



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

JUN 03 2011

CEMP-CR/CECW-CO

MEMORANDUM FOR COMMANDER, SOUTH ATLANTIC DIVISION, U.S. Army Corps of Engineers, CESAD-PDS-O (ATTN Lester S. Dixon) 60 Forsyth Street S.W., Atlanta, GA 30303

SUBJECT: Approval for Deviation to Model Cooperating Association Lease

1. Reference CESAD-PDS-O Memo, dated 4 May 2011, Subject: Request for Deviation to Model Cooperating Association Lease.

2. Headquarters has reviewed the Cooperating Association Lease at W. Scott Kerr Lake (Kerr Lease) with the Friends of W. Kerr Scott Lake (FOL) and accompanying Exhibit F submitted by SAD as well as the Cooperating Association Agreement (Agreement) effective March 7, 2011 and conclude that changes must be made to both the Kerr Lease and the Agreement to reflect the current situation with regard to the O&M duties at Kerr and for those documents to serve as models for future large-scale activities with cooperating associations. Accordingly, when the Corps and the FOL execute the approved Kerr Lease, the parties must also execute a new Agreement.

- a. The required changes to the Agreement are attached at Exhibit 1.
- b. An approved Kerr Lease is attached at Enclosure 1.

3. If the approved Kerr Lease is used, the required changes are made to the Agreement and a new Agreement is signed, then the arrangement with FOL at Kerr Lake will comport with the Office of the Chief Counsel memoranda dated June 25, 2010 and April 7, 2011 and the CECW-CE/CEMP-CR memorandum dated April 7, 2011.

4. If you have any questions regarding this action, please contact Rod Hallstrom, CEMP-CR, at 202-761-0620.

FOR THE COMMANDER:


MICHAEL G. ENSICH
Chief, Operations


SCOTT L. WHITEFORD
Director of Real Estate

Required Changes to the Cooperative Agreement:

1. The CA should be changed to reflect the delineation of the O&M activities and other requirements as noted below. Accordingly, when the Corps and the Friends of W. Scott Kerr (FOL) execute the revised lease, the parties must execute a new CA.

2. Throughout the CA, references are made to the Corps accepting contributed funds from the FOL. However, the authority to accept contributed funds is not 16 U.S.C. 460d but rather 33 U.S.C. 2328. Accordingly, the seventh whereas clause citing 16 U.S.C. 460d should be deleted and replaced with the following:

“WHEREAS, the Corps has authority, pursuant to Section 4 of the 1944 Flood Control Act, as amended, Title 16 U.S.C. 460d, to permit the maintenance and operation of recreation facilities at water resources development projects by local interests and may enter into leases or licenses with non-profit organizations for park and recreational purposes, and has authority, pursuant to Title 33 U.S.C. 2328, to enter into agreements with non-profit organizations for the cooperative operation and management of recreation facilities at water resources development projects and to accept contribution of funds, materials, and services from non-profit organizations for the same;”

3. It must be noted in the CA that any contributed funds from the FOL must be funds that are not generated on premises leased under 16 U.S.C. 460d. Under the lease, all monies received by the FOL from operations conducted on the leased premises must be utilized by the FOL for the administration, maintenance, operation and development of the leased premises. Any such monies not utilized or programmed for use within a reasonable period shall be paid to the Corps at the end of each 5 year period to be deposited into the Treasury as Miscellaneous Receipts as required by 16 U.S.C. 460d.

4. If the CA is terminated, then all real estate outgrants should also terminate. Accordingly, language in the nature of “Any Real Estate Outgrants pursuant to this Agreement would also be terminated immediately” should be added to paragraph 3.A. 2 under FOL Responsibilities and “All leases to the FOL will be terminated if the Agreement expires or is cancelled for any reason” should be added to paragraph 7. Duration.

5. Paragraph 2. B. 1. of the current CA states “[s]hould the FOL, as part of its cooperative activities, require the use of Corps facilities and/or equipment the Corps agrees, that in recognition of the services the FOL is contributing to the public, provide at no cost to the FOL such equipment, facilities, utilities, janitorial services, and routine and general maintenance when incidental to the normal operation of the facility by the Corps.” It is unclear whether this statement applies to the leased premises or whether it is meant to cover a separate area not under the proposed lease. Clearly, if the FOL uses Corps facilities in the leased area that use is covered by the O&M activities delineated in Exhibit F. The CA should be amended to clarify what is intended under this paragraph or deleted if it refers to the leased area.

