

# ***THE TOWN OF KENSINGTON***

## **Proposal for Use and Management of the Kensington Cabin**

Town of Kensington  
3710 Mitchell Street  
Kensington, MD 20895

Kitty L. Raufaste, Mayor  
301-949-2424

The following is an expression of interest on the part of the Town of Kensington to use and manage the Kensington Cabin (10000 Kensington Parkway) as a historic and recreational resource for the surrounding communities. The Town of Kensington recognizes the Kensington Cabin as an invaluable recreational resource of historic significance, and worked to save it from potential demolition. The Town recommends the re-activation of the Cabin for the public's enjoyment through a partnership with MNCPPC. The Town, through a joint venture with surrounding communities and MNCPPC, will undertake necessary improvements and will develop and implement programs for the Cabin, assuming rights and responsibilities commensurate with the use and management of the facility.

### **HISTORY OF KENSINGTON CABIN**

The Kensington Cabin is one of the earliest structures built in the MNCPPC park system. It was constructed in the 1930s and illustrates the early years of public recreation in a county anxious to preserve a system of stream side parks developed along landscaped roadways. The cabin is a picturesque one-story log structure, tucked against a hillside along a branch of Rock Creek. It is built of rounded logs and has a stone chimney. Although not currently designated on the *Master Plan for Historic Preservation*, the cabin has a unique story and is of great value in understanding our heritage.

### **STATEMENT OF PROPOSED PARTNERSHIP USE**

The Town proposes to use the Kensington Cabin to host a variety of programs of public benefit consistent with the Cabin's original use in the 1930s as a community center. Under the proposed partnership, the Town would assume responsibilities for overseeing the renovation of the Cabin and would then assume management responsibilities for the facility, including rental administration, payment of utilities, upkeep of the interior facilities, maintenance of an alarm system, and provision of liability insurance. MNCPPC would continue to maintain the grounds and lighting surrounding and leading to the Cabin and would be responsible for major capital improvements in the future.

The Town's proposed use of the Kensington Cabin will be multi-functional:

- ⇒ summer camps and recreational programs for children
- ⇒ adult classes
- ⇒ meeting space for community groups
- ⇒ event space for lectures and workshops, etc.
- ⇒ historic structure

These events will make the Cabin available to the public on a regular basis.

The Town has extensive experience in managing Town-owned properties and making those properties available for community events. We anticipate similar arrangements for the Kensington Cabin property. Currently, the Town Hall accommodates a number of community activities that would be better suited to the Cabin and the surrounding parkland.

Community groups potentially interested in use of the property include: the Rock Creek Hills Citizens Association, the Women's Club of Kensington, the Women's Community Club of Kensington, and the Kensington Historical Society.

### **PROJECTED YEARLY USAGE**

Based on current information, the Town feels that the following usage figures are reasonable estimates:

#### **Community group meetings:**

- Garden Club – once per month
- Widows Group – once per month
- Women's Club – once per month
- Historical Society – once per month

#### **Community/Adult classes:**

- Yoga – once per week on Saturdays
- Pilates – three classes per week

#### **Children's camps and/or classes:**

- Kiddie Ballet – three classes per week
- Kuman Math and Reading – three classes per week, including Saturday

Special programs – approximately six events of this type per year

Additional uses may be more frequent, depending on the season of the year, and may include county summer recreation programs. The primary goal for the Kensington Cabin is to have the community participate and feel involved in the use of the property.

## FINANCIAL INFORMATION - OPERATING

The Town plans to meet the operating expenses involved in a variety of ways: income from the rental operation of the cabin, grants, and special fund-raisers. A proposed annual budget is included below:

### Expenses

Clerical support (Town Hall staff)	2,000
Maintenance and cleaning	2,000
Utilities	4,800
Security System (regular maintenance)	500
Liability Insurance	500
<b>TOTAL</b>	<b>9,800</b>

### Income

In-kind contribution of clerical support	2,000
Rentals	7,000
Special Events (6/yr @\$75)	450
Fundraisers	350
<b>TOTAL</b>	<b>9,800</b>

## FINANCIAL INFORMATION - CAPITAL IMPROVEMENTS

A variety of capital improvements need to be made to make the Kensington Cabin usable for the programs described in the proposal. The Town has had architectural plans for the renovation drawn up by a local architect and these are included as **Attachment #1**. They include an accessible bathroom and accessible entrance to the building, as well as all necessary code improvements necessary to get a Use and Occupancy Permit. In addition, the Town has asked a local contractor to develop a cost estimate for the needed improvements and that is included as **Attachment #2**. Both of the individuals providing this information are experienced professionals who have extensive knowledge of working with historic structures.

