

**LEASE AGREEMENT**

This Lease Agreement ("Lease Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2011, by and between CITY OF LINCOLN, NEBRASKA, a municipal corporation, hereinafter referred to as "City," and LINCOLN TRAP AND SKEET CLUB, a Nebraska nonprofit corporation, 4805 N. 48<sup>th</sup> Street, Lincoln, Nebraska, 68504, hereinafter referred to as "LTSC".

WHEREAS, City is the owner of Helen Boosalis Park, located generally at the northwest corner of 44th Street and Superior Street, in Lincoln, Lancaster County, Nebraska ("Boosalis Park"); and

WHEREAS, LTSC desires to operate a Sporting Clays Range/Shotgun Range ("Sporting Clays Range") on a portion of Boosalis Park; and

WHEREAS, City and LTSC mutually agree that the development and operation of the Sporting Clays Range is in the vital and best interest of the City and LTSC and is in furtherance of the health, safety, and welfare of the residents of the City, in accordance with the public purposes.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein, the parties hereto agree as follows:

1. **Lease of Premises.** The City hereby leases to LTSC that portion of Boosalis Park as more particularly depicted in Attachment "A," which is attached hereto and incorporated herein by this reference ("Premises"). Currently the Premises has a substantial amount of solid waste as defined in Lincoln Municipal Code Section 8.32.010 that needs to be cleaned up in order for the Premises to be useful for the development and operation of the Sporting Clays Range. Pursuant to this Lease Agreement, LTSC is being independently retained by the City as an independent contractor to clean up the refuse as provided in paragraph 3 below. LTSC's cost to perform such cleanup shall constitute prepaid rent for lease of the Premises under this Lease Agreement for the Base Term.

2. **Term of Lease.** The term of this Lease Agreement shall be for approximately fifteen (15) years ("Base Term") commencing on January 1, 2012 and continuing until December 31, 2026, in accordance with the terms and conditions hereinafter set forth. LTSC shall have the option to extend the Base Term for one additional five-year period ("Extended Term") upon the same terms and conditions except for the payment of rent. Said option shall be exercised by giving the City six months advance written notice stating LTSC's intent to exercise the option prior to the date of termination of the Base Term.

3. **Cleanup.** Immediately following the execution of this Lease Agreement, LTSC shall have the right to enter upon the Premises to perform cleanup activities as provided below. The property shall be cleaned up to the satisfaction of the City to the extent practicable and to a level that allows use of the Premises without jeopardizing the health and safety of the public.

The work shall be completed prior to June 1, 2014. Cleanup activities shall consist of the following:

- (1) LTSC shall install and maintain temporary fencing around the primary debris area until it is cleaned up to the satisfaction of the City. The fencing material must be submitted to and approved by the City prior to installation.
- (2) LTSC shall organize, implement removal, and arrange for appropriate disposal of debris from the Premises, including but not limited to removal and disposal of the "bedsprings" fence and any free standing structures thereon.
- (3) Metal items shall be collected and placed in a roll-off container to be hauled to a salvage facility.
- (4) Glass and ceramic items shall be collected and hauled to the landfill.
- (5) Concrete and brick shall be collected and hauled to a recycling facility to the extent possible.
- (6) Trees and woody vegetation that are to be removed shall be ground and spread on the Premises.
- (7) Insofar as practicable, LTSC shall endeavor to recycle or reuse the debris on the Premises.
- (8) LTSC shall immediately inform the City of any unusual items discovered on the Premises during the cleanup that may require additional abatement action.

LTSC shall be solely responsible for all costs of the cleanup, including but not limited to the purchase and installation of the temporary fencing and equipment rental, except as follows:

- (1) City shall be responsible for the cost of disposal of tires estimated to be \$600 (i.e. 300 tires x \$2.00/tire).
- (2) City shall be responsible to pay tipping fees for disposal of glass and ceramic debris at the landfill estimated to be between \$3,000 and \$5,000.

City understands that LTSC intends to use volunteers to assist in the cleanup. In such event LTSC shall document the time its volunteers spent on cleanup on a form acceptable to the Lincoln Parks and Recreation Department which shall include the name, age, address, and time donated by each volunteer. LTSC shall require each volunteer, prior to engaging in any cleanup activities, to sign a waiver (the form of which is attached hereto as Attachment "B") releasing City from liability for injuries that might occur during the cleanup activities. LTSC shall provide copies of the signed waiver forms to City at the end of each month during the cleanup period.

