the Target Date, and before the date on which the ECE Funding Goal has been achieved, the City desires to sell all remaining portions of the Leased Property that are owned by the Trust at such time, and following such sale, the ECE Funding Goal shall not have been met (each, a “**Short Sale**”), then such Short Sale shall be subject to the prior written approval of the Trust, which approval may be granted or denied in the Trust’s sole and absolute discretion. The City shall deliver to the Trust prior written notice of its intent to enter into a Short Sale (a “**Short Sale Notice**”), which Short Sale Notice shall include all relevant information regarding the economic terms of the proposed Short Sale. The Trust shall have a period of seven (7) Business Days following its receipt of such Short Sale Notice in which to either grant or deny its approval to such proposed Short Sale. If the Trust fails to deliver written notice to the City either granting or denying its approval to a proposed Short Sale with such 7-day period, then the Trust shall be deemed to have approved such Short Sale. The City shall not consummate any Short Sale

without the written approval, or deemed approval of the Trust in accordance with this Section 7.2(b).

(c) The Net Sales Proceeds (as hereinafter defined) of any City-Controlled Sale or Short Sale pursuant to this Section 7.2 shall be distributed in accordance with the provisions of Section 7.4.

7.3 Clayton Control Period.

(a) If, during the period commencing on the day following the Target Date and continuing until the Outside Date (the “**Clayton Control Period**”), (i) the Trust has not achieved the ECE Funding Goal, and (ii) either the Trust or the City continues to own any portion of the Leased Property (excluding any portions to be retained by or transferred to the City for public right-of-way, utilities, parks, open space or similar uses), then the Trust shall have the exclusive right (without the prior approval of the City) to initiate and direct all potential sales of all or portions of the Leased Property then owned by the Trust or the City (but excluding any portions retained by or transferred to the City for public right-of-way, utilities, parks, open space or similar uses) to third party purchasers; provided, however, that (I) the Trust shall not accept any offers at a price lower than the then “as-entitled” appraised market value of the portion of the Leased Property being sold; (II) the Trust shall not initiate or permit any sale that would be inconsistent with the Master Plan (in the City’s reasonable determination); (III) the Trust shall inform and consult with the City with respect to any proposed sales; and (IV) the Trust shall provide written notice to the City no later than fifteen (15) Business Days after entry into any term sheet or agreement for such sales, which written notice shall include a copy of any appraisal prepared in connection with such sale. During the Clayton Control Period, the City shall take such reasonable steps as are necessary to facilitate the closing of any sales of portions of the Leased Property owned by the City (excluding any portions to be retained by or transferred to the City for public right-of-way, utilities, parks, open space or similar uses) that satisfy the foregoing conditions of this Section 7.3 (each, a “**Clayton-Controlled Sale**”), including, without limitation, executing letters of intent, purchase and sale agreements, and deeds to convey title to the relevant portion of the Leased Property, in each case on the City’s then-current forms.

(b) Notwithstanding anything in this Section 7.3 to the contrary, if at any time during the Clayton Control Period but prior to December 31, 2026, the Trust desires to sell any portion of the Leased Property to or for any buyer or operator that, as a condition to such sale, requires a specific use or development which, in the reasonable judgment of the City, is not consistent with the community values reflected in the Vision Plan or the Master Plan (an “**Alternative Sale**”), then such Alternative Sale shall be subject to the prior written approval of the City, which approval may be granted or denied in the City’s sole and absolute discretion. To the extent that a proposed buyer or operator does not require a specific use or development as a condition to its purchase of a portion of the Leased Property, then under no circumstances shall such proposed sale be deemed to be an Alternative Sale. The Trust shall deliver to the Director of Real Estate for the City (the “**Director**”) prior written notice of its intent to enter into an Alternative Sale (an “**Alternative Sale Notice**”), which Alternative Sale Notice shall include all relevant information regarding the economic terms of the proposed Alternative Sale. The Director shall have a period of seven (7) Business Days following its receipt of such Alternative

Sale Notice in which to either grant or deny its approval to such Alternative Sale. If the Director fails to deliver written notice to the Trust either granting or denying its approval to an Alternative Sale with such 7-day period, then the City shall be deemed to have approved such Alternative Sale. The Trust shall not consummate any Alternative Sale without the written approval, or deemed approval of the City in accordance with this Section 7.3(b).