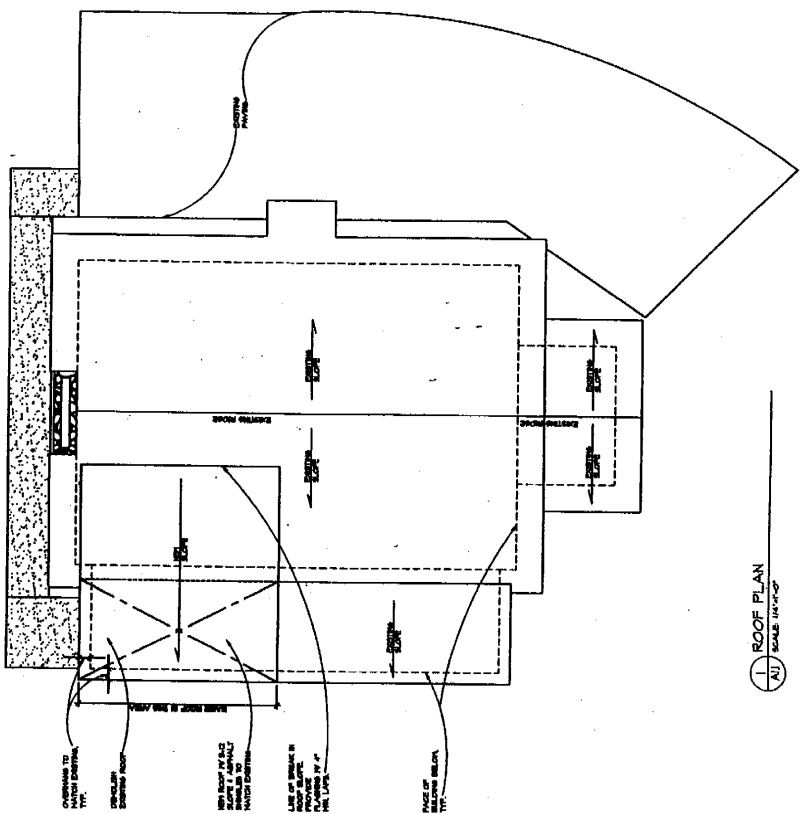
The Town would like to propose that MNCPPC provide a maximum of \$50,000 for implementation of the capital improvements noted above. The Town would implement the improvements under a Lease agreement, similar to the one utilized at the Waters House in Germantown. A draft Lease agreement, based on the one utilized at the Waters House, is included for consideration as **Attachment #3**.

## CONCLUSION

The Kensington Cabin has been vacant for a number of years. Its current condition is a detriment to the Town and to MNCPPC. It can and should be an important community resource which will not only provide much-needed space for community events and gatherings, but will also serve to remind all the citizens of Montgomery County of the history of our park system and of Kensington. The proposed partnership will benefit the citizens of Montgomery County and the Town hopes that MNCPPC will give this proposal its approval.



**SCHEMATIC DESIGN**



ROOF PLAN  
 1/4" = 1'-0"



10/29/03

To: Lynn Raufast, Mayor  
Town of Kensington  
3710 Mitchell St.  
Kensington, MD 20895  
Via Fax # 301 949-4925

Ref: Kensington Cabin

Sub: Revised Proposal for Construction

Dear Mayor Raufast,

I am pleased to provide this revised proposal for the renovation of the Kensington Cabin. This proposal is based on plans by GTM Architects dated 2/8/01.

You will recall that my initial proposal, dated 6/14/01 was limited in scope so as to include the handicap entry and baths areas only.

This revised proposal expands Macon's scope of work to include not only the handicap entry and bath areas, but also repairs to the rest of the building.

I have included the most technical and demanding aspects of the work in this proposal, knowing the it will still be necessary to draft volunteers for the simpler aspects of the work, such as painting, final cleaning and landscaping.

There are also some potential areas of work that have not been considered on the drawings or in this proposal.

These areas of concern include:

- Is the existing water service adequate to serve the new sprinklers?
- Are sprinklers actually required in such a small building?
- Are structural repairs to the front wall or floors required?
- What others issues will present themselves during the preparation of permit drawings?

**Scope of Work:**

**New Bathroom and Entry Areas**

**Demolition**

- Remove, salvage existing bath fixtures
- Remove drywall, interior partitions, finishes
- Remove section of existing roof as required

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10412 Montgomery Avenue      Kensington, MD 20895      (P) 301-933-7420      (F) 301-933-2974  
- MHIC #15715      - DC Lic. #4016      - VA Class A #2701 031596      -

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**Masonry**

- Cut-in new door opening
- Extend approx. 20'x2' of C.M.U. wall
- Parge new and existing walls

**Framing**

- Build new roof, gables
- Sheath new roof w/5/8" plywood
- Raise new bathroom floor on wood sleepers
- Build new interior partitions

**Insulation**

- Provide R-13 at new exterior walls
- Provide R-30 insulation at new roof areas

**Drywall**

- Hang and finish drywall at the new bathroom and foyer

**Roofing**

- Provide new asphalt shingles with ice and dam shield at the new roof section
- Tie-in to existing roofing as required

**Electrical**

- Rough-in three lights with switches, 1 g.f.i. plug, 1 bath exhaust fan and switch
- Re-locate the water heater circuit

**Plumbing**

- Remove and re-install the existing bath fixtures
- Raise the waste and water lines to accommodate the raised floor
- Re-locate the existing water heater

