

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made this 24<sup>th</sup> day of July, 2008, by and between MONTGOMERY COUNTY, MARYLAND, 101 Monroe Street, Rockville, Maryland 20850, a body corporate and politic and a political subdivision of the State of Maryland (hereinafter referred to as the "COUNTY"), and DAMASCUS HERITAGE SOCIETY, INC., a non-stock corporation organized under the laws of the State of Maryland and having a determination letter from the Internal Revenue Service as to its status as an organization qualified under § 501 (c) (3) of the Internal Revenue Code, with its principal place of business located at 26421 Mullinix Mill Road, Mt. Airy, Maryland 21771 (hereafter referred to as "LICENSEE"), (the LICENSEE and the COUNTY together the "Parties").

### WITNESSETH

In consideration of the fees herein after reserved and other good and valuable covenants and obligations as hereinafter contained, the Parties agree as follows:

#### 1. USE OF LICENSED PREMISES:

(a) COUNTY hereby grants to LICENSEE a non-exclusive license to occupy and use, subject to all of the terms and conditions herein, space for a prefabricated building ("Prefabricated Building") to be used as a temporary museum, subject to COUNTY'S prior approval, located on a portion of the grounds of the COUNTY'S property at 9701 Main Street, Damascus, Maryland 20872 as shown crosshatched in red on EXHIBIT A attached hereto and made part hereof ("Property"). The Property is more particularly described on EXHIBIT B. The location of LICENSEE'S Prefabricated Building is generally described as the licensed premises ("Licensed Premises"). No variation will be permitted without the prior written consent of the COUNTY. LICENSEE shall have the right of reasonable ingress and egress, to install and maintain the Prefabricated Building and appurtenances for its use as a temporary museum, subject to the restrictions in this paragraph.

(b) LICENSEE, its employees, agents, independent contractors and subcontractors shall be entitled to access the Licensed Premises during normal business hours (9:00 A.M. to 5:00 P.M., Monday through Saturday) during the period of time which the Prefabricated Building is being installed on the Licensed Premises. Thereafter, access to the Licensed Premises and hours of operation of the temporary museum are established in the following manner: (i) the hours of operation during which the temporary museum is open to the public shall be limited to the normal hours of operation of the Damascus Library and Damascus Senior Center; (ii) access to the Licensed Premises shall be allowed at other times on a daily basis between the hours of 7:00 A.M. to 9:00 P.M. for the purpose of maintenance, repairs, setting up exhibits, and other functions necessary for administration of the temporary museum; and (iii) in the event of an emergency before or after hours of operation described in this Paragraph, LICENSEE shall be entitled to immediate access to the Licensed Premises, provided that in all instances LICENSEE shall notify the COUNTY within one (1) business day after emergency access of its need to access the Prefabricated Building for such emergency need.

(c) The LICENSEE shall use the Licensed Premises for the purpose of housing the Damascus Heritage Museum. All work on the Licensed Premises and improvements thereto, including

the plans and specifications for such work, shall be at LICENSEE'S expense, and shall be subject to prior written review and approval of the COUNTY. The LICENSEE will maintain the Licensed Premises in good condition. It is understood and agreed that the LICENSEE'S ability to use the Licensed Premises is contingent upon its obtaining after the execution date of this Agreement and maintaining throughout the term of this Agreement all of certificates, permits, and any other approvals ("Approvals") required by any federal, state, or local authorities. In the event that any such application should be finally rejected or any Approval is canceled, expires, lapses or is otherwise withdrawn or terminated by government authority, or; if the LICENSEE in its sole discretion determines that it will be unable to use the Licensed Premises for its intended purposes, the LICENSEE shall have the right to terminate this Agreement. Notice of the LICENSEE'S exercise of its right to terminate, shall be given to COUNTY in writing by certified mail, return receipt requested.

(d) At LICENSEE'S sole cost and expense and with minimal disruption to COUNTY, LICENSEE may install, erect, maintain and operate the Prefabricated Building and appurtenances thereto on the Licensed Premises, in substantial conformance with EXHIBIT C attached hereto and made a part of this Agreement. In connection therewith, the LICENSEE may complete all work necessary to prepare the Licensed Premises for operation of the Prefabricated Building. Notwithstanding affixation to the Licensed Premises, title to the Prefabricated Building and all accessories and appurtenances associated therewith installed by LICENSEE shall remain property of the LICENSEE. The LICENSEE shall remove the Prefabricated Building at its sole expense on or before the expiration or earlier termination of this Agreement and shall make any necessary repairs to the Licensed Premises, normal wear and tear excepted, necessitated by such removal.

