

# 1

AGREEMENT

NOW COMES, Lewis Family Foundation, a New Hampshire not-for-profit corporation with a mailing address of 347 Congress Street, Boston, Massachusetts 02210 (hereinafter, the "Foundation") and Town of Kensington, by and through its Board of Selectmen, with an address of 95 Amesbury Road, Kensington, New Hampshire 03833 (hereinafter, the "Town");

WITNESSETH:

WHEREAS, the Foundation has prepared a comprehensive plan for the land currently owned by the Town known as the "Town Park" and the "Sawyer Field" (together, the "Town Land"), and the land adjacent thereto to be deeded to the Town by Kensington Leadership Center Trust, an affiliate of the Foundation, (the "KLC Trust Land"). The Town Land and the KLC Trust Land are referred to collectively as the "Park"; and

WHEREAS, the Foundation is desirous of seeing the Park developed for park and recreational purposes in a cohesive fashion; and

WHEREAS, the Foundation is desirous of seeing that the Park is maintained for the purposes for which it is being built for the foreseeable future; and

WHEREAS, the Town is grateful for the gift of the land and improvements, but wishes to be sure that the improvements meet the park and recreational needs of the residents of the Town now and in the foreseeable future; and

WHEREAS, the Kensington Town Meeting voted to accept the KLC Trust Land offered by Kensington Leadership Center Trust for park purposes, and voted to accept the improvements to the KLC Trust Land, and voted to accept improvements on the Town Land.

NOW, THEREFORE, the parties agree as follows:

1. The Foundation will cause to be created, and, subject to the terms hereof, will fund the internal operating costs of, a "Sawyer/Kensington Trust", a New Hampshire not-for-profit entity

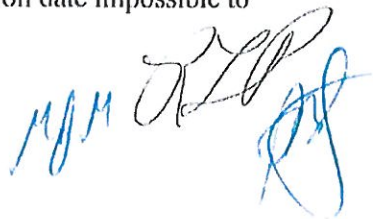
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(the "Trust"), which will qualify as a public charity under the Internal Revenue Service statutes and regulations. The Trust will have five Trustees: (a) three of the Trustees will be appointed for staggered three-year terms by the Town Board of Selectmen, who may appoint one or more Selectmen as its designated Trustees; and (b) two of the Trustees will be appointed for staggered three-year terms by the Foundation, which may appoint one or more of the Foundation's Directors as its designated Trustees. The three town Trustees will have initial terms of three years, two years and one year, respectively, and the two Foundation Trustees will have terms of three years and two years, respectively. The Foundation will appoint as its first designee Michael Del Sesto, of Kensington, NH.

2. The Foundation will provide matching funds to the Trust in the amount of up to Eight Thousand (\$8,000) Dollars (the "Maximum Committed Funds") on or about July 1 of each year provided that the Town, through public or private means, raises an equivalent amount for the maintenance and repair of the Park facilities in that year, including funds raised through "Permit Fees" in accordance with Section 6 hereof.

3. The Foundation will provide an amount up to the Maximum Committed Funds each year for a period of ten (10) years commencing one year after completion of the Park facilities.

4. Upon completion of the Park facilities and improvements thereon, the Foundation will cause the Kensington Leadership Center Trust to deed the KLC Trust Land to the Town with deed restrictions requiring the Park to be used solely for park and recreation purposes. The completion of such Park facilities and improvements shall be at the sole expense of the Foundation and shall be substantially in accordance with the Plans (the "Plans") and Budget (the "Budget") attached hereto as Exhibit A and Exhibit B, respectively. The parties understand that the weather, the commitments of contractors, and other factors make the completion date impossible to

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determine with accuracy at this point in time, but it is anticipated to take place during calendar year 2007.

5. The Town will permit the Foundation to enter into contracts for improvements to the Town Land in accordance with the Plans and the Budget, and provided that:

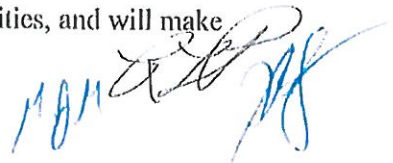
- (a) all changes and improvements to the Park Plans and the Park Budget prior to completion of the Park must be approved in advance by the Town Board of Selectmen or its designee and by the Foundation or its designee;
- (b) all payments to contractors for payments for said changes and improvements must be approved in advance by the Town Board of Selectmen or its designee prior to disbursement being made by the Foundation; and
- (c) once the facilities and improvements to the Park have been completed, any further capital improvements to the Park including, without limitation, improvements to the design, layout or facilities, shall require the prior approval of not less than Eighty Percent (80%) of the Trustees of the Trust.