Interior doors, hardware and trim

Ceramic tile at the new bath floor and base

Vinyl flooring at the new foyer

**Scope of Work**

Existing Cabin Areas

**Sprinklers**

- Install approx. eight sprinkler heads, served by the existing water service



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**HVAC**

Repair/ replace the existing gas hot-air furnace

**Electrical**

Design and install a simple fire alarm system  
Provide improved lighting in the main room, and storage areas

**Windows**

Make misc. repairs to the existing windows and screens

**Flooring**

Provide new carpet or vinyl flooring in the main room

**Concrete Access Ramp**

Excavate and form as required for the new access ramp  
Provide, place and finish the concrete as required

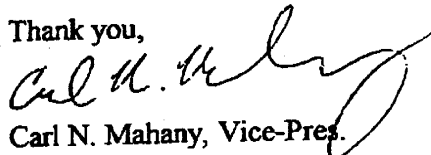
The cost of the work outlined above is \$49,560.00

The following items have not been included

Building permit fees, plans, engineering  
Termite inspection or treatment  
New electric, water, gas or telephone services, if required  
Lead paint or asbestos abatement, if required  
Structural repairs, if required  
Painting, landscaping, and final cleaning

Please let me know if I can provide any additional information.

Thank you,



Carl N. Mahany, Vice-Pres.

Macon Construction Inc.

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**DEVELOPMENT, LEASE AND LICENSE AGREEMENT**

This Development, Lease and License Agreement ("Agreement"), is entered into this \_\_\_\_ day of \_\_\_\_\_, 2003, by The Maryland-National Capital Park and Planning Commission ("Commission"), a public body corporate of the State of Maryland at 9500 Brunett Avenue, Silver Spring, Maryland 20901; and the Town of Kensington ("Town"), 3710 Mitchell Street, Kensington, Maryland, 20895.

WHEREAS, the Commission is the owner of certain real property known as the Kensington Cabin in the \_\_\_\_\_ Park, Montgomery County, Maryland; and

WHEREAS, the Town is a Maryland Municipality whose mission is governmental and public in nature; and

WHEREAS, to fulfill its public mission, the Town desires to lease and license a portion of the Park (as defined herein) to rehabilitate and occupy the Kensington Cabin as a community center and historic site; and

WHEREAS, the Commission has found that there is sufficient public interest in the work of the Town with reference to community and educational programs, to justify the use of the Commission's property for this purpose; and

WHEREAS, the Commission desires to enter into a Development, Lease and License Agreement (as defined herein) with the Town to provide for the Town's use of the Park for a five (5) year term with an option for the Town to renew for an additional (five) 5 years; and

WHEREAS, in consideration of permission to use the Park for five (5) years, the Town intends to (1) design and construct Improvements (as defined herein) in the Park valued at approximately \$50,000; (2) assume maintenance of the Improvements as further detailed in this Agreement; and (3) administer programs and educational events at the Park which are of benefit to the public;

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NOW, THEREFORE, WITNESSETH, in consideration of the mutual promises, covenants, and agreements herein contained, and other good and valuable consideration, it is hereby agreed by and between the parties as follows:

**Section 1. DEFINITIONS**

The following terms are defined as follows in this Agreement:

- 1.1 "Acceptance" means written confirmation from the Commission that a particular Improvement was constructed in accordance with the approved construction drawings and specifications;
- 1.2 "Agreement" means this Development, Lease and License Agreement between the Commission and the Town;
- 1.3 "Commission" means The Maryland-National Capital Park and Planning Commission, a body corporate and politic created and existing under the laws of the State of Maryland with the full legal right, power and authority to enter into agreements for the development, maintenance, and operation of park facilities in the County;
- 1.4 "Construction Phase" means the period beginning when the Town receives a permit from the Commission to enter the Park and begin construction of the Improvements for a particular Phase, through to obtaining a permit to occupy the Kensington Cabin;
- 1.5 "Construction Plans" means the plans, drawings, and specifications for the Improvements to the Kensington Cabin;
- 1.6 "Contractor" means an individual, firm, corporation or other entity awarded a contract for the renovation of the Kensington Cabin by the Town;
- 1.7 "County" means Montgomery County, Maryland;
- 1.8 "Development Costs" means any and all costs associated with the planning, design and/or construction of the renovations to the Kensington Cabin;

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1.9 "Director of Parks" means the Director of Parks of the Commission or his designee;

1.10 "Hazardous Materials" means any hazardous or toxic substance, material, or waste including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172. 101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable federal, state, or local law, ordinance, or regulation including, but not limited to, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or "Superfund"), the Clean Air Act, and the Clean Water Act.

1.11 "Hours of Operation" means the hours and days which the Kensington Cabin may be open to the general public.

1.12 "Improvements" mean renovation to be constructed within the Kensington Cabin by the Town;

1.13 "Laws" mean any and all applicable laws, orders, ordinances, codes and regulations of any and all courts and governmental bodies, agencies and authorities having jurisdiction over the Park including, without limitation, all zoning, subdivision, building and land use laws;

1.14 "Lease" means the right of Town to use the Leased Premises of the Kensington Cabin for a five year term with an option to renew for five years;

1.15 "Leased Premises" mean the building delineated as Leased Premises on Attachment 1.

