

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **THE GREENWAY FOUNDATION, INC.**, a Colorado nonprofit corporation, whose address is 5299 DTC Blvd. #710, Greenwood Village, Colorado 80111 (the "Lessee").

WITNESSETH:

WHEREAS, the City is the owner of a property known as Habitat Park located at 610 South Jason Street in the City and County of Denver, Colorado, which includes a small building on site erected and formerly used by the Boy Scouts of America; and

WHEREAS, the Lessee is a non-profit corporation engaged, through its South Platte River Environmental Education ("**SPREE**") program, in programmatic activities for environmental education and stewardship efforts to improve and maintain natural areas along and near the South Platte River, the mission of which is consistent and supportive of the purposes and goals of the Denver Department of Parks and Recreation; and

WHEREAS, the City agrees to lease to Lessee the small building and associated parking lot located within Habitat Park, as depicted in the drawing in **Exhibit A**, to be used by the Lessee exclusively for nonprofit purposes within the mission of the Lessee and its SPREE program; and

WHEREAS, the City desires to lease these facilities to Lessee, at a nominal rental rate, in consideration of certain environmental educational, stewardship and other services the Lessee will provide the Denver Department of Parks and Recreation (the "**Department**") and for the benefit of the residents of Denver.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter contained, the City and the Lessee agree as follows:

1. **LEASED PREMISES**: Subject to the terms and conditions of this Lease Agreement (hereinafter referred to as "**Lease**"), the City agrees to lease, demise, and let unto Lessee and the Lessee does hereby lease from the City the premises located within the building and the land surrounding the building located at 610 South Jason Street, Denver, Colorado 80223, as more particularly described and depicted in **Exhibit A**, attached hereto and incorporated herein (the "**Leased Premises**"). Subject to the terms and conditions of this Lease, the Lessee shall have exclusive use of the Leased Premises during the Term of this Lease. The Lessee shall also have a right of access to the Leased Premises from Exposition Street and the

use of legal on-street parking and established parking areas on the edge of Habitat Park next to Exposition Street, in common with the public. The description contained on **Exhibit A** may be modified upon the written authorization of the Manager of Parks and Recreation to correct minor, technical errors.

2. **TERM and TERMINATION:**

A. Term: The term of this Lease shall begin on January 1, 2012, and shall expire on December 31, 2017, unless sooner terminated pursuant to the terms of this Lease or is extended by an amendment to this Lease executed in the same manner as this Lease (“**Term**”).

B. Termination:

1) The City and the Lessee may mutually agree to terminate this Lease at any time. Either the City or the Lessee may unilaterally terminate this Lease upon giving the other Party twelve (12) months’ written notice. The Lessee shall vacate the Leased Premises in accordance with Section 9 of this Lease.

2) The City may, upon good cause, terminate the Lease for a material breach or default by Lessee under this Lease (which does not include abandonment or unauthorized assignment or sublease which are addressed in Paragraph 3 of this Sub-section 2.B), provided that the Lessee shall have ten (10) days (or such longer time as specified by the Manager) following the receipt of written notice from the City to substantially cure or rectify the breach or default. If the Lessee fails to substantially cure or rectify the beach or default within the specified period of time, the City shall have a right to re-enter the Leased Premises and assume control and full use of the Leased Premises as provided in Section 9.

3) The Lease shall be deemed abandoned, and automatically terminated, if Lessee fails to occupy and use the Leased Premises for a continuous period of six (6) months or assigns or subleases the Leased Premises in violation of Section 19 of this Agreement. Upon occurrence of the specified abandonment or unauthorized assignment or sublease, without further notice, the City shall have a right to re-enter the Leased Premises and assume control and full use of the Leased Premises as provided in Section 9.

4) The Lease may be terminated by the City as prescribed in Section 13 of the Lease in the event of serious damage to or destruction of the Leased Premises due to fire or other casualty.

