

AGREEMENT

The Kensington Leadership Center Trust (hereinafter, “KLCT”), Alan E. Lewis, Trustee, a New Hampshire not-for-profit corporation with a mailing address of 347 Congress Street, Boston, Massachusetts 02210; the Town of Kensington, by and through its Board of Selectmen, with an address of 95 Amesbury Road, Kensington, New Hampshire 03833 (hereinafter “Town”); and the Sawyer/Kensington Trust (hereinafter “the Trust”) 22 Cottage Road, Kensington, NH 03833 (hereinafter collectively referred to as “the Parties”) agree to the following terms:

RECITALS

WHEREAS, KLCT prepared a comprehensive plan for the land currently owned by the Town known as “Sawyer Park” and the land adjacent thereto having been deeded to the Town by KLCT, (collectively referred to as the “Park”), as outlined more fully in Exhibit A to this Agreement; and

WHEREAS, KLCT (and/or related parties) donated land to the Town and paid for the development of the Park at a cost of approximately \$3.2 million; and

WHEREAS, since the Park’s inception, the Trust has spent approximately \$360,000 for the maintenance and operation of the Park; and

WHEREAS, the Parties are desirous of seeing the Park’s continued development for park and recreational purposes in a cohesive fashion; and

WHEREAS, the Parties are desirous of seeing that the Park is maintained for the purposes for which it was built for the foreseeable future.

NOW THEREFORE, for the public benefit and consideration set forth herein, the Parties agree as follows:

PROVISIONS

1. The Town Board of Selectmen determine that entering into this Agreement is in the public benefit. Specifically, the benefit is the continued maintenance, development, oversight, and improvement of the Park for the benefit of Town of Kensington (“Town”) residents and the general public.
2. The term of this Agreement is thirty (30) years from the date hereof, unless extended as set forth in Paragraph 12 of this Agreement.

3. KLCT will fund the internal operating costs of the Trust, which has qualified as a public charity under Internal Revenue Service statutes and regulations. The Trust consists of five members, three of whom are currently appointed by the Board of Selectmen (“Town Trustees”). Hereafter, the Town Trustees shall be elected at Town Meetings in similar fashion to other Town Trusts, such as the Library Trust, Grange Hall Trust and the Cemetery Trust. In the event a Town Trustee position fails to be filled by election, the Board of Selectmen shall appoint a Town Trustee to serve until the next Town Meeting. Initial elected Town Trustee positions shall be for one, two, and three years so that only one Town Trustee position is generally subject to reelection in any year. The remaining two Trustees shall be appointed by KLCT. The Parties agree that four Trustees constitute a quorum, and four votes are needed to take any action on behalf of the Trust. The Trust’s governing documentation shall be amended to reflect the election of Town Trustees and accompanying procedures as reflected in this paragraph.
4. The Town agrees to provide \$30,000 annually to the Trust for the duration of this Agreement so long as the Trust and KLCT comply with their obligations under this Agreement. The Town’s payment to the Trust shall be appropriated through and included in the Town’s annual operating budget and shall be made on or before April 1 of each year this Agreement remains in effect. In the event the Town legislative body, through Town inhabitants qualified to vote in Town affairs, fails to pass appropriation of funds to be paid by the Town to the Trust as contemplated by this Agreement, this Agreement shall terminate. KLCT agrees to provide all remaining funds necessary to maintain the Park (“Necessary Funds”) for the duration of this Agreement. All Permit Fees shall be remitted to the Trust and shall be used by the Trust for the benefit of the Park.
5. KLCT shall hire a Park Manager. The Park Manager shall oversee the operations of the Park and serve and assist the Trust in managing the Park. The Park Manager shall be selected with approval from the Trust and input from the Town Board of Selectmen. The Parties agree that the Park Manager is not an employee of the Town. Key responsibilities of the Park Manager shall include, but are not limited to, coordinating all Park activities, including Park rentals, event scheduling, advertising,

concession stand, and community and nearby communities outreach as well as general maintenance and upkeep of the Park. The Park Manager shall also serve as a point of contact for any vendor retained by the Trust to provide services in connection with the Park. Funds paid to and for compensating the Park Manager shall also be considered Necessary Funds.

6. The Park will be used by for-profit and non-profit groups who will benefit from the use of the Park, and such groups may retain the revenue that they may earn from concession stand sales, ticket sales, or other revenue-generating activities. Use of the Park's fields, trails, or pavilion by any organization, league, or group shall be scheduled through the Park Manager and scheduled use shall have priority over and supersede any non-scheduled use of the Park. The Parties further agree that the first priority in scheduling the use of any Park field or facility shall be given based on the following guidelines: (a) Town programs, Town residents, and/or organizations or leagues made up exclusively or primarily of Town residents should be prioritized over organizations with minimal to no residents participating; (b) non-profit organizations should be prioritized over for-profit organizations; and (c) New Hampshire-based organizations should be prioritized over out-of-state organizations. Town residents and non-profit organizations or leagues made up primarily of Town residents shall not be required to pay a Permit Fee. The Parties further agree to establish minimum Permit Fees consistent with the attached "Permit Fee Schedule" (the "Fee Schedule" attached hereto as Exhibit B), and incorporate the Fee Schedule as part of this Agreement. The Parties agree that all Permit Fees shall be paid to the Trust and shall be used by the Trust solely to benefit the Park.

The Parties agree to revisit the Fee Schedule annually, prior to January 15 of each year, 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 established minimum fees that are to be honored for the period of this Agreement.

7. The Town Board of Selectmen may, after consultation with the Trust, establish policies for the Park's use, including but not limited to any necessary waiver of liability form for certain individuals utilizing the Park.