1.16 "License" means the right of the Town to use the Licensed Premises for a five year term with an option to renew for five years;

1.17 "Licensed Premises" means the portion of the Park delineated as Licensed Premises on Attachment 1.

1.18 "Memorandum of Understanding" means an agreement (Attachment 2, incorporated herein by reference) entered into between the Commission and the Town for the reimbursement of expenses relating to the renovation of the Kensington Cabin.

1.19 "Town" means the the Town of Kensington, a Maryland Municipality with Town Offices located at 3710 Mitchell Street, Kensington, Maryland, 20895, which intends to operate the Kensington Cabin.

1.20 "Permit for Construction on Park Property" means a permit issued by the Commission authorizing construction activities on Commission property pursuant to an approved set of construction plans and specifications;

1.21 "Planning Board" means the Montgomery County Planning Board of the Commission;

1.22 "Planning Phase" means the period within which the Town and its Contractors or Subcontractors design the renovations, obtain any required approvals, from Planning Board or otherwise, and obtain any required permits.

1.23 "Premises" means the area of the Park designated as the Leased Premises and the Licensed Premises on Attachment 1.

1.24 "Project Manager" means the Commission Staff person responsible for overseeing the Project;

1.25 "Scope of Work " means the Improvements as detailed in Attachment 3;

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1.26 "Subcontractor" means an individual, firm, corporation or other entity having direct contract with the Contractor or any Subcontractor for the performance of part of the Project;

1.27 "Substantial Completion" means that construction of the Improvements has so progressed as to make the Improvements fit and usable for use for their intended purpose and safe for use by the public;

1.28 "Suppliers" mean an individual, firm, corporation or other entity having a direct contract with the Contractor or any Subcontractor or Society to provide materials, equipment or supplies for the Project;

**Section 2. DEVELOPMENT AGREEMENT**

2.1 **Term** - The Development Agreement portion of this Agreement (as defined herein) is in effect from the date of execution until completion of the Construction Phase (as defined herein) and Acceptance (as defined herein) by the Commission of the Improvements (as defined herein).

2.2 **Scope** - Town is authorized to construct Improvements in the Park (as defined herein), provided the terms of this Agreement have been met, in accordance with the Scope of Work (as defined herein).

2.3 **Town's Role** - Town will engage the services of Contractors (as defined herein), Subcontractors (as defined herein), and Suppliers (as defined herein) for the purposes of (1) designing the Project (as defined herein), (2) obtaining any necessary permits; and (3) constructing the renovations to the Kensington Cabin detailed in Attachment 2. The Town must provide construction bonds or must have their contractors provide such bonds (performance bond and labor and material bonds as required by the Maryland Little Miller Act) to the extent required by the Commission.

2.4 **Funding for Project** - MNCPPC Special Revenue Fund, OCA # 494412. The Commission is not responsible for funding any portion of the construction of the Project, except the reimbursement of the Town for certain expenses as detailed in the Memorandum of Understanding (as defined herein).

2.5 **Planning Phase** – Town is solely responsible, financially and otherwise, for developing technical specification for the renovations, obtaining any required approvals, and obtaining any required permits from any federal, state or local agency.

2.6 **Project Manager** - During the Planning Phase, the Commission's Project Manager will be responsible for review and approval of all plans and technical specifications. Town shall work closely with the Project Manager. The Project Manager will also serve as the central point of contact on all required Commission approvals.

2.7 **Completion of Construction Phase** - Upon completion of each renovation, the Town shall notify the Commission. The Commission shall make a final inspection of the renovations to assure their compliance with the approved specifications and the terms and conditions of this Agreement.

2.8 **Insurance** - Town will maintain, or have its Contractors maintain, liability insurance as required by the Commission. Town will ensure that all construction is bonded as required by the Commission.

2.9 **Default** - If Town materially defaults on its responsibility to complete the Project, then the Commission may, among other remedies, elect to terminate the renovations. Material default in any Construction Phase will also void Town's Lease and License under Section 3 of this Agreement.

### **Section 3. LEASE AND LICENSE AGREEMENT**

A Lease (as defined herein) for the use of the Leased Premises (as defined herein), and a License (as defined herein) to use the Licensed Premises (as defined herein) as

displayed in Attachment 1, for the purposes designated below, is hereby granted to Town, subject to all of the conditions hereinafter enumerated.

3.1 **Purpose** - The purpose of this Lease and License to the Town is for the Town to preserve the history of Montgomery County and to provide life and vitality to the historic Kensington Cabin. The Town's use of the Kensington Cabin will be multi-functional and will be open to the public on a regular basis:

- summer camps and recreational programs for children
- adult classes
- meeting space for community groups
- event space for lectures and workshops, etc.
- historic structure

3.2 **Term** - For the period of the signing of this agreement and five years hence, the Commission grants the Town a Lease for use of the Leased Premises and a License for the use of the Licensed Premises to operate the Kensington Cabin described herein. The Town shall have the option to renew this lease for an additional five years. Such option must be exercised by written notice to the Property Management office one year prior to the expiration of this lease.