5) Upon termination by the City under Paragraphs 2 or 3 of this Sub-section 2.B. or Paragraph 4 of this Sub-section 2.B. if the damage to or destruction of the Leased Premises is due to fault or neglect, in whole or part, of the Lessee, its agents, employees, volunteers, invitees, or visitors, the City shall be entitled to receive or recover as compensation or damages a sum of money equal to the total of: (i) the cost of recovering the Leased Premises, including reasonable attorneys' fees; (ii) any unpaid Rent earned at the time of termination; (iii) damages for any wrongful withholding of the Leased Premises by Lessee; (iv) unpaid taxes or assessments, if any; (v) unpaid Utilities, if any; (vi) any other sum of money owed by Lessee to City or third parties as a result of its use or occupancy of, or conduct of business on, the Leased Premises; and (vii) the costs of any repairs of the Leased Premises for damages caused during the Term of the Lease Agreement above and beyond normal wear and tear.

3. **RENT & SERVICES:**

A. **Rent:** The Lessee shall pay to the City for the annual rent of the Leased Premises for each year of the Term of this Lease one dollar (\$1.00) ("**Rent**") and for such other consideration stated in this Section 3. The Rent payments shall be payable to the Denver Manager of Finance, paid on or before January 1st of each year during the Term of this Lease (and for 2012, on or before the date the Mayor signs the Lease), and shall be delivered to the Finance and Administration Director for the Department of Parks and Recreation at 201 West Colfax, Department 602, Denver, Colorado 80202 or to such other address as the City may designate by written notice.

B. **Services:** In addition to the Rent specified in Sub-section 3.A., the Lessee agrees to provide, as consideration for and as a condition of this Lease, the following services and uses for the Leased Premises:

1) Janitorial and other general maintenance services provided by its staff or by contract with a professional janitorial service company, at the Lessee's sole expense, for the entire Leased Premises, and in doing so, to assure that the Leased Premises are maintained in a clean and sanitary condition readily usable by the public and any other users under this Lease. Janitorial and general maintenance services shall include, among other things, in the daily removal of trash and waste and providing for, as needed, sweeping, vacuuming, dusting, bathroom cleaning, stain or graffiti removal, snow removal, and landscape maintenance

and other general services to maintain the interior and exterior of the Leased Premises. The Lessee shall comply with all requirements of the Prevailing Wage ordinance, sections 20-76 *et seq.*, D.R.M.C., as it applies to janitorial and custodial work, and shall cooperate with the City Auditor's Office with respect to enforcement of this ordinance.

2) Restroom facilities to be open to the public when the Leased Premises are occupied by SPREE or other Lessee staff, except closures to the public as required by law during Lessee's permitted use of the Leased Premises for its SPREE activities, a school-age child care center program titled *Adventures Outside Day Camp*, which may be subject to daycare licensing requirements.

3) Environmental educational programming and stewardship projects which will benefit Denver residents and the City's natural areas and wildlife programs.

4) Meeting space available, as authorized by the Lessee, to various river-related project groups and committees, particularly those that support and promote funding or volunteer opportunities for the South Platte River Greenway's parks, trails and waterways.

5) Host location for the operation and support of the Venice on the Creek program, so long as the City and the Lessee continue to operate this program under a separate agreement.

4. **USES:**

A. Uses Allowed: The Leased Premises are to be used and occupied by Lessee solely for the purposes stated in Lease and such other purposes appropriate to the operating of a non-profit organization and for the provision and coordination of services and activities within the stated mission of the Lessee, a non-profit corporation. The Leased Premises may be utilized, among other things, as an office for the SPREE program and as a host location for various events, programs and activities conducted in Habitat Park or other locations for the benefit of children and families and others interested in environmental education and stewardship efforts along or near the South Platte River.

B. Child Care Center: The Leased Premises may also be used by the Lessee to run a school-age child care center ("Child Care Center"). To the extent that the Lessee does operate a Child Care Center, the Lessee shall conduct all child care activities in the Leased Premises in accordance with this Lease and in full compliance with the rules and regulations

regarding child care, adopted by the Colorado Department of Human Services, which are in effect as of the date of such child care, and the Lessee shall maintain, during the term of this Lease, in good standing its state license as a child care provider, and shall immediately notify the City if any investigation is commenced, or any action is taken, by any state agency in respect of such license, including without limitation, the suspension or revocation thereof. The Lessee will, at all times during the term of this Lease, maintain the insurance coverage specified in Section 17 of this Lease.

