

COMPATIBLE USAGE AGREEMENT
(Fleming House in Platt Park)

THIS COMPATIBLE USAGE AGREEMENT ("Agreement") is made and entered this ____ day of _____, 2010 ("**Effective Date**") by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation, and **THE PARK PEOPLE**, a Colorado nonprofit corporation, whose address is 715 S. Franklin Street, Denver, Colorado 80209, and jointly referred to herein as the "**Parties**" and individually as a "**Party**".

RECITALS

A. The City and County of Denver (the "**City**") owns and operates, through its Department of Parks and Recreation, the James A. Fleming House situated within Platt Park and addressed as 1510 South Grant Street in Denver (the "**Fleming House**"); and

B. The Fleming House, built in 1882, has fallen into some disrepair and has been used substantially less over the years; and

C. Section 2.4.7 of the City Charter allows for certain historic structures located in a designated park, not otherwise suitable for a park use, to be used for a compatible, non-park use, subject to the criteria and procedures set forth in Article V of Chapter 39 of the Denver Revised Municipal Code ("**CNP Process**"); and

D. The Fleming House is located in a designated park, Platt Park, and, by Ordinance No. 654, Series of 1973, has been designated as a structure for preservation pursuant to Article I of Chapter 30 of the Denver Revised Municipal Code; therefore making Fleming House a structure qualified to come under the CNP Process; and

E. In accordance with the CNP Process, the Manager of the Department of Parks and Recreation ("**Parks Manager**") has determined that Fleming House is not suitable currently or in the foreseeable future for a park use; the Parks and Recreation Advisory Board has concurred with this determination of the Parks Manager; and the Denver City Council has authorized, by Ordinance No. 478, Series of 2008, the Parks Manager to issue a Request for Proposals seeking a party to propose one or more compatible non-park uses for the Fleming House; and

F. Following the public issuance by the Parks Manager of a Request for Proposals in accordance with the CNP Process, The Park People ("**TPP**") submitted a proposal for, among other things, the rehabilitation and renovation of Fleming House, the development of community event space on the first floor, and TPP's use of the second floor as an office area; and

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G. As a 501(c)(3) non-profit organization, TPP has made valuable contributions, through its projects and operations, to the welfare and benefit of the citizens of the City and County of Denver and has worked in conjunction with the Parks Manager and the Manager's staff on numerous public projects; and

H. The rehabilitation and renovation, development of community event space, and occupation of the second floor by TPP of the Fleming House will result in the historic restoration and preservation of the Fleming House and the creation and promotion of community benefits as set forth in this Agreement; and

I. The City and TPP have cooperated to their mutual benefit for many years and believe that the proposed rehabilitation, renovation and uses of the Fleming House contemplated in this Agreement will mutually support their respective missions and goals;

NOW, THEREFORE, in consideration of recitals set forth above and the mutual agreements of the Parties set forth below, it is understood and agreed as follows:

1. **Key Definitions**. As used in this Agreement:

(a) The name "**Fleming House**" shall mean the James A. Fleming House located within Platt Park, addressed as 1510 South Grant Street in Denver, and legally described and depicted in **Exhibit A**, a copy of which is attached hereto and incorporated herein by reference. The geographical area of Fleming House may not be expanded, and no structures or additions constructed or extended beyond the area described and depicted in **Exhibit A**, except as expressly provided in this Agreement.

(b) The phrase "**TPP Premises**" shall mean the second floor of the Fleming House including all permanent improvements and fixtures presently existing, or as may be constructed or renovated in the future, on the second floor of the Fleming House.

(c) The phrase "**Community Facility**" shall mean the first floor of the Fleming House including all permanent improvements and fixtures presently existing, or as may be constructed or renovated in the future, on the first floor of the Fleming House.

(d) The term "**City**" shall mean the City and County of Denver and those officials and employees with authority to act on behalf of the City.

(e) The phrase "**Parks Manager**" shall mean the Manager of the Denver Department of Parks and Recreation ("**DPR**") or the Manager's designated representative.

(f) The acronym “**TPP**” shall mean The Park People and its directors and officers.

(g) The phrase “**TPP’s Mission**” shall mean TPP’s expressed mission to preserve, enhance and advocate for Denver’s parks, recreation resources, open space and urban forest.

(h) The phrase “**City Contact**” shall mean such employees or other agents of DPR designated in writing by the Parks Manager to represent the City with respect to specific performances or actions under this Agreement, including telephone and email contact information for these persons.

(i) The phrase “**TPP Contact**” shall mean such employees or other agents of TPP designated in writing by TPP to represent TPP with respect to specific performances or actions under this Agreement, including telephone and email contact information for these persons.

(j) The phrase “**Capital Improvements**” shall mean all improvements, renovations, remodeling, alterations, repairs made or to be made, including fixtures and equipment installed, by TPP or its contractors, at TPP’s sole expense and in accordance with the applicable terms and conditions of Agreement and as such plans and plan changes for such Capital Improvements are approved by the Parks Manager and other specified City officials.

(k) The phrase “**Applicable Law**” shall mean all federal, state, and local laws applicable in the context of the specific matter addressed in this Agreement, including but not limited to: 1) the constitutions, laws, and rules and regulations of the United States of America and the State of Colorado; 2) the City Charter, the Denver Revised Municipal Code (“**DRMC**”), and building, fire, and other applicable codes, as they may be amended from time to time; 3) rules and regulations promulgated or amended by DPR governing the public’s utilization of City parks and recreational facilities; 4) any rules and regulations promulgated by other City departments and agencies applicable to TPP operations and activities under this Agreement; 5) executive orders issued by the Mayor; 6) any applicable court order, judgment, or decree or any appellate decision; 7) any federal, state, or local administrative decision or order applicable to this Agreement, the City or TPP; and 8) the terms and conditions of any grant agreements entered in order to obtain funding for Capital Improvements to Fleming House or other purposes for the benefit of Fleming House.

2. **General Provisions.**

(a) **Basic Premise.** Subject to the terms and conditions of this Agreement, the City and TPP agree that the basic premise of this Agreement, and the consideration upon which this Agreement is based, is that TPP will, at its sole expense, rehabilitate and restore the Fleming House, in keeping with the Fleming House's historic character and in accordance with City-approved plans, in exchange for the rent-free and exclusive use and occupancy of the TPP Premises during the time period specified in this Agreement.

(b) **Charter.** The public purpose of this Agreement is to provide for an appropriate and restricted compatible non-park use of the Fleming House, a structure designated for preservation under Ordinance No. 654, Series of 1973 and located in Platt Park (a designated park under the City Charter), in accordance with section 2.4.7 of the City Charter and Article V of Chapter 39 of the Denver Revised Municipal Code.