3.3 **Associated Facilities** - In connection with the Lease and License granted herein, the Town, its employees, agents, guests and invitees shall have access to and from the Kensington Cabin via any road or walkway located within the Park and shall have access to any parking areas ultimately built within the Leased Premises.

3.4 **Exclusive Use and Control** - The Town shall have the exclusive control and management over the Leased Premises, subject only to the right of inspection by the Commission to ensure compliance with this Agreement. In addition, the lands around the Kensington Cabin, not subject to the Lease, may be used by the Town with 45 days notice to the Park Manager. The Commission and/or the County may use the area around the leased structures (which are not subject to the lease) for active and passive recreational uses,



without the prior consent of the Town except on those days where the Town has given notice of their use.

3.5 **Operating Permits** - The Town shall obtain all licenses and operating permits that are required by Federal, State or local law for the operation of the Town's activities. The Town shall be solely responsible for any fees or costs associated with obtaining the licenses and permits. Notwithstanding the above, whenever Commission regulations require the Town to obtain permits from the Commission for its operation at the Park, the Commission shall provide such permits at no cost to the Town.

3.6 **Alcoholic Beverages and Tobacco Products** - The Town will be responsible for obtaining any necessary permits for the serving of alcoholic beverages. Tobacco products are prohibited anywhere on Park property including the leased premises.

3.7 **Taxes** - The Town will be responsible for all taxes (including Admission taxes, if applicable) and fees assessed against the Town or the Commission by Federal, State or local authorities related to the operation of the Town's activities in the Kensington Cabin.

3.8 **Insurance** - Town will purchase and keep in effect at its own cost and expense, a comprehensive general liability policy, insuring both the Town and the Commission, as follows:

1. Premises and Operations Liability Insurance
  - a) Limits each occurrence: \$1,000,000.00
  - b) Limits each person: \$1,000,000.00
2. Excess Liability: Bodily Injury and Property Damage
  - 1) Limits combined: Not less than \$1,000,000.00 each occurrence
  - 2) Limits combined: Not less than \$1,000,000.00 aggregate
3. Premises Medical Payment Insurance
  - 1) Limits each person: \$5,000.00

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The Town must provide a Certificate of Insurance, in a form approved by the Commission's Risk Management Division, evidencing the existence of the insurance coverage required above, and naming the Commission as an additional insured. The insurance company must have a Best rating of A or a Standard and Poor's rating of BBB. The Certificate of Insurance must provide for thirty (30) days advance notice to the Commission in the event of amendment, termination or cancellation of coverage.

The Commission shall insure or self-insure the Park and the Improvements, once Accepted, and will repair or replace the Accepted Improvements, if destroyed by fire or otherwise, in a timely manner.

3.9 **Utilities** - The Town, at its sole cost and expense, shall pay the charges for all necessary utilities for the operation of the Town and the Improvements thereon, including, but not limited to, electric, water, and sewer service.

3.10 **Admission Fees** - The Town shall have the right to charge Admission Fees (as defined herein). Admission Fees collected shall be the sole property of the Town. The Town shall have full responsibility for the collection and remittance to the State of Admission and Taxes, if applicable.

3.11 **Hours of Operation** - In consideration of this Lease and License, Town agrees that their Hours of Operation (as defined herein) shall begin no earlier than 9:00 am and end no later than 11:00 pm. The Town shall provide the Commission with a final schedule of when the Kensington Cabin will be open to the public, once that schedule is developed.

3.12 **Maintenance by the Commission** - The Commission, at no cost to the Town, shall maintain the Park grounds, specifically including the mowing of the grass and the maintenance of the plantings and flowers. The Commission will also be responsible for major

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maintenance and capital improvements to the exterior of the buildings on the property, exterior repairs resulting from vandalism and responding to alarms from the leased premises.

3.13 **Maintenance Responsibilities** - The Town, at its sole cost and expense, agrees to keep the Improvements in good repair and condition, normal wear and tear excepted, and shall make or cause to be made all necessary routine repairs, alterations, and/or replacements thereto. All interior repairs and maintenance are the responsibility of the Town. The Town assumes full responsibility to maintain the Improvements in a good state of repair and condition, as required by any federal, state, county or other rule, statute or standard governing such maintenance. The Town shall be responsible collecting and removing trash generated by its activities.

3.14 **Reports to the Commission** - The Town shall promptly notify the Commission of any damage on or about the Park which occurs by any cause, including, but not limited to accident, fire, water, flood, freezing, wind, explosion, and vandalism. The Town shall notify Park Police at (301) 949-3010, and Property Management at (301) 495-2520. On an annual basis, the Town shall provide a report to the Montgomery County Planning Board on the actual public use of the building and any operating issues of significance.

3.15 **Signage** - Subject to the review and approval by the Commission of the location, style and structure, the Town may erect monument signs and other identifying landmarks on the Park or in other areas of the Park reflecting the name of the Park, the Town and/or the Town's activities thereon.