The cleanup activities will be monitored by staff from the Department of Parks and Recreation. The parties agree that if any unusual circumstances arise during the cleanup, the parties shall negotiate additional terms and compensation as necessary.

4. **Use of Premises.** The Premises shall be used by LTSC solely for the development and operations of the Sporting Clays Range. Development of the actual Sporting Clays Range facilities shall accommodate considerations of safety, sound, soil erosion, animal habitat, and the environment. LTSC shall be responsible for all operations of the Sporting Clays Range year-round. The Sporting Clays Range shall be open to the public. Normal hours of

operation of the Sporting Clays Range shall be determined by the LTSC except that the hours of operation shall be no earlier than 7:00 a.m. and no later than 9:00 p.m. due to the lack of permanent lighting. LTSC shall place a person or persons duly qualified to operate the Sporting Clays Range in charge of the Sporting Clays Range at all times it is open for public use. The parties recognize and agree that the members of the public may use the Sporting Clays Range and LTSC's adjacent shooting facilities ("LTSC Facilities") without a membership when the Sporting Clays Range and LTSC Facilities are open for public use and not being utilized solely for an LTSC event or league. LTSC shall, at its own expense, furnish all materials, supplies and assistance required in the operation of the Sporting Clays Range, including any maintenance, repairs and utilities as outlined in this Lease Agreement. City shall not be responsible for any expense needed for daily operation of the Sporting Clays Range. It is understood and agreed that the Sporting Clays Range shall be operated in accordance with operational standards established by the National Shooting Sports Foundation.

5. **Compliance with Laws and Regulations.** LTSC shall conduct and operate the Sporting Clays Range and LTSC Facilities strictly in compliance with laws, ordinances, rules and regulations of the City, the State of Nebraska, and the United States, now and hereafter in effect during the term of this Lease Agreement, in a manner wholly acceptable to the City, including but not limited to City and federal flood regulations. LTSC shall operate the Sporting Clays Range and LTSC Facilities to meet all safety standards for design and operation set forth by the National Rifle Association's Range Source Book titled "A Guide to Planning and Construction" as such book existed on January 1, 2009 or as otherwise required by law. LTSC shall take appropriate action to ensure that users of the Sporting Clays Range and LTSC Facilities do so in compliance with the laws, ordinances, rules and regulations of the City and the State of Nebraska now and hereafter in effect during the term of this Lease Agreement. LTSC shall apply for and obtain any and all necessary permits, certifications, licenses, variances, and approvals required by any applicable law or regulations that relate to the operation of the Sporting Clays Range and LTSC Facilities and any related activities.

6. **City Events.** City will have use of the Sporting Clays Range without charge for up to three (3) days per year for City Events. City shall coordinate and negotiate with the LTSC for use of the Sporting Clays Range for additional City Events each year as necessary, which use shall not be unreasonably withheld. City Events are defined as any shooting or archery events on the Sporting Clays Range that are co-sponsored or operated by the City. Because of long-term nature of LTSC event scheduling, the scheduling of City Events are subject to the previously scheduled LTSC events and will be scheduled on open dates on a first-come first-served basis. LTSC will also honor use agreements between the City and Prairie Bowmen, Inc. a/k/a Prairie Bowmen Lincoln Archery Club, Nebraska Game and Parks Commission, or other archery or shooting groups by providing use of the Sporting Clays Range with minimal or no charge as negotiated between the parties, which use shall not be unreasonably withheld.

7. **Rent.** LTSC shall not pay any monetary rent for the Base Term in consideration of the initial cleanup of the Premises pursuant to this Lease Agreement. The estimated value of the cleanup of the Premises, including volunteer hours, is One Hundred Thousand Dollars (\$100,000). Any extension of the Base Term shall require written amendment signed by both parties reiterating the terms of rent and how payment is to be remitted to City subject to any

mutual agreed upon changes by the parties. The initial Extended Term rent payments shall be established at 5% of the 2011 appraised value of \$3,400 per acre adjusted by the rate established by the Consumer Price Index (CPI) for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, All Items for the Midwest region annual average index for each calendar year during the Base Term. Each subsequent year of the Extended Term shall also be increased by the rate established by the Consumer Price Index (CPI) for the prior calendar year. Any Extended Term rent payments are due forty-five days after the end of each quarter of LTSC's fiscal year. City shall at all reasonable times be permitted to inspect the financial records of LTSC as they pertain to this operation. City shall place all revenue derived from any renewal of this Lease Agreement in a City endowment account for future major renovation or capital improvements to City parks and facilities. LTSC shall not be entitled to any pro-rata return for its clean up costs or credit for the hours of volunteer work in the event of termination under the terms of this Lease Agreement.

