

**PURCHASE AND SALE AGREEMENT**  
(EC-78 REV1, EC-78A and EC-78R: Park Hill Golf Course)

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is entered, as of the date set forth on the City's signature page ("Effective Date"), between, on the one hand, the CITY AND COUNTY OF DENVER, a Colorado municipal corporation and home rule city ("City"), whose address is 1437 Bannock, Denver, Colorado 80202, and THE GEORGE W. CLAYTON TRUST, a Colorado Trust (the "Trust"), through its trustee, CLAYTON EARLY LEARNING, whose address is 3801 Martin Luther King Boulevard, Denver, Colorado 80205, and, on the other hand, the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. Section 32-9-101, *et seq.* ("RTD"), whose address is 1600 Blake Street, Denver, CO 80202.

13-0123

**WHEREAS**, RTD is building the East Corridor of the FasTracks Project; and

**WHEREAS**, a portion of the East Corridor construction and operation impacts the northwest and northern side of the Park Hill Golf Course located at 4141 East 35<sup>th</sup> Avenue, Denver, Colorado ("Park Hill Golf Course") through the reconstruction of portions of Colorado Boulevard, East 40<sup>th</sup> Avenue and Smith Road so that certain portions of the Park Hill Golf Course will have to be re-designed and reconstructed; and

**WHEREAS**, RTD wishes to acquire certain parcels of land needed for the above-mentioned street reconstruction which are part of the Park Hill Golf Course, which parcels are identified by RTD as EC-78 REV1, EC-78A and EC-78R, as legally described in **Exhibit A** to this Agreement; and

**WHEREAS**, the Park Hill Golf Course is an asset of, and subject to the George W. Clayton Trust, which is administered by its trustee Clayton Early Learning (formerly known as the Clayton Foundation); provided, however, that the Trust holds ownership of the Park Hill Golf Course as an agent for the City under an Agency Agreement entered on October 13, 2000, and recorded December 1, 2000 at reception number 2000175267, and effected through a Bargain and Sale Deed from the City to the Trust dated October 13, 2000, and recorded December 1, 2000, at reception number 2000175271, all in the Denver Clerk and Recorder's Office; and

**WHEREAS**, the Agency Agreement was approved and put into effect by means of an Order Providing Authority and Approval signed by the Probate Court of the City and County of Denver in Case No. 86 PR 1593, as part of the Probate Court's ongoing jurisdiction over the Trust, a copy of which Order is attached as Exhibit C to the Agency Agreement; and

**WHEREAS**, appraisals have been prepared by both sides, and arms-length negotiations have resulted in the fair and reasonable compensation and terms set forth in this Agreement; and

**WHEREAS**, the City and the Trust desires to support and accommodate RTD's land needs for the FasTracks Project, and RTD desires to support the re-design and reconstruction of the Park Hill Golf Course necessitated by the FasTracks Project.

**NOW THEREFORE**, for the amounts set forth herein and other good and valuable consideration, the Parties agree as follows:

1. **Purchase and Sale.** Subject to the terms and conditions of this Agreement including payment of all amounts required hereunder by RTD, the City and the Trust agree to sell and convey, and RTD agrees to purchase, the Property described by RTD as EC-78 REV1, EC-78A and EC-78R as legally described in **Exhibit A**, attached hereto and incorporated herein ("Property"). The Property shall be conveyed free and clear of the terms and conditions of the Agency Agreement, but subject to the terms and conditions of this Agreement. The City and the Trust shall convey the Property by a Quitclaim Deed, in the form attached hereto as **Exhibit B** and incorporated herein ("Deed"). RTD agrees to accept title and all other conditions of the Property in an AS IS, WHERE IS condition.

2. **RTD Payment.** RTD shall pay to the Trust a total of Nine Hundred Thirty-Five Thousand Dollars (\$935,000.00) ("RTD Payment") in good funds at Closing. The RTD Payment shall be deposited into and become an asset of the Trust.

3. **Closing.** The Closing shall occur on or before March 1, 2013, at a location acceptable to the City and Trust ("Closing Date"). The Closing Date may be extended only with the permission of the City and Trust, which permission is not likely to be granted due to time being of the essence under this Agreement.