3.16 **Uses** - The Town covenants that it will use the Park solely for the operation of the Town as detailed in section 3.1 of this document. The Town, at its discretion, may have caretakers, watchmen and/or maintenance personnel present on the Leased Premises after hours. The sale or promotion of firearms is hereby specifically prohibited. Should the Town

use the Premises for any purpose other than those specifically permitted by this Agreement, Commission may terminate the Agreement pursuant to Section 4 herein.

The Town agrees to neither:

- (1) commit waste in the leased premises;
- (ii) use the leased premises for any unlawful purpose, or violate any certificate of occupancy, or for any purpose which may constitute a nuisance, public or private; or
- (iii) suffer any dangerous article to be brought into the leased premises.

3.17 **Hazardous Materials** - The Town shall use, store, manage and dispose of all Hazardous Materials on the Premises in accordance with all applicable Laws. If the Town breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises caused or permitted by the Town results in contamination of the Premises or of properties located in the proximity of the Premises, then the Town shall indemnify, defend and hold Commission harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification of Commission by the Town includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises or the adjacent properties. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises and/or the adjacent properties caused or permitted by the Town results in any contamination of the Premises and/or the adjacent properties, The Town, at the Town's expense, shall promptly take all actions as are necessary to return the Premises and/or the adjacent properties to the condition existing prior

to the introduction of any such Hazardous Material to the Premises and/or the adjacent properties.

3.18 **Annual Rent.** Tenant hereby covenants and agrees to pay an annual rental for each Lease Year of the Term in the amount of One Dollar, in lawful money of the United States of America, without set off, deduction or demand, payable in advance on the first business day of each Lease Year.

3.19 **Building Renovation and Improvements.** Notwithstanding anything in this Lease to the contrary, the parties acknowledge that (i) the Building is potentially historic and is in need of substantial rehabilitation and improvements; (ii) the parties have entered into a Memorandum of Understanding, which provides for the renovation and improvement of the building, as summarized in Attachment 2 hereto (MOU); and (iii) Commission may perform additional improvements to the Building and/or to interior space in the Building not included in the MOU in order to preserve and/or improve the Building and its historic character. The Commission shall not be liable to Tenant for any temporary interruption in services, inconvenience, annoyance or interference with the rights of Town hereunder or those of Town's guests, invitees or employees or otherwise as a consequence of or in connection with any such construction in, on, to or around the Building. The Commission agrees to use commercially reasonable efforts to keep any such interruptions, inconvenience, annoyance or interference within practical limits.

#### **Section 4. TERMINATION**

4.1 **Event of Default** - Any one or more of the following events shall constitute a default of this Agreement:

- (i) If the Town fails to keep in effect any other financial obligations that are the Town's responsibility under the Lease (e.g., insurance, payment of utilities, etc.);
- (ii) If default shall be made by the Town in the performance of or in compliance with any other covenant, agreement or condition of this Agreement;

- (iii) If the Town is adjudicated a bankrupt, makes a general assignment for the benefit of creditors, or takes the benefit of any insolvency act, or if a permanent receivership or trustee in bankruptcy is appointed for the Town's property and such appointment is not vacated within ninety (90) days thereafter; or
- (iv) If the Town fails to complete renovation of the Kensington Cabin as specified in the MOU.

4.2 **Notice of Default** - Upon a Event of Default, the Commission shall serve a Notice of Default upon the Town, and the Town shall cure the default within thirty (30) calendar days of such Notice.

4.3 **Termination** - If the Town does not comply with a Notice of Default within the time limits imposed in Section 4.2, then the Commission may among other remedies, elect to terminate the Agreement. If the Town fails to complete construction of a particular Phase, then Commission may elect to complete some or all of construction identified in the Scope of Work. Material default in the Construction Phase will also void the Town's Lease and License under Section 3 of this Agreement.

4.4 **The Town Surrender Upon Expiration or Termination** - Upon the expiration or termination of the Lease and License, The Town shall immediately cease the Town operations on the Premises and peaceably surrender the Lease Premises, without any payment by the Commission, without further notice, and without institution of legal proceedings. The Kensington Cabin and all Improvements and fixtures shall revert to the Commission.

4.5 **Commission's Remedies** - The Commission shall have the right and option upon an Event of Default and Termination to enter the Kensington Cabin, expel the Town, and remove any property there from, with or without legal process, by force or otherwise, without being chargeable in any manner with trespass and expressly without prejudice to any remedies of arrears of rent or breach of covenant.

**Section 5. GENERAL TERMS**

5.1 **Consent of Commission** - Where consent or approval is required by the Commission, only the Executive Director of the Commission or designee may give such consent or approval unless is otherwise clearly stated in this Agreement.

5.2 **Compliance with Laws** - The parties agree they will comply with all Federal, State and local laws, rules and regulations. The parties further agree the laws of the State of Maryland are applicable to this Agreement and any subsequent agreements.