(e) LICENSEE shall be responsible for all costs associated with providing and maintaining public utilities, including separate metering through local utility companies, for it's electrical and other public utility requirements for operation of the Prefabricated Building.

(f) The Parties acknowledge that the Prefabricated Building is currently temporarily housed on the grounds of the Property. Upon relocation of the Prefabricated Building to the Licensed Premises, LICENSEE agrees to seed or sod the disturbed area and return the temporary location, in a good workman like manner, to its original condition, free of rubble and debris.

## 2. TERM:

(a) This Agreement shall be for a term of five (5) years ("Initial Term") commencing on August 1, 2008 (the "Commencement Date").

(b) This Agreement may be renewed by the mutual written agreement of the COUNTY and the LICENSEE for two (2) additional one (1) year terms ("Renewal Terms"), provided that the Parties hereto reach an agreement prior to the end of the Initial Term or the then current Renewal Term on the Terms of this Agreement for the next one (1) year term. LICENSEE shall notify COUNTY in writing no less than six (6) months prior to the expiration of the Initial Term or Renewal Term of its desire to extend the term. The Renewal Terms shall be upon the same terms and conditions as the Initial Term. The COUNTY and the LICENSEE shall execute a letter of agreement stating the Commencement Date of any Renewal Term.

(c) The termination date (Termination Date") of the Agreement shall be the last day of the Initial Term, or the then current Renewal Term or the earlier date on which this Agreement is terminated in accordance with the provisions hereof.

3. LICENSEE FEE:

LICENSEE shall pay an annual amount of One and 00/100 (\$1.00) Dollar payable as a license fee (the "License Fee"). The License Fee payments shall commence on August 1, 2008. All payments shall be made payable to Montgomery County Government, c/o Department of General Services, Office of Real Estate, P.O. Box 9464, Gaithersburg, Maryland 20898-9464.

4. LICENSEE INDEMNIFICATION:

Except to the extent caused by the negligence or intentional misconduct of COUNTY, its agents, employees or contractors, LICENSEE hereby agrees, covenants, and warrants to protect, indemnify, and hold COUNTY and its respective officers, members, employees, agents and invitees (the "Indemnified Parties") harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, liens, encumbrances, suits or actions and reasonable attorneys' fees, and the cost of the defense of the Indemnified Parties in any suit, including appeals, arising out of (i) construction work and alterations and related activities undertaken by LICENSEE pursuant to this Agreement, (ii) the negligence or willful misconduct of LICENSEE, or its agents, employees, contractors and invitees on or about the Property, (iii) the use or occupancy of the Property by the LICENSEE or its agents, employees or contractors, (iv) any breach by LICENSEE, or anyone acting through or on behalf of LICENSEE of any of its obligations hereunder, and (v) damages, including consequential damages from an occurrence involving either bodily injury or property damage, caused by LICENSEE.

5. LICENSEE INSURANCE:

Commencing on the date upon which COUNTY delivers the Premises to LICENSEE and at all times thereafter, LICENSEE shall cause to be carried and maintained, at no cost to COUNTY, the insurance coverages attached hereto as EXHIBIT D. COUNTY may change the types of required coverages from time to time as circumstances and changes in use of the Licensed Premises warrant.

6. COUNTY LIABILITY:

Any obligation or liability of the County arising in any way from this Agreement is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the damage caps and notice requirements stated in the Maryland Local Government Tort Claims Act, currently found at Maryland Code Annotated, Courts & Judicial Proceedings Art. §§5-301 et seq. (2006 Repl. Vol) (the "LGTCA"); Md. Code Ann. Art. 25A, §§1A (2005 Repl. Vol.); and Md. Code Ann., Cts. & Jud. Proc. §§ 5-509 (2006 Repl. Vol.), (together the "County Indemnification Statutes"), all as amended from time to time. Any indemnification given by the County in this Agreement is not intended to create any rights or causes of action in any third parties or to increase the County's liability above the caps provided in the County Indemnification Statutes, as applicable.