(c) The Net Sales Proceeds of any sales pursuant to this Section 7.3 shall be distributed in accordance with the provisions of Section 7.4.

7.4 Proceeds from Future Sales of Property.

(a) Following the Initial Closing Date, and until such date as the ECE Funding Goal is achieved, the Trust shall be entitled to seventy-five percent (75%) of the Net Sales Proceeds from any sales of the Property, and the City shall be entitled to twenty-five percent (25%) of such Net Sales Proceeds. As used herein, “**Net Sales Proceeds**” shall mean the gross sale proceeds, less any brokerage commissions and closing costs, but expressly excluding any attorneys’ fees or other costs incurred by the City or the Trust in connection with any such sale.

(b) Following achievement of the ECE Funding Goal, Net Sales Proceeds from any sales of all or a portion of the Property shall be divided between the City and the Trust in accordance with the following order of priority:

(i) First, to the City and the Trust in equal shares until payment in full of the Clayton Planning Costs in excess of the CPC Cap (as hereinafter defined), if any, and the City Planning Costs; then

(ii) Second, 100% to the City until the City shall have been reimbursed for the full amount of (I) the Acquired Property Purchase Price, (II) all Lease Payments made by the City, (III) any Purchase Option Price paid by the City, and (IV) any Accelerated Payment made by the City; then

(iii) Third, with respect to any Net Sales Proceeds received prior the Outside Date, 50% to the City and 50% to the Trust; and then

(iv) Lastly, with respect to any Net Sales Proceeds received on or after the Outside Date, 100% to the City.

7.5 Future Sales of Property by City. The Trust’s rights pursuant to Section 7.4 to participate in the Net Sales Proceeds generated by future sales of the Acquired Property shall run with the land, and at the Initial Closing, Clayton shall record against the Acquired Property a memorandum of such rights (the “**Sale Participation Memo**”), which Sale Participation Memo shall be subject to the prior approval of the City, not to be unreasonably withheld, conditioned or delayed. To the extent that the City exercises the Lease Purchase Option or Accelerated Payment Option, those portions of the Leased Property acquired by the City pursuant thereto shall be deemed to be a part of the Acquired Property for purposes of this Section 7.5. At the applicable Subsequent Closing, the Trust shall record against such portions of the Leased

Property a Sale Participation Memo in the same form as the Sale Participation Memo recorded at the Initial Closing.

7.6 Survival. The provisions of this Article VII shall survive Closing.

ARTICLE VIII
ECE FUNDING GOAL

8.1 The aggregate consideration for the purchase and sale, lease, and future sale transactions pursuant to this Agreement shall be an amount equal to the sum of (i) Twenty-Four Million and No/100 Dollars (\$24,000,000.00), based upon the value of the U.S. Dollar on January 15, 2019, plus (ii) the Clayton Planning Costs up to a total of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00) (the “**CPC Cap**”) (collectively, the “**ECE Funding Goal**”). In order to calculate progress toward the ECE Funding Goal, all payments of the Acquired Property Purchase Price, the Lease Payments, the Lease Option Price (if any), the Accelerated Payment (if any), and any Net Sales Proceeds received by the Trust shall be discounted from the date of receipt back to January 15, 2019 at a discount rate of four percent (4.0%), as if such amounts were received on January 15, 2019 (collectively, as discounted, the “**Discounted Payments**”). Notwithstanding anything herein to the contrary, the Acquired Property Purchase Price shall not be discounted for purposes of calculating the Discounted Payments countable toward the ECE Funding Goal, and instead, such amount shall be counted at its face value.