C. Uses Outside of Leased Premises: All events and activities conducted as regular part of the SPREE program may be conducted in Habitat Park, as depicted in **Exhibit B** attached hereto and incorporated herein, without the prior written approval or a permit by the Department. The Lessee may hold up to five (5) scheduled, one-night camping events each year in Habitat Park for SPREE participants without the prior approval of or a permit from the Department. The Lessee must provide the Manager with written notice of all camping events, including their locations within Habitat Park (but not on or immediately next to the South Platte River Trail), a minimum of thirty (30) days prior to each such event. Each camping event shall be limited to no more than one hundred (100) SPREE participants. The Lessee shall be solely responsible and liable for all aspects of these camping events, including staging, monitoring the participants, clean-up, obtaining appropriate insurance (if needed), and any damage or injuries occurring during the events. All events and activities conducted outside of Habitat Park, in other City parks or recreational facilities, are subject to prior written approval or a permit by the Department.

D. Sales: The Lessee may sell pre-packaged food and beverages and items suitable to the needs of park and trail users and attendees and participants for the SPREE programs at the Leased Premises (e.g., trail maps, hats, suntan lotion, etc.), subject to the following conditions: 1) All sales shall be conducted on the Leased Premises unless prior written permission is obtained from the Department; 2) All sales activity shall be conducted by employees or volunteers of Lessee – no concessions or subleases are allowed; 3) All net sales proceeds shall be committed to the programs and activities of the Lessee or for authorized repairs to the Leased Premises; 4) All licenses or permits required for the operation of the business and for food service shall be obtained and maintained during all times that such sales occur; and 5)

The sales, service, distribution, promotion or use of alcohol, tobacco, fireworks, firearms and adult materials on the Leased Premises are strictly prohibited, except that the service of alcohol may be permitted for scheduled meetings or events involving Lessee's staff and Board members when no program participants are present.

E. Conditions of Use: The Lessee shall use the Leased Premises in a careful, safe, and proper manner, and shall not use or permit the Leased Premises to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, or the Charter or ordinances of the City and County of Denver. The Lessee shall not commit or suffer to be committed any waste or damage upon the Leased Premises or any nuisance to be created or maintained thereon. The Lessee shall also keep the Leased Premises free and clear from all trash, debris, and waste resulting from its use or the use by its employees, officers, agents, invitees and visitors and shall see that the Leased Premises are kept in a clean and sanitary condition. The Lessee shall provide all security the Lessee deems necessary for the Leased Premises.

F. Background Checks: With respect to its operations and programs on the Leased Premises, the Lessee shall not hire, retain, or knowingly engage or permit the services of any supervisor, employee, volunteer, agent, or subcontractor with a felony criminal conviction or convictions or who has been charged with a felony crime involving physical violence, sexual acts, or illegal drugs, including any criminal attempts, solicitations, trafficking, or conspiracies relating to the same, and any crime or crimes, whether a felony or a misdemeanor, that involve children. A "conviction" shall mean a plea of guilty, a plea of *nolo contendere*, a finding of guilt, a default judgment, or a deferred judgment and sentence. The Lessee shall use every reasonable means available to confirm (through a national criminal background check for its supervisors and a state criminal background check for all other employees, volunteers, agents, and subcontractors) that its supervisors, employees, volunteers, agents, or subcontractors have not been convicted or charged as set forth above and shall immediately and fully inform the City if the Lessee becomes aware of any such conviction or charge. The Lessee shall provide proof of said background checks to the City upon request. If such a criminal conviction exists and the Lessee believes there are extenuating circumstances that should be considered, the Lessee may request, in writing, that the Manager waive the restrictions of this paragraph in light of policies set forth in C.R.S. Section 24-5-101, as amended, pertaining to the effect of criminal convictions

on employment rights. Any waiver shall be in the absolute discretion of the Manager. At times when program participants are on site, a supervisor shall be attendance and responsible for overseeing and directing the actions of all employees, volunteers, agents, and subcontractors. Failure to comply with this Sub-section or, at the City's option, failure to promptly discharge an employee, volunteer, agent, or subcontractor who has been so convicted or charged shall be cause for the City to immediately terminate this Lease. The Lessee shall indemnify, hold harmless, and defend the City against any claims, actions, suits, damages, injuries, costs, penalties, judgments, awards, settlements, or other liability or expenses arising from or related to Lessee's failure to comply with this Sub-section 4.F.