(c) **No Property or Financial Interest.** Notwithstanding any provision or implication to the contrary in this Agreement, no property interest, including no leasehold interest, is being created or granted with respect to TPP's occupancy and use of any portion of the Fleming House or Platt Park or any other rights TPP may have under this Agreement, nor may any rights created and granted by this Agreement be hypothecated or similarly used by TPP or any other party to secure loans or any other form of indebtedness or to establish any financial interest in this Agreement, the Fleming House or Platt Park, except as expressly approved by City Council and the Mayor in accordance with Applicable Law.

(d) **Capital Improvements.** All Capital Improvements made at Fleming House shall become the property of the City following inspection and acceptance by the City.

3. **Consideration & Term.**

(a) **Consideration.** It is anticipated by the Parties that the costs of Capital Improvements to be made by TPP at Fleming House, including hard and soft expenditures, will be approximately Five Hundred Ten Thousand Dollars (\$510,000.00) ("**Capital Improvement Costs**"). TPP shall be 1) solely responsible for obtaining or raising all the funds necessary to pay the Capital Improvement Costs and any other costs and charges associated with the Capital Improvements and 2) solely liable for paying for all Capital Improvements and associated costs and charges without reimbursement or other financial support from the City. TPP shall also be solely responsible, as further provided in this Agreement, 3) for the planning, management and

construction of the work necessary to make the Capital Improvements in accordance with this Agreement and other Applicable Law and 4) for the maintenance, repair and general upkeep of the TPP Premises once the TPP Premises are ready for occupancy by TPP. In return for the performance of the foregoing TPP obligations, the City shall credit the payments made and work performed by TPP as prepaid consideration for TPP's occupancy and use of the TPP Premises for the Term of this Agreement as provided in this Agreement.

(b) Term. This Agreement shall go into effect as of the Effective Date stated at the top of this Agreement. The Parties acknowledge and agree that the Capital Improvements must be substantially completed and a certificate of occupancy (final or temporary) must be obtained by TPP for the Fleming House no later than December 31, 2011 ("**Capital Improvements Completion Date**"). The Parks Manager may agree to extend the time for the Capital Improvements Completion Date for a period not to exceed eighteen (18) months upon TPP providing written justification, reasonably satisfactory to the Parks Manager, as to the necessity for the time extension. The occupancy and use of the TPP Premises by TPP shall commence on January 1, 2012, or such earlier or later date depending on when the Capital Improvements are completed and a certificate of occupancy (final or temporary) is issued for the Fleming House. If a temporary certificate of occupancy is obtained, then TPP and its contractors shall have up to one hundred eighty (180) days or the time limit specified by City's Building Division or Fire Department in issuing the temporary certificate of occupancy, whichever time period is shorter, to take all actions necessary to obtain the final certificate of occupancy. Notwithstanding any time extension granted by the Parks Manager for the Capital Improvements Completion Date, the right of TPP to occupy and use the TPP Premises, and this Agreement, shall expire on January 1, 2027 ("**Expiration Date**"). The term of this Agreement shall be from the Effective Date of this Agreement through the Expiration Date (the "**Term**"). Any extension of the Expiration Date or other amendment of this Agreement must be approved and executed by the Parties in the same manner as this Agreement.

(c) Reduction of Term. In the event, under sub-section 3(b) above: 1) the Capital Improvements are not substantially completed on or before the Capital Improvements Completion Date; and 2) the Parks Manager has not been requested by TPP to grant a time extension on or before the Capital Improvements Completion Date; or 3) the Parks Manager has reasonably denied a time extension request by TPP; or 4) the time extension granted by the Parks

Manager has lapsed without the Capital Improvements being substantially completed, the Manager shall have the right, but not the obligation (subject to appropriation), to complete the unfinished Capital Improvements and to reduce the Term of this Agreement one (1) year for every twenty thousand dollars (\$20,000.00) the City incurs in cost in completing the Capital Improvements, up to the full Term of this Agreement. In the alternative, the Manager may elect to terminate this Agreement and seek such remedies as provided in this Agreement.

4. Use.

(a) Permitted Uses. Upon completion of the Capital Improvements and issuance of a certificate of occupancy (temporary or final), TPP shall have the exclusive right to occupy and use the TPP Premises for office, meeting and related purposes (“**Permitted Uses**”). TPP’s use and occupancy of the TPP Premises, as well as any other activities or functions TPP may conduct within the Fleming House, shall be restricted to those consistent with and in support of TPP’s 501(c)(3) nonprofit status, TPP’s Mission, and the terms and conditions set forth in this Agreement. These Permitted Uses shall not extend to the Community Facility or Platt Park except to the extent expressly provided in this section 4.

(b) Access. Upon occupancy of the TPP Premises, TPP and TPP’s employees, agents, guests and volunteers shall have: 1) a right of access (common to the public, park users, and City staff) through Platt Park to and from Fleming House, 2) the right of access (common to the public, authorized users of the Community Facility, and City staff) through the front porch and the reception area of the Community Facility in Fleming House, 3) a right of ingress to and egress from and along the front stairway running internally from the Community Facility to the TPP Premises, and 4) the right of emergency ingress to and egress from the TPP Premises along the rear stairway to and out the rear entrance of Fleming House. In the event there is any interference with any of these access rights which TPP cannot readily resolve, TPP shall contact the City Contact to take such actions necessary to assure proper access. TPP shall have the right to install a chain and/or post signs on the stairways to discourage the public in the Community Facility from going upstairs uninvited to the TPP Premises; however, no physical barriers may be installed by TPP or any other party that would prevent or substantially impede egress from the TPP Premises in the event of a fire or other calamity on site. At any time when the City or the City’s contractor needs to engage in maintenance, repair or other work in Platt Park or Fleming

House which may interfere with TPP's right of access, a reasonable detour or other reasonable point of access shall be promptly provided in order to assure TPP's continued right of access.

(c) Security. TPP shall be responsible for locking and unlocking the front door to Fleming House, as needed (depending on authorized public use of the Community Facility), at such times as the TPP Premises are in use or the last TPP staff member is leaving and otherwise assisting DPR in securing and protecting Fleming House against theft, arson, vandalism or other illegal activity. TPP will promptly communicate with the City Contact and/or Denver Police, as appropriate, whenever TPP or TPP's staff is aware of any inappropriate, dangerous, destructive or illegal activity occurring in or around Fleming House.

(d) Meetings with Disabled. Due to the fact that there is no elevator and no plans to install an elevator in Fleming House, TPP may hold meetings with disabled person(s) coming to TPP's offices in the first floor reception area or in any room that is not in use or scheduled for use during the time of the visit by the disabled person(s), and the disabled person(s) shall have use of the ADA-accessible restrooms on the first floor of the Fleming House.

(e) Community Facility. Except as provided in sub-section 4(d) above, TPP shall schedule and/or obtain a permit for the use of any room(s) in the Community Facility in the same manner as any other member of the public will be required to do in order to reserve and use a room in the Community Facility. TPP shall not be required to pay any fees or damage deposits for the use of any single room in the Community Facility for the first (5) uses in any calendar month, so long as each use does not exceed four (4) hours in duration. TPP shall clean and put back into order any room it uses to established standards and requirements.

