

## SPECIAL USE AGREEMENT WALNUT VALLEY SAILING CLUB

**THIS AGREEMENT** is entered into on this 23 day of March, 2010, by and between made between the Walnut Valley Sailing Club (hereinafter referred to as the "Club") with a mailing location of P.O. Box 20076, Wichita, KS 67208-1076 and the Kansas Department of Wildlife and Parks (hereinafter referred to as "Department") with a mailing location of 512 SE 25<sup>th</sup> Street, Pratt, Kansas 67124.

The Department grants to the Club privileges detailed in this Agreement for the area located at El Dorado State Park (hereinafter referred to as "Premises") and more specifically identified in Appendix I.

In consideration of the mutual promises and conditions contained in this Agreement, the Department and Club agree as follow:

### A. PURPOSE

1. It is understood by both parties that the purpose of this Agreement is to provide a quality sailboat facility through an open membership association within El Dorado State Park. The Club's objectives are to promote sailing and provide a quality sailing facility to the public and its' members. The Department reserves the right to survey members, utilizing the association, and members of the public to determine if the Club is best serving the needs of the public. The Department may require changes to the Club based on these surveys.

2. Services provided by the Club shall be within the area designated in Appendix I, as the Premises.

### B. SERVICES

1. The Club shall equip and operate a sailing facility within the Premises as indicated on Appendix I in accordance with this Agreement.

### C. OPERATIONS

1. The Club agrees to operate the Club facilities each and every day from May 15<sup>th</sup> to October 15<sup>th</sup>, inclusive, of each year during the term of this Agreement. The Club may, as an option, conduct, and operate the Club facilities for the period of October 16<sup>th</sup> to May 14<sup>th</sup>, inclusive, during the term of this Agreement.

2. The Club shall serve the public and Club members courteously and efficiently.

### D. PRICES

Prices charged by the Club for supplies, services, and facilities to the public shall be subject to prior written approval of the Department. By February 1 of each year, the Club shall submit to the Department a list of items it intends to sell to the public and services it intends to provide to the public with a schedule of proposed prices for that particular season. If the Department determines that any price is not reasonably related to the quality and quantity of items sold or services provided, the Department may require that the price be modified. The Department may not require a modification in price which will prevent the Club from making a reasonable profit, provided that the Department shall have final

authority to determine in such instances, what constitutes a reasonable profit. No item shall be sold above the schedule price without written consent of the Department. The Club shall keep a schedule of prices posted at all times in a conspicuous place on the Premises.

**E. PUBLIC NEEDS/ACCESS**

1. It is mutually agreed that the Department retains the right to determine the public needs and services in the future and to determine the location of the Clubs facilities within the Premises and El Dorado State Park.

2. The Club shall have exclusive use of the Club's facilities marked in Appendix I. All other facilities are open to the general public and no user fees may be charged. All users of the Premises are required to have a park permit affixed to their vehicle.

**F. SUPPLIES**

1. The Department reserves the right to require the removal of any items or services which it deems to be inappropriate or does not reflect a positive image for the Department.

2. Should the Club agree to sell vendible items, Club shall supply and have ready for sale sufficient quantity of each and every vendible item proposed to be sold.

**G. EQUIPMENT, BUILDINGS, AND FACILITIES**

1. At its own expense, the Club shall provide on the Premises all equipment necessary for the services required under the Agreement. The quality and maintenance of such equipment shall be the responsibility of the Club and shall comply with all laws, rules, and regulations as established by the State of Kansas and the United States Army Corps of Engineers.

2. At its own expense, the Club shall provide all building and storage facilities necessary for providing the goods or services, as approved in writing by the Department. All such buildings and facilities shall be approved in writing by the Department prior to any installation or modification thereof. The quality and maintenance of the buildings shall comply with all rules and regulations as established by the State of Kansas and the United States Army Corps of Engineers (USACE).

a) The Club shall provide, at a minimum, the following on the Premises: a floating dock, a minimum amount of boat slips as required by the Club, a sewage holding facility, a boat ramp, a storage compound, and facilities needed to provide items covered in Section B 1.

b) The Club owns the facilities noted in Appendix II. All other facilities not identified in Appendix II shall be considered to be owned by the Department or the USACE. (See Attachment #2 for complete listing).

c) Any improvements added by Club and approved to in writing by the Department and USACE shall become the Club's property and shall be added to this Agreement.

3. Upon termination or expiration of this Agreement for any reason other than those listed in Section M of this Agreement, the Club's property shall be removed within ninety (90) days by the Club, at the Club's expense without damage to the Premises; or at the Department's option, be purchased at fair market value by the Department or a third party designated by the Department. The Department shall request an appraisal of the improvements in the event that the Club, the Department or the third party designee cannot agree in writing to the fair market value of the property or the Department elects to

purchase the property that is to remain on the Premises after the termination or expiration of the Agreement.

The appraisal shall follow the requirements of Kansas Statutes Annotated §75-3043a and shall consider fair market value of the property. The fair market value shall not consist of the real property upon which the buildings and improvements are located or any business value. The Club, the Department and/or any third party designee, shall share equally any appraisal fees incurred.

If the Department elects not to purchase the property or if there is no third party is designated by the Department to purchase the property and if the Club fails to remove its property within ninety (90) days after the expiration or termination of this Agreement, the Department may retain the property without any compensation or dispose of the property at the Club's expense.

4. The Club shall be responsible for the Premises compliance with the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) and with the Kansas Architectural Accessibility Act (K.S.A. §58-1301, et seq.). Any modifications to the concession Premises deemed necessary for American Disabilities Act compliance shall be completed at the sole expense of the Club with written approval by Department

5. It is mutually understood and agreed to that the Department retains the right to determine the location of all Club facilities within the Premises and all Department properties. As needed, Club may alter the boundaries of the Premises with written approval of the Department as to the specific boundary change.

6. A single family campsite may be constructed at the Club's expense to be utilized between the days of May 15<sup>th</sup> – October 15<sup>th</sup> during the term of this Agreement. The purpose of this site would be to house an onsite security monitor. On-site monitor would be subject to restrictions established by the Department and USACE.

7. Any future marine sewage disposal facilities shall be approved in writing by the Department and meet Environmental Protection Agency guidelines, United States Coast Guard regulations, and comply with all federal, state, and local laws.