8. The Trust will, according to its governing documents and the authority granted to it by the Town consistent with N.H. R.S.A. § 35-B as outlined in this Agreement, monitor the use and maintenance of the Park and the Park's recreational facilities, and will make periodic recommendations to the Town regarding the Park's use and maintenance. The Trust may enter into contracts on its own behalf for the maintenance of the Park as well as oversee and manage the grounds and building maintenance for the Park, including but not limited to:
 - a. Mowing, fertilization, athletic field turf care, and pesticide application, as well as general purpose plant, shrub, and tree oversight and maintenance;
 - b. Ensuring that any waste, rubbish, or other objectionable materials do not accumulate within and around the Park, and taking necessary steps to dispose of such waste, rubbish, or other objectionable materials; and
 - c. Monitoring and routine maintenance of building structures, fencing, and playground and fields

To the extent the Trust seeks to make capital improvements to the Park in excess of \$15,000.00, it must first seek approval of the Town Board of Selectmen. The powers and duties conferred upon the Trust are limited to those powers and duties contained in N.H. R.S.A. § 35-B to allow the Trust to effectively manage, oversee, and improve the Park as outlined in this Agreement. Nothing in this Agreement shall be construed to give KLCT or the Trust the ability to dispose of real estate that forms the Park or take any action that would be inconsistent with the purpose set forth in N.H. R.S.A. § 35-B.

9. To accomplish the goals set forth in this Agreement, the Town and Trust agree to sponsor a jointly-conducted, comprehensive review of the Park Grounds, buildings, playground equipment, and athletic fields for purposes of developing a maintenance schedule that will remain intact during the life of this Agreement. This review will include the participation of the Park Manager. This review will be conducted annually, and the schedule may be amended if all Parties agree.
10. The Trustees of the Trust shall prepare a financial report reflecting the expenditures and funding sources for the Park on an annual basis. The review and publication of

this report will be the responsibility of the Town Board of Selectmen. The Town Board of Selectmen reserves the right, if it deems it necessary and in the public interest, to conduct an audit upon receipt of the financial report prepared by the Trustees of the Trust. The Town shall bear the reasonable costs of the audit contemplated in this paragraph.

11. In the event of a dispute arising out of or related to this Agreement or in the event a party defaults on its obligations under this Agreement, the Parties agree that the following dispute resolution procedure shall apply:
 - a. The party alleging that a dispute exists or that a party has failed to comply with its obligations under this Agreement shall, in the first instance, give notice in writing via certified mail, return receipt requested to the other parties of such dispute or default. Such notice shall include a reasonable period of time to cure any purported default of 30 days, unless extended in writing by the noticing party. The Parties agree to work in a collaborative manner to address the purported dispute or default in an attempt to reach a resolution on that issue.
 - b. In the event the dispute or default continues to exist after written notice is sent, the Parties agree to engage in non-binding mediation in an attempt to resolve the dispute or default.
 - c. In the event the dispute resolution procedure outlined in this section fails to achieve a resolution of the dispute or default, the Parties are entitled to pursue any legal or equitable relief available. Nothing in this section shall preclude a party from any equitable or legal relief available to it.
12. This Agreement will expire thirty (30) years from the date hereof, unless extended in writing by the Town Board of Selectmen, KLCT, and the vote of not less than Eighty Percent (80%) of the Trustees of the Trust.
13. Any notice contemplated or required under this Agreement or other writing, which may be given by any of the parties, shall be addressed as follows:

To the Town: Board of Selectmen
 95 Amesbury Road

Kensington, New Hampshire 03833

To the KLCT: Alan E. Lewis, Trustee
347 Congress Street
Boston, Massachusetts 02210

To the Trust: Sawyer/Kensington Trust
22 Cottage Road
Kensington, New Hampshire 03833

14. Nothing in this Agreement shall be construed as a waiver by the Town, the Town Board of Selectmen, and Town employees and agents of any statutory or common law immunity available in connection with or in any way related to the Town's ownership of the Park and the subject matter of this Agreement.
15. This Agreement shall be governed by the laws of the State of New Hampshire without regard or reference to its conflict of laws principles. The Parties agree that any dispute arising out of or related to this Agreement shall be brought in a court of competent jurisdiction in the State of New Hampshire, to the extent the dispute resolution procedures provided herein are unsuccessful.
16. This Agreement may be modified only in writing and only by the agreement of the Town Board of Selectmen, KLCT, and a vote of not less than Eighty Percent (80%) of the Trustees of the Trust.
17. KLCT and the Trust may not assign this Agreement without written authorization from the Town Board of Selectmen.
18. The Parties hereby represent to one another that they have full power and authority to enter into this Agreement and carry out their obligations.
19. The "WHEREAS" clauses set forth above are expressly incorporated into and form part of the terms of this Agreement.
20. Any determination by a court of competent jurisdiction that any provision herein contained is invalid or unenforceable shall not affect the validity or enforceability of any other provision of this Agreement.

21. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.
22. This Agreement and accompanying attachments constitute the entire agreement between the Parties relating to the subject matter covered by them, and supersedes any and all prior agreements and/or undertakings of either party related to the subject matter.
23. The effective date of this Agreement is the date upon which all of the Parties have executed this Agreement. The date this Agreement is signed by the last party to sign it (as indicated by the date stated opposite the party's signature) will be deemed the date of this Agreement. An executed electronic copy of this document shall be deemed to be an original, fully enforceable agreement.
24. This Agreement is contingent upon authorization by the Town legislative body at the Town's March 2019 meeting.

[signature pages to follow]