(f) Signs. Any signs TPP proposes to locate on the exterior of the Fleming House, in Platt Park or within the Community Facility must be reviewed and approved in advance and in writing by the Parks Manager.

(g) Parking. No parking spaces associated with Fleming House or in Platt Park are available to TPP and TPP's employees, agents, guests or volunteers. All TPP parking must be in lawful locations on the streets in the vicinity of Platt Park.

(h) Political Activity. Fleming House may not be used by TPP in connection with any activities of a political nature, including, but not limited to, any activity to further the appointment, election, defeat, or removal of any applicant, incumbent, or candidate for public

office or any activity undertaken to influence the passage, defeat, or final content of any legislation or ballot proposal. This prohibition is not intended to prevent The Park People from engaging within Fleming House in such fundraising and advocacy activities and events consistent with TPP's Mission.

(i) Risk, Damage & Nuisance. TPP shall not do or permit anything to be done by TPP's employees, agents, guests, volunteers or contractors in or about Fleming House, or bring or keep anything or allow anything to be brought or kept by TPP's employees, agents, guests, volunteers or contractors in or about Fleming House, that will 1) increase the fire and extended coverage insurance premium upon the building or be in violation of any property insurance coverage held by the City or TPP; 2) damage the building (beyond ordinary wear and tear); 3) engender a "dangerous condition" as that phrase is defined in section 24-10-103(1), C.R.S.; 4) cause or likely cause injury or harm to persons or damage to the personal property of persons; or 5) constitute waste, a nuisance (public or private), or a menace to the public or adjoining property.

(j) Compliance with Applicable Laws. TPP shall comply with and abide by all Applicable Laws in connection with the occupancy and use of the TPP Premises and any other activities or functions TPP may conduct within the Fleming House.

5. Design and Construction.

(a) Assignment. TPP shall have the responsibility, and shall bear the expense, for designing and constructing the Capital Improvements to the Fleming House. Pursuant to the authority granted in Section 2.3.3(A) of the Denver City Charter and subject to this Agreement, the Mayor hereby assigns to TPP, as agent for Denver, authority to handle all matters relating to the design, planning, and construction of the Capital Improvements to the Fleming House.

(b) Design by Engineer or Architect and Construction by Contractor.

1) *Capital Improvement Plans.* The Capital Improvements have been described in certain but not complete detail in a set of drawing labeled "James Fleming House Rehabilitation Project" prepared by Hoehn Architects, PC, and last dated July 12, 2010 ("**Hoehn Drawings**"), a copy of which are available for review in the offices of the Denver Department of Parks and Recreation. The City and TPP agree that the Hoehn Drawings reflect the basic expectations for Capital Improvements to be made by TPP at the Fleming House in a single phase of work to be completed on or before December 31, 2011. TPP shall be responsible for

seeking qualifications, selecting, and retaining qualified and licensed engineers, architects, surveyors, or other consultants who will prepare the design and construction documents for the Capital Improvements at Fleming House consistent with the Hoehn Drawings and for bidding and letting out the construction work to qualified, licensed and experienced contractors. These design and construction plans must be reviewed and approved in writing by the Parks Manager and the Manager of the Department of Public Works or his designated representative (“**Public Works Manager**”) prior to the commencement of any demolition, construction, or other activities that will alter the current condition of the Fleming House. Once approved, the final design and construction plans, along with any material changes or additions approved in advance and in writing by the Parks Manager and the Public Works Manager, shall be referred to herein as the “**Capital Improvement Plans**”.

2) *Insurance, Bonds, and Indemnification:* TPP shall require the design professionals, contractors and sub-contractors to obtain and maintain insurance in the amounts and types of coverages appropriate for the work. The insurance requirements shall be those specified in **Exhibit B** attached to and incorporated by reference into this Agreement. TPP shall obtain and maintain, or require TPP’s contractor(s) and sub-contractor(s) to obtain and maintain, in advance and subject to approval by the Denver City Attorney’s Office, one hundred percent (100%) payment and performance bonds from an acceptable surety. The City and TPP shall be named as additional insured on all insurance coverages, except professional liability and workers’ compensation coverage, and the City and TPP shall be named as obligees on all bonds. In addition, all design professionals, contractors and sub-contractors shall be required to include an indemnification and “hold harmless” clause, approved by and for the benefit of the City and TPP, to protect both Parties against claims, actions, and demands arising from or related to the work performed by the design professionals, contractors and sub-contractors. Failure to comply with the requirements of this paragraph shall be legal grounds under this Agreement for work to be ordered to cease or to be restricted, as deemed appropriate by the Parks Manager or the Public Works Manager, until compliance is achieved and any unpaid claims are resolved to the reasonable satisfaction of the Parks Manager or the Public Works Manager. The obligations set out in this paragraph shall survive the termination of this Agreement.

3) *Warranties:* TPP shall obtain warranties and guarantees for all construction work it contracts and shall designate the City as an additional express beneficiary

for enforcing all warranties and guarantees. TPP shall cooperate and support the City at any time that the City needs to exercise or enforce the warranties received for the Capital Improvements. The obligations set out in this paragraph shall survive the termination of this Agreement.

4) *Prevailing Wages*: The Parties acknowledge and agree that all construction work performed by contractors and sub-contractors under this Agreement must comply with the applicable prevailing wage requirements of Section 20-76 of the Denver Revised Municipal Code, as the same may be amended from time to time (“**Prevailing Wages**”). TPP shall include a Prevailing Wages provision, as prescribed by the City, in each and every contract with contractors and require the contractors to do the same with their sub-contractors. As a result, TPP and TPP’s contractors or sub-contractors agree to cooperate fully with the Denver Auditor’s Office in implementing, administering, and enforcing all applicable requirements of Prevailing Wages. The applicable prevailing wage rate schedule(s) shall be attached to any contract by which a contractor or sub-contractor is to be retained to perform work under this Agreement. Failure to comply with the requirements of this paragraph shall be legal grounds under this Agreement for construction work to be ordered to cease or to be restricted, as deemed appropriate by the City, until compliance is achieved and any unpaid claims are resolved to the reasonable satisfaction of the City.

5) *Default/Remedies*. In the event of any material default or breach by any design professional, contractor or sub-contractor under a design contract or a construction contract or subcontract or otherwise, TPP agrees to diligently undertake and pursue all available remedies against the breaching or defaulting party, and to timely advise the City as to efforts and progress made by TPP in this regard and to allow for the City’s participation, if the City so requests.

(c) Commencement. No on-site construction work, including demolition, shall commence unless and until the Capital Improvement Plans have been approved by both the Parks Manager and the Public Works Manager, the Operation Plan specified in paragraph 5(e) has been received and approved, the initial permits and approvals specified in paragraph 5(f) have been obtained, and 100% stamped construction plans are prepared and ready for the construction work to proceed.