#### **H. MAINTENANCE AND REPAIR OF CLUB FACILITIES**

1. At its own expense, the Club shall maintain the Premises to the satisfaction of the Department in a clean, healthy, sanitary, and safe condition, and in a condition complying with all applicable federal, state, and county laws and regulations. Club is responsible for all mowing duties associated with the Premises. Club shall abide by all United States Army Corps of Engineers Environmental Guide for Operations (hereinafter referred to as "USACE ERGO") requirements.

2. The Club shall be responsible for all facilities constructed and owned by the Club, all equipment located on the Premises and all repairs made to the Premises. The design and composition of all facilities located on the Premises and all materials used by the Club in maintaining or repairing the Premises shall have prior written approval by the Department.

3. At the termination of this Agreement, the Club shall return the Premises to the Department in a condition equivalent to that in which it was received, the effects of normal wear and tear accepted.

4. In the event of an emergency such as vandalism, fire, wind, flooding, hail, or act of God, which threaten damage to the Premises or harm to the public, the Department may act immediately to stop such emergency and prevent or mitigate any damage to the Premises. The Department shall notify the Club of any action or repair undertaken by the Department due to emergency circumstances, and may

require the Club to make further repairs necessitated by such emergency. The Club shall reimburse the Department for all repairs to the Premises made pursuant to this provision.

5. Maintenance and surveillance of docks, slips, storage yards, moorings, and other sailboat facilities are the responsibility of the Club.

6. The Club shall install and maintain signs, the road, parking, rigging area, and launching ramps operated by the Club.

7. The Club is responsible for all mowing in the area marked by the crosshatch area on the map (Appendix I).

8. The Club shall keep the Premises neat and clean. All trash and litter shall be placed in designated trash containers. The Department shall provide trash containers to Club and shall empty them on regular schedule.

9. The Department shall have no obligation for landscaping or soil stabilization in the Premises.

10. If available, the Department may provide picnic tables to the area for special events. The Club may provide additional tables at its own expense but the Department shall not be responsible to repair, paint, or maintain those tables owned by the Club.

11. Dry Storage Area

a) All dry storage of boats, boat trailers, and equipment shall be confined to the dry storage area assigned to the Club. The dry storage area shall be fenced with a non-climbable fence.

b) All movable equipment and material not in use by the Club shall be stored in the dry storage area assigned to the Club. This includes, but is not limited to, trucks, tractors, mowers, and trailers.

12. Floating docks, slips, and attendant docks may be left in place or on shoreline within the Premises during the non-use season.

13. The Club is responsible to maintain the Club's docks during floods, drawdowns, and at all other times and conditions.

14. The non-member user fee schedule shall be approved by the Department in writing and posted on a bulletin board at the site.

15. The Club shall not restrict sightseers or anglers from the Premises and will not impose any charge for these activities. The Club may, however, prohibit anglers from the docks themselves; however, it will be the Club's responsibility to enforce any such restriction.

16. Camping Trailers and Equipment

a) All camping trailers and other camping conveyances shall be subject to El Dorado State Park Rules and Regulations governing use of camping equipment. There shall be no camping activities in the Club area, except that of a security person as approved by the Department. This person shall be pre-approved in writing by the Department. Such security person shall report violations but cannot enforce laws.

b) Camping equipment shall not be stored within the Premises.

17. Park Rangers may enforce parking, boating, and rigging restrictions previously approved by the Department and imposed by signs erected by the Club.

18. Development

a) Any new construction or development will be submitted to the Department with

detailed plans and drawings. The Department and the United States Corps of Engineers must approve in writing of construction prior to commencement of construction.

19. All users of the Premises are required to have valid park permits affixed permanently to their vehicles.

20. Fees for hosting special events such as regattas shall be paid in addition to this contract fee.

21. Reservoir water level fluctuations may occur occasionally. It is understood that the Department shall not be held liable for any resulting damages to the Club's facilities. The Club will be notified whenever these occurrences are scheduled.

#### **I. DEVELOPMENT AND IMPROVEMENTS**

1. If the present facilities become inadequate to meet user demands, the Department and Club, shall jointly develop a General Development Plan (hereinafter referred to as "Plan"). The Lessee and any sub-lessees or Clubs shall provide a copy of the Plan and proposed changes to the District Engineer, United States Army Corps of Engineer for review and written approval. This Plan shall indicate the types and general locations of all facilities to be developed on the Premises. The Plan may be amended in writing, by mutual agreement of all parties at any time during the Agreement term.

2. At its own expense and in compliance with the Plan, the Department may undertake such construction, modifications, or improvements on the Premises as the Department deems desirable. Any construction, modification or improvements undertaken and paid for by the Department shall be owned by the Department. At its own expense, Club may undertake additional construction, modification, or improvements subject to written approval by the Department prior to any construction, modification or improvements are scheduled to occur. Routine maintenance of all facilities or structures on the Premises shall be the responsibility of the Club.

#### **J. UTILITIES**

1. At its own expense, Club shall be responsible for extension, hook-up, maintenance, metering, and payment of all utilities and associated charges and/or fees, used in connection with the concession, excluding water.

2. A water line shall be provided by the Department to the Premises. A water meter shall be provided by the Club and all water flow recorded through said water meter shall be charged to the Club at a rate commensurate with cost of water to the State.

a) On a monthly basis, water meter shall be read and cost shall be determined.

b) The Club shall make monetary compensation to El Dorado State Park by January 30<sup>th</sup> for the previous year's water usage.

3. Club is responsible for all water distribution system repairs past the water meter.

4. The Club shall be responsible for ensuring that all utilities used in connection with the Premises shall comply with federal, state, and local building code standards.