4. **Possession.** RTD, the Trust and the City acknowledge and agree that it will take approximately three (3) months from the Closing Date for the Trust to have its design and construction team complete the re-design and re-construction of portions of the Park Hill Golf Course (collectively, the "Golf Course Reconstruction") necessitated by the loss of the Property and for Xcel to relocate some transmission towers (the "Xcel Relocation") in an easement along the new northerly edge of the Park Hill Golf Course adjoining Smith Road. In addition, the Trust's tenant, Evergreen Alliance Golf Limited, L.P. (the "Tenant"), needs to continue to have access to maintain the golf course and for its golfing customers to play through the Property. For these reasons, RTD agrees to forego taking possession of the Property until June 1, 2013, or until Golf Course Reconstruction and the Xcel Relocation are complete, whichever occurs earlier ("Possession Date"). In the unlikely event that the Closing Date of March 1, 2013, is extended, then the Possession Date of June 1, 2013, shall be extended an equivalent number of days. Until the Possession Date or any extension thereof, the Trust and the Tenant shall continue to have possession and use of the Property in substantially the same manner it has been historically used for golf course purposes, except and to the extent as limited by the Golf Course Reconstruction and the Xcel Relocation, and the Trust, the Tenant and their contractors shall have access to and use of the Property for the Golf Course Reconstruction and may allow Xcel to access the Property for the Xcel Relocation. RTD shall prepare and execute a temporary construction and use license (the "License"), substantially in the form of the license attached as **Exhibit C** and incorporated herein by reference, and RTD and the Tenant shall execute the License before or at Closing. If the Possession Date is to occur prior to June 1, 2013, the Trust will provide written notice to RTD as to the Possession Date, and the Trust, the Tenant and their contractors will vacate the Property prior to that Possession Date.

5. **Title Documents and Defects.** RTD will obtain, at its own cost, and complete its review of a current commitment to insure title of the Property (the "Title Commitment") prior to the Closing Date. RTD will be solely responsible for the cost of a subsequent title insurance policy (the "Title Policy"), if any. If RTD objects to any matter contained in the Commitment or any other encumbrance, encroachment or defect in title ("Title Defect(s)"), RTD shall immediately give the City's Director of the Division of Real Estate written notice thereof. Upon receipt of such notice, the City and the Trust may, in their sole discretion, elect to remove or cure the Title Defect(s) specified in the notice from RTD. If all such Title Defect(s) are not removed or cured prior to Closing Date, RTD may elect: (i) to accept title to the Property subject to the uncured Title Defect(s) ("Permitted Exceptions"); or (ii) to terminate this Agreement. Upon the giving of notice of RTD's intent to terminate, this Agreement shall become null and void and of no further force and effect.

6. **Pre-Closing Conditions.** RTD's obligation to purchase the Property is expressly conditioned upon the following:

a. **Investigation Period.** Beginning on the Effective Date, RTD shall have until no later than five (5) calendar days prior to Closing Date (the "Inspection Period"), in which to inspect the Property, and to review all matters affecting or relating to the environmental and physical condition of the Property, except that nothing more than a Phase I Environmental Assessment shall be performed. If as a result of such inspection, RTD finds the environmental or physical condition of the Property to be unsatisfactory, RTD shall have the right to terminate this Agreement by giving notice of the termination to the City and the Trust on or before the end of the Inspection Period. Upon the giving of such notice, this Agreement shall become null and void and of no further force and effect.

b. **The City's and the Trust's Obligations.** The City and the Trust shall have substantially performed all of its agreements and obligations contained in this Agreement.

c. **Consents and Approval.** Approval of the Denver City Council and execution of this Agreement by all appropriate City officials and approval of the Board of Trustees for the Clayton Trust and execution of this Agreement by the Trust's President and Chief Executive Officer shall be required before this Agreement is legally binding. The City and the Trust shall have delivered to RTD evidence of such approval of this Agreement along with a fully executed Agreement and Deed at Closing. Written consent of the State Attorney General's Office and/or the Probate Court for the City and County of Denver may be required for this Agreement. If such consent is required, the City and the Trust will provide evidence of such consent prior to or on the Closing Date.

7. **Representations of the City and the Trust.** The City's Director of the Division of Real Estate and the President and Chief Executive Officer of the Trust, to the best of their knowledge, without investigation, represent to RTD as follows:

a. **No Undisclosed Litigation.** There are no actions, suits or proceedings pending against the City or the Trust or the Property which might adversely affect the Property.

b. **Compliance with Law.** The City and the Trust have not received any notice of any violation of any law, rule, regulation or order with respect to the Property.

c. **Condemnation.** There are no presently pending or threatened condemnation actions with respect to any part of the Property, nor has the City or the Trust received any notice of any condemnation actions being contemplated.

d. **Authority.** The City and the Trust have full power and authority to enter into this Agreement, subject to any required consents of the State Attorney General's Office and/or the Probate Court for the City and County of Denver, and consummate the transaction contemplated hereunder and such transaction has been duly authorized.