8. **Fees.** Initial fees for public use of the Sporting Clays Range and LTSC Facilities shall be prepared by LTSC and submitted to the Parks and Recreation Director and Mayor for review and written approval thirty (30) days prior to the operation of the Sporting Clays Range. The Parks & Recreation Director and Mayor shall approve or deny the proposed fees thirty (30) days after receipt of the proposed fees or forfeit any right of approval for said fees. Any fee increases for subsequent years must be established and approved in the same manner. A schedule of all fees shall be kept posted at all times in a conspicuous place at the Sporting Clays Range and at LTSC's Facilities adjacent thereto.

9. **Entry and Inspection.** LTSC hereby further covenants and agrees with City that City shall be permitted to enter upon the Premises at all reasonable times to examine the condition of the same.

10. **Street Vacations.** The City will vacate the necessary portions of 44<sup>th</sup> Street and Morton Street. The vacated right of way will revert to the owners of the adjacent real estate, one-half for each side thereof pursuant to Neb. Rev. Stat. § 15-701.

11. **Premises and Sporting Clays Range Maintenance.** LTSC shall, at its sole cost, except as herein otherwise specifically provided, keep, and maintain the entirety of the Sporting Clays Range, and all improvements and facilities placed thereon, in good order, condition and repair and shall mow and keep the Premises in a clean, safe condition. LTSC shall maintain the trees and landscaping in a manner that is consistent with other sporting clays range operations. Any removal of trees larger than 5 inches in diameter must first be approved by the Lincoln Parks & Recreation Department Forestry Section. LTSC shall cause all papers, rubbish, empty containers, garbage and other trash accumulated to be picked up and placed in suitable trash and garbage containers, which containers shall be kept in a clean and sanitary condition. In the event that LTSC installs walks, LTSC shall clear snow from those walks as needed to provide access to the Sporting Clays Range as events dictate. City shall not be responsible for any maintenance, repairs, or other costs during the term of the Lease Agreement.

12. **Lead or Bullet Management.** LTSC shall periodically remove all lead, shell hulls, wads, boxes, target remains or other debris from or within the Premises as reasonably

necessary conform to operation standard as presently accepted by other sporting clays ranges. LTSC shall recycle as much material of lead shot or bullets as possible. The revenue generated by this activity shall stay with the LTSC.

13. **Utilities and Permits.** LTSC shall pay for all necessary permits and utilities associated with the Sporting Clays Range, including but not limited to water, sewer, gas, electricity, phone service, and garbage service.

14. **Personal Property and Improvements.** All personal property of LTSC including fixtures kept, stored or maintained on the Premises shall be so kept, stored or maintained at the sole risk of LTSC. Upon the expiration of this Lease Agreement or its termination as herein provided, all structures, sporting clays equipment, and other improvements installed or built by LTSC, with the exception of fencing, shall remain the property of the LTSC and either sold or removed by the LTSC as outlined herein. The design and materials of any permanent structure and fencing must be approved by the Lincoln Parks & Recreation Department. The parties agree to coordinate as to appropriate signage for the Sporting Clays Range.

15. **Termination.** City has the right to terminate this Lease Agreement, without cost, if LTSC shall at any time be in default in the payment of the amounts due hereunder or be in default in the performance of any of the other covenants, terms, conditions or provisions of this Lease Agreement. Termination for breach may occur only after the non-breaching party provides thirty (30) days written notice to the breaching party of the failure to perform and LTSC fails to cure default within the thirty (30) days. The parties may also mutually agree to terminate the Lease Agreement.

16. **Surrender and Restoration Upon Termination or Expiration.** It is agreed that at the expiration or termination of the time mentioned in this Lease Agreement peaceful exclusive possession of the Premises shall be given to the City. LTSC accepts the Premises as being in the stated condition as documented in photos provided upon signing of this document. LTSC shall, within six (6) months after termination or expiration of this Lease Agreement, and at LTSC's sole expense, remove lead, casings, or other debris to industry standards as outlined in the current National Shooting Sports Foundation range management guidelines, as well as any improvements from or within the Premises, unless otherwise agreed to between the parties in writing.

17. **Independent Contractor.** City is interested only in the results produced by this Lease Agreement. LTSC has sole and exclusive charge and control of the manner and means of performance. LTSC shall perform as an independent contractor and it is expressly understood that neither LTSC nor any of its staff are employees of City and, thus they are not entitled to any City benefits including, but not limited to, overtime, retirement benefits, workers compensation, sick leave, or injury leave.

18. **Indemnification.** To the fullest extent permitted by law, LTSC shall indemnify, defend and hold harmless City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or

resulting from performance of this Lease Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of LTSC, its agents and employees, or anyone for whose acts any of them may be liable. This section will not require LTSC to indemnify or hold harmless City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of City. City does not waive its governmental immunity by entering into this Lease Agreement and fully retains all immunities and defenses provided by law. City assumes no responsibility for the property of LTSC including no responsibility for loss from fire, theft, pilferage or malicious mischief. This section survives any termination of this Lease Agreement.

19. **Insurance.**

A. LTSC shall maintain General Liability Insurance at its own expense during the life of this Lease Agreement, naming and protecting LTSC and City of Lincoln, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Lease Agreement whether such operations by LTSC and LTSC's employees, or those directly or indirectly employed by LTSC. This insurance shall be written by an insurance company authorized to do business in the State of Nebraska. Such insurance shall provide protection for replacement from all risks covering all improvements constructed or installed by LTSC. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

1. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
2. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
3. Personal Injury Damage - \$1,000,000 each Occurrence; and
4. Contractual Liability - \$1,000,000 each Occurrence; and
5. Products Liability and Completed Operations - \$1,000,000 each Occurrence; and
6. Medical Expenses (any one person) - \$10,000; and
7. Fire Damage (any one fire) - \$100,000; and
8. Umbrella or excess coverage - \$2,000,000 each Occurrence.

B. The following shall be provided and attached to this Lease Agreement by LTSC:

1. A Certificate of Insurance for its General Liability Insurance. The City of Lincoln shall be specifically named as an additional insured on the General Liability Insurance.
2. Proof of Workers' Compensation Insurance, where appropriate.

C. LTSC is required to provide City with thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance as required by this Lease Agreement.

20. **Fair Employment and Treatment.** LTSC nor anyone acting by virtue of this Lease Agreement shall not discriminate against any employee (or applicant for employment) with respect to hire, tenure, compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national

origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and Neb. Rev. Stat. § 48-1122, as amended, nor shall LTSC or anyone else, in conducting the business covered by this Lease Agreement, discriminate against any patrons of said business or against anyone else, because of such person's race, color, religion, sex, national origin, ancestry, disability or creed.

21. **Americans with Disabilities Act (ADA).** LTSC shall comply with the Americans With Disabilities Act. LTSC shall take all reasonable steps to provide services for individuals with disabilities as required by the Act. LTSC shall defend, indemnify, protect and hold harmless City and all the officers, employees, and agents of City against any and all claims, demands, losses, actions or causes of action of whatsoever kind, arising or resulting from the LTSC's failure to comply with and fulfill the requirements of the ADA, except for the City events not managed by the LTSC. City shall defend, indemnify, protect and hold harmless LTSC and all officers, employees, and agents of LTSC against any and all claims, demands, losses, actions or causes of action of whatsoever kind, arising or resulting from the City's failure to comply with and fulfill the requirements of the ADA for City Events.

22. **Fair Labor Standards.** LTSC shall maintain Fair Labor Standards in the performance of this Lease Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

23. **Nebraska Law.** This Lease Agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

24. **Integration, Amendment, Assignment.** This Lease Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Lease Agreement. This Lease Agreement may be amended only by written agreement of both parties. This Lease Agreement and any rights, privileges, and authorities associated with it may not be assigned without the prior written consent of the other party.

25. **Successors and Assigns.** This Lease Agreement shall be binding on and shall inure to the benefit of the Parties to this Lease Agreement and their respective assigns, executors, heirs, personal representatives, and successors.

26. **Severability and Savings.** Each section and each subdivision of a section of this Lease Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Lease Agreement and invalidity of any section or subdivision of a section of this Lease Agreement shall not invalidate any other section or subdivision of a section thereof.

27. **Waiver.** Any waiver by any party of a default of any other party of this Lease Agreement shall not affect or impair any right arising from any subsequent default. No custom or practice of the parties which varies from the terms of this Lease Agreement shall be a waiver of any party's right to demand exact compliance with the terms of this Lease Agreement.

28. **E-Verify.** In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, LTSC agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. LTSC shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. § 1324b. LTSC shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to [www.uscis.gov/everify](http://www.uscis.gov/everify).

29. **Capacity.** The undersigned individuals do hereby agree and represent that he or she is legally capable to sign this Lease Agreement and to lawfully bind their respective parties to this Lease Agreement.

30. **Notice.** Any notice required to be given hereunder shall be in writing and may be given by personal delivery, followed by a copy in regular U.S. mail, overnight mail, or by certified mail, and if given personally or by mail, shall be deemed sufficiently given when received by the intended addressee (whether accepted or rejected) if addressed LTSC or to City at the address noted below. Either party may by notice to the other party specify a different address for notice purposes.

Mailing addresses:

City's mailing address:  
Director – Parks and Recreation  
2740 A Street  
Lincoln, NE 68502

LTSC's mailing address:  
President of LTSC  
P.O. Box 29292  
Lincoln, NE 68529-0292

31. **Taxes.** LTSC agrees to pay prior to delinquency the amount of any property taxes and assessments levied against the Premises for any year during the Base Term or Extended Term. The City will give LTSC notice of this assessment as soon as reasonably possible after City received such assessment. LTSC shall pay prior to delinquency all taxes assessed against or levied upon trade fixtures, furnishings, equipment and all other personal property of LTSC contained in the Premises.

**CITY OF LINCOLN, NEBRASKA**  
A Municipal Corporation

**ATTEST:**

\_\_\_\_\_  
Chris Beutler, Mayor

\_\_\_\_\_  
Date

**LINCOLN TRAP AND SKEET CLUB**  
A Nebraska nonprofit Corporation

By: *Laura W. Post* *President.*  
Board Member

*Dec. 7, 2011*  
Date

By: *[Signature]* *SECRETARY.*  
Board Member

By: *David Dinker*  
Board Member

By: *Bruce Whitta*  
Board Member

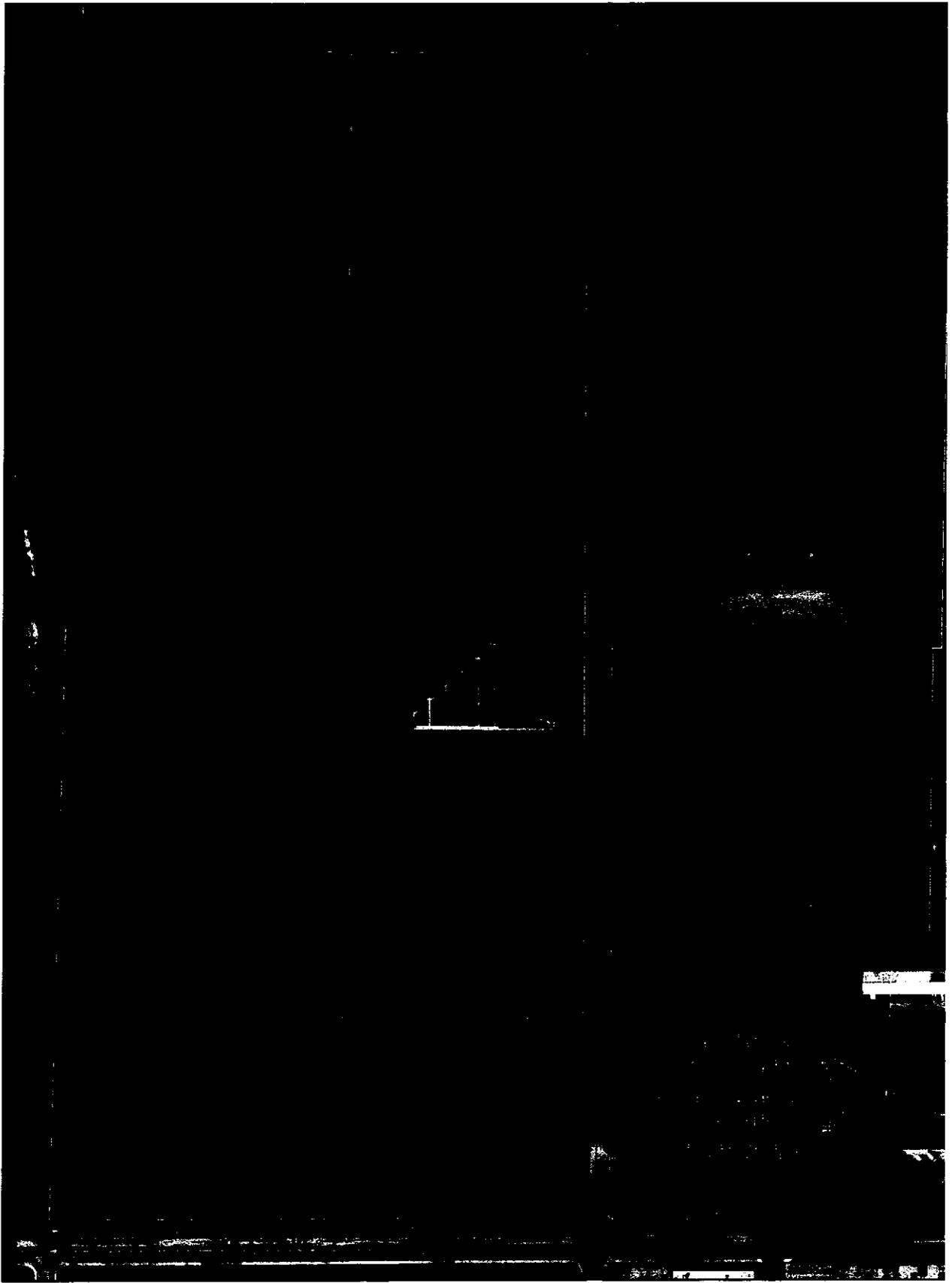
By: *[Signature]*  
Board Member

By: *R.S. Reed*  
Board Member

By: *Jerry Claxton* *V.P.*  
Board Member

By: *[Signature]* *Treasurer*  
Board Member

By: *Mike Watmore*  
Board Member



BOOSALIS PARK

ATTACHMENT A

**ATTACHMENT B**  
**WARNING OF RISK, WAIVER, AND RELEASE**

The undersigned hereby acknowledge the existence of and assume full responsibility for certain risks associated with this clean-up activity of Boosalis Park in conjunction with Lincoln Trap & Skeet Club, which may cause damage to property or personal bodily injury or death to the participant. The participant is required to follow instructions and any safety guidelines closely. The likelihood of injury may be reduced by participant adhering to safety rules or procedures.

The undersigned fully aware and understand the specific risks associated with this activity, including physical injury, and that this activity may be hazardous to the participant. The undersigned agrees to assume and accept the full risks associated with this activity without limitation, or in the alternative waive all rights to notice of risks associated with this activity and any activities connected or associated with this activity, including any loss or damage to clothing and/or personal equipment; any mental and/or physical injuries, including illness, permanent and/or partial disability; severe social and/or economic loss; attorney's fees; and/or any other damages or loss which may result not only from his or her actions, inactions or negligence, but the actions, inactions or negligence of others, or in the condition of the premises or of any equipment used. The undersigned agree to waive and relinquish all claims the undersigned and/or the participant may have as a result of participating in this activity against the City of Lincoln and their officials, officers, agents, volunteers and employees. The undersigned further assume all the foregoing risks and accepts personal responsibility for all costs associated with the risks or injuries that the undersigned incurred or causes.

To the fullest extent permitted by law, the undersigned, on behalf of myself as the participant or as the parent or guardian of a participant on behalf of myself and the participant, shall indemnify, covenant not to sue, defend, releases, and hold forever harmless City of Lincoln or their officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from this activity, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission associated with this activity.

The undersigned hereby acknowledge and represent unqualified authority to execute the same on his or her own behalf and/or on behalf of the participant and agree to hold harmless and indemnify the City of Lincoln from and against any claims of such minor or his or her successors.

The undersigned have read, fully understand, and freely agree to this Warning of Risk, Waiver and Release.

Participant Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ D/O/B \_\_\_\_\_

**If a parent or guardian is signing on behalf of a participant (under the age of 19):**

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Relationship \_\_\_\_\_

Emergency Contact \_\_\_\_\_ Phone \_\_\_\_\_

Physician \_\_\_\_\_ Phone \_\_\_\_\_