#### **K. RENTAL**

1. The Club shall remit to the Department a check payable to El Dorado State Park in accordance with the terms and conditions of this Agreement of \$750.00 at execution of this Agreement, and an amount of \$750.00 due and on April 1 of each year thereafter, through April 1, 2015. Beginning April 2, 2015, the Club shall remit to the Department, through the local park office, an annual fee of \$1,000 due

on April 1 of each year thereafter, through April 1, 2020. Beginning April 2, 2020, the Club shall remit to the Department, through the local park office, an annual fee of \$1,250 due on April 1 of each year thereafter, through April 1, 2025. Beginning April 2, 2025, the Club shall remit to the Department, through the local park office, an annual fee of \$1,500 due on April 1 of each year thereafter, through January 1, 2030

2. In addition to the rental schedule in Section K1, the Club shall compensate the Department a guaranteed annual rental payment in the form of goods and services or monetarily valued at \$45.00 per regular family membership (membership total) upon execution of this Agreement, and each year thereafter, through April 1, 2015. Beginning April 2, 2015, the Club shall compensate the Department a guaranteed annual rental payment on the form of goods and services valued at \$50.00 per regular family membership (membership total) and each year thereafter through April 1, 2020. Beginning April 2, 2020, the Club shall compensate the Department a guaranteed annual rental payment on the form of goods and services valued at \$55.00 per regular family membership (membership total) and each year thereafter through April 1, 2025. Beginning April 2, 2025, the Club shall compensate the Department a guaranteed annual rental payment on the form of goods and services valued at \$60.00 per regular family membership (membership total) and each year thereafter through January 1, 2030.

3. The Club will certify to the El Dorado State Park Manager in writing on or before December 1<sup>st</sup> of each year of the membership total as defined in the by-laws of the Club.

#### **L. TERM**

1. The term of this Agreement shall be deemed to have commenced on March 23, 2010, and will expire on January 1, 2030. This agreement may be renewed or extended at the sole discretion of the Department. Renewal of this agreement for subsequent terms shall be subject to the provisions of KSA 32-808(H)(6) as amended and applicable regulations.

2. The term of this Agreement or any subsequent agreement may not extend beyond the term of USACE Lease No. DACW56-1-80-247 or supplemental thereof.

3. The Department leases from the United States Army Corps of Engineers the Premises at El Dorado State Park through Lease No. DACW56-1-80-247, which expires on January 3<sup>rd</sup>, 2030. The Department may terminate this Agreement upon relinquishment or termination of Lease No. DACW56-1-80-247. The Department shall give the Club sixty (60) days written notice prior to such termination. Such termination shall not constitute a breach of this Agreement and shall not obligate the Department to pay any compensation or damages to the Club.

4. The Club shall, within ninety (90) days after termination of this Agreement, remove from El Dorado State Park all of property and goods owned by Club with minimum disturbance. Club's failure to remove all of its items from the Premises may cause Department to remove items at the expense of the Club. The Department shall have a lien thereon for unpaid rental and for the actual or reasonable estimate of cost and expense of removal of said property, goods, buildings, and effects or at its option declare any remaining facilities, goods, buildings, and effects to be the property of the State of Kansas.

#### **M. BREACH**

1. Each term of this Agreement is material. Unless specifically provided herein, the Club's failure to

remedy a breach of this Agreement within sixty (60) days as stipulated by the Department in a written notice of non compliance, shall be grounds for termination of the entire Agreement by the Department.

2. With respect to non-payment defaults, if Club is reasonably pursuing a cure of said breach and, through no fault of its own, said breach cannot be cured within specified time as stipulated by the Department, the Club shall have reasonable time to cure said breach as is necessary under the circumstances. In lieu of termination of the Agreement, the Department may assess liquidated damages payable upon request to the Department in the amount of \$50.00 per day to a maximum of \$10,000.00 until the breach is corrected to the Department's satisfaction.

3. This Agreement shall be deemed breached if the Club files a petition in bankruptcy, or if involuntary proceedings under any bankruptcy act or insolvency act are instituted against the Club, or if a trustee or receiver is appointed for any property of the Club.

4. The Club agrees to promote and provide positive public relations for the Department and understands that attempts to degrade or undermine the Department's image will, at the sole discretion of the Department, be grounds for immediate termination of this Agreement.

5. Waiver of a breach by either party shall constitute a waiver only as to such particular breach and not a waiver of any future breach. Any such waiver must be requested to the Department in writing and approved in writing by Department.

6. The Club agrees that should carrying out the purpose of this Agreement be stopped by legal proceedings, criminal or civil, brought against the Club or any of its employees, the Department may, by written notice to the Club, cancel this Agreement and thereupon all rights and privileges herein granted shall cease.

7. If this Agreement is terminated by the Department due to breach by the Club, the balance of the guaranteed annual rental for the entire term of this Agreement shall be considered at once due and payable to Department.

8. Any government provided building, structure or space used by the Club on Premises shall not be deemed to be leased; Club is a licensee and not a lessee thereof. Club's right to occupy the same and to operate the Premises shall continue only as long as each and all undertakings, provisions, agreements, stipulations and conditions herein contained are strictly and promptly complied with. In case of default, the Department may at any time after such default, close and take possession of said buildings, structures or spaces and this Agreement shall be forfeited, together with all privileges to occupy any buildings structures or space within Premises.

#### **N. EMERGENCY CLOSURE**

The Department retains the right to close and cease operation of El Dorado State Park and/or the concession operation without notice and without liability for damages in the event the Department finds that the continued operation of El Dorado State Park or the Club's concession operation represents an immediate threat to the health, safety, or welfare of the public, Department, or Club membership.

#### **O. CLUB USE**

The Club agrees to use the Premises for no other purpose than those stated in this Agreement.

**P. ASSIGNMENT**

The Club shall have no authority or power to sell, mortgage, assign, or parcel out this Agreement or any interest therein, nor any power or authority to permit any other person or party to have any interest in or use any part of the Premises, buildings, structures, or space covered by this Agreement for any purpose. It is the purpose of this Agreement to grant said Club concessions and privileges solely to the Club and neither directly or indirectly to any other person or party. However, nothing in this agreement shall be construed to prohibit the Club from mortgaging or granting a security interest in the property in Appendix II or otherwise using said property as collateral to obtain financing for Club operations or approved development and/or improvements, provided such lender or security holder agrees in writing to the terms and conditions of section G3.

**Q. INCORPORATION OF LEASE NO. DACW56-1-80-247**

This Agreement is subject to all terms and conditions of United States Army Corps of Engineers Lease No. DACW56-1-80-247 between Department and the United States Army Corps of Engineers and subsequent amendments thereto. The Club assumes all duties and rights of the Department to and from the United States Army Corps of Engineers under said lease and shall indemnify the Department for any liability or responsibility which the Department might incur to the United States Army Corps of Engineers by virtue of this Agreement.