5. **WALK-THROUGH INSPECTION; "AS IS" CONDITION:**

A. Inspection: The Lessee has performed a walk-through inspection of the Leased Premises along with a representative of the Department, and a document generally detailing the condition of the Leased Premises was prepared and shared by the Parties, and is attached hereto and incorporated herein as **Exhibit C**. Upon expiration or termination of this Lease, Greenway agrees that it will leave the Leased Premises in substantially the same or better condition as the Leased Premises was during the walk-through.

B. AS-IS Condition: The Leased Premises are accepted by Lessee in an "AS IS", "WHERE IS" condition, with all faults and defects. The City does not make, and disclaims, any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Leased Premises. Lessee accepts the Leased Premises in its current environmental condition, including any asbestos and lead-based paint, if any, and without any expectation that the City will remove or remediate the environmental conditions unless conditions become such that the City is compelled by federal or state law to do so. Lessee agrees to comply with any operations and any maintenance plan prepared by or on behalf of the City for the preservation and control of asbestos-containing material or areas containing by lead-based paint on the Leased Premises after a copy of said plan is provided to Lessee.

6. **QUIET ENJOYMENT**: The Lessee shall and may peacefully have, hold and enjoy the Leased Premises, subject to the other terms and conditions of this Lease, provided that the Lessee pays all financial liabilities and obligations related to the Leased Premises and

performs all of Lessee's covenants and agreements contained in this Lease.

7. **MAINTENANCE, REPAIRS and REPLACEMENTS:**

A. Maintenance: The Lessee shall provide, at its own expense, all general maintenance and upkeep services for the Leased Premises, including but not limited to those specified in Paragraph 1 of Sub-section 3.B. of this Lease. The Lessee shall provide maintenance and inspections for all mechanical systems existing on the Leased Premises which shall not exceed manufacturer's recommendations.

B. Repairs: Except to the extent expressly provided in this Sub-section 7.B, the City shall not be required to make any repairs or improvements of any kind or character to or for the Leased Premises during the Term of this Lease, except repairs as may be deemed appropriate by the Department for the Leased Premises. Lessee shall make, when needed and at its own expense, and without prior consent of the Manager of Parks and Recreation, all repairs to the Leased Premises costing five hundred dollars (\$500.00) or less per occurrence. Lessee shall make no alterations in or additions to, make any repairs costing in excess of \$500.00 to, change any locks in, nor post any signage on, the Leased Premises without first obtaining the written authorization from the Department. All such repairs must be performed in accordance with all applicable City codes for construction. Copies of all keys for replaced locks shall be provided, at no charge, to the Designated Representatives as specified in Section 8 of this Lease. Subject to appropriation and availability of funds, the Department will make repairs or replacement of any portion of the Leased Premises that cost in excess of \$500.00 per occurrence, with the Lessee paying the first \$500.00 of such repairs, to the extent that the repair or replacement is not necessitated by damages caused by the Lessee or its employees, officers, agents, volunteers, invitees and visitors. Under this Sub-paragraph 7.B, the Lessee shall only be responsible for no more than \$500.00, during the Term of this Lease, of the costs for repairs or replacement of the roof of the Leased Premises, should the roof require repair or replacement.

C. Damage: The Lessee shall be responsible, at its own expense, to repair or replace any portion of the Leased Premises damaged by the Lessee or its employees, officers, agents, volunteers, invitees and visitors to the Leased Premises. All such repairs or replacements costing in excess of five hundred dollars (\$500.00) shall require the prior written authorization from the Department and must be performed in accordance with all applicable City codes and

other requirements for construction on City property.

D. Indemnification: For any repairs or replacements requiring Manager's authorization under Sub-sections 7.B. and C. of this Agreement, Lessee shall make such authorized repairs or replacements and shall indemnify and hold the City harmless against any liability, loss, damage, costs or expenses, including attorneys' fees, on account of any claims of any nature whatsoever, including but not limited to claims of liens by laborers, material suppliers, or others for work performed, or materials or supplies furnished to Lessee or persons claiming under Lessee.

8. ENTRY BY CITY: Designated representatives of the City who are of management level ("Designated Representatives") shall maintain control over all keys held by the City for the Leased Premises and shall have the responsibility to direct City employees and contractors to enter into and upon the Leased Premises, upon providing reasonable advance notice to the Lessee (except in an emergency), at all reasonable hours to inspect the Leased Premises and make any repairs or replacements deemed necessary by the City.