(d) Inspections. TPP shall ensure right of entry to any City inspector or other authorized agent of the City to inspect the work site and progress of the work and to conduct

tests and evaluations to determine that the work performed and materials used are of good quality and in conformance with the Capital Improvement Plan and this Agreement. If it is determined that the work is not being so performed, the Parks Manager or the Public Works Manager may order the cessation of the work until there is evidence, satisfactory to the Parks Manager or the Public Works Manager, that the work conforms to the Capital Improvement Plan and this Agreement.

(e) Operation Plan. No construction work affecting or requiring closure of any part of Platt Park or adjacent streets shall occur unless and until a detailed plan is prepared and approved by both the Parks Manager and the Public Works Manager adequately addressing the following, to the extent applicable: a) public notices of impending construction activity, b) access or travel restrictions, detours and closures, c) barricades and warning signs, d) dust and erosion control, e) management of construction vehicle traffic; and f) staging, equipment and materials storage areas ("**Operation Plan**"). The Operation Plan shall recognize, and appropriately consider, that the construction work to be performed is occurring in a park that must be preserved and protected. Failure by TPP or TPP's contractors or sub-contractors to substantially comply with said Operation Plan shall be legal grounds under this Agreement for construction work to be ordered to cease or to be restricted, as deemed appropriate by the Parks Manager or the Public Works Manager, until compliance with the Operation Plan is achieved and any damage or harm resulting from noncompliance is appropriately remedied by TPP or TPP's contractors or sub-contractors.

(f) Permits and Compliance with Laws. At its own expense, TPP shall be responsible for obtaining and maintaining, or causing to be obtained and maintained, all required permits, licenses or other governmental authorizations and approvals necessary to perform the Capital Improvements and related work, including any permits or approvals required under section 30-6, DRMC, and shall, at all times during design and construction, ensure or cause to be ensured compliance with all Applicable Laws, as well as the terms and conditions of this Agreement. To the extent applicable, TPP shall conform with the requirements or standards of the federal Americans with Disabilities Act ("**ADA**") and any other federal or state laws requiring access for the disabled to public accommodations. Failure to substantially comply with the requirements of this paragraph shall be legal grounds under this Agreement for construction work to be ordered to cease or to be restricted, as deemed appropriate by the Parks Manager or

the Public Works Manager, until compliance is achieved and any penalties or fines are paid by TPP. The City and TPP acknowledge and agree that ADA requirements, including accessibility, usability and configuration, shall be met with all Capital Improvements in the Community Facility in Fleming House, including ramp access to the building and restrooms, but that providing elevator access to the TPP Premises in Fleming House is not practicable due to the building's landmark status and is not contemplated under this Agreement or the Capital Improvement Plans.

(g) Environmental Compliance. TPP shall obtain all federal, state, and local environmental permits necessary for the work to be performed and shall comply with all applicable federal, state, and local environmental permit requirements applicable to the work. TPP shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders applicable to the work (collectively, "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term "**Hazardous Materials**" shall mean asbestos, asbestos contaminated soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes, or any other applicable federal or state statute.

(h) Noise, Water and Air Pollution. TPP shall take all reasonable measures to minimize and control noise, water and air pollution, water discharges, and soil erosion resulting from work and activities associated with the Capital Improvements and to avoid adverse impacts to Platt Park and surrounding property, wherever possible, as a result of noise, water and air pollution, water discharges, and soil erosion resulting from the work and activities.

(i) Liens & Claims. TPP shall not permit any mechanic's or materialman's liens or any other liens to be imposed and remain for more than thirty (30) days upon any City property, or any part thereof, by reason of any work or labor performed or materials furnished by

any person or legal entity to or on behalf of TPP, either pursuant to C.R.S. § 38-26-107 or by any other authority. TPP shall promptly pay when due, and shall require its design professionals, contractors and sub-contractors to pay when due, all taxes, regulatory fees and charges, bills, debts and obligations incurred in connection with the Capital Improvement Costs and this Agreement and shall not permit the same to become delinquent. TPP shall not permit any lien, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this Agreement or to City property associated with the Capital Improvements. TPP shall timely obtain and submit all documentation or other certifications necessary to demonstrate, to the satisfaction of the Parks Manager and the Public Works Manager, that all liens and claims for design work, labor, materials, equipment, or other services or goods have been released and waived, and that all City property associated with the Capital Improvements is free of any potential liens or claims associated with design or construction work performed by or on behalf of TPP. Failure to comply with the requirements of this paragraph shall be legal grounds under this Agreement for design or construction work to be ordered to cease or to be restricted, as deemed appropriate by the Parks Manager or the Public Works Manager, until compliance is achieved and any unpaid liens or claims are paid or otherwise resolved. The obligations set out in this paragraph shall survive the termination of this Agreement.

(j) Changes. TPP shall ensure that all improvements are constructed in accordance with the Capital Improvement Plans and that no material changes to the Capital Improvement Plans will occur during construction, unless approved in advance and in writing by the Parks Manager and the Public Works Manager. Requested changes that are not rejected in writing within ten (10) days of actual receipt by the Parks Manager and the Public Works Manager shall be deemed approved. Failure to request approval or to comply with rejections for material changes shall be legal grounds under this Agreement for construction work to be ordered to cease or to be restricted, as deemed appropriate by the Parks Manager or the Public Works Manager, until such approval is obtained or the unapproved work is corrected.

(k) Completion. TPP shall provide the Parks Manager and the Public Works Manager with written notification of substantial completion in order that the City may participate in all punch list reviews and sign off on the improvements. TPP shall provide the Parks Manager and the Public Works Manager with written notification of final completion in order that the City may inspect the improvements as constructed and verify that the improvements have been

constructed in accordance with the Capital Improvements Plan and this Agreement without any material deviations, and the work is at final completion. Upon determination that the requirements contained in this Section 5 have been satisfied, the Parks Manager and the Public Works Manager shall jointly issue a written letter accepting the improvements. Detailed and stamped "as built" construction plans will be provided to the Parks Manager and the Public Works Manager within sixty (60) days following the City's final inspection.

6. Care; Furnishing; Damage Repair; Casualty; Snow and Trash Removal; City Access; and Prevailing Wages.

(a) City Assumption of Care. Upon completion of the Capital Improvements and acceptance by the Parks Manager and the Public Works Manager, the City shall assume all responsibility and costs for the management, maintenance, repair and general up-keep of Fleming House, including electrical and communication wiring, gas lines, plumbing, HVAC, water heater and related systems and the building exterior, roof, rafters, joists, supporting interior and exterior walls, foundation, windows, exterior doors, stairs and related structural components ("Systems and Structure"), except to the extent provided in this section 6.

(b) Furnishing of Community Facility. The furnishing of the Community Facility, excluding any items that are Capital Improvements, shall be the responsibility of the City and shall be maintained, repaired or replaced, as needed, by the City.

(c) Care and Furnishing of TPP Premises. Upon occupancy of the TPP Premises, TPP shall be responsible for, at its own expense:

- 1) cleaning and maintaining the TPP Premises in a sanitary and safe condition;
- 2) performing all ordinary maintenance, repairs, replacements and enhancements to the TPP Premises, as needed, excluding Systems and Structure but including but not limited to light switches, plugs, and lighting; doors and door frames; handles and locks; cabinets and counters; railings; curtains and blinds; hardwood floors, carpet, floor tiles, and other flooring; baseboards and moldings; paint and stains; woodwork, wall paneling and tiles, drywall, and plastering; ceiling tiles and surfaces; break room appliances; sinks and toilets; and similar items (all replacement and enhancement items shall be the property of the City); and
- 3) providing, maintaining, repairing and replacing all office furnishings, furniture, equipment, telephone, television, computer and related communication

devices, decorations, supplies and similar office items to be used on the TPP Premises (all of said items shall remain the personal property of TPP).

(d) TPP-Caused Damages. TPP shall be responsible, at its own expense, for making any repairs or providing any replacements for damages to Fleming House caused by TPP or TPP's employees, agents, guests, volunteers or contractors, including damages to Systems and Structure, with such repairs or replacements being subject to the prior, written approval of the Parks Manager. Upon completion and acceptance by the Parks Manager, any replacement items shall become the property of the City.

(e) Casualty. If the Fleming House is destroyed or damaged by fire, earthquake, flood, or other casualty to the extent that it is untenable in whole or in part, then the City and TPP shall meet to mutually determine if Fleming House should be restored or reconstructed and, if the mutual decision is to restore or reconstruct Fleming House, then the City and TPP shall enter a separate agreement regarding the design and construction for Fleming House and the source of funding, including but not limited to use of insurance proceeds, fundraising by TPP and appropriations by the City. This Agreement shall remain in effect during such time unless amended or replaced by a separate agreement between the City and TPP. If the mutual decision is not to restore or reconstruct Fleming House, then this Agreement shall be terminated by mutual consent as provided in this Agreement.

(f) Snow Removal. TPP agrees to remove snow and ice from the sidewalk along Grant Street, approximately 100' in either direction from the front steps to the Fleming House and on the steps and front porch of Fleming House.

(g) Trash Removal. TPP may use the City-owned trash dumpsters located in Platt Park for the disposal of ordinary trash generated by TPP operations. If dumpsters are not located in Platt Park in the future, TPP will need to arrange for municipal trash pick up.

(h) City Access. TPP shall permit the City to enter the TPP Premises at reasonable times for the purpose of inspecting, altering and repairing the Premises, and ascertaining compliance by TPP with the provisions of this Agreement. City may also show the TPP Premises to prospective users commencing one hundred eighty (180) days prior to the expiration or termination of this Agreement, during regular business hours and upon reasonable notice to TPP, provided that the City shall not unreasonably interfere with TPP's business.

(i) Prevailing Wages. With respect to work performed by or on behalf of TPP under this section 6, TPP shall comply with applicable Prevailing Wages requirements.

7. Utilities.

(a) Water and Sewer. The City shall pay all water and sewer service rates, fees and charges for Fleming House. TPP agrees to participate in any reasonable water conservation programs the City may have for City-owned facilities.

(b) Electricity and Gas. TPP agrees, within ten (10) days of receiving an itemized billing from DPR, to pay one half (1/2) of the monthly rates, fees and charges for electrical and gas service at Fleming House. TPP agrees to participate in any reasonable energy conservation programs the City may have for City-owned facilities.

(c) Telephone, Television, Internet and other Communications. TPP shall pay all rates, fees and charges for telephone, television (cable or satellite), internet and other communication devices used by TPP on the TPP Premises.

8. Insurance.

(a) General Conditions. TPP agrees to secure, at or before the time of execution of this Agreement, insurance covering all operations and activities provided pursuant to this Agreement. TPP shall keep the required insurance coverage in force at all times during the Term of this Agreement and for three (3) years after termination of this Agreement or any extension thereof. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, TPP shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by TPP. TPP shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of TPP.

(b) Proof of Insurance. TPP shall provide a copy of this Agreement to its insurance agent or broker. Concessionaire certifies that the certificate(s) of insurance to be provided to the City, preferably ACORD certificate(s), shall comply with all insurance requirements of this Agreement. The certificate(s) of insurance should include the Denver contract control # XC0A012. The acceptance by the City of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of TPP's breach of this Agreement or of any of the rights or remedies of the City and County of Denver under these insurance requirements. Denver Risk Management may require additional proof of insurance, including but not limited to policies and endorsements.

(c) Additional Insureds. For Commercial General Liability and Business Auto Liability, TPP's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(d) Waiver of Subrogation: For all coverages, TPP's insurer(s) shall waive subrogation rights against the City.

(e) Sub-contractors and Sub-consultants: Except when there is insurance coverage specified in sub-paragraph 6(b)2) above, all sub-contractors and sub-consultants (including independent contractors, suppliers or other entities providing goods or services) retained by TPP with respect to operations and activities at Fleming House shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of TPP. TPP shall include all such sub-contractors and sub-consultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such sub-contractors and sub-consultants maintain the required coverages. TPP agrees to provide proof of insurance for all such sub-contractors and sub-consultants upon request by the City.

(f) Workers' Compensation/Employer's Liability Insurance. TPP shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. TPP expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of TPP's officers or employees who may be eligible under any statute or law to reject Workers'

Compensation Insurance shall effect such rejection during any part of the Term of this Agreement, and that any such rejections previously effected, have been revoked as of the date TPP signs this Agreement.

(g) Commercial General Liability. TPP shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(h) Business Automobile Liability. TPP shall maintain a Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in connection with operations and activities under this Agreement.

(i) Additional Provisions.

(1) For Commercial General Liability, the policy must provide the following:

(i) That this Agreement is an Insured Contract under the policy;

(ii) Defense costs in excess of policy limits;

(iii) A severability of interests, separation of insureds or cross liability provision; and

(iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(3) TPP shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At TPP's own expense, where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, TPP shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

9. Defense & Indemnification:

(a) TPP hereby agrees to defend, indemnify, and hold harmless the City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments,

suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement or operations or activities of TPP at Fleming House ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of TPP or TPP's employees, agents, guests, volunteers or contractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

(b) TPP's duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether an action has been filed in court on the Claim. TPP's duty to defend and indemnify the City shall arise even if the City is the only party sued and/or it is alleged that the City's negligence or willful misconduct was the sole cause of the alleged damages.

(c) TPP will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to City and shall not be considered the City's exclusive remedy.

(d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of TPP under the terms of this indemnification obligation. TPP shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

(e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

10. Taxes; Licenses; Liens; and Debts.

(a) Taxes. TPP shall pay all sales taxes, property taxes (including possessory interest taxes), excises, or other taxes of whatever nature under law (local, state, or federal) required for the occupancy or use of Fleming House by TPP, and shall promptly pay all government fees or charges of whatever nature applicable to this Agreement, and shall not permit any of said taxes, excises, fees or charges to become delinquent.