**R. LAWS, LICENSES, and TAXES**

1. The Club shall comply with all applicable federal, state, and county laws and regulations. At its own expense, the Club shall obtain all licenses and permits necessary for operation of facilities and services upon Premises. The Club shall pay all sales taxes and other taxes assessed on services and facilities.

2. At all times, the Club shall comply with all laws, governmental standards, orders, rules and regulations promulgated by the United States of America, the State of Kansas, or any city, county state or other governmental entity applicable to Club or to the Premises in respect to occupational, health and safety, hazardous waste and substances and environmental matters including, but not limited to, the registration provision of financial assurance and remediation, maintenance and leak testing requirements applicable to underground storage tank systems (hereinafter referred to as "Applicable Environmental Laws"). United States Army Corps of Engineers ERGO requirements shall also be adhered to.

3. Club shall promptly give Department written notice of the Club's receipt of notice of any violation of any such law, rule, standard, order or regulation or of any claim asserted or threatened based upon an alleged violation of any such Applicable Environmental Laws. All losses, costs, damages, claims and expenses incurred by Department on account of Club's failure to perform these legal obligations shall be immediately due and payable with the interest to the Department at the interest rate applicable to judgments in the State of Kansas from the date of initial loss, cost, damage, claim or expense incurred by Department.

4. Club shall not use, deposit, install or permit to be used, deposited or installed on or about the Premises any substance deemed hazardous by Applicable Environmental Laws other than products used in the ordinary course of operations provided such use is in compliance with all Applicable Environmental Laws. At its own expense, Club shall promptly remove any such hazardous materials on or about the Premises not in compliance with all Applicable Environmental Laws and United States Army



Corps of Engineers requirements. Club acknowledges that in the event any hazardous material is removed from the Premises by Club (or by Department as provided below), the Environmental Protection Agency number assigned to such hazardous material shall be in the name of the Club and not in the name of the Department.

5. Club shall assume all of the Department's potential and actual liability for the removal of such material and otherwise comply with the Applicable Environmental Laws.

6. The Department may, after notice from the Club and at the expiration of either (I) the cure period, for a failure to perform a condition of this Agreement or (ii) at the expiration of the cure period as permitted under the Applicable Environmental Laws, declare this Agreement to be in default or undertake whatever actions are necessary to eliminate such material from the Premises or otherwise comply with the Applicable Environmental Laws. In the event that this Agreement is declared to be in default, the cost thereof incurred by the Department shall be immediately due and payable to the Department by the Club without notice and with interest thereon at the interest rate applicable for judgments in Kansas from the date incurred by the Department.

7. Club shall abide by all ERGO requirements and comply with all corrective actions required by the United States Army Corps of Engineers inspections in a timely manner. Club shall provide to the Department written notice of the completion of all requested corrective measures.

8. Club shall give the Department, its agents and employees access to the Premises and Club hereby specifically grants to Department a license, effective upon expiration of the applicable cure period to remove such material at Departments option.

9. Club shall become familiar with and comply with all Department rules and regulations and shall make every effort to ensure that patrons of the Club and Club members are in compliance with such rules. The Department shall provide to Club copies of applicable rules and regulations that Club is required to comply with. It shall be the responsibility of the local park manager to provide the Club with applicable rules and regulations.

10. As authorized by Kansas Statutes Annotated § 32-901, a valid park and recreation motor vehicle permit is required to use a motor vehicle in El Dorado State Park, including the concession and Premises area as indicated on Appendix I. Vendors and delivery vehicles conducting official business to the Premises are exempt from the purchasing vehicle permit requirements but must purchase and display a valid park vehicle permit for personal use and a valid vendor pass provided at the El Dorado State Park Office for business use.

#### **S. SIGNS and ADVERTISING**

The Club shall not advertise nor erect any signs, including signs containing brand names of products on the Premises without obtaining prior written approval of the Department.

#### **T. ACCOUNTING and RECORDS**

1. The Club shall install and maintain inventory, bookkeeping, accounting systems and methods of collection of monies sufficient to allow the Department to accurately compute and audit the gross receipts of Club to the satisfaction of the Department. Such records shall include retail sales by category (i.e. fishing, grocery, sporting goods, etc.) and a separate accounting of slip rental, dry storage, and boat rental receipts as well as receipts from any other income associated with the concession and Club and shall be submitted to the Department within thirty (30) days of request.

2. A copy of the Club's monthly sales tax report to the Kansas Department of Revenue shall be submitted to the Department within thirty (30) days of each due date and a statement of the annual gross receipts for the preceding calendar year is due to the Department by January 31 of each year during the term of this Agreement. Such statement shall contain certification that all gross receipts during the yearly accounting period have been duly and properly reported to the Department.

3. Upon request, the Department shall have the right to examine all books and records concerning the Club during regular business hours of Club or other hours the Department may specify during the term of this Agreement and for up to two (2) years following the termination or expiration of this Agreement. Such records shall be kept in separate accounting records and in a manner acceptable to the Department.

#### **U. ACCESS**

The Department shall, at any time, have access to the Premises for the purpose of inspecting the Club concessions, facilities and Premises. The Club shall appoint a representative to accompany said Department inspections. The Department reserves the right to determine the schedule of all inspections.

#### **V. INSURANCE**

1. At its own expense, the Club shall maintain insurance for bodily injury, death, or property damage arising from the operations conducted by the Club on the Premises. Insurance carried by Club shall have minimum liability as follows: \$500,000.00 per person and \$1,000,000.00 per occasion, \$500,000.00 for property damage and \$250,000.00 hazard including docks. The Department reserves the right to reasonably adjust amounts needed for insurance. All liability insurance required by this Agreement shall name the Department as an additional insured party.

2. A certificate of insurance showing that such insurance coverage has been obtained, renewed, or extended, shall be filed with the Department at least thirty (30) days prior to commencement of Club Services and within thirty (30) days prior to any policy expiration thereafter. The Department shall verify the insurance documents and then provide copies of said documents to the United States Army Corps of Engineers. All policies shall provide that coverage that cannot be cancelled or reduced without at least thirty (30) days prior written notice to the Department. The Department shall not be responsible for payment of any premiums. The Club shall also provide thirty (30) days written notice prior to the cancellation or reduction in coverage of any policy.