8.2 The City shall have the option (the “**Accelerated Payment Option**”), exercisable upon no less than ten (10) days’ prior written notice, to make a payment to the Trust in an amount equal to the positive difference between the ECE Funding Goal and the sum of all Discounted Payments received by the Trust as of the date of the City’s exercise of the Accelerated Payment Option (the “**Accelerated Payment**”).

8.3 Once the Trust receives Discounted Payments equal to the ECE Funding Goal, the Trust shall convey to the City any remaining portions of the Leased Property owned by the Trust, the City shall have no further obligations to make payments to the Trust with respect to Lease Payments, the Lease shall terminate, and the Trust will have no further rights with respect to the planning process under Article IV; provided, however, that the Trust shall continue to share in proceeds from any future sales of the Property as provided in Section 7.4. Notwithstanding any term or provision of this Agreement to the contrary, after the ECE Funding Goal has been met, the City shall have no obligation to market, list, sell, or offer any remaining portion of the Property at any price, to any particular party or for any particular purpose.

8.4 From time to time, upon written request by the City, the Trust shall provide an accounting of the total amount of the ECE Funding Goal, together with all Discounted Payments received as of the date of the City’s request, along with a reasonable breakdown substantiating the calculation of such amounts.

ARTICLE IX
CONDITION OF PROPERTY

The City and Clayton each hereby acknowledge that the interests in the Property contemplated in this Agreement will be transferred based solely upon each Parties independent inspection and investigation of the Property and that such transfers shall be made on an “AS IS” and “WITH ALL FAULTS” basis based upon the condition of the Property as of the date of this Agreement, subject to reasonable wear and tear and loss by fire or other casualty or condemnation from the date of this Agreement until the applicable Closing. The Parties acknowledge that neither Party or its consultants or agents have made any representations or warranties of any kind upon which the other Party is relying as to any matters concerning the Property, including, but not limited to, (i) the land, and any improvements, any personal property, (ii) the existence or nonexistence of any hazardous substances, (iii) economic projections or market studies concerning the Property, (iv) any development rights, taxes, bonds, covenants, conditions and restrictions affecting the Property, (v) water or water rights, (vi) topography, drainage, soil, subsoil of the Property, (vii) the utilities serving the Property (viii) zoning, environmental, building or other laws, rules or regulations affecting the Property, (ix) the development, entitlements, benefits or other rights in connection with the development of the Property, (x) the obligations, restrictions, limitations, feasibility or other requirements in connection with the development of the Property, (xi) the current or future real estate tax liability, assessment or valuation of the Property, (xii) the potential qualification of the Property for any benefits conferred by any laws whether for subsidies, special real estate tax treatment, insurance, mortgages or any other benefits, whether similar or dissimilar to those enumerated, (xiii) the ability to obtain a change in the zoning or a variance in respect to the non-compliance of the Property, if any, with zoning laws, (xiv) the nature and extent of any right-of-way, easement, lease, possession, lien, encumbrance, license, reservation, condition, declaration, covenant or otherwise, (xv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Property from any source, including, without limitation, any government authority or any lender, (xvi) any matters excepted on the Title Commitment, (xvii) the current or future use of the Property, (xviii) the present and future condition and operating state of any personal property and the present or future structural and physical condition of any improvements, their suitability for rehabilitation or renovation, or the need for expenditures for capital improvements, repairs or replacements thereto, and (xix) the actual or projected income or operating expenses of the Property. NEITHER PARTY MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PROPERTY. The Party’s make no representation that the Property complies with Title III of the Americans with Disability Act or any fire codes or building codes. The Parties hereby release each other from any and all liability in connection with any claims, and the Parties each hereby agree not to assert any claims, for contribution, cost recovery or otherwise, against each other relating directly or indirectly to the existence of hazardous substances on, or environmental conditions of, the Property.