8. **The City's and the Trust's Obligations at Closing.** At the Closing, the City and the Trust shall deliver the Deed, duly executed and acknowledged by both, conveying fee simple title to the Property to RTD subject to the terms and conditions of this Agreement; along with such standard affidavits, undertakings or other closing documents acceptable to the City and the Trust as may be reasonably required, but in no event shall such affidavits or undertakings include indemnification or hold harmless provisions applicable to the City or the Trust.

9. **RTD's Obligation at Closing.** At Closing, RTD shall deliver the RTD Payment in good funds made payable to the George W. Clayton Trust; along with such standard affidavits, undertakings or other closing documents acceptable to RTD as may be reasonably required, but in no event shall such affidavits, undertakings or other closing documents include indemnification or hold harmless provisions made by RTD.

10. **Closing Costs.** RTD shall be responsible for all closing costs.

11. **Prorations.** Real property taxes (if any), water and sewer rents and charges, other like and similar municipal taxes and charges shall be apportioned and adjusted between the Trust and RTD as of 11:59 p.m. (Denver, Colorado Time) the day preceding the Closing Date.

12. **Default Remedies.**

a. In the event of a default by the City or the Trust, RTD may elect to terminate this Agreement by written notice delivered to the City and the Trust at or prior to the Closing Date and thereafter neither the City or the Trust nor RTD shall have any obligations to the other under this Agreement, or RTD may seek specific performance. RTD expressly waives its rights to seek all damages, whether actual, consequential or punitive, direct or indirect against the City or the Trust.

b. In the event of a default by RTD, the City and the Trust may elect to terminate this Agreement by written notice delivered to RTD at or prior to the Closing Date and thereafter neither RTD nor the City or the Trust shall have any obligations to the other under this Agreement, or the City and the Trust may seek specific performance. The City and the Trust expressly waive their respective rights to seek all damages, whether actual, consequential or punitive, direct or indirect against RTD.



Division of Real Estate, Department of Finance  
201 W. Colfax, Dept. 1012  
Denver, Colorado 80202  
Attention: Jeff Steinberg

If to the Trust: Clayton Early Learning, Trustee of  
The George W. Clayton Trust  
3801 Martin Luther King Boulevard  
Denver, Colorado 80205  
Attention: Charlotte Brantley

b. **Entire Agreement and No Third Party Beneficiaries.** This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein. The parties hereto do not intend to confer any benefit hereunder on any person other than the parties hereto.

c. **Amendment.** This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby in the same formality as originally executed.

d. **Governing Law.** 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, 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 be in the City and County of Denver, Colorado.

e. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns.

f. **Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws other than a provision which if invalidated would result in a failure of consideration, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

g. **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

h. **Waivers.** No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

i. **Time of Essence.** The City, the Trust and RTD hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by any party shall constitute a material breach of and a non-curable default under this Agreement by the party so failing to perform.

j. **No Joint Venture.** This Agreement shall not create a partnership or joint venture relationship between RTD and the City or the Trust.

k. **Assignment.** No assignments of this Agreement are allowed.

l. **No Personal Liability.** No elected official, director, officer, agent or employee of any party nor any director, officer, employee or personal representative of any party shall be charged personally or held contractually liable by or to any 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.

m. **Conflict of Interest by City Officers.** RTD represents that to the best of its information and belief 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.

n. **No Discrimination in Employment.** In connection with the performance of work under this Agreement, RTD 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, 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.

o. **No Merger.** The parties intend that the terms of this Agreement shall survive Closing and shall not be merged into the Deed.

p. **Annual Appropriations.** All obligations of the City under and pursuant to this Agreement are subject to prior appropriation of monies expressly made by the Denver City Council for the purposes of this Agreement and encumbered and paid into the Treasury of the City and County of Denver.

q. **City Police Powers.** Nothing in this Agreement shall amend or modify any applicable ordinance, rule or regulation of the City and County of Denver, or limit the exercise of the police powers of the City and County of Denver.

r. **Further Assurances.** After Closing, the City, the Trust and RTD each will execute any instruments necessary to confirm, assure or validate any of the transactions contemplated by this Agreement, whenever reasonably requested by the other party.

s. **Electronic Signatures and Electronic Records.** RTD and the Trust consent to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder (except the Deed), 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 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.



Contract Control Number: FINAN-201309675-00

Contractor Name: Regional Transportation District

By: Richard F. Clarke

APPROVED AS TO LEGAL FORM FOR THE  
REGIONAL TRANSPORTATION DISTRICT.

Name: RICHARD F. CLARKE  
(please print)

BY: W. Craban  
LEGAL COUNSEL

Title: Assistant General Manager, Capital Programs  
(please print)

ATTEST: [if required]

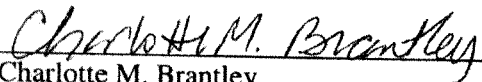
By: \_\_\_\_\_

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

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



**The GEORGE W. CLAYTON TRUST,**  
by its Trustee, **CLAYTON EARLY LEARNING**  
(formerly Clayton Foundation)

  
Charlotte M. Brantley  
President and Chief Executive Officer

SIGNATURE PAGE



**Contract Control Number:** FINAN-201309675-00

**Contractor Name:** Regional Transportation District

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

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**EXHIBIT "A"**  
**PARCEL NO. EC-78A**  
**Date: September 10, 2010**  
**DESCRIPTION**

Parcel No. EC-78A of the RTD East Corridor Commuter Rail Project, containing 19,161 square feet, (0.440 Acres), being a portion of a tract of land described at Reception No. 2000175271 recorded December 1, 2000, recorded in the City and County of Denver Clerk and Recorder's Office, located in the Northeast Quarter of the Southwest Quarter of Section 19, 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 Center 1/4 Corner of said Section 19;  
THENCE S11°51'39"W a distance of 243.10 feet to the Southerly right-of-way line of Smith Road, being also the Northeast corner of said tract of land described at Reception No. 2000175271, and to the **POINT OF BEGINNING**;  
THENCE S00°00'30"E coincident with the Westerly right-of-way line of Dahlia Street a distance of 84.23 feet;  
THENCE N15°10'31"W a distance of 45.07 feet;  
THENCE N47°21'12"W a distance of 22.71 feet;  
THENCE S89°16'34"W a distance of 81.19 feet;  
THENCE N67°42'06"W a distance of 49.23 feet;  
THENCE N78°41'01"W a distance of 260.34 feet;  
THENCE N81°57'35"W a distance of 369.97 feet;  
THENCE N02°54'20"E non-tangent with the following described curve a distance of 3.26 feet;  
THENCE the following two (2) courses coincident with the northerly line of said tract of land described at Reception No. 2000175271, being also the Southerly right-of-way line of Smith Road:

- 1) Along the arc of a curve to the right, having a central angle of 6°46'50", a radius of 5588.94 feet, a chord bearing of S83°18'36"E a distance of 661.03 feet, and an arc distance of 661.42 feet;
- 2) THENCE S79°54'23"E non-tangent with the last described curve a distance of 122.02 feet to the **POINT OF BEGINNING**.

Said Parcel No. EC-78A containing 19,161 square feet, (0.440 Acres), more or less.

**Basis of Bearings:** All bearings are based on the line connecting "D 394" to "DR B" being a grid bearing of N77°31'03"E as obtained from a Global Positioning System (GPS) survey based on National Geodetic Survey (NGS) data. Said grid bearing is NAD 83 (CONUS), UTM Zone 13 North. "D 394" (PID KK1292) is a NGS mark monumented with a 3.5 inch disk set flush in concrete bridge abutment, stamped in part "NGS D 394 1983". "DR B" (PID DH9129) is a NGS mark monumented with a flange encased stainless steel rod in 5 inch logo box and cap surrounded by concrete collar, flange stamped in part "DR B 807".

Prepared by:  
Kenneth W. Carlson PLS 24942  
For and on behalf of Jacobs Engineering Group, Inc.  
707 17<sup>th</sup> Street #2300  
Denver, CO 80202  
303.820.5240

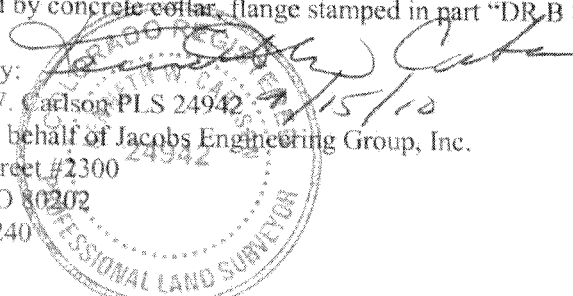


EXHIBIT "A"  
PARCEL NO. EC-78 REVI  
Date: OCTOBER 12, 2011  
DESCRIPTION



Parcel No. EC-78 REVI of the RTD East Corridor Commuter Rail Project, containing 37.648 square feet, (0.864 Acres), being a portion of a tract of land described at Reception No. 2000175271 recorded December 1, 2000 in the City and County of Denver Clerk and Recorder's Office, located in the Southwest Quarter of Section 19, 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 said Section 19 (a found 3-1/4" aluminum cap in range box stamped "COLO DEPT OF HIGHWAYS T3S S24 S19 S25 S30 1990 PLS 11434") WHENCE the South Quarter Corner of said Section 19 (a found 3-1/4" aluminum cap in range box stamped "T3S R67W 1/4 S19 S30 1998 LS 27011") bears N89°48'09"E a distance of 2489.61 feet (basis of bearing – assumed); THENCE N02°50'49"E a distance of 1236.00 feet to the easterly right-of-way line of Colorado Boulevard and the to the **POINT OF BEGINNING**;

THENCE the following three (3) courses coincident with the northwesterly, northerly and westerly lines of said tract of land described at Reception No. 2000175271:

- 1) N45°04'08"E a distance of 91.92 feet;
- 2) S89°56'06"E a distance of 290.00 feet;
- 3) N00°03'52"E a distance of 86.16 feet;

THENCE S89°56'08"E a distance of 31.76 feet;

THENCE N80°50'28"E a distance of 34.06 feet;

THENCE N70°22'51"E a distance of 32.51 feet;

THENCE N60°04'16"E a distance of 24.87 feet;

THENCE S89°56'08"E coincident with the northerly line of said tract of land a distance of 107.63 feet;

THENCE S34°24'51"W a distance of 59.92 feet;

THENCE S53°07'48"W a distance of 77.66 feet;

THENCE S63°55'41"W a distance of 91.35 feet;

THENCE S88°51'08"W a distance of 100.00 feet;

THENCE N00°03'54"E a distance of 13.50 feet;

THENCE N89°57'09"W a distance of 242.00 feet;

THENCE S45°04'08"W a distance of 56.98 feet;

THENCE S00°03'52"W a distance of 190.25 feet;

THENCE S03°52'42"W a distance of 150.39 feet;

THENCE S00°03'52"W a distance of 239.85 feet;

THENCE S03°23'35"W a distance of 310.00 feet;

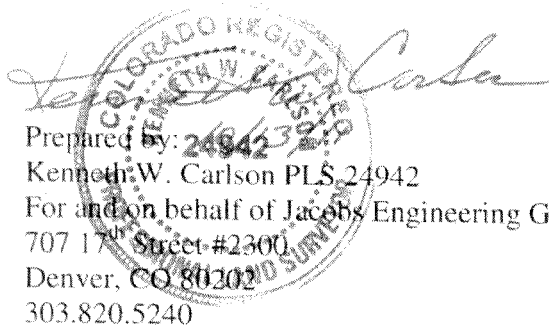
THENCE N89°56'08"W a distance of 2.00 feet;

THENCE the following three (3) courses coincident with the westerly line of said tract of land:

**EXHIBIT "A"**  
**PARCEL NO. EC-78 REVI**  
**Date: October 12, 2011**  
**Page 2 of 2**

- 1) N00°03'52"E a distance of 550.00 feet;
- 2) N03°52'42"E a distance of 150.38 feet;
- 3) N00°03'52"E a distance of 174.95 feet to the **POINT OF BEGINNING.**

Containing 37,648 square feet, (0.864 Acres), more or less.



Prepared by: 24942  
Kenneth W. Carlson PLS 24942  
For and on behalf of Jacobs Engineering Group Inc.  
707 17<sup>th</sup> Street #2300  
Denver, CO 80202  
303.820.5240

**EXHIBIT "A"**  
**PARCEL NO. EC-78R**  
**Date: February 18, 2011**  
**DESCRIPTION**


Parcel No. EC-78R of the RTD East Corridor Commuter Rail Project, containing 2,476 square feet, (0.057 Acres), being a portion of a tract of land described at Reception No. 2000175271 recorded December 1, 2000 in the City and County of Denver Clerk and Recorder's Office, located in the Southwest Quarter of Section 19, 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:

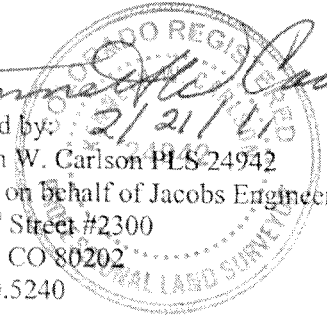
**COMMENCING** at the Southwest Corner of said Section 19;  
THENCE N16°24'55"E a distance of 1474.15 feet to a point of intersection of a Westerly line of said tract of land with the Southerly right-of-way line of 40<sup>th</sup>, Albion Street Subdivision Filing Number 1, as recorded at Reception Number 2003197552 on September 19, 2003 in the City and County of Denver Clerk and Recorder's Office, said point being the **POINT OF BEGINNING**;

THENCE S89°56'08"E coincident with the Easterly extension of said Southerly right-of-way line a distance of 117.53 feet;  
THENCE S60°04'16"W a distance of 24.87 feet;  
THENCE S70°22'51"W a distance of 32.51 feet;  
THENCE S80°50'28"W a distance of 34.06 feet;  
THENCE N89°56'08"W a distance of 31.76 feet to a point lying on said Westerly line of a tract of land described at Reception Number 2000175271;  
THENCE N00°03'52"E coincident with said Westerly line a distance of 28.84 feet to the **POINT OF BEGINNING**.

Said Parcel No. EC-78R containing 2,476 square feet, (0.057 Acres), more or less.

**Basis of Bearings:** All bearings are based on the line connecting "D 394" to "DR B" being a grid bearing of N77°31'03"E as obtained from a Global Positioning System (GPS) survey based on National Geodetic Survey (NGS) data. Said grid bearing is NAD 83 (CONUS), UTM Zone 13 North. "D 394" (PID KK1292) is a NGS mark monumented with a 3.5 inch disk set flush in concrete bridge abutment, stamped in part "NGS D 394 1983". "DR B" (PID DH9129) is a NGS mark monumented with a flange encased stainless steel rod in 5 inch logo box and cap surrounded by concrete collar, flange stamped in part "DR B 807".

  
Prepared by: 2/21/11  
Kenneth W. Carlson PLS 24942  
For and on behalf of Jacobs Engineering Group, Inc.  
707 17<sup>th</sup> Street #2300  
Denver, CO 80202  
303.820.5240



**EXHIBIT B  
QUITCLAIM DEED**

**THIS DEED**, made this \_\_\_ day of \_\_\_\_\_, 2013, between the **CITY AND COUNTY OF DENVER, a Colorado municipal corporation**, whose legal address is 1437 Bannock Street, Room 350, Denver, Colorado 80202 and the **GEORGE W. CLAYTON TRUST** through its trustee **CLAYTON EARLY LEARNING** (formerly Clayton Foundation) whose legal address is 3801 Martin Luther King Boulevard, Denver, Colorado 80205 (“grantors”) and **REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado**, whose legal address is 1600 Blake Street, Denver, Colorado 80202-1399 (“grantee”).

**WITNESS**, that the grantors, for and in consideration of the sum of NINE HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$935,000.00) and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM unto the grantee, its heirs, successors and assigns forever, all the right, title, interest, claim and demand which the grantors have in and to the real property, together with improvements, if any, situate, lying and being in the City and County of Denver and State of Colorado, described as follows:

LEGAL DESCRIPTION SET FORTH IN **EXHIBIT A**  
ATTACHED HERETO AND INCORPORATED HEREIN.

**TO HAVE AND TO HOLD** the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the grantors, either in law or equity, to the only proper use, benefit and behoof of the grantee, its heirs and assigns forever.

**TO HAVE AND TO HOLD**, without warranty or representation of the grantors, free and clear of the terms and conditions of the Agency Agreement entered by the grantors on October 13, 2000, and recorded December 1, 2000 at reception number 2000175267 of the Denver Clerk and Recorder’s Office and free and clear of the restrictions of the Clayton Trust.

**IN WITNESS WHEREOF**, the grantors have executed this deed on the date set forth above.



**ATTEST:**

**CITY AND COUNTY OF DENVER**

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

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

**APPROVED AS TO FORM:**

Douglas J. Friednash  
City Attorney

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

State of Colorado                    )  
  ) s s.  
City and County of Denver        )

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2013, by Michael J. Hancock, as the Mayor of the City and County of Denver.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**The GEORGE W. CLAYTON TRUST,**  
by its Trustee, **CLAYTON EARLY LEARNING**  
(formerly Clayton Foundation)

Attestation:

\_\_\_\_\_  
Charlotte M. Brantley  
President and Chief Executive Officer

STATE OF COLORADO                    )  
  ) s s.  
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2013, by Charlotte M. Brantley as President and Chief Executive Officer of Clayton Early  
Learning, the trustee for the George W. Clayton Trust.

Witness my hand and official seal.

My commission expires:

\_\_\_\_\_  
Notary Public

***[SAME LEGAL DESCRIPTION AS ATTACHED AS EXHIBIT A TO THE  
PURCHASE & SALE AGREEMENT.]***

**TEMPORARY CONSTRUCTION AND USE LICENSE  
(RTD Licensor)**

THIS **TEMPORARY CONSTRUCTION AND USE LICENSE** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (this "License"), by and between the Regional Transportation District, a political subdivision of the State of Colorado ("RTD") and, Evergreen Alliance Golf Limited, L.P. whose address is 4851 LBJ Freeway, Suite 600, Dallas, TX 75244 (the "Licensee") (RTD and the Licensee are referred to herein individually as a "Party" and collectively, as the "Parties").

Subject to and in accordance with the terms, covenants and conditions contained in this License, and in consideration of the mutual agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**I. PREMISES.** RTD owns or controls a parcel of land in the City and County of Denver, Colorado, Premises which Licensee desires to use Premises(the "Premises") for the purposes indicated herein. The Premises are indicated on **Exhibit A** attached hereto and incorporated herein by this reference.

**II. GRANT.** RTD hereby grants a revocable, nonexclusive, nontransferable, temporary license to Licensee its contractors, agents and assigns to use the Premises subject to and in accordance with the terms, covenants and conditions of this License.

**III. TERM.** The term of this License shall commence at midnight on March 1, 2013 and expire at midnight on May 31, 2013, unless sooner terminated (the "Term").

**IV. IMPROVEMENTS.** RTD hereby grants permission to Licensee to use, on a temporary basis for the Term of this License, the Premises to redesign and re-construct the Park Hill Golf Course (the "Golf Course Reconstruction") and use of the Premises in substantially the same manner it has been historically used for golf course purposes, except and to the extent as limited by the Golf Course Reconstruction and by relocation by Xcel of certain transmission towers (the "Xcel Relocation") in an easement along the new northerly edge of the Park Hill Golf Course adjoining Smith Road. The Golf Course Reconstruction shall not interfere with existing utilities or other facilities installed on or adjacent to the Premises. RTD shall retain all other rights in and usage of the Premises not inconsistent with the reasonable enjoyment of the above grant or with the Purchase and Sale Agreement executed by RTD, the Trust and the City and County of Denver on \_\_\_\_\_, 2013. Permission for the Licensee or its contractors to traverse the property of any other property owners or interest holders is the sole responsibility of Licensee. Procurement of any applicable licenses, regulatory permission or consent is the sole responsibility of Licensee. All of the limitations and obligations imposed upon the Licensee pursuant to this License and all rights reserved to RTD hereunder shall apply with equal force and effect to any contractors and subcontractors performing any activities on behalf of Licensee on the Premises. Licensee agrees to maintain the Premises in a clean, neat and sanitary condition, and to properly and promptly dispose of all litter and debris. Licensee shall remove all litter and debris resulting from Golf Course Reconstruction from the Premises.

**V. HAZARDOUS SUBSTANCES.** Licensee shall not use, produce, treat, generate, release, discharge, store, transport, or cause to be transported, or dispose of any hazardous substances at, on, under, in, or about the Premises in violation of applicable law. The term "hazardous substances" shall mean any toxic or hazardous or noxious substance, material, or waste which

Exhibit C

is regulated by any local government authority having jurisdiction over the Premises, the State of Colorado, or the United States government.

**VI. INSURANCE.** Licensee shall obtain and maintain at its sole cost and expense public liability insurance with limits of not less than \$2,000,000 per occurrence in which RTD is named as an additional insured. Licensee shall furnish to RTD, in a form satisfactory to RTD, a copy of said policy or a certificate indicating that such insurance has been issued.

**VII. TOOLS AND EQUIPMENT.** Licensee shall promptly remove all tools, equipment and materials from the Premises upon completion of Golf Course Reconstruction and restore the Premises to substantially the same state and condition as when entered upon.