3. At its own expense, the Club shall maintain, during the terms of this Agreement, hazard insurance with extended coverage endorsements for the Premises, in an amount equal to eighty percent (80%) of the full value of the replacement costs thereof. The policy shall contain a replacement cost endorsement naming the Club as the insured. Any payment made to the Club due to fire or loss shall be used solely to repair or replace the destroyed or damaged Club property.

In the event that such hazard insurance is unavailable, the Club shall provide to the Department sufficient written documentation from various insurance companies of its inability to procure such policies to the Department and shall deposit \$1,000.00 into a repair and maintenance fund. All monies for this fund shall be deposited in an interest-bearing account, and all interest will become a part of this fund.

a) The Club shall annually deposit \$500.00 into this fund by March 1<sup>st</sup> of each year.

- b) Monies from this fund shall be used by the Club to pay only major repair and maintenance costs and may only be spent with written approval from the Department. This fund is not intended for use in routine repair and maintenance.
- c) Funds in this account may accumulate throughout the term of this Agreement and shall remain the property of the Club.
- d) This fund shall be accounted for separately from the other Club funds, and the Club shall furnish annual statements of the account in a format approved by the Department.
- e) At the expiration of or termination of this Agreement, the Department will release all claims to this fund, provided that the Club's facilities remaining in the Premise area are in a condition satisfactory to the Department, or a third party buyer, as agreed in writing to place them in such condition. The Club's responsibility for repair and maintenance is not limited by the balance of the repair and maintenance fund.

#### **W. HOLD HARMLESS**

1. The Club shall hold the Department, its officers, agents, and employees harmless from and shall defend and indemnify the Department from and against all liability for injuries to or death of persons or damage to property or damages arising from liens or claims of any nature resulting from the use and operation of the Premises, or the construction, modification, alteration, or repair of any improvements by the Club upon the Premises.

2. Indemnification by Club to the Department is applicable to all claims, demands, defenses, set-offs, counterclaims, damages, disbursements, losses, judgments, liens, liabilities, penalties, fines, injuries, litigation, or other proceedings and cost and expenses (including attorneys' fees and disbursements including fees in appellate and bankruptcy proceedings) which accrue against or are incurred by Department and arise directly or indirectly from or out of or in any way, including those connected with (a) the presence on, remediation of, or the actual, alleged or threatened release from the Premises of any hazardous material or petroleum hydrocarbons, if not otherwise deemed to be hazardous, (b) the Club's failure to perform any removal or abatement of or to institute a safe and effective control plan for pollution source of the Premises, or (c) non-compliance with any Applicable Environmental Laws. The parties hereto contemplate the Club's liability may arise under this indemnity after the termination of this Agreement, and it is specifically agreed that the indemnity and hold harmless provision of this Agreement, including those contained in Provision R and this section shall survive termination of this Agreement.

#### **X. NON-DISCRIMINATION**

1. The Club or its employees shall not discriminate against any person because of race, sex, religion, disability, color, ancestry, or national origin by refusing to furnish such person facilities or services provided to the general public or Club members. The Club or its employees shall not publicize facilities, membership, or services in any matter affecting the patronage of any person because of race, sex, religion, disability, color, ancestry, or national origin.

2. The Club shall not discriminate against any employee or applicant for employment because of race, sex, religion, disability, color, ancestry, or national origin. The Club shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to

their race, sex, religion, disability, color, ancestry, or national origin. Such actions shall include, but not be limited to, employment, promotion, demotion, or transfer, recruitment or advertising, lay-off, termination, rates of pay or other forms of compensation, and selection for training.

3. The Club agrees to comply with Title VI (Section 106) of the Civil Rights Act of July 2<sup>nd</sup>, 1964 (78 Stat 241), which provides that "No person shall in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance," and to be bound by the applicable regulation of the Federal government for the effectuation thereof.

4. The Club agrees to obligate its subcontractors, sub-grantees, transferees, successors in interest, or any other participation to comply with the requirements of this provision.

5. Club agrees to initiate an American Disabilities Act Compliance Plan with reasonable dates for completion, plans, and costs to the El Dorado State Park manager within ninety (90) days of execution of this Agreement. Further all facilities and Premises shall comply with American Disability Act standards within five (5) years of the execution of this Agreement, provided however if renovations are commenced that would require earlier compliance with ADA standards, and then such earlier statutory period shall control. Club shall demonstrate to the Department by November 15 of each calendar year continuous progress in modifying the service area and facilities to meet ADA standard. If requested, Department may assist Club with this plan.

6. Equal opportunity to participate in and benefit from programs described herein is available to all individuals without regard to their race, color, religion, national origin, ancestry, sex, age or disability. Complaints of discrimination should be sent to the Office of Secretary, Kansas Department of Wildlife and Parks, 1020 S. Kansas, Suite 200, Topeka, KS 66612.

#### **Y. ACTING IN INDIVIDUAL CAPACITY**

1. Both parties hereto, in the performance of this Agreement, shall be acting in an individual capacity and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or constructed to be the employees or agents of the other party for any purpose whatsoever.

#### **Z. TIME OF THE ESSENCE**

Time is of the essence of this Agreement.

#### **AA. NOTICES**

All notices shall be made in writing and deposited with the United State Postal Service postage prepaid, and addressed as follows:

To the Club: Walnut Valley Sailing Club  
P.O. Box 20076  
Wichita, KS 67208-1076

To the Department: Park Manager  
El Dorado State Park  
618 NE Bluestem RD  
El Dorado, KS 67042

**BB. MODIFICATIONS**

The terms and conditions of this Agreement may be modified in writing ONLY by mutual consent of the Department and the Club and approval by USACE. No modification or waiver by either the Department or the Club of any term or condition of this Agreement shall be deemed a continuing modification or waiver of the same term or condition.

**CC. TERMS BINDING UPON SUCCESSORS**

1. All terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors, heirs, and assigns of the Department and Club.

**DD. CONTRACTUAL PROVISIONS**

The provisions found in Contractual Provisions Attachment (form DA-146a), which is attached hereto, are hereby incorporated in this Agreement and made a part hereof. The following shall be incorporated into the contract by reference: original Request For Proposal (RFP), any response to the RFP, supplemental responses, correspondence from the Department to the Club or correspondence from the Club to the Department related to this proposal and Agreement, and any other documentation to or from the Club and the Department related to the proposal or Agreement.