9. SURRENDER OF THE LEASED PREMISES:

A. Delivery; Re-Entry: At the expiration or termination of this Lease, Lessee shall deliver the Leased Premises to the City in the same condition as the Leased Premises were at the beginning of the Term of the Lease, ordinary wear and tear excepted. Lessee shall promptly remove all of the Lessee's personal property and belongings and vacate the Leased Premises. If the Lease has been terminated by the City as provided in Paragraphs 2 and 3 of Sub-section 2.B. and the Lessee fails to deliver the Leased Premises as set forth herein, the City shall have the right to re-enter and occupy the Leased Premises without further notice.

B. Lessee's Personal Property: All moveable furniture and other belongings and effects of the Lessee not removed from the Leased Premises upon vacation by Lessee or re-entry by the City shall be conclusively deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to Lessee or any other person, and without obligation to account therefor, and Lessee shall pay the City all expenses incurred in connection with such property.

C. Financial Obligations: Lessee shall pay, before delinquency, any and all financial liabilities and obligations related to the Lessee's occupancy and use of, and any

business conducted on, the Leased Premises, Lessee's personal property which is or was located on the Leased Premises, or the Lessee's operations or conduct of business on the Leased Premises, including any taxes, assessments, and other costs and charges, any of which become payable during the Term of this Lease.

10. **UTILITIES AND SERVICES**: Starting with the first day of occupancy of the Leased Premises by Lessee, Lessee shall pay to the City, in the same manner and at the same time as Rent as provided in Sub-section 3.A. of this Lease, one hundred twenty dollars (\$120.00) a year for water and sanitation service for the Leased Premises ("**Water Service**") and shall pay for one hundred percent (100%) of the total costs of gas, heat, light, and power ("**Power Utilities**") incurred on the Leased Premises. The Lessee shall coordinate with the Department with respect to putting the Power Utilities in the name of the Lessee and shall coordinate and cooperate with the Department to putting the Power Utilities back in the name of the City upon the expiration or termination of this Lease. The Lessee shall timely pay all charges, surcharges, fees, assessments, taxes for Power Utilities, and shall not allow the same to become delinquent. The Lessee shall limit its uses of Water Service and Power Utilities to those as may be reasonable and necessary for normal uses as allowed under this Lease. Lessee shall be solely responsible and liable for obtaining and directly paying providers for any cable, internet, telephone and alarm monitoring connections and service desired by the Lessee on the Leased Premises.

11. **INDEMNITY**: Lessee shall defend, indemnify, and save harmless the City, its officers, agents, employees and contractors from any and all fines, losses, damages, claims, demands, suits, actions or proceedings of any kind or nature whatsoever, during the Term of the Lease, including without limitation Workers' Compensation claims, of or by anyone whomsoever, on account of personal injury or death of any person or damage to property, including those persons employed by or associated with the City or property belonging to the City, its officers, agents, employees or contractors, where the injuries or damage are caused by the negligence or misconduct of the Lessee or its employees, officers, agents, volunteers, invitees and visitors on or about the Leased Premises during the Term of this Lease or where such injuries or damage are the result, directly or indirectly, of the violation of the provisions of this Lease. This indemnity shall survive the expiration or earlier termination of this Lease. Lessee

need not, however, indemnify or save harmless the City, its officers, agents, employees and contractors from damages resulting from the sole negligence or misconduct of the City's officers, agents, employees and contractors. In the event of a Claim, the Lessee covenants and agrees that it will not file or assert any legal action or claim against the City, its officers, agents and employees by way of cross claim, counterclaim, third party claim or independent action regardless of the alleged fault of either the Lessee or the City. If the City reasonably believes that the Lessee has asserted a defense against any Claim that puts the City at risk of incurring any substantive liability under the Claim or a collateral action or puts the City's rights, title, or interest in the Leased Premises at any risk, the Lessee's insurer shall promptly provide, at the insurer's expense, separate legal counsel reasonably acceptable to the City or, if this does not occur, the City shall have the right to elect to provide its own defense, and the Lessee shall be liable for the City's defense costs. Insurance coverage specified herein constitutes the minimum requirements, and said requirements shall in no way lessen or limit the liability of the Lessee under this Lease. The Lessee shall procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that it may deem necessary.