## 7. COUNTY INSURANCE:

The COUNTY shall maintain during the term of this Agreement and until all of the COUNTY'S obligations which survive termination of this Agreement have been completed, a policy of public liability and property damage insurance as per §§ 20-37 of the Montgomery County Code, (2004), as amended, which regulates the Montgomery County Self-Insurance Program. Montgomery County may self-insure. The County shall evidence limits of insurability for general liability coverage in amounts of \$1,000,000 aggregate and \$500,000 each occurrence, and \$50,000 per person, \$40,000 per accident for bodily injury and \$15,000 for property damage for automobile liability and State of Maryland statutory limits for workman's compensation. These are the maximum limits of liability for which the Montgomery County Self-Insurance Program is responsible, as determined by the LGTCA, Md. Ann. Code §§ 5-301, et seq.

## 8. RIGHT OF ENTRY:

(a) Routine Repairs and Inspection: LICENSEE shall permit COUNTY, its agents or employees, at reasonable times and upon reasonable prior notice (not less than forty eight (48) hours' prior notice) to enter the Licensed Premises without charge to examine and inspect the Licensed Premises.

(b) Emergency Access: In cases of emergency involving imminent risk of injury or death to persons or damage to property, COUNTY, its agents or employees, without prior notice to LICENSEE, may enter the Licensed Premises, however, COUNTY will attempt, but is not required, to notify LICENSEE of any such entry under this Article 8(b) as soon as is practicable under the circumstances.

(c) Nothing in this Article 8 shall be construed as a limitation on the police powers of COUNTY, nor a limitation on any entry by COUNTY pursuant to the exercise of its police powers.

## 9. SURRENDER OF POSSESSION:

This Agreement shall terminate on the Termination Date without the necessity of notice from either COUNTY or LICENSEE. Upon the Termination Date or earlier termination of this Agreement, LICENSEE shall (i) quit and surrender to COUNTY the Licensed Premises with utilities capped off; (ii) remove LICENSEE'S Prefabricated Building and facilities; and, (iii) seed or sod the disturbed area and return the Licensed Premises in a good workman like condition free of rubble and debris. If LICENSEE'S Prefabricated Building and facilities are not removed from the Licensed Premises within 72 hours after the Termination Date, the property remaining will be deemed abandoned and will become the property of COUNTY, and COUNTY may have it removed and disposed of at LICENSEE'S expense. At the time of termination of this Agreement and at the request of COUNTY or LICENSEE, the Parties must participate in a walk-through to inspect the Licensed Premises. LICENSEE agrees to remove the concrete foundation piers concurrently with the removal of the Prefabricated Building and facilities. In the event LICENSEE fails to remove the concrete foundation piers, the COUNTY may have them removed and disposed of at LICENSEE'S expense.

10. ENTIRE AGREEMENT:

It is agreed and understood that this Agreement contains all agreements, promises, and understandings between COUNTY and LICENSEE, and any addition, variation, or modification to this Agreement shall be void and ineffective unless made in writing and signed by the Parties.

11. COMPLIANCE WITH LAWS:

LICENSEE shall comply with all statutes, laws, rules, orders, regulations and ordinances (collectively "Laws") affecting the use or operation of the Licensed Premises. In no event shall LICENSEE use the Licensed Premises for purposes which are prohibited by zoning or similar laws or regulations. LICENSEE acknowledges and agrees it is solely responsible for determining if its use of the Licensed Premises complies with the applicable zoning regulations, and that COUNTY makes no representation (explicit or implied) concerning such zoning regulations. LICENSEE shall not use the Licensed Premises in any manner that causes a violation of any environmental laws or regulations or that could create environmental liabilities under Federal, State or local environmental protection laws.

12. CHOICE OF LAW:

This Agreement and the performances thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maryland.

13. CHOICE OF FORUM:

Any action involving a dispute relating in any manner to this Agreement, the use or occupancy of the Leased Premises, and/or any claim of injury or damage shall be filed and adjudicated solely in Montgomery County, Maryland.