In the event of conflict of the terms of language among documents, the following order of precedence shall govern:

- 1) Form DA-146a
- 2) Modifications, written and signed by the parties, to the executed contract;
- 3) Written contract signed by both parties;
- 4) Any other correspondence, supplemental responses, or documentation to or from the contractor and the Department.

**EE. NON-SUBSTITUTION FOR DEPARTMENT**

In the event of termination of Lease No DACW56-1-80-247, the USACE will not stand in-stead for the Department for the remainder of the term of this Agreement, if any. At USACE discretion, USACE may enter into a new agreement with the Club that is in compliance with the rules and regulations which govern USACE.

Dated the 23 day of March 2011.

CONCESSIONAIRE  
WALNUT VALLEY SAILING CLUB

KANSAS DEPARTMENT OF  
WILDLIFE & PARKS



By: R E BROWN

Title: Commodore 2011



By: Keith Sessor

Title: Asst. Secretary

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*Approved as to form but not a party hereto:*

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*Chief, Civil Branch, Real Estate Division*  
**United States Army Corps of Engineers**



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, TULSA DISTRICT  
1645 SOUTH 101ST EAST AVENUE  
TULSA, OKLAHOMA 74128-4609

JAN 11 2012

Real Estate Division  
Management

SUBJECT: El Dorado Lake; El Dorado State Park, Lease DACW56-1-80-247, Approval of Sublease

Mr. J. Michael Hayden  
Secretary, Kansas Dept. of Wildlife & Parks  
1020 South Kansas Ave, Suite 200  
Topeka, KS 66612

Dear Mr. Hayden:

This is in reply to your letter of request, in which you requested approval of a sublease agreement with Walnut Valley Sailing Club for a sailboat facility.

In accordance with provisions of the lease, the proposed sublease operation is approved subject to the following conditions:

- a. Operation of the sailboat facility must comply with all applicable Federal, state, and local laws and regulations, as well as Lease DACW56-1-80-247.
- b. This approval serves to concur with the sublease activities, but is not to be construed as warranting the legal sufficiency of the sublease agreement.

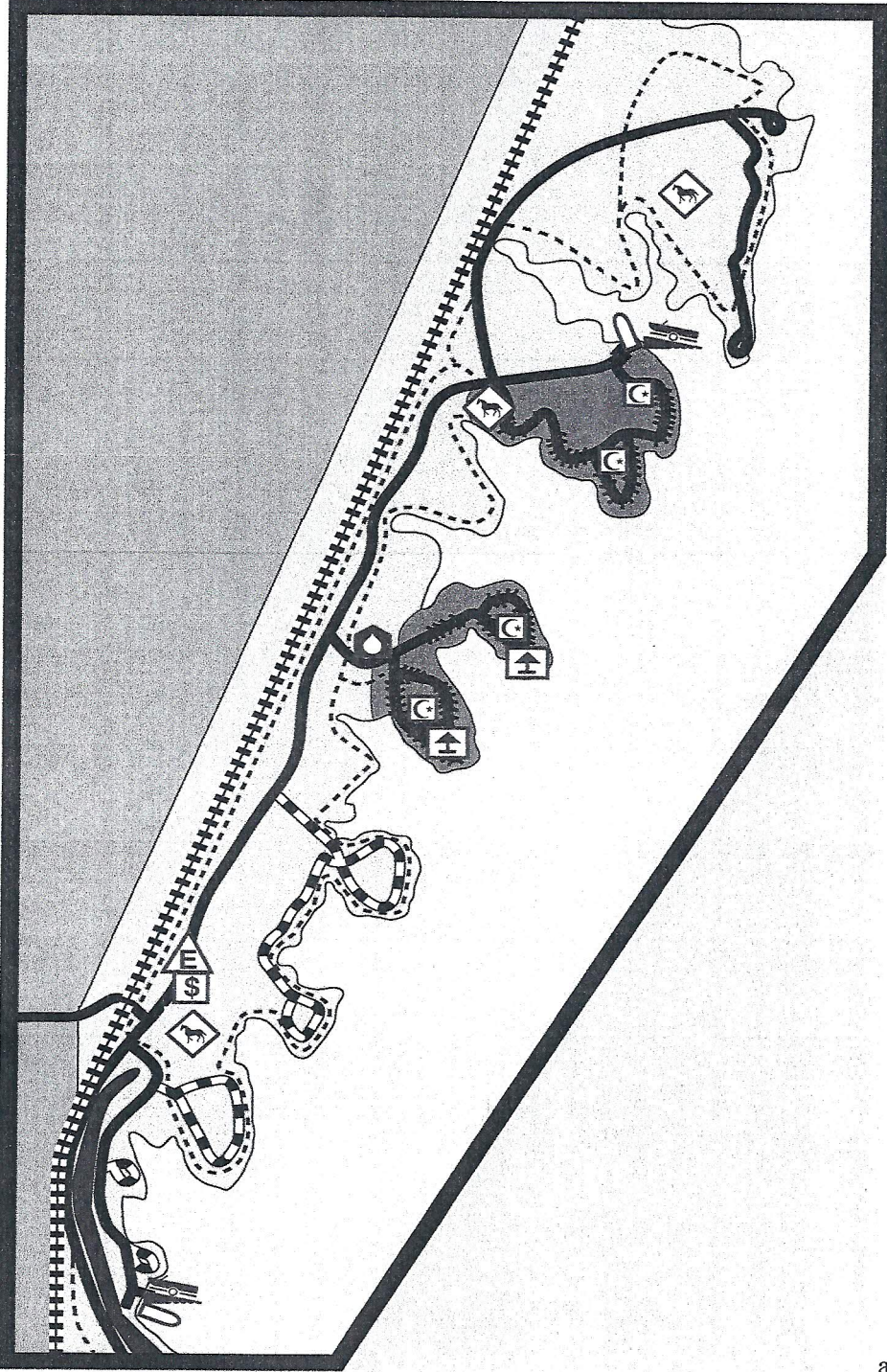
If you have any questions, please call Jason Northern at 918-669-7679.

Sincerely,

A handwritten signature in cursive script that reads "Ida Lafayette".