5.3 **Non-Discrimination** - The Town shall not discriminate against any employee, applicant for employment, contractor, subcontractor, or patron, because of age, sex, race, creed, national origin or disability. The Town agrees that the Kensington Cabin will be open to all members of the general public without regard to age, sex, race, creed, national origin or disability. The Town will take affirmative action to ensure that applicants are employed and employees are treated without regard to their age, sex, race, creed, national origin or disability. In the event the Town is determined by the final order of an appropriate court or agency to be in violation of the non-discrimination provisions of Federal, State or local law, this Agreement may be canceled, terminated or suspended, in whole or part by the Commission, and the Town may be declared ineligible for future Commission agreements.

5.4 **Indemnification** - The Town agrees that it will at all times during the term of this Agreement indemnify, defend and hold the Commission harmless from and against all costs, claims, suits, damages, liabilities and expenses, of any kind, including attorneys fees, which may be brought or made against the Commission or which the Commission may incur by reason of or in any manner resulting from any injuries to persons or property, arising out of breach of the foregoing representations and warranties, and/or arising from the Town's negligent use of the Kensington Cabin. In the event a suit, or an appeal there from, is filed

with respect to this Agreement the Commission shall be entitled to reimbursement of attorneys' fees and costs from the Town.

5.5 **Liens and Mortgages** - The Town shall not permit any liens or mortgage of leasehold interest, or mortgage of any kind, to stand against the Park, the Premises or any Improvements, including liens for any labor or material furnished to the Town in connection with any construction or work performed by or at the direction of the Town, or any other costs associated with the renovation or operation of the Town, without the Commission's prior written permission. The Town covenants and agrees that if, because of any action or omission (or alleged act or omission) of the Town, any mechanic's or other lien, charge, or order for payment of money or other encumbrance shall be filed against the Commission, the Town shall at the Town's own cost and expense, cause the same to be charged of record or bonded within thirty (30) days' notice to the Town of the filing thereof.

5.6 **Administration** - The Town shall control all administrative operations of the Kensington Cabin.

5.7 **Use of Monies Collected by The Town** - No monies received, charged or derived from operation of the Town at the Kensington Cabin shall be used or distributed for the benefit of any person or organization other than the Town.

5.8 **Audit** - The Town shall keep an accurate set of books and records of all income and expenses, including sales of tickets, merchandise, concessions, services, and revenues derived from the use of the Kensington Cabin, and all supporting records such as tax reports, State and Federal tax returns, banking records, cash register tapes, sales slips, and other sales records. All such books and records shall be retained and preserved for at least thirty-six (36) months after the end of the year to which they relate, and shall be subject to inspection and audit by the Commission and its agents upon reasonable advance notice to



the Town. No monies received, charged, or derived from the operation of the Kensington Cabin shall be used or distributed for the benefit of any other person or organization.

5.9 **Legal Authority** - Each party executing this Agreement represents and warrants that it has the legal authority to enter into and perform this Agreement. Each person executing this Agreement on behalf of a party personally represents and warrants to the other party that he or she is duly authorized to execute and bind the party on whose behalf he or she executes this Agreement.

5.10 **Fund Raising Activities** - The Town shall not allow or permit any person or organization, other than the Town itself or any other qualified 501c3 organization, to conduct any fund raising activities in the Park.

5.11 **Recitals** - The Recitals above are incorporated herein as though set out in full.

5.12 **Notice** - All notices (including, without limitation, approvals, consents, notices of default, and exercises of rights or options) required by or relating to the Agreement shall be in writing and shall be deemed duly given when (i) personally delivered, or when personal delivery is refused, (ii) delivered by overnight commercial carrier, or when overnight delivery is refused, (iii) transmitted by telecopier, or (iv) 3 days after mailing, if mailed by United States Mail, postage prepaid, to the other party at its address set forth below:

If to the Commission:           The Maryland-National Capital Park and Planning  
Commission  
Parkside Headquarters Office  
9500 Brunett Avenue  
Silver Spring, Maryland 20901  
Attn: Director of Parks

with a copy to:                 The Maryland-National Capital Park and Planning  
Commission  
Legal Department  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

If to The Town:                 The Town of Kensington  
Attn: Mayor  
3710 Mitchell Street

Kensington, Maryland 20850

Parties may change Notice of address in accordance with this Section.

5.13 **Governing Law** - This Agreement is to be governed by the laws of the State of Maryland, and is to take effect as a sealed instrument.

5.14 **Approvals** - Wherever in this Agreement the approval, certification, or consent of any party is required, such approval shall not be unreasonably withheld, conditioned or delayed unless a shorter or longer time period is specified in this Agreement.

5.15 **Amendments** - Any amendment to this Agreement must be executed in writing, signed by the parties and attached hereto.

5.16 **Attachments/Exhibits** - All attachments, exhibits and recitals form a part of this Agreement.

5.17 **Waiver** - No failure on the part of the Commission to enforce any covenant or provision contained in the Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other party to enforce the same in the event of any subsequent default.

5.18 **Integration** - This Agreement expresses the entire understanding between the parties with respect to the matters set forth herein and neither party shall be bound by any terms, covenants, or agreements not in or herein contained.