(b) Licenses. TPP shall take out, keep current, and comply with all licenses, permits, or other authorizations (local, state, or federal) required for the performance of this Agreement.

(c) Liens. TPP shall not permit any mechanic's or materialman's lien or any other involuntary lien to be imposed and remain for more than ninety (90) days upon the property of the City, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any person, partnership, association, company, corporation, or other entity to or for TPP, either pursuant to C.R.S. § 38-26-107, as amended, or by other authority.

(d) Debts. TPP shall promptly pay, when due, all bills, debts, and obligations incurred in connection with its operations and activities at Fleming House and shall not permit the same to become delinquent. TPP shall suffer no lien, mortgage, judgment, execution, or adjudication of bankruptcy that would, in any way, impair the rights of the City under this Agreement or its rights to the Fleming House.

(e) Final Adjudication; Bond. TPP may, diligently and in good faith, resist or contest the application or imposition of any such tax, fee, lien, debt or obligation, in which case the same shall not be considered due, owing or imposed for the purposes of this Agreement until final adjudication of validity. TPP may likewise, diligently and in good faith, appeal any judgment, execution, or adjudication of bankruptcy, in which case the same shall not be regarded as impairing the City's rights until final adjudication. If at any time the City should reasonably conclude that the contested tax, fee, lien, or debt or obligation presents an unacceptable liability on the City's part, TPP shall promptly post a bond or other security reasonably satisfactory to the City as a protection against any expenses, costs or liability that the City might incur.

11. Status and Authority Of TPP.

(a) Status. TPP and the City acknowledge and agree that the status of TPP shall be that of a private, nonprofit corporation acting as an independent entity for the purposes and goals set forth in this Agreement.

(b) Authority. The scope of authority of TPP may exercise with respect to Fleming House shall be as expressly delegated, assigned, or allowed under, or necessarily implied in, this Agreement. TPP shall have no authority to avoid, modify or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing

powers. This Agreement is not intended, nor shall this Agreement be construed, to establish or constitute a joint venture between the City and TPP.

(c) Contracts. The authority delegated under this Agreement shall not be construed to grant TPP the right or power to bind, or to impose any liability upon, the City through any contracts or agreements the TPP may make, unless the prior, written approval of the Parks Manager is obtained and the contract or agreement is in accordance with Applicable Law. Likewise, the City shall have no authority to bind, or to impose liability upon, TPP through any contracts or agreements the City may make, unless the prior, written approval of TPP is obtained.

(d) Nonprofit Status. TPP shall at all times while this Agreement is effect take such actions as may be necessary to maintain and preserve, and shall refrain from taking such actions as may be detrimental to, its status as a nonprofit corporation that qualifies as a tax exempt entity under section 501(c)(3) of the Internal Revenue Code (or any successor provision).

12. Audit and Capital Improvement Expenditures. TPP agrees that any duly authorized representative of the City (including the City Auditor) shall, at the City's own expense and until three (3) years after termination of this Agreement, have the right to perform whatever audit or check the City may require, including a financial audit and a check for compliance with this Agreement. Upon request, TPP shall also provide, or cause its contractors to provide, adequate documentation of expenditures, including invoices and payroll, with respect to the Capital Improvements at Fleming House.

13. Non-Discrimination. TPP agrees to comply with all applicable laws concerning non-discrimination against persons because of their race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability in connection with membership on the TPP board and TPP's operations or activities at Fleming House. In connection with the performance of this Agreement, TPP 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, subcontracts, or agreements it may enter relating to Fleming House.

14. **Alcohol & Drugs Policy; Smoking Policy.**

(a) TPP and TPP's directors, officers, agents, and employees shall cooperate with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Refusal to cooperate with implementation of the policy can result in the City barring TPP from City facilities or participating in City operations. TPP, as an employer, shall adhere to the federal, state, and local laws regarding alcohol and drug abuse. TPP shall maintain a policy against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations.

(b) TPP agrees to adopt and enforce a "no smoking" policy in all areas of Fleming House. TPP's smoking policy shall be in conformance with Executive Order No. 99 and any rules, regulations, or policies adopted by the Parks Manager and generally applicable to specified facilities under the auspices of DPR.

15. **Environmental Compliance.** TPP shall obtain all federal, state, and local environmental permits necessary for the performance of this Agreement and shall comply with all applicable federal, state, and local environmental permit requirements. TPP shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders (collectively, "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term "**Hazardous Materials**" shall mean asbestos, asbestos-containing soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, any Colorado statutes serving a similar purpose for environmental regulation, and any guidelines issued and rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

16. **Termination; Remedies.** This Agreement may be terminated only as follows:

(a) TPP Default. In the event that TPP shall default or breach, on its part, in the performance or fulfillment of one or more material terms or conditions of this Agreement (“TPP Default”) and shall fail to cure such TPP Default within ninety (90) days following delivery of written notice from the Parks Manager to TPP specifying the TPP Default, the Parks Manager may, in the Parks Manager’s reasonable discretion, terminate this Agreement. If the Parks Manager decides to terminate the Agreement upon the TPP Default not being cured by the termination date, then the Parks Manager shall so notify TPP that the provisions of subparagraph 16(e) below shall be effective on the termination date.

(b) City Default. In the event that the City shall default or breach, on its part, in the performance or fulfillment of one or more material terms or conditions of this Agreement (“City Default”) and shall fail to cure such City Default within ninety (90) days following delivery of written notice from TPP to the Parks Manager, TPP may, in its reasonable discretion, terminate this Agreement. If TPP decides to terminate the Agreement upon the City Default not being cured by the termination date, then the TPP shall so notify the Parks Manager that the provisions of subparagraph 16(e) below shall be effective on the termination date.

(c) Time Extension. Upon mutual agreement of the Parties, the time to cure any TPP Default or City Default may be extended to a date certain and the manner and extent of cure may be modified. The deadline for any cure under this paragraph 16 shall not excuse the obligation of any defaulting party to take timely and proper action to prevent, stop, mitigate, or alleviate any recent or impending damage to Fleming House, Platt Park or neighboring property or any existing or imminent threat to public health and safety.

(d) Mutual Consent Termination. Upon mutual written consent, the City and TPP may terminate this Agreement, with or without cause.

(e) Effect of Termination. Upon termination of this Agreement, Fleming House and the Capital Improvements contained therein shall remain the property of the City. TPP shall take all reasonable measures to turn over the TPP Premises and any other part of Fleming House used by TPP to the City in a timely manner and in reasonably good operating condition. TPP shall remove all personal property belonging to or leased by TPP from Fleming House in a timely manner and without causing any damage to Fleming House. Failure by TPP to comply with this paragraph may result in the City bringing a legal action against TPP to recover the property and, if successful, the City shall be entitled to its attorney’s fees and costs from TPP.