Ida Lafayette  
Chief, Management & Disposal Branch  
Real Estate Contracting Officer

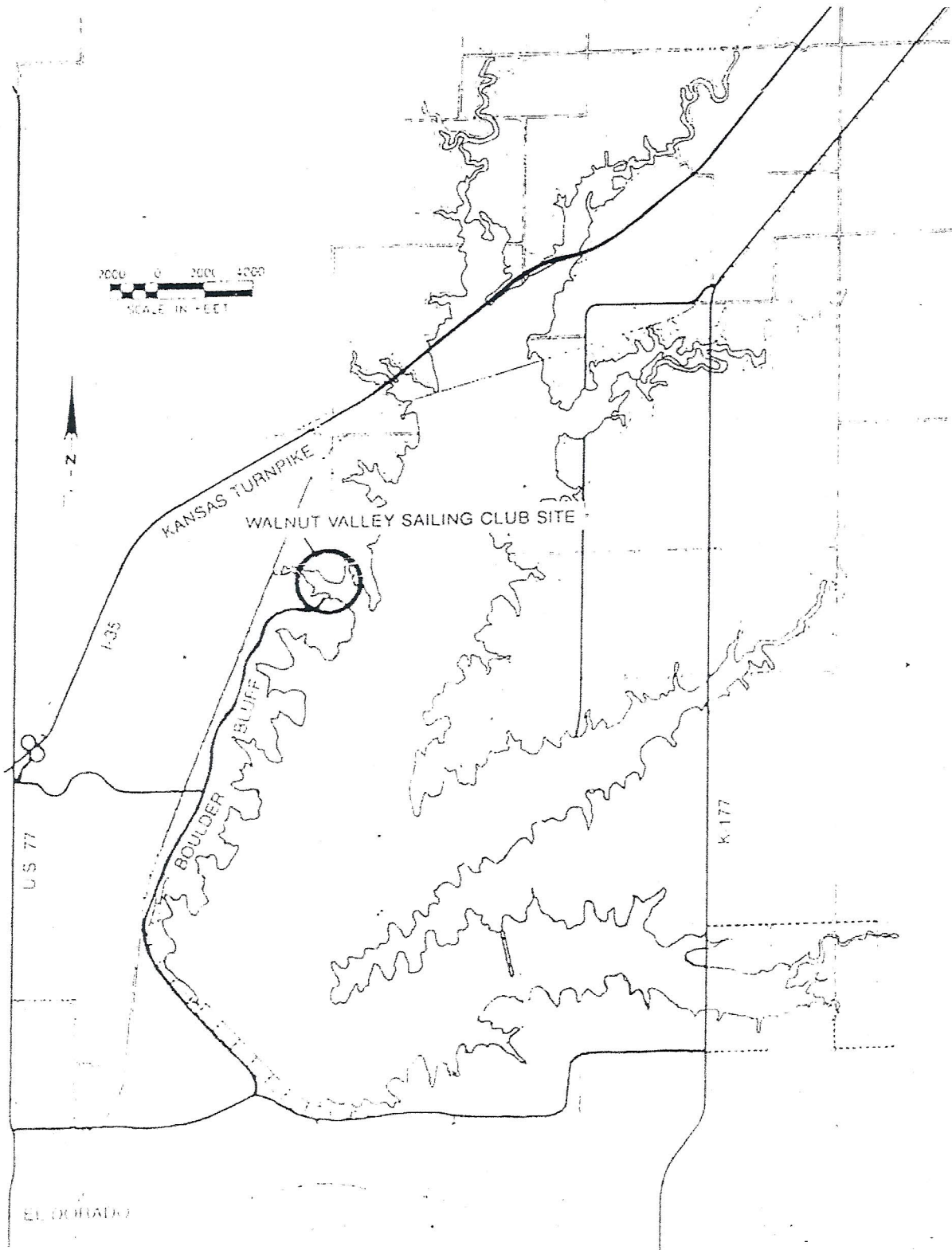
Boulder Bluff Area – El Dorado State P



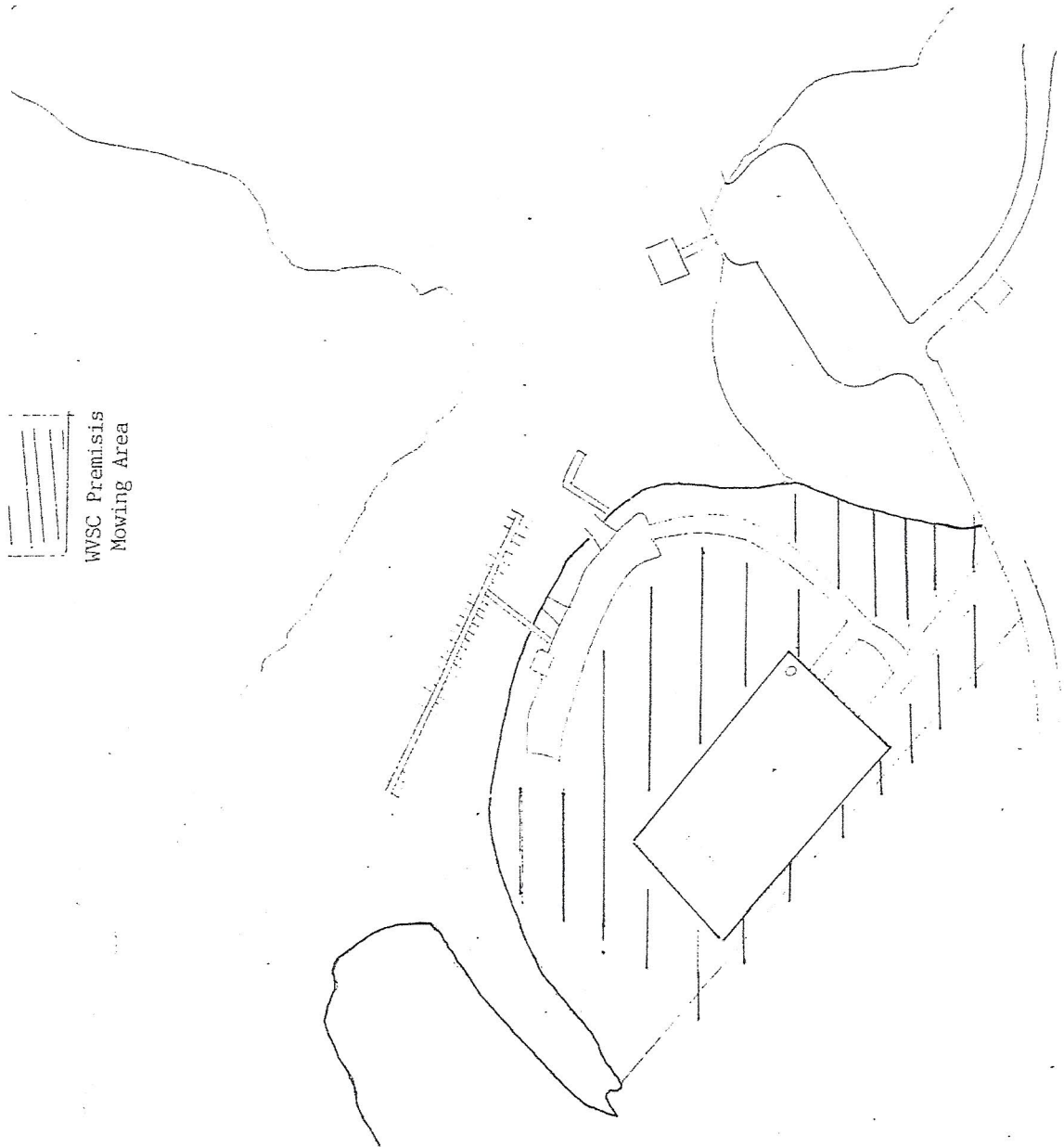
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APPENDIX 1