**DEPARTMENT OF THE ARMY
LEASE TO NON-PROFIT ORGANIZATION
FOR COOPERATIVE MANAGEMENT OF
BANDITS ROOST PARK, AND
FOREST EDGE AMPHITHEATER
W. KERR SCOTT RESERVOIR
WILKES COUNTY, NORTH CAROLINA**

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, acting by and through the Chief, Real Estate Division, U.S. Army Engineer District, Savannah, hereinafter referred to as the Lessor, and the **Friends of the W. Kerr Scott Lake**, a non-profit corporation duly organized and existing under and by virtue of the laws of the State of North Carolina with its principal office in the City of Wilkesboro, North Carolina, hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and pursuant to a Cooperative Agreement dated _____, hereinafter referred to as the Agreement, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in **Exhibit(s) A, B and C**, attached hereto and made a part hereof, hereinafter referred to as the Premises for the development and management, in cooperation with the Lessor.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said Premises are hereby leased for a term of **Five (5)** years beginning on _____ and ending _____.

2. CONSIDERATION

The consideration for this lease is the operation and maintenance of the premises by the Lessee who will perform routine maintenance activities that are of a recurring nature and park operations, in cooperation with the Lessor who will perform major repairs, renovation, replacements, and non-recurring, non-routine maintenance for the benefit of the United States and the general public in accordance with the terms and conditions of this lease as set forth in Exhibit F to the Lease, Division of Responsibilities. Said Exhibit F "Division of Responsibilities" may be modified or supplemented by the Lessor and the Lessee by mutual agreement and the new Exhibit F will become a part of this Lease. It is understood and agreed that this lease will be controlling if there are any conflicts between the Lease and the Agreement.

3. NOTICES

a. All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to Friends of the W. Kerr Scott Lake, 499 Reservoir Road Wilkesboro, North Carolina 28697 and, if to the United States, to the District Commander, U.S. Army Engineer District, Savannah, Corps of Engineers, ATTN: Chief, Real Estate Division, CESAS-RE, 100 W. Oglethorpe Avenue, P.O. Box 889, Savannah, Georgia 31402-0889, or as may from time to time otherwise be directed by the parties.

b. Notices shall be mailed by certified mail, postage prepaid, return receipt requested, addressed to the addresses above. The effective date of the notice shall be the earlier of the actual date of receipt or the date the addressee is notified of the attempted delivery of the certified mail, whether or not the addressee actually accepts delivery.

c. General correspondence does not have to be sent by certified mail, return receipt requested.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include, sublessees, assignees, transferees, concessionaires, successors and its duly authorized representatives.

5. SUPERVISION BY THE LESSOR

The use and occupation of the premises shall be subject to the general supervision of the Lessor's representative having immediate jurisdiction over the Premises and to such rules and regulations as may be prescribed from time to time by Lessor including any special provisions that may be established due to the cooperative joint management of the premises by the Lessee and the Lessor as contemplated by the Agreement.

6. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located. The Lessee shall be solely responsible for obtaining at its cost and expense any permits or licenses required for its operations under this Lease, independent of any existing permits or licenses held by the Lessor.

b. The Lessee shall promptly report to the Lessor any incident for which the Lessee is required to notify a Federal, State or local regulatory agency or any citation by Federal, State or local regulatory agency of non-compliance with any applicable law, ordinance or regulation.

7. CONDITION OF PREMISES

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever.

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the Lessor and the Lessee to reflect the condition of the said property and improvements. A copy of the said report is attached hereto as **Exhibit D** and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such settlement will take into account the cooperative relationship of the parties, and will reflect an equitable apportionment of damages.

8. TRANSFERS AND ASSIGNMENTS

a. Without prior written approval of the Lessor the Lessee shall neither transfer nor assign this lease, nor sublet the Premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the Lessor.

b. