

COPY

CONCESSION AGREEMENT
(AS AMENDED)

STATE OF TEXAS

COUNTY OF DENTON

WHEREAS, the City of Lewisville, Texas, acting by and through its duly authorized Mayor, entered into a lease granted to the City by the Secretary of the Army, identified as Lease No. DACW 63-1-00-0820, dated April 27, 2000, for a period of 25 years, commencing on April 15, 2000, and ending on April 14, 2025, to use and occupy an area in Denton County, Texas, Lewisville Lake Project, for public and recreational purposes; and

WHEREAS, the lease authorizes the City of Lewisville, hereinafter referred to as "the City", to enter into concession agreements with third parties providing needed services to the public, subject to the approval of the District Engineer, U. S. Army Corps of Engineers, Fort Worth District, hereinafter referred to as the "District Engineer"; and

WHEREAS, the City of Lewisville has heretofore entered into a Concession Agreement with Eagle Point Marina for the operation of a boat marina on September 29, 1981, for the period ending December 31, 2005;

WHEREAS, the City of Lewisville, Eagle Point Marina, and L.J.H. Corporation entered into a Supplemental Agreement No. 1 to the Concession Agreement whereby the City of Lewisville consented to the sale of Eagle Point Marina to L.J.H. Corporation; and

WHEREAS, the City of Lewisville and L.J.H. Corporation wish to extend the term of the Concession Agreement; and

WHEREAS, the City of Lewisville on October 2, 2000, extended the term of the Concession Agreement to April 14, 2025; and

WHEREAS, the parties wish to clarify certain matters pertaining to the payment of concession fees by this amendment;

NOW THEREFORE, for and in consideration of the premises and covenants hereinafter set forth and in accordance with the above quoted authority, the City, party of the first part, acting

CITY SECRETARY OFFICE
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by and through its duly authorized Mayor, hereby grants to L.J.H. Corporation, party of the second part, hereinafter referred to as "Concessionaire", authority to operate commercial activities on a tract of land more particularly described as set out in Exhibit A and as shown on Exhibit B, both Exhibits attached hereto and made a part hereof, for a term of 25 years, commencing on April 15, 2000, and ending April 14, 2025, and hereinafter at such other site or sites under such terms and conditions, including compensation amounts, payable to the City, as may be agreed upon in the future between the City and the Concessionaire, and approved in writing by the District Engineer.

It is expressly understood and agreed that this agreement is subject to all the terms, conditions, privileges and obligations incorporated in the lease granted to the City by the Secretary of the Army under Lease No. DACW 63-1-00-0820, as extended, and such terms are as binding on the Concessionaire as if they were fully set forth herein.

This agreement is further granted subject to the following conditions:

1.

That the Concessionaire shall pay to the City compensation for the concession privileges herein authorized in a sum equal to 3 percent (3%) of the Gross Income from all the business operations conducted under this agreement by the Concessionaire, with the following exceptions:

- a. One percent (1%) shall be charged on the gross sales of new and used boats, motors, and trailers
- b. From and after such time as a certificate of occupancy is issued for a hotel, one percent (1%) shall be charged on the gross income from the operation of such hotel, including but not limited to income from the operation of a conference center and income from food and beverage sales either within such hotel and/or conference center or in any bars or restaurants operated in association therewith.
- c. No concession fee shall be charged or paid among the business entities utilizing the property for cost sharing items such as shared maintenance expenses, security patrol expenses, reimbursements for use of show and courtesy slips, shared shop expenses for

make ready or warranty work performed on a reduced cost basis, ground lease fees charged to other businesses, or other cost sharing items necessary to generate revenues upon which the concession fee is payable.

Payments by the Concessionaire shall be made in quarterly installments, each due and payable to the City on or before the 30th day of the month following the end of the calendar quarter. Gross income, as herein defined, shall mean the total receipts of the Concessionaire from the business operations conducted under this agreement without any reductions whatsoever. The Concessionaire shall keep an accurate set of books which shall be open to inspection by officials of the City at any and all reasonable times. The City shall have the right to perform audits of the Concessionaire's records and accounts. The Concessionaire shall also pay to the City on demand, any sum that may have to be expended after the expiration, revocation, or termination of this agreement in restoring the premises to as good order and condition as that existing upon the date of commencement of the term of this agreement, damage beyond the control of the Concessionaire and due to wear and tear excepted. Compensation shall be payable to the City and forwarded to the City at P.O. Box 299002, Lewisville, Texas 75029.

2.

The Concessionaire is authorized to conduct commercial activities in the leased area that have been approved by the City and approved in writing by the District Engineer. The area shall be occupied and used solely for the conduct of business in connection with the recreational development of the area for the general public. Business shall include, but is not necessarily limited to the following:

- (a) Storage facilities for privately owned boats and other watercraft
- (b) Sale and rental of new and used boats, watercraft, recreational vehicles, and campers
- (c) Servicing and repairing privately owned boats and other watercraft
- (d) Sales of gasoline, oil, and other marine supplies
- (e) Sale of food, refreshments, fishing tackle, fish bait, and other supplies

- (f) Guide services, charters, and transportation by boat
- (g) Providing for overnight and long-term recreational vehicles and campers
- (h) Providing for dry storage of boats and watercraft, recreational vehicles, and campers
- (i) Operation of hotel and convention facilities
- (j) Operation of restaurants

3.

That said business shall be initiated in a manner satisfactory to the City commencing on the effective date of this instrument, and thereafter the Concessionaire shall conduct such of the permitted activities as the City shall at any time specify.

4.

All plans and locations for buildings and/or structures to be placed upon the premises or any subsequent alterations thereto shall be approved in writing by the City and the District Engineer prior to commencement of construction by the Concessionaire. All buildings and structures placed upon the premises by the Concessionaire shall be and remain the property of the Concessionaire, except as otherwise provided in Condition 20 below, and may be removed therefrom by the Concessionaire as provided in Condition 20.

5.

The Concessionaire shall comply with all Federal laws and regulations and with all the laws, ordinances, and regulations of the State and County wherein the demised premises are located with regard to construction, sanitation, licenses, or permits to do business and all other matters. The City or the District Engineer, upon finding that a violation exists that constitutes a health or safety hazard, may suspend the use of the operation or facility until such violation is corrected.

6.

That any and all taxes which may be lawfully imposed by the State or its political subdivision upon the property or business of the Concessionaire on the said premises shall be paid promptly by the Concessionaire.

7.

That the Concessionaire shall not hunt or trap or allow hunting or trapping on the said premises.

8.

That the Concessionaire shall not sell, store, or dispense, or permit the sale, storage, or dispensing on the said premises of any alcoholic beverages, including beer, unless prior written approval by the District Engineer has been obtained. The Concessionaire shall not install or permit to be installed or operated any devices or conduct any activities thereon which, in the opinion of the City, are contrary to good morals or are otherwise objectionable.

9.

That the Concessionaire shall not permit or suffer any offensive use of the said premises, or the commission of waste thereon, shall not cut timber or native shrubs except as approved in writing by the said City and the District Engineer, shall not conduct mining operations or drill for oil or gas upon the said area, shall not remove sand, gravel or kindred substances from the ground or shall not in any manner substantially change the contour or condition of the property unless approved in writing by the City and the District Engineer, but the Concessionaire may salvage such fallen dead timber as may be required for use as firewood. The Concessionaire shall keep the area in good order and in a clean, sanitary, and safe condition, and shall at all times maintain all structures and equipment in a condition satisfactory to the City and the District Engineer. The Concessionaire shall be responsible for the removal of all refuse, litter, debris, etc., that may accumulate in the concession area from any cause or for any reason, and shall keep all weeds, grass, and underbrush in the area under proper control by mowing or other approved methods. Such mowing and cleaning of

the area will conform to standards of frequency and quality which are established by the Corps of Engineers.

10.

That the Concessionaire shall not transfer, sublease, or assign this agreement or any privileges hereunder, nor any interest whatsoever in connection with this agreement without permission in writing from said City and the District Engineer.

11.

There shall be no unreasonable interference with navigation by the privileges hereby granted.

12.

That no attempt shall be made by the Concessionaire to forbid the full and free use by the public of the water areas of the reservoir or the public use areas that may be developed upon the said premises in accordance with the purpose and intent of the Act of Congress approved 22 December 1944, as amended.

13.

That if the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the District Engineer shall be installed and maintained at the expense of the Concessionaire.

14.

That this agreement may be terminated by the Concessionaire at any time by giving thirty (30) days notice in writing to the City, provided that, in case of such termination, no remission by the City of any rental heretofore paid shall be made.

15.

That the use and occupation of the premises shall be subject to the general supervision and approval of the City and to such rules and regulations as may be prescribed by it from time to time. The City shall perform, at least monthly, and more often if necessary, compliance inspections of all subleased premises and shall prescribe corrective action for all noncompliance. The District Engineer also reserves the right to perform periodic inspections of all concession premises and to require the City to notify Concessionaires of deficiencies and prescribe corrective measures. This concession agreement may be terminated by the City or the District Engineer, upon failure of the Concessionaire to correct said deficiencies, within a reasonable time as determined by the City and the District Engineer.

16.

That the right is hereby reserved to the City and to the United States, its officers, agents and employees to enter upon the said premises at any time for inspection and for any purpose necessary or convenient in connection with government work, to remove therefrom timber or other material, except property of the Concessionaire required or necessary for such work, to sell and remove merchantable timber therefrom, to flood the premises whenever necessary, to manipulate the level of the reservoir or pool in any manner whatsoever, and to draw down the reservoir or pool to any extent at any time, and the Concessionaire shall have no claim for damages of any character on account thereof against the City or the United States or any officer, agent or employee thereof.

17.

That the right is hereby reserved to the county and state and the United States, its officers, agents, and employees to construct or to permit the construction of facilities suitable for communication, electrical distribution or transmission, water supply, sewerage disposal, access roads, and similar purposes on the premises, and the Concessionaire shall have no claim for compensation or damages of any character on account thereof.

18.

That the Concessionaire shall be responsible for any damage that may be caused to property of the City or government property by the activities of the Concessionaire under this agreement and shall exercise due diligence in the protection of all improvements, timber, and other property of the City or of the United States which may be located on the said premises against fire or damage from any and all other causes.

19.

That neither the City nor the United States shall be responsible for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the said premises, nor for damages to the property of the Concessionaire, or for injuries to the person of the Concessionaire, or for damages to the property or injuries to the person of the Concessionaires officers, agents, servants, or employees or others who may be on said premises at their invitation or the invitation of any one of them, arising from or incident to the flooding of the said premises by the Government or flooding from any other cause, or arising from or incident to any other Governmental activity, and the Concessionaire shall hold the City and the United States harmless from any and all such claims.

20.

That on or before the date of expiration of this agreement or its termination by the Concessionaire, the Concessionaire shall at the Concessionaire's cost vacate the premises, remove the property of the Concessionaire therefrom, and restore the premises to as good order and condition as that existing upon the date of commencement of the terms of this agreement, damages beyond the control of the Concessionaire and due to fair wear and tear excepted. If, however, this agreement is revoked, the Concessionaire shall restore the premises to the condition aforesaid within such time as the City may designate. In either event, if the Concessionaire shall fail or neglect to

remove the property of the Concessionaire and so restore the premises, then, at the option of the City, the property of the Concessionaire shall either become the property of the City, without compensation therefor, or the City may cause it to be removed and the premises to be restored at the expense of the Concessionaire and no claim for damages against the City or its officers or agents shall be created by or made on account of such removal and restoration work.

21.

That if more than one individual is named in this agreement, the obligations of said individuals herein contained shall be joint and several obligations.

22.

Notice shall be deemed to have been given if and when enclosed in a properly sealed envelope or wrapper addressed and deposited postage prepaid in a post office or branch post office regularly maintained by the United States Government and addressed to the City at P.O. Box 299002, Lewisville, Texas 75029, and to the Concessionaire at #1 Eagle Point, Drive, Lewisville, Texas 75029.

23.

This agreement may be revoked by the City upon the happening of any of the following events:

- (a) Non-payment of rental
- (b) A breach by the Concessionaire of any of the terms or conditions of this agreement, including failure to perform corrective action for noncompliance
- (c) Termination of the Department of the Army lease.

24.

That the Concessionaire will fully indemnify and save whole and harmless the City from all

claims or cause of action against it that may arise in connection with the maintenance and operation of the entire premises, which include all areas included in or adjacent to and used in connection with any facilities constructed at or beyond the shoreline of Lewisville Lake, and that prior to commencing operations under this agreement, the Concessionaire will obtain from a reputable insurance company, acceptable to the City, and carry liability or indemnity insurance so indemnifying the City, providing for limits no less than \$250,000.00 per person in any one claim and an aggregate limit of \$500,000.00 for any number of persons or claims arising from any one accident with respect to bodily injuries or death resulting therefrom, and \$100,000.00 for property damage suffered by any person or persons resulting from the operations of the Concessionaire under the terms of this agreement.

25.

That the storage, display, or sale of fireworks or explosives on the premises is hereby prohibited.

26.

That the Concessionaire shall not discriminate against any person or persons because of race, creed, color, sex, age, or natural origin in the conduct of operations on the leased premises.

This constitutes the entire agreement between the parties, and all previous agreements, if any, are either merged herein or rescinded. IN TESTIMONY WHEREOF, the parties hereto have each caused this instrument to be executed in duplicate originals, on this the 11th day of December, 2000.

APPROVED AS TO FORM

CITY OF LEWISVILLE



Ron Neiman, City Attorney



Gene Carey, Mayor

ATTEST:



Marty Hendrix, City Secretary



Concessionaire



CITY SECRETARY OFFICE
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LEASED AREA

LEGEND

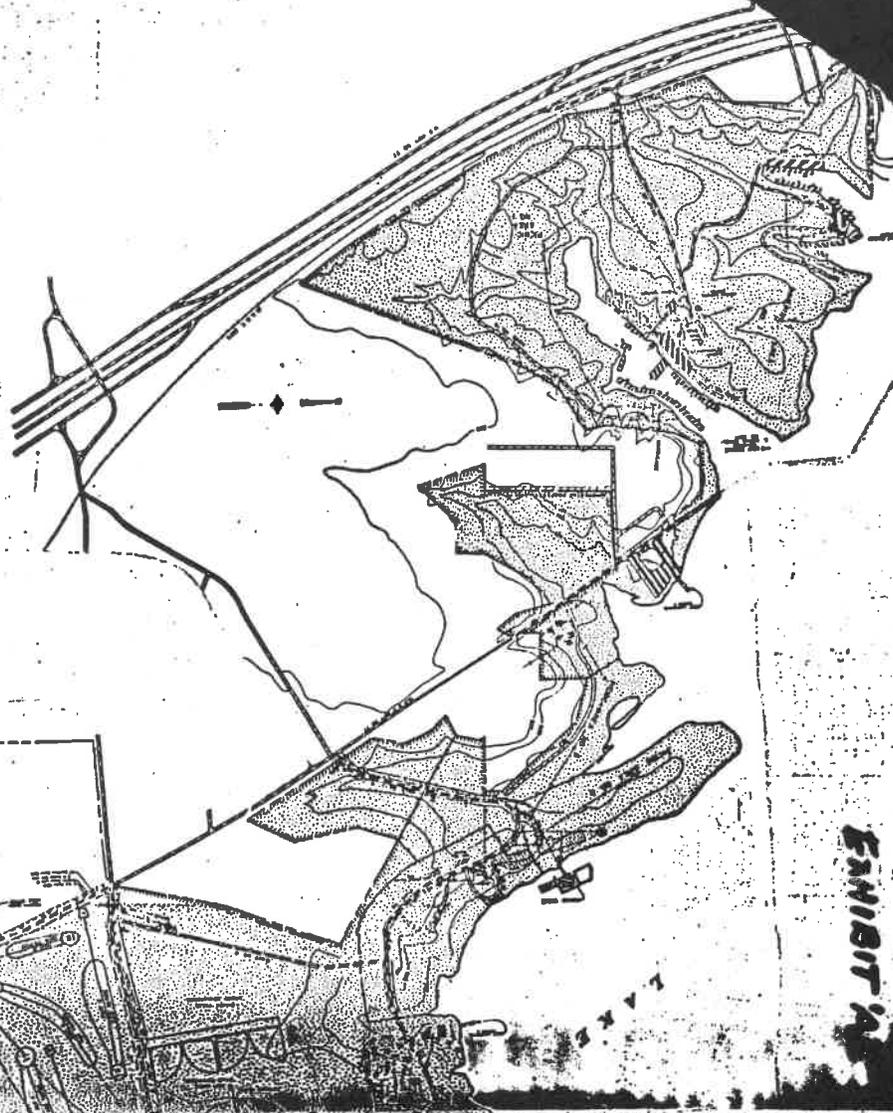


EXHIBIT 'A'

LEASE EXHIBIT



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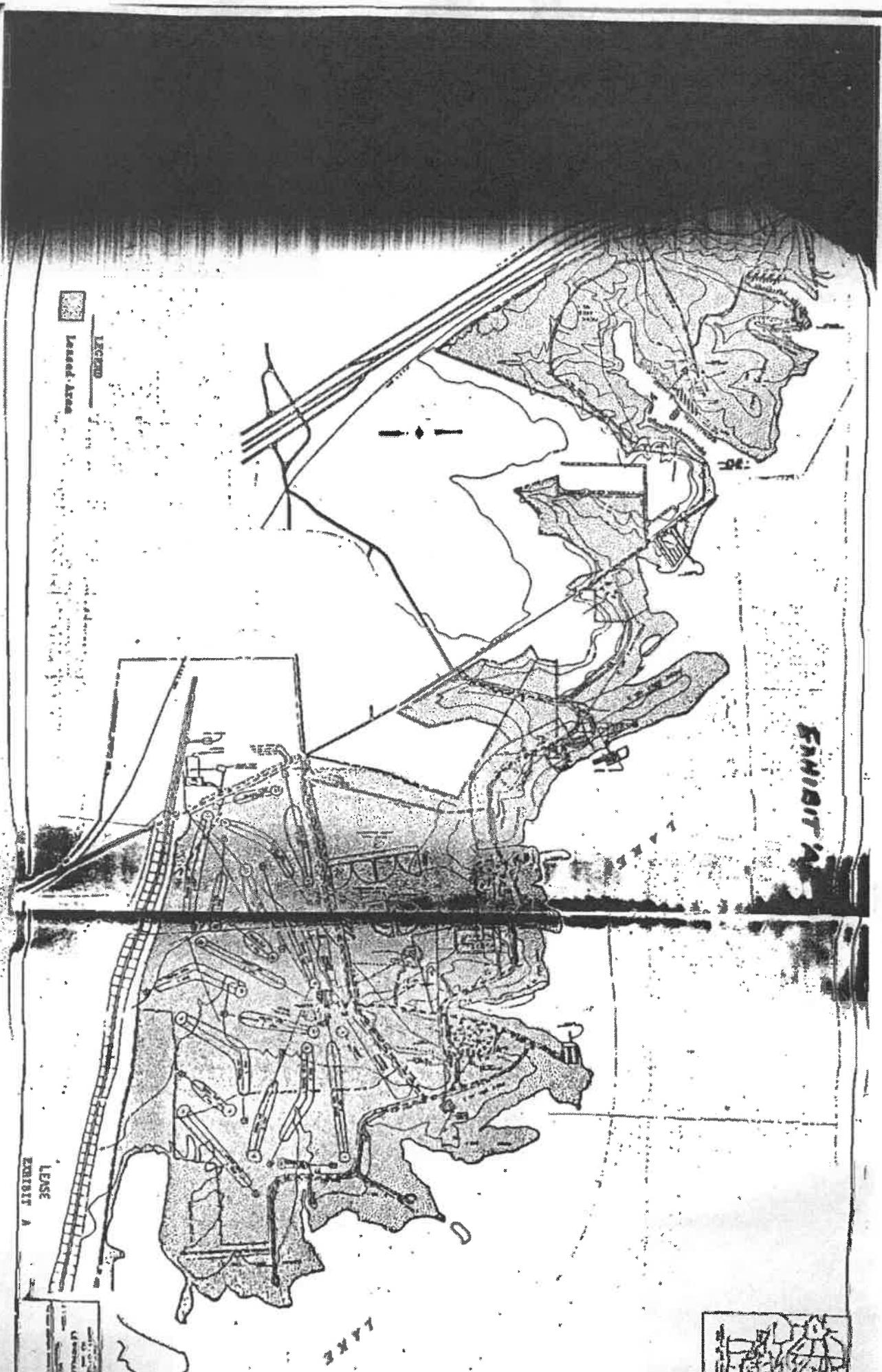