**VIII. SURRENDER.** At the expiration or earlier termination of this License, Licensee shall promptly quit and surrender the Premises in a condition deemed to be reasonably satisfactory to RTD. If all or any portion of Premises is not vacated at the end of the Term, RTD shall be and is hereby authorized to remove from the Premises and store, at the expense of Licensee, all goods, wares, merchandise and property of any kind or description (collectively, the "Goods") which may be then occupying all or any portion of the Premises. All removal and/or storage charges must be paid to RTD by Licensee before the Goods will be released to Licensee. In any event, RTD may dispose of any the Goods as it sees fit after the expiration of thirty (30) calendar days from the end of the Term. RTD shall not be liable for any damage to or loss of the Goods sustained either during the removal, storage and/or disposal of same and RTD is hereby expressly released from any and all claims for any such loss or damage. This Section shall survive expiration or earlier termination of this License.

**IX. ASSIGNMENT AND SUBLETTING.** This License may not be assigned by Licensee and Licensee shall not sublet the Premises, or any part thereof, or any interest therein, without the prior written consent of RTD. No assignment or subletting shall release Licensee from any responsibility or liability hereunder. Any subletting or assignment in violation of this Section shall be null and void.

**X. INDEMNIFICATION AND WAIVER.** Licensee shall hold harmless and indemnify RTD and its officers, directors, agents, affiliates, insurers and employees (the "Indemnified Parties") from and against any and all losses, damages, liens, claims, demands, debts, obligations, liabilities, fines, penalties, suits or actions, judgments, and costs of any kind whatsoever (including reasonable attorneys' fees) related to the use of the Premises, caused by any act, omission or neglect of the Licensee or Licensee's employees, guests, invitees or assignees. Licensee, hereby waives and releases all claims against the Indemnified Parties, with respect to all matters for which RTD has disclaimed liability pursuant to this License. This Section shall survive expiration or earlier termination of this License.

**XI. BREACH.** Any failure of Licensee to fulfill any of Licensee's obligations hereunder shall constitute a breach of this License and subject Licensee to immediate termination of the License, as well as damages and costs, including attorneys' fees.

**XII. APPLICABLE LAWS; VIOLATION.** Licensee shall use and occupy the Premises in a safe and careful manner and shall comply with all applicable municipal ordinances of the City and County in which the Premises is situated, the laws of the State of Colorado and of the United States of America, and all other rules of governmental authorities as may be in force and effect during the Term. If at any time the use of the Premises by Licensee violates said applicable

Exhibit C

ordinances or laws, Licensee shall cease and desist from continuing such use and shall surrender the Premises upon demand by RTD.

**XIII. 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 Section:

**Licensor:** Regional Transportation District  
Manager of Real Property

1560 Broadway, Suite 650  
Denver, CO 80202

**Licensee:** Evergreen Alliance Golf Limited,  
L.P. c/o Park Hill Golf Course  
Attention: Josh Pommer, General Manager  
4141 East 35<sup>th</sup> Avenue  
Denver, CO 80207  
(303) 333-5411

**with a copy to:**

General Counsel  
1600 Blake Street  
Denver, CO 80202

**XIV. ENTIRE AGREEMENT.** This License represents the entire agreement between the Parties regarding the Premises.

**XV. AMENDMENTS TO LICENSE.** No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by the RTD and Licensee.

**XVI. WAIVER, SEVERABILITY.** The failure of any Party to exercise any right hereunder, or to insist upon strict compliance by the other Party, shall not constitute a waiver of either Party's right to demand strict compliance with the terms and conditions of this License. If any provision of this License is held to be unenforceable for any reason, its unenforceability shall not affect the remainder of this License, which shall remain in full force and effect and enforceable in accordance with its terms.

**XVII. GOVERNING LAW AND LEGAL EFFECT.** This License shall be interpreted and enforced according to the laws of the State of Colorado. This License runs with the land and the benefits and burdens thereof inure to the benefit of and without further action become binding upon the Parties and their respective successors and assigns.

Exhibit C

IN WITNESS WHEREOF, the Parties have executed this License:

**LICENSOR:**

**REGIONAL TRANSPORTATION DISTRICT**

By: \_\_\_\_\_ Date \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_ Date \_\_\_\_\_  
Lori L. Graham  
Associate General Counsel

**LICENSEE:**

Evergreen Alliance Golf Limited, L.P.

By: \_\_\_\_\_ Date \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_