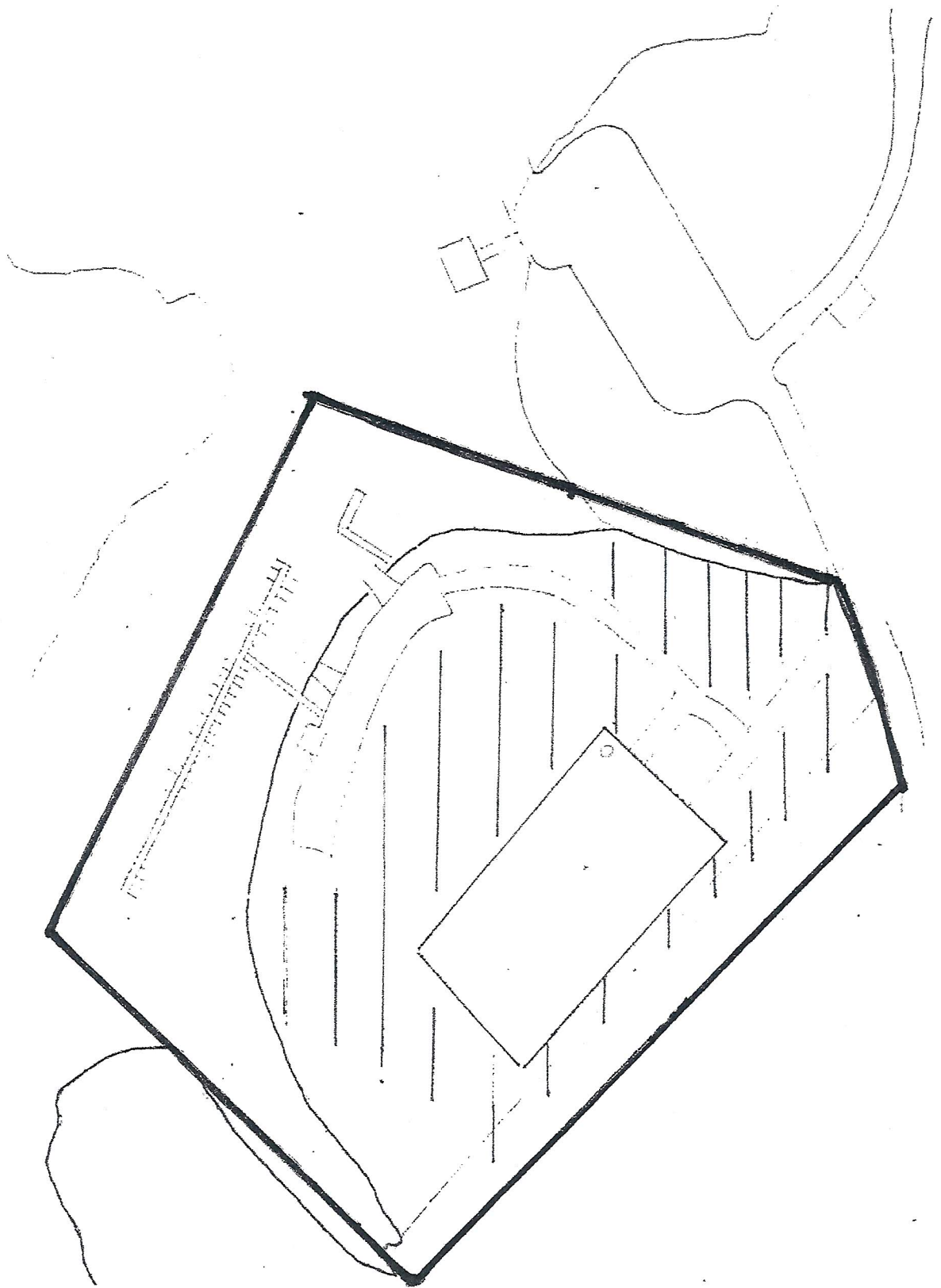




Appendix  
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Appendix  
I  
Premises



## Appendix I

Exclusive use facilities per E. 2.:

Dry Storage

Activities Center

Docks, including slips and attached walkways, dinghy dock, plastic floating docks and dinghy storage racks

Picnic Shelter

Youth sailing storage buildings

Boat Ramps

Appendix  
II

Facilities and property owned by WVSC per G. 2. b.:

Activities Center

Docks, including slips and attached walkways, dinghy dock, plastic floating docks and dinghy storage racks

Picnic Shelter

Youth sailing storage buildings

Power boats used for safety, racing and training activities

Sailboats used for training activities

Dry Storage building (including contents) and fencing

Miscellaneous equipment in Dry Storage area (not including boats, trailers, etc. personally owned by members)

Contents of Activities Center including freezers, refrigerators, tables, chairs and miscellaneous supplies.

Boat Ramps



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, TULSA DISTRICT  
1645 SOUTH 101ST EAST AVENUE  
TULSA, OKLAHOMA 74128-4609

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Ida Lafayette  
Chief, Management & Disposal Branch  
Real Estate Contracting Officer