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EXHIBIT 'B'

LEGEND



LEGEND
Leased Area

EXHIBIT A

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EXHIBIT A

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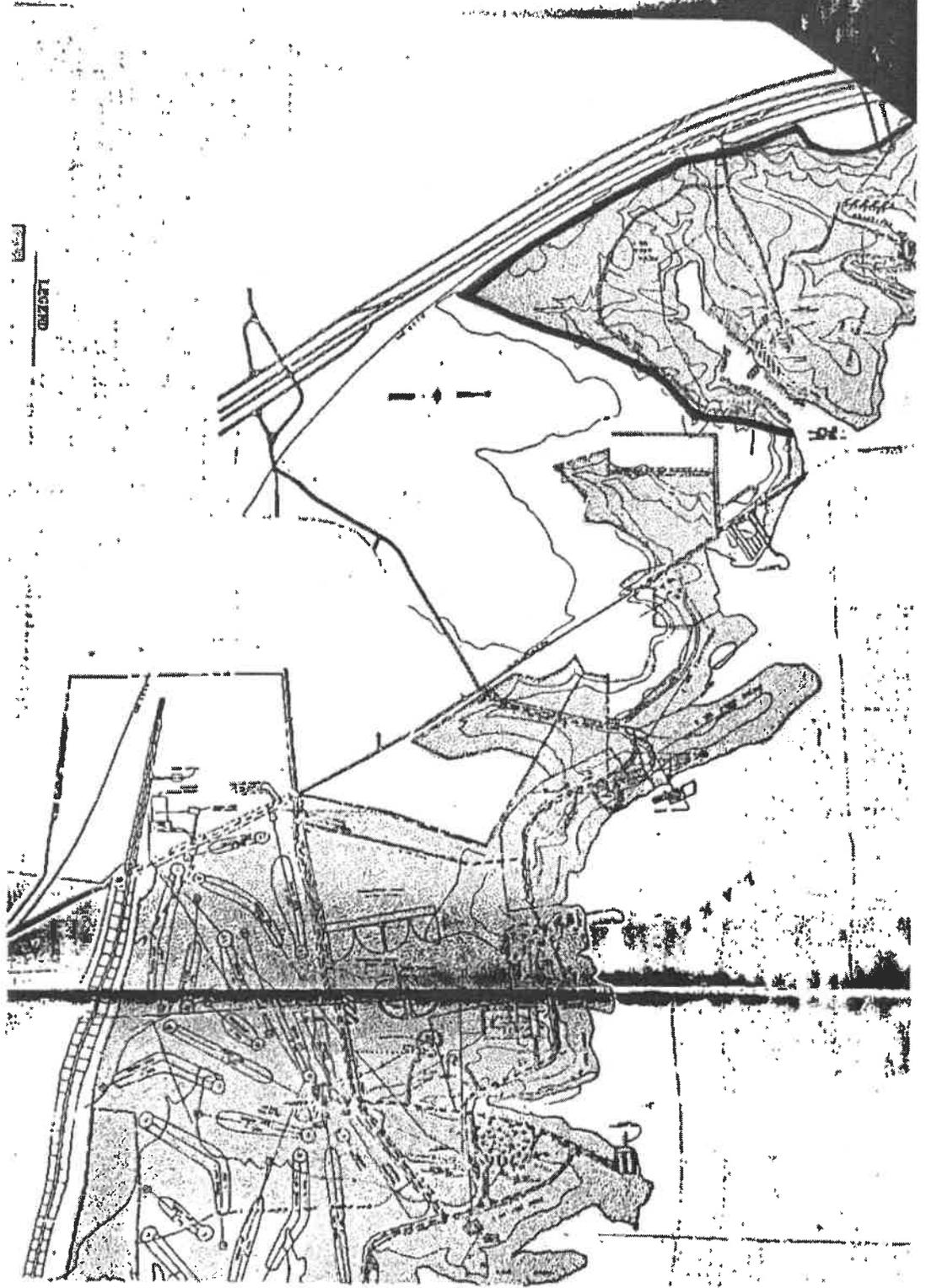


EXHIBIT 'B'