14. ASSIGNMENT AND OTHER TRANSFER:

(a) LICENSEE shall not assign this Agreement without the prior written consent of the COUNTY, which consent shall be in the sole discretion of the COUNTY, nor shall any assignment hereof be effected by operation of law or otherwise without the prior written consent of the COUNTY. Any assignment consented to by the COUNTY shall not relieve the LICENSEE from any of its obligations under this Agreement, and such consent by the COUNTY shall not be effective unless and until (i) Licensee gives written notice thereof to the COUNTY, which notice shall state the name and address of the proposed assignee, and identify the nature and character of the proposed use of the Licensed Premises by assignee, (ii) such assignee shall deliver to the COUNTY a written agreement in form and substance satisfactory to the COUNTY pursuant to which such assignee assumes all of the obligations and liabilities of the LICENSEE hereunder, and (iii) LICENSEE shall deliver to the COUNTY a copy of the proposed assignment agreement. LICENSEE shall also provide any additional information the COUNTY reasonably requests regarding such proposed assignment. Any assignment without the COUNTY's written consent may be declared null and void by the COUNTY and, at the COUNTY's election, constitute an Event of Default hereunder.

(b) This Agreement may not be sold or transferred and the LICENSEE shall not sublet or permit any other party to use the Licensed Premises or Property or any of the LICENSEE'S facilities on the Property.

15. NOTICES.

All notices hereunder must be in writing and shall be deemed validly given if hand delivered to the other party or if sent by certified mail, return receipt requested, addressed as follows (or such other address as the party to be notified has designated to the sender by like notice):

LICENSEE:

Damascus Heritage Society, Inc.  
26421 Mullinix Mill Road  
Mt. Airy, Maryland 21771  
Attention: Daniel King

COUNTY:

Montgomery County, Maryland  
Department of General Services  
Office of Real Estate  
101 Monroe Street, 10<sup>th</sup> Floor  
Rockville, Maryland 20850

With a copy that does not constitute notice to:

Office of the County Attorney for Montgomery County, Maryland  
101 Monroe Street, 3<sup>rd</sup> Floor  
Rockville, Maryland 20850  
Attn: County Attorney

16. RELATIONSHIP OF THE PARTIES:

It is expressly understood that the COUNTY shall not be construed or held to be a partner, co-venturer, agent or associate of the LICENSEE; it being expressly understood that the relationship between the Parties hereto is and shall remain at all time that of the COUNTY and LICENSEE.

17. EVENTS OF DEFAULT:

Either Party shall be considered in default of Agreement upon the occurrence of any of the following:

(a) Failure to perform any term, covenant or condition of this Agreement and the continuance thereof for fifteen (15) days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money or for thirty (30) days following receipt of written notice from the non-defaulting party specifying said failure with respect to a default which may not be cured solely by the payment of money. In either event, the non-defaulting Party may pursue any remedies available to it against the defaulting party under applicable law, including but not limited to, the right to terminate this Agreement.

(b) If the non-monetary default may not be reasonably be cured within a fifteen (15) day period, this Agreement may not be terminated if the defaulting Party commences action to cure the default within such fifteen (15) day period and proceeds with due diligence to fully cure the default.

(c) In the event that the LICENSEE shall be found in default and shall fail to cure such default after notice given as set forth hereinabove, then the LICENSEE'S right to the Licensed Premises shall automatically be revoked.

18. HAZARDOUS MATERIALS:

LICENSEE warrants and represents that it will be solely liable for the clean-up and removal of hazardous substances that it generates, or causes to be placed on the Property and Licensed Premises as required by law. COUNTY represents that to its knowledge, the Property and Licensed Premises are free from any unlawful environmental contamination as of the date of execution of this Agreement.

19. NON DISCRIMINATION:

LICENSEE agrees to comply with the non-discrimination in employment policies in County contracts as required in Sections 11B-33 and 27-19 of the Montgomery County Code (2004), as amended, as well as all other federal, state and local laws, rules and regulations regarding employment discrimination. By signing this Agreement, LICENSEE assures COUNTY that in accordance with applicable law, it does not, and agrees that it shall not engage in any employment discrimination in violation of the above sections of the Montgomery County Code as well as any other federal, state or local laws, rules and regulations.

20. ETHICS REQUIREMENT:

LICENSEE understands and agrees that unless authorized pursuant to Section 11B 52 and Chapter 19A of the Montgomery County Code (2004), as amended, that it is unlawful for any person or entity transacting business with the County to employ a public employee contemporaneous with his or her public employment.