ARTICLE X
MISCELLANEOUS

10.1 Time is of the Essence. It is understood and agreed between the Parties that time is of the essence hereof, and all the agreements herein contained shall be binding upon and for the benefit of each party's successors and permitted assigns. If any date set forth in this Agreement for the delivery of any document or the happening of any event should, under the terms hereof, fall on a day that is a Saturday, Sunday, legal holiday or day on which banking institutions are generally authorized or obligated by applicable law to close in the state of Colorado, then such date shall be extended automatically to the next succeeding day that is not a Saturday, Sunday, legal holiday or day on which banking institutions are generally authorized or obligated by applicable law to close in the state of Colorado (a "**Business Day**").

10.2 Agreement as Complete Integration; Amendments. This Agreement, together with the documents executed and delivered in connection with each Closing, is intended as to the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendatory or other agreement executed by the Parties.

10.3 Subject to Local Laws; Venue. Each and every term, provision, and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and Ordinances of the City and County of Denver, and regulations enacted 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 hereby expressly incorporated into this Agreement as if fully set out herein by this reference. This Agreement is made, shall be deemed to be made, and shall be construed in accordance with the laws of the State of Colorado. Venue for any action arising under this Agreement or any amendment or renewal shall lie in the District Court in and for the City and County of Denver, Colorado.

10.4 Reasonableness of Consent or Approval. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

10.5 Notices. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the Parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph. All notices which are mailed shall be deemed to have been received three (3) Business Days after deposit in the United States mail.

If to the City: Mayor
 Mayor's Office
 City and County Building
 1437 Bannock Street, Room 350

Denver, CO 80202

With copies to: Denver City Attorney's Office
201 West Colfax Avenue, Dept. 1207
Denver, CO 80202

and

Director of Real Estate
201 W. Colfax Avenue, Dept. 1010
Denver, CO 80202

If to the Trust: Clayton Early Learning
3801 Martin Luther King Boulevard
Denver, CO 80205
Attn: Executive Director

and

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, Colorado 80202
Attn: Bruce A. James

10.6 Section Headings. The section headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular sections to which they refer.

10.7 Third-Party Beneficiary. The Parties intend that this Agreement shall create no third-party beneficiary interest except for an assignment pursuant to this Agreement. The Parties are not presently aware of any actions by them or any of their authorized representatives which would form the basis for interpretation construing a different intent, and in any event expressly disclaim any such acts or actions, particularly in view of the integration of this Agreement.

10.8 No Personal Liability. No elected official, director, officer, agent or employee of the City or any director, officer, employee or personal representative of the Trust shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

10.9 Conflict of Interest by City Officer. The Trust represents that to its knowledge, no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

10.10 No Discrimination in Employment. In connection with the performance of any work required under this Agreement, the Trust agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts entered into in conjunction with this Agreement.

10.11 Subject to Council Approval. This Agreement is subject to the approval of the City Council in accordance with the provisions of the City Charter, and this Agreement shall not take effect until its final approval by City Council, and until signed by all appropriate City officials, including the Mayor, the Clerk and Recorder, the Manager of Finance and the Auditor. Notwithstanding the foregoing, upon satisfaction of the foregoing requirements, this Agreement shall be effective as of the Effective Date.

10.12 Appropriation. All obligations of the City under and pursuant to this Agreement for the payment of money are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City.

10.13 Severability. The promises and covenants contained herein are several in nature. Should any one or more of the provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provision of this Agreement.