5.19 **Non-Assignment** - The Town may not assign, sell, convey or otherwise transfer this Agreement, or any right, interest, or obligation under it, without the prior written consent of the Commission.

5.20 **Budget Appropriations** - Notwithstanding anything to the contrary in this Agreement, Commission cannot be in default of this Agreement if funds are not specifically budgeted and appropriated therefore at the time of the alleged default. Certification by the Secretary-Treasurer of the Commission that funds are not specifically budgeted and

appropriated therefore shall be conclusive as to that issue. Commission shall, in accordance with its budgetary procedures, make timely application for, and use reasonable efforts to obtain, budget appropriations reasonably calculated to provide all funds necessary for Commission's performance of and compliance with all of the material terms, conditions and covenants contained in this Agreement.

The Town of Kensington

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

Mayor

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION,  
a Maryland body corporate and politic

Witness  
ATTEST

\_\_\_\_\_

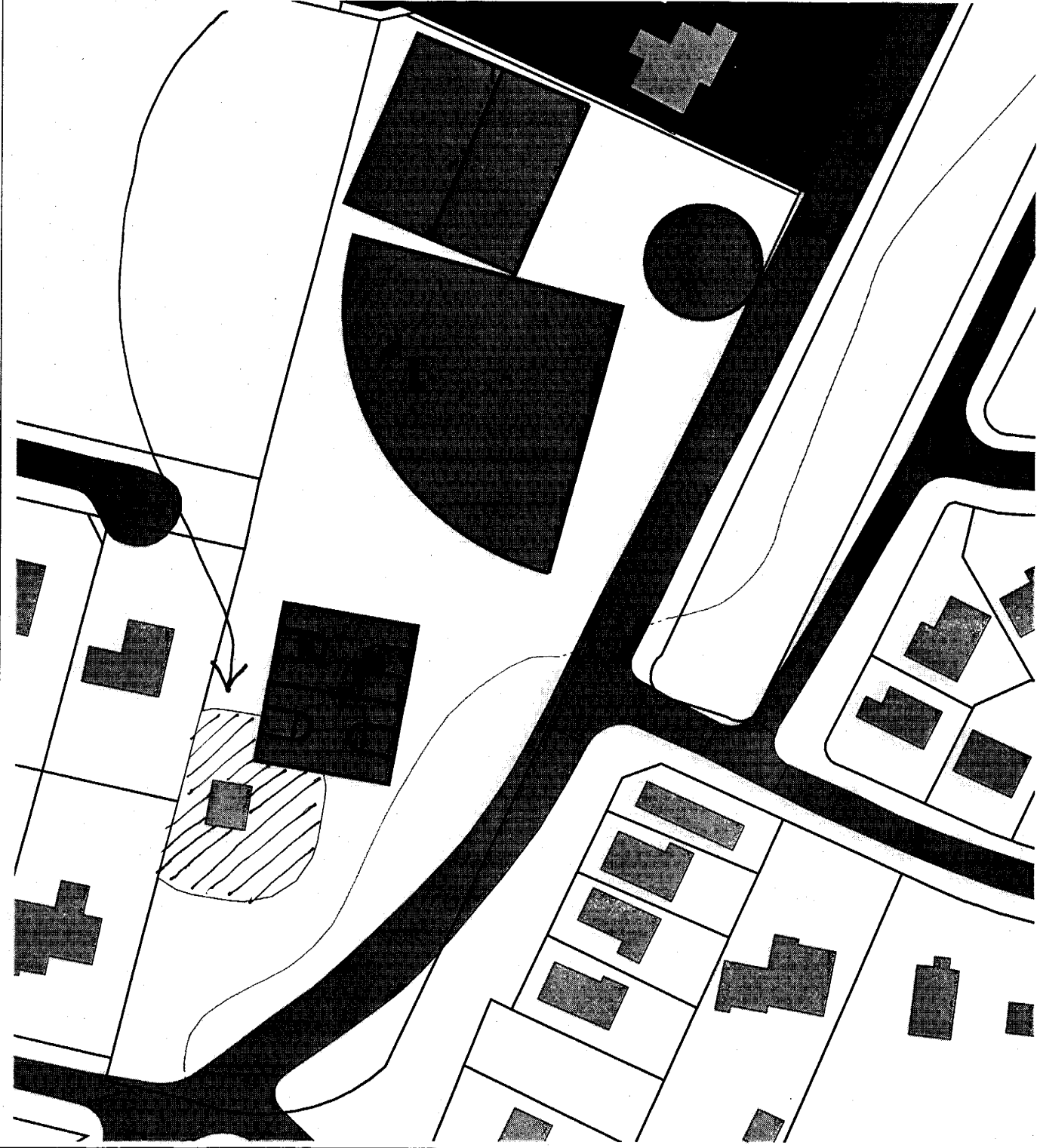
Patricia Colihan Barney  
Secretary-Treasurer

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

Trudye M. Johnson  
Executive Director

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# ATTACHMENT #3 KENSINGTON CABIN 50' LEASE BOUNDARY



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Casual User Application