21. CONTRACT SOLICITATION:

LICENSEE represents that it has not retained anyone to solicit or secure this Agreement from the COUNTY upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees of bona fide established, licensed, commercial selling or leasing agencies (the "Broker") maintained by the LICENSEE for the purpose of securing business or an attorney rendering professional legal services consistent with the canons of ethics of the profession. LICENSEE is responsible for paying any Broker's fees or commissions for any Broker with whom LICENSEE has any contract or agreement and for paying all of LICENSEE's attorneys' fees in connection with the negotiation of this Agreement.

22. RESIDENT AGENT:

The resident agent for the LICENSEE is: Daniel King, 26421 Mullinex Mill Road, Mt. Airy, Maryland 21771.

23. TERMINATION:

This Agreement and all rights and obligations hereunder may be terminated by the COUNTY, for any reason, at any time and at no cost to the COUNTY, whenever the Chief Administrative Officer or his designee shall determine that termination of this Agreement is in the best interest of the COUNTY. Such termination shall be effective to LICENSEE on the later to occur of (i) one hundred eight (180) days after delivery to LICENSEE of written notice, or (ii) the date specified in a written notice as the termination date. Notwithstanding the above, this Agreement will terminate upon relocation of the temporary museum to a permanent location.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties hereto have set their hand and affixed their respective seals the day and year first above written.

WITNESS:

By: Sharon A. Matt

LICENSEE:  
Damascus Heritage Society, Inc.

By: Randy Scritchfield  
Randy Scritchfield

Title: President

Date: July 17, 2008

WITNESS:

County:

By: [Signature]

COUNTY:  
MONTGOMERY COUNTY, MARYLAND

By: [Signature]  
Diane R. Schwartz Jones

Title: Assistant Chief Administrative Officer

Date: 07/24/08

Approved for legal form and legality:  
Office of the County Attorney

By: Gileen S. Brennan  
Date: 7/2/2008

Recommended:

By: [Signature]  
Cynthia Brenneman, Director  
Office of Real Estate

Date: 6/24/08

**EXHIBIT A**

**SITE PLAN**

**SD-101 Damascus Town Center**

**Prepared by Kamber Engineering, Inc.**

**Dated October 1988**

**EXHIBIT B**

**PROPERTY**

Owner Name: Montgomery County

Account Identifier: District 12, Tax Account Number 00927475

Premises Address: 9701 Main Street, Damascus, Maryland 20872

Deed References: Liber 7756 at Folio 576 among the Land Records of Montgomery County, Maryland

Legal Description: Parcel P677, Tax Map FX43

## **EXHIBIT C**

### **Foundation, Ramp and Stair Details to Allow Reuse of a Trailer for the Damascus Heritage Society Temporary Museum**

Prepared by: Smislova, Kehnemui & Associates

Dated: October 23, 2007

Drawing Numbers:

S-0 Cover Sheet

S-1 Site Plan, Elevations and Section

S-2 Foundation Plan

## EXHIBIT D

### LICENSEE INSURANCE REQUIREMENTS

#### MANDATORY INSURANCE REQUIREMENTS - LICENSE AGREEMENT

#### *License Agreement for Damascus Heritage Society to Install a Prefabricated Building that will serve as a Local Museum and be open to the public on County Property – Damascus Library*

Prior to the execution of the contract by the County, the proposed awardee must obtain at their own cost and expense the following insurance with an insurance company/companies licensed to do business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the proposed awardee/Contractor shall provide a copy of the insurance policies. The Contractor's insurance shall be primary.

#### Commercial General Liability

A minimum limit of liability of *one million dollars (\$1,000,000)*, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations

#### Worker's Compensation/Employer's Liability

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers'

- Liability limits:
- Bodily Injury by Accident - \$100,000 each accident*
  - Bodily Injury by Disease - \$500,000 policy limits*
  - Bodily Injury by Disease - \$100,000 each employee*

#### Property – All Risk Property to Cover Licensee's Contents and Building at Licensed Premises

Licensee agrees to obtain and maintain, during the term of the Lease, and any extension thereof, an All Risk Property policy covering 100% replacement cost of the contents of the Leased Premises.

#### Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract.

#### Policy Cancellation

Forty-five (45) days written notice of cancellation or material change of any of the policies is required.

#### Certificate Holder

Montgomery County, Maryland  
DPWT/Leases/ Bernie Fitzgerald  
101 Monroe Street, 10<sup>th</sup> floor  
Rockville, Maryland 20850