(f) Remedies. The Parties agree that the terms and conditions of this Agreement, and any breach of or default under this Agreement, may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including actual damages, costs, expenses, and attorney's fees, as may be available according to the laws of the State of Colorado; provided, however, the Parties agree to and hereby release any claims for indirect, consequential or punitive damages.

17. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations of liability the City may have under the Colorado Governmental Immunity Act (§24-10-101, C.R.S., et. seq.) or to any other defenses, immunities, or limitations of liability available by law.

18. General Provisions.

(a) Appropriation. Notwithstanding any provision of this Agreement to the contrary, any financial obligation of the City under this Agreement is contingent upon all funds necessary for performance under this Agreement being budgeted, appropriated and otherwise made available, and any commitments by the City to provide services is contingent upon the necessary funds being budgeted, appropriated, and otherwise made available and the necessary discretionary actions being taken by the City Council and the Mayor. The Parties acknowledge that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

(b) Good Faith. The City and TPP agree to work diligently and in good faith to perform and fulfill the duties and obligations and achieve the purposes of this Agreement and to resolve any unforeseen issues or disputes under this Agreement as quickly and fairly as possible.

(c) Assignment. TPP shall not assign, encumber, or otherwise transfer any rights or interests granted by this Agreement, in whole or in part, without the prior written consent of the City. No assignment, encumbrance, or transfer of any kind shall be permitted that would extend or be effective beyond the Term of this Agreement. Any assignment, encumbrance, or transfer must be approved and executed in the same manner as this Agreement.

(d) Contracting or Subcontracting. Any work that is allowed to be contracted or subcontracted under this Agreement shall be subject, by the terms of the contract or subcontract, to every provision of this Agreement. Compliance with this provision shall the

responsibility of the Party who arranged the contract or authorized the subcontract. TPP shall, upon request, provide to the Parks Manager a copy of any written contract or subcontract entered by TPP for work or services relating to Fleming House.

(e) Non-waiver. No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

(f) Applicable Laws. The parties agree to comply with all Applicable Laws in existence as of the Effective Date of this Agreement or as may be subsequently enacted or adopted and applicable to this Agreement. It is understood that the Parks Manager will not, in any event, propose any changes in laws, rules, or regulations applicable to the Fleming House as a means to depart from the express terms of this Agreement; provided, however, this provision shall not restrict any authority of the City to adopt reasonable ordinances or rules and regulations which are of general application throughout the City, including the Fleming House.

(g) Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, and the applicable provisions of the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

(h) Conflict of Interest. The Parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein, and TPP further agrees not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

(i) No Personal Liability. No official, officer, director, agent, or employee of either Party shall be charged personally or held contractually liable to the other Party or its officials, officers, directors, agents, or employees under any term or condition of this Agreement or for any breach, default, or violation under this Agreement.

(j) Force Majeure. No Party shall be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of *force majeure*.

Notices of the occurrence and the end of such delay shall be provided by the Party asserting *force majeure* to the other Party. "*Force majeure*" shall mean causes beyond the reasonable control of a Party such as, but not limited to, extreme weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities. Written notice of any claim of inability to perform or comply due to *force majeure* must be promptly given.

(k) No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of the Parties that any person or entity other than the Parties receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only.

(l) Notices. All notices, demands or consents required or permitted under this Agreement shall be in writing and shall be deemed delivered upon receipt, if delivered personally or by facsimile transmission (receipt verified by telephone), or upon the third day following posting by certified mail, return receipt requested, to the following addresses:

If to the TPP:

The Park People
715 South Franklin Street
Denver, Colorado 80209

If to the City or the Manager:

Manager of Parks and Recreation
City and County of Denver
201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

cc: Denver City Attorney
1437 Bannock Street, Room 353
Denver, Colorado 80202

The address for any Party set forth above may be changed at any time by written notice in the manner provided herein to the Parties.

(m) Entire Agreement. This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire Agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various terms and conditions contained herein are mutually agreed upon and are in consideration for one another.

(n) Amendment. This Agreement must be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.

(p) Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable by a court of competent jurisdiction, all other provisions of this Agreement nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term or condition that will legally achieve the original intent and purposes of the Parties hereunder.

(q) No Employment of Illegal Aliens:

1) The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and as amended hereafter.

2) TPP certifies that:

(i) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(ii) It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the “**Department Program**”), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

3) FMHP also agrees and represents:

(i) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(ii) It shall not enter into a contract with a contractor or subcontractor that fails to certify to TPP that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(iii) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program or the Department Program.

(iv) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.

(v) If it obtains actual knowledge that a contractor or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such contractor or subcontractor and the City within three days. TPP will then terminate such contractor or subcontractor if within three days after such notice the contractor or subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the contractor or subcontractor provides information to establish that the contractor or subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

(r) No Construction against Drafting Party. The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions have been prepared by a particular Party.

(s) "Reasonableness". Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of a Party hereto, such Party shall be entitled to consider public and governmental policy, moral and ethical standards, established professional standards and practices as well as business and economic considerations.

(t) Headings for Convenience. Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

(u) Authority. Each Party represents and warrants that it has taken all actions that are necessary or that are required by its applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Party and to bind the Party to its terms and

conditions. The person(s) executing this Agreement on behalf of each Party warrants that he/she/they have full authorization to execute this Agreement. The City shall have the right, in its discretion, to either temporarily suspend or permanently terminate this Agreement if there is any dispute as to the legal authority of either TPP or the person signing the Agreement for TPP to enter into this Agreement.

(v) Execution of Agreement. This Agreement shall not be or become effective or binding until it has been approved by ordinance and until it has been fully executed by all signatories of the Parties.

(w) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day, month and year first above written.

THE PARK PEOPLE

Tax Identification Number:
84-6045624

By: 

Name: Paige Haydon-McCrary

Title: EXECUTIVE DIRECTOR

ATTEST:

CITY AND COUNTY OF DENVER

By: _____
Stephanie Y. O'Malley, Clerk &
Recorder, Ex-Officio Clerk of the
City and County of Denver

By: _____
MAYOR

APPROVED AS TO FORM:

David R. Fine, Attorney for the
City & County of Denver

RECOMMENDED AND APPROVED:
By: _____
Manager of Parks and Recreation

By: _____
Assistant City Attorney

By: _____
for Manager of Public Works

REGISTERED & COUNTERSIGNED:

By: _____
Manager of Finance

Contract Control No. XC0A012

By: _____
Auditor

EXHIBIT A


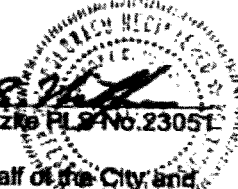
**FLEMING HOUSE
LEGAL DESCRIPTION &
SITE DRAWING**