6. The parties anticipate that the Park will be used by for-profit and not-for-profit groups who will benefit from the use of the Park and the revenue that such groups may earn from concession stand sales, ticket sales, or other revenue-generating activities. The Town and the Foundation agree to establish minimum Permit Fees consistent with the attached "Permit Fee Schedule" (the "Fee Schedule") attached hereto as Schedule 1, and incorporate the Fee Schedule as part of this Agreement.

The Town, Foundation and the Trust agree to revisit the Fee Schedule yearly, prior to March 1<sup>st</sup>, to make such adjustments to the Fee Schedule as may be reasonable and necessary, including any modifications to the "Definitions" used therein, keeping in mind that the Fee Schedule set forth herein establishes minimum fees that are to be honored for the period of this Agreement.

7. The Town Board of Selectmen will, from time to time, in consultation with the Trust, establish policies for the Park's use.

8. The Trust will, according to its governing documents, have as a purpose the monitoring of the use and maintenance of the Park and recreational facilities, and will make



periodic recommendations to the Town as it sees fit in that regard. The governing documents will be reviewed and approved in advance of their submission by the Town Board of Selectmen.

9. The parties anticipate that, upon creation of and IRS approval of the Trust, the Trust will agree and acknowledge in writing that it will be bound by the terms and conditions of this Agreement, and that it will be added as a party to this Agreement.

10. After the Trust becomes a party to this Agreement, evidenced by the Trust's authorized signature and date, this Agreement may be modified only in writing and only by the Foundation, the Town and a vote of not less than Eighty Percent (80%) of the Trustees of the Trust.

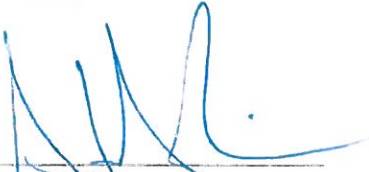
11. This Agreement expires when the ten (10) year period described in Paragraph 3 herein expires unless extended in writing by the Foundation, the Town and the vote of not less than eighty percent (80%) of the Trust.

*[signatures on next page]*

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IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on 25 of

July 31, 2007.

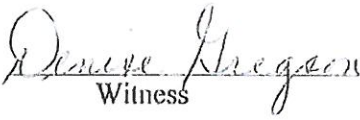
  
\_\_\_\_\_  
Witness

LEWIS FAMILY FOUNDATION

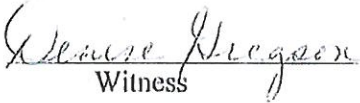
By:   
\_\_\_\_\_, duly authorized  
Date: August 28, 2007

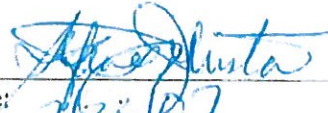
TOWN OF KENSINGTON

By and Through Its Board of Selectmen


  
\_\_\_\_\_  
Witness

By:   
\_\_\_\_\_  
Date: 7/23/07

  
\_\_\_\_\_  
Witness

By:   
\_\_\_\_\_  
Date: 7/23/07

  
\_\_\_\_\_  
Witness

By:   
\_\_\_\_\_  
Date: 7/23/07

SAWYER/KENSINGTON TRUST

  
\_\_\_\_\_  
Witness

By:   
\_\_\_\_\_, duly authorized  
Date: 8/29/07

Permit Fee Schedule

<u>Event</u>	<u>Fee</u>
Not-For Profit Team Practices .....	\$ - 0 -
Not-For-Profit Games/Events .....	\$ ____ /day
For-Profit Games/Events .....	\$ ____ /day
“Special Events” .....	\$ ____ /day

Definitions:

“Not-For-Profit”: Associations, organizations or corporations organized and operated exclusively for one or more of the following purposes: (a) charitable, (b) religious, (c) scientific, (d) literary, (e) educational, (f) prevention of cruelty to children or animals, (g) to foster local, national or international sports, or (h) family reunions, celebrations or other family-oriented events that do not generate revenue.

“For-Profit”: Businesses, corporations, sole proprietors or individuals whose primary function is to generate profit.

“Special Events”: Any single use of the Park that is expected to draw more than 200 people to the Park for the event.

If there is a disagreement or question as to whether any Park user is a not-for-profit organization or a for-profit organization, or whether a single use of the Park constitutes a “Special Event”, the Trust, by vote of not less than eighty percent (80%) of the Trustees, shall make such determination, which determination shall be final.