12. **CLAIMS; COOPERATION; GOVERNMENTAL IMMUNITY:**

A. In the event that any claim, demand, suit, or action is made or brought in writing by any person or entity against one of the parties related in any way to this Lease, the party in receipt of same shall promptly notify and provide a copy of said claim, demand, suit, or action to the other party. The parties agree to cooperate in the investigation, defense or settlement of any claim, demand, suit, or action related in any way to this Lease. Nothing in this provision shall modify or reduce the Lessee's obligations with respect to insurance and indemnification/duty to defend under this Lease.

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

13. **LOSS OR DAMAGE:** The City shall not be liable or responsible to the Lessee for any loss or damage to any property or person occasioned by theft, fire, Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or regulatory order of

any governmental entity. In the event of a fire or other casualty in or to the Leased Premises, Lessee shall immediately give notice thereof to the Department. If the Leased Premises are totally destroyed by fire or other casualty, the Lease shall immediately terminate. If the Leased Premises should be partially damaged by fire or other casualty so as to render the Leased Premises untenable, whether or not the fire or casualty is due to fault or neglect of Lessee, its agents, employees, volunteers, invitees, or visitors, the City shall be free to elect to repair or replace the damaged portions of the Leased Premises or to terminate the Lease. If the Leased Premises are not damaged due to fault or neglect, in whole or part, of the Lessee, its agents, employees, volunteers, invitees, or visitors, the Lessee may elect to terminate this Lease or to continue the Lease if the City elects to repair the Leased Premises. If the Leased Premises are damaged as the result of fault or neglect, in part or whole, of the Lessee, its agents, employees, volunteers, invitees, or visitors, Lessee agrees to promptly pay to the City, upon request, an amount equivalent to the deductible on any property insurance the City may carry for the Leased Premises, even if the Lease is terminated under Sub-section 2.B. or the City elects to terminate the Lease under this Section 13. In the event that the Lessee suffers a loss to its personal property on the Leased Premises due to theft or damage of or to the Lessee's personal property resulting from the sole negligence or deliberate misconduct of the City's officers, employees, agents or contractors, the Lessee may request, in writing, that the City replace or repair, as appropriate, the lost or damaged personal property and, subject to appropriation and available funds, the City may elect to so compensate the Lessee to the extent of the proven loss or damage.

14. **HAZARDOUS SUBSTANCES**: Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Leased Premises by Lessee, Lessee's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Leased Premises, or if the Leased Premises become contaminated in any manner due to the actions or inactions of the Lessee, Lessee shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the Term of the Lease and arising as a

result of those actions or inactions by Lessee. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and that results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substance on the premises. Lessee shall first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum. Notwithstanding the provision above, the Lessee is authorized to use and safely store propane to the extent necessary for food preparation under paragraph 4.D. of this Lease; however, beyond use and storage, the propane shall be subject to this provision.

15. **HOLDING OVER:** If after the expiration of the Term of this Lease, Lessee should remain in possession of the Leased Premises or any part thereof, and continue to pay rent, without any express agreement as to such holding, then such holding over shall be deemed and taken to be a periodic tenancy from month-to-month, subject to all the terms and conditions of this Lease, except for the provisions relating to the period of Lessee's occupancy, and at a rent of one thousand dollars (\$1,000.00) a month, due at the first of each month. Such holding over may be terminated by City or Lessee upon ten (10) days' written notice. In the event that Lessee fails to surrender the Leased Premises upon termination or expiration of this Lease or such month-to-month tenancy, then Lessee shall indemnify City against loss or liability resulting from any delay of Lessee in not surrendering the Leased Premises.

16. **ANNUAL REPORTS:** Each year during the Term of this Lease Agreement, Lessee shall prepare and submit to the Manager of Parks and Recreation, or the Manager's designated representative, an annual report in a format reasonably satisfactory to the Manager

(the “**Report**”). Such Report shall be submitted on or before March 1st of each year for the preceding calendar year. At a minimum, the Report must demonstrate Lessee’s accomplishments and operations over the past year which are consistent with its stated goals and services and its continued mission. The Report should also include its plans for the upcoming year and how the public will be benefited by such proposed plans. The Manager may elect to present this Report to a committee of the City Council and may require the presence of a representative of the Lessee at the committee to help in the presentation and to answer the questions or concerns of Council members.

17. **LESSEE'S INSURANCE:**

A. **General Conditions:** The Lessee agrees to secure, at or before the time of execution of this Lease, the following insurance covering all operations, activities, occupancies uses and services provided pursuant to this Lease Agreement. The Lessee shall keep the required insurance coverage in force at all times during the term of the Lease 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. The Lessee shall provide written notice of cancellation, non-renewal and any reduction in coverage to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. 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. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Lessee. The Lessee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Lease are the minimum requirements, and these requirements do not lessen or limit the liability of Lessee. The Lessee 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 Lease.

B. **Proof of Insurance:** The Lessee shall provide a copy of this Lease to its insurance agent or broker. The Lessee certifies that the certificate of insurance attached as **Exhibit D**, preferably an ACORD certificate, complies with all insurance requirements of this Lease. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply

with all insurance requirements set forth in this Lease shall not act as a waiver of Lessee's breach of this Lease or of any of the City's rights or remedies under this Lease. The City's Risk Management Office may require, and the Lessee shall promptly provide, additional proof of insurance, including but not limited to policies and endorsements, at any time.

C. Additional Insureds: For Commercial General Liability and Business Auto Liability, the Lessee and Lessee's subcontractor'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, Lessee's insurer shall waive subrogation rights against the City.

E. Subcontractors and Subconsultants of Lessee: All subcontractors and subconsultants of Lessee (including independent contractors, suppliers or other entities providing goods or services to Lessee on the Leased Premises) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Lessee. The Lessee shall include all such subcontractors and subconsultants 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. The Lessee agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

F. Workers' Compensation/Employer's Liability Insurance: The Lessee 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.

G. Commercial General Liability: The Lessee 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: The Lessee 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 association with this Lease.

I. Fire and Extended Coverage Insurance on all of Lessee's personal property located in or about the Leased Premises in the minimum amount of \$50,000.00.

J. Additional Provisions:

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

(i) That this Lease 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

(v) No exclusion for sexual abuse, molestation or sexual misconduct.

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

K. Other: The insurance requirements set forth in this Section 17 shall survive the expiration or earlier termination of this Lease. The Manager of Parks and Recreation shall have the right to suspend this Lease, and deny Lessee access to the Leased Premises, if at any time the Manager becomes aware that the Lessee has failed to satisfy the insurance requirements, in whole or part, set forth in this Section 17 and may, at the Manager's discretion, terminate this Lease if the Lessee fails to rectify the deficiency on the insurance requirements within a reasonable time frame, as determined by the Manager. Alternatively, if it should be determined by the Manager that the Lease should remain in effect, the City shall have the right to obtain any insurance coverage specified in this Section 17 as Denver Risk Management deems necessary to remedy the deficiency in the Lessee's policies, and the Lessee agrees to promptly and fully reimburse the City for the costs of such insurance coverage upon being provided a bill

for the costs.

18. **NO DISCRIMINATION**: In connection with this Lease, the Lessee 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 subcontracts hereunder.

19. **VENUE, GOVERNING LAW**: This Lease shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Lease shall lie in the State District Court in and for the City and County of Denver, Colorado.

20. **ASSIGNMENT AND SUBLEASE**: The Lessee shall not assign or transfer its rights or obligations under this Lease or sublet the Leased Premises. Assignment or sublease by Lessee shall constitute grounds for immediate termination of the Lease.

21. **NO SALE OR ADVERTISING OF TOBACCO PRODUCTS**: The Lessee, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City and County of Denver. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

22. **EXAMINATION OF RECORDS**: The Lessee agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after final payment under this Lease, have access to and the right to examine any directly pertinent books, documents, and records of the Lessee involving matters directly related to this Lease.

23. **AMENDMENT**: No alteration, amendment or modification of this Lease shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Lease Agreement; however, the Manager of Parks and Recreation shall have the

this Lease shall be the date such notice is deposited in the mail or hand-delivered to the party.

28. **ENTIRE AGREEMENT:** The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that any representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect.

29. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any performance hereunder constitute or be construed to be a waiver by any party or any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any breach or default exists shall in no way impair or prejudice any right or remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Lease shall be deemed or taken to be a waiver of any other default or breach.

30. **NO PERSONAL LIABILITY:** No elected official, director, officer, agent or employee of the City, nor any director, officer, employee or personal representative of the Lessee shall be charged personally or held contractually liable by or to the other party under any term or provision of this Lease or because of any breach thereof.

31. **CONFLICT OF INTEREST BY CITY OFFICER:** The Lessee 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 interest in this Lease, except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

32. **APPROPRIATION:** Except for the purchase of certain property authorized to be paid for under various City General Obligation Bond ordinances, all obligations of the City under and pursuant to this Lease are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Lease Agreement and paid into the Treasury of the City.

33. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Lessee shall cooperate and comply with the provisions of Executive Order 94 concerning the use, possession or sale of alcohol or drugs. Violation of this provision or refusal to cooperate with implementation of the policy can result in the City barring Lessee from City facilities or participating in City operations.

34. **AUTHORITY TO EXECUTE:** The Lessee represents that the persons who

have affixed their signatures hereto have all necessary and sufficient authority to bind the Lessee.

35. **PARAGRAPH HEADINGS**: The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Lease or to define or limit the scope or intent of this Lease or its sections.

36. **CITY'S EXECUTION OF AGREEMENT**: This Lease is expressly subject to, and shall not be or become effective or binding on the City until approval by its City Council and full execution by all signatories set forth below.

37. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**: The Lessee consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of 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:

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:

By _____

By _____

By _____



Contract Control Number:

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Exhibit A Habitat Park Greenway Foundation Site

Habitat Park

South Platte River

S. Jason St.

One Story Block Building with Restrooms

Patio

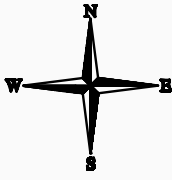
Lease Premises

Pedestrian Path

Pedestrian/Bike Path

W. Exposition Ave.

Parking Lot



Date: January 10, 2012
By: Gregory S. Neitzke PLS

Exhibit B Habitat Park Greenway Foundation Site

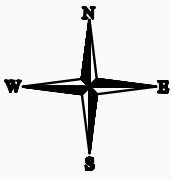


S. Jason St.

Habitat Park

South Plate River

W. Exposition Ave.



Date: March 15, 2012
By: Gregory S. Neitzke PLS



CERTIFICATE OF LIABILITY INSURANCE

OP ID: CM

DATE (MM/DD/YYYY)

11/07/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Madison Insurance Group 425 S. Cherry St, #420 Denver, CO 80246 Thomas R Young		303-322-0800 303-322-0874	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: GREEN-5	FAX (A/C, No):
INSURED The Greenway Foundation Inc 5299 DTC Blvd #710 Greenwood Village, CO 80111		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A : Nautilus Insurance Company		
		INSURER B :		
		INSURER C :		
		INSURER D :		
		INSURER E :		
		INSURER F :		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			NN099398	05/01/11	05/01/12	EACH OCCURRENCE \$ 3,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	<input checked="" type="checkbox"/>					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 3,000,000
							PRODUCTS - COMPI/OP AGG \$ 1,000,000
							\$
A	AUTOMOBILE LIABILITY			NN099398	05/01/11	05/01/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS						\$
<input checked="" type="checkbox"/> NON-OWNED AUTOS			\$				
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	DEDUCTIBLE						\$
	RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The City and County of Denver, its elected and appointed officials, employees and volunteers are named as additional insured with regards to the Commercial General Liability policy.

CERTIFICATE HOLDER**CANCELLATION**

City and County of Denver Department of Parks & Recreation 201 W. Colfax, Dept.602 Denver, CO 80202-5328	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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CERTIFICATE OF LIABILITY INSURANCE

OP ID: CM

DATE (MM/DD/YYYY)

11/08/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER Madison Insurance Group 425 S. Cherry St, #420 Denver, CO 80246 Thomas R Young		303-322-0800 303-322-0874	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: GREEN-5
INSURED The Greenway Foundation, Inc. 5299 DTC Blvd., Suite 710 Greenwood Village, CO 80111		INSURER(S) AFFORDING COVERAGE INSURER A : Pinnacle Assurance Company INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :	
		NAIC # 41190	

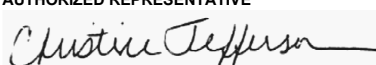
COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPI/OP AGG \$	
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$	
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$ \$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	X	4043282	05/01/11	05/01/12	WC STATUTORY LIMITS E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

City and County of Denver, Parks & Recreation Attn: Linda Nedved 201 W. Colfax Ave., Dept.602 Denver, CO 80202	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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