10.14 Electronic Signatures and Electronic Records. The Trust consents to the use of electronic signatures by 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; provided, however, that to the extent the Office of the Recorder of the City and County of Denver requires any recordable documents to be executed in a manner other than an electronic signature for purposes of complying with recording requirements, the City agrees to execute such documents in the manner required by the Office of the Recorder of the City and County of Denver. The Parties agree not to deny the legal effect or enforceability of the 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, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

10.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but of all which shall together constitute one and the same document.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

THE TRUST:

The George W. Clayton Trust, a Colorado Trust

By: _____

Name: _____

Title: _____

[signatures continue on following page]

ATTEST:

CITY AND COUNTY OF DENVER

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

Michael B. Hancock, Mayor

NEED TO ADD FULL 5-AGENCY CITY SIGNATURE PAGE WITH BAR CODE

[end of signatures]

EXHIBIT A

LEGAL DESCRIPTION OF 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; 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

FORM OF TERMINATION AGENCY AGREEMENT

TERMINATION OF AGENCY AGREEMENT

THIS TERMINATION OF AGENCY AGREEMENT (this "Agreement") is made effective as of January 2, 2019 (the "Effective Date"), by and between THE GEORGE W. CLAYTON TRUST, a Colorado trust (the "Trust"), through its Trustee, CLAYTON EARLY LEARNING (f/k/a The Clayton Foundation) ("Clayton"), and THE CITY AND COUNTY OF DENVER (the "City" and, together with Clayton, the "Parties").

RECITALS

A. Clayton and the City are parties to that certain Agency Agreement dated October 13, 2000 (the "Agency Agreement"), pursuant to which the Trust, as the agent for the City, operates and controls an approximately 155-acre tract of real property known as the Park Hill Golf Course, as more particularly described on Exhibit A attached hereto (the "Property"); and

B. The Parties now desire to waive certain provisions of the Agency Agreement and terminate the Agency Agreement in accordance with the terms and provisions of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Clayton and the City agree as follows:

1. Incorporation of Recitals. The foregoing Recitals shall be incorporated and made a part of this Agreement as though fully set forth herein.

2. Termination of the Agency Agreement. Clayton and the City hereby agree that the Agency Agreement shall be terminated effective as of 5:00 p.m., Mountain Standard Time, on the Effective Date, including, without limitation, any obligations under Paragraph 9 of the Agency Agreement. As of the Effective Date, neither Clayton nor the City shall have any further obligations under the Agency Agreement.

3. General Provisions.

(a) Governing Law. This Agreement and all provisions hereunder shall be governed by and construed in accordance with the laws of the State of Colorado without reference to any conflict of law provisions.

(b) Complete Agreement. This Agreement embodies the entire agreement between the Parties hereto with regard to the termination of the Agency Agreement and

supersedes all previous agreements, negotiations, understandings and arrangements between the Parties, whether written or oral.

(c) Amendment. This Agreement may not be amended except in writing signed by both Parties.

(d) Benefit. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their successors and assigns.

(e) Counterparts; Facsimile. This Agreement may be executed in counterparts, each of which (or any combination of which) when signed by all of the Parties shall be deemed an original, but all of which when taken together shall constitute one agreement. Executed copies hereof may be delivered by telecopier and/or electronically in .pdf form and shall be deemed originals and binding upon the Parties hereto upon receipt, with actual originals to be promptly delivered.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

THE TRUST:

The George W. Clayton Trust, a Colorado Trust

By: _____

Name: _____

Title: _____

[signatures continue on following page]

ATTEST:

CITY AND COUNTY OF DENVER

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

Michael B. Hancock, Mayor

NEED TO ADD FULL 5-AGENCY CITY SIGNATURE PAGE WITH BAR CODE

[end of signatures]

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NORTHWEST ONE-QUARTER OF SECTION 30 A DISTANCE OF 2.96 FEET; THE FOLLOWING (3) COURSES:

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

EXHIBIT C

FORM OF LEASE

[FORM OF LEASE SUBJECT TO CITY AND TRUST APPROVAL AND WILL BE
ATTACHED WHEN APPROVED]

EXHIBIT D

LEGAL DESCRIPTION OF ACQUIRED PROPERTY

[TO BE INSERTED PURSUANT TO SECTION 4.3]