Platt Park
Fleming House Parcel

Legal Description

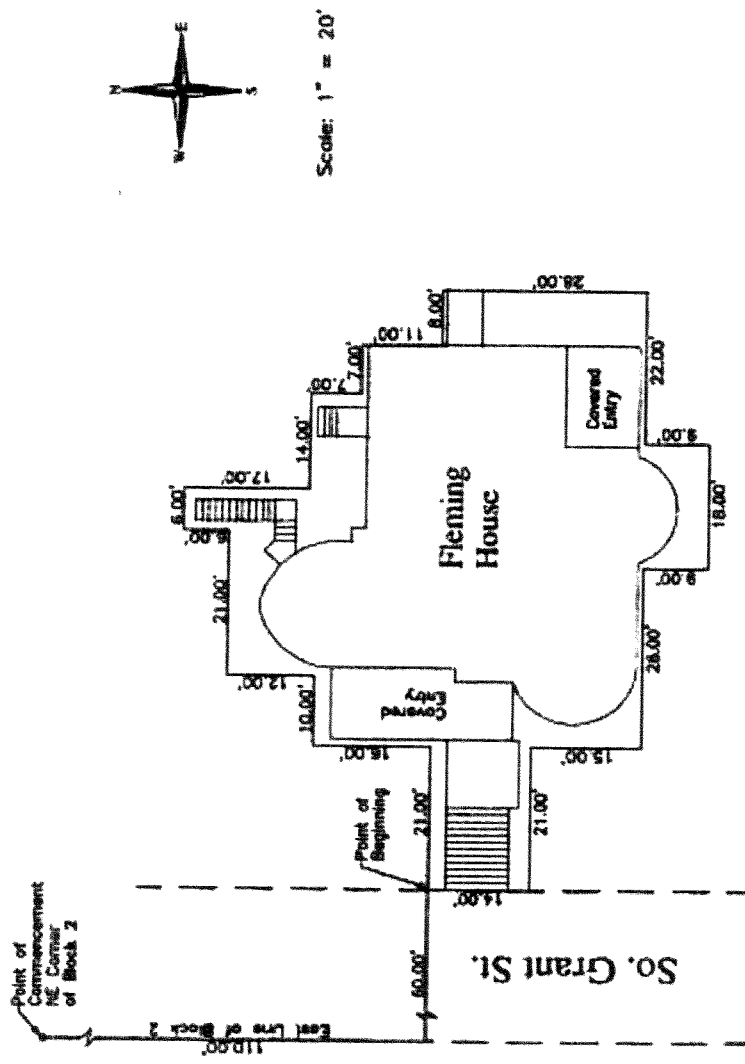
A parcel of land located in SE1/4 of Section 22, T4S, R68W, of the 6TH P.M., City and County of Denver, State of Colorado, more particularly described as follows:

Commencing at the northeast corner of Block 2, FLEMING'S BROADWAY ADDITION in the records of the City and County of Denver; Thence S0°00'00"E, along the east line of said Block 2, a distance of 110.00 feet; Thence N90°00'00"E, departing said east line, a distance of 60.00 feet to the Point of Beginning; Thence N90°00'00"E, a distance of 21.00 feet; Thence N0°00'00"E, a distance of 16.00 feet; Thence N90°00'00"E, a distance of 10.00 feet; Thence N0°00'00"E, a distance of 12.00 feet; Thence N90°00'00"E, a distance of 21.00 feet; Thence N0°00'00"E, a distance of 6.00 feet; Thence N90°00'00"E, a distance of 6.00 feet; Thence S0°00'00"E, a distance of 17.00 feet; Thence N90°00'00"E, a distance 14.00 feet; Thence S0°00'00"E, a distance of 7.00 feet; Thence N90°00'00"E, a distance of 7.00 feet; Thence S0°00'00"E, a distance of 11.00 feet; Thence N90°00'00"E, a distance of 8.00 feet; Thence S0°00'00"E, a distance of 28.00 feet; Thence N90°00'00"W, a distance of 22.00 feet; Thence S0°00'00"E, a distance of 9.00 feet; Thence N90°00'00"W, a distance of 18.00 feet; Thence N0°00'00"E, a distance of 9.00 feet; Thence N90°00'00"W, a distance of 26.00 feet; Thence N0°00'00"E, a distance of 15.00 feet; Thence N90°00'00"W, a distance of 21.00 feet; Thence N0°00'00"E, a distance of 14.00 feet to the Point of Beginning.


Gregory S. Neitzke PLS No. 23051

For and on behalf of the City and
County of Denver Dept. of Parks
and Recreation

Rev 3/05/10

Fleming House in Platt Park



Date: May 5, 2010
By: Gregory S. Neitzke PLS



EXHIBIT B

CONTRACTOR INSURANCE REQUIREMENTS

(1) **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 and The Park People. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to Denver Risk Management and The Park People by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, Denver Risk Management and The Park People must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

(2) **Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate(s) of insurance to be provided to Denver Risk Management and The Park People prior to commencement of services or work, preferably ACORD certificate(s), complies with all insurance requirements of this Agreement. The certificate(s) of insurance should include the Denver contract control # XC0A012. The acceptance by Denver Risk Management or The Park People of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the rights or remedies of the City and County of Denver and The Park People under these insurance requirements. Denver Risk Management and The Park People may require additional proof of insurance, including but not limited to policies and endorsements.

(3) **Additional Insureds:** For Commercial General Liability, Business Auto Liability, and Contractors Pollution Liability, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers and The Park People as additional insured.

- (4) **Waiver of Subrogation:** For all coverages, Contractor's insurer shall waive subrogation rights against the City and County of Denver and The Park People.
- (5) **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by Denver Risk Management and The Park People.
- (6) **Workers' Compensation/Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City and County of Denver and The Park People, as a material representation upon which they are relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.
- (7) **Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
- (8) **Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services or work under this Agreement. If transporting hazardous material or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.
- (9) **Builders' Risk or Installation Floater:** Contractor shall maintain limits equal to the completed value of the project. Coverage shall be written on an all risk, replacement cost basis including coverage for soft costs, flood and earth movement, if in a flood or quake zone, and, if applicable, equipment breakdown including testing. Contractor is responsible for payment of all policy deductibles. The City and County of Denver, The Park People, Contractor, and sub-contractors shall be named insureds under the policy. Policy shall remain in force until acceptance of the project by the City and County of Denver. (Construction Contractors only).
- (10) **Contractors Pollution Liability:** Contractor shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include bodily injury; property

damage including loss of use of damaged property; defense costs including costs and expenses incurred in the investigation, defense or settlement of claims; and clean up costs. (Construction Contractors Only).

(11) **Professional Liability (Errors & Omissions):** Contractor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. (Design Professionals only).

(12) **Additional Provisions:**

(a) For Commercial General Liability and Contractors Pollution Liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
 - (ii) Defense costs in excess of policy limits;
 - (iii) A severability of interests, separation of insureds or cross liability provision;
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City and County of Denver and the The Park People; and
 - (v) No exclusions for lead-based paint or asbestos.
- (b) For claims-made coverage: The retroactive date must be on or before the contract date or the first date when any goods or services were provided under this Agreement, whichever is earlier
- (c) Contractor shall advise Denver Risk Management and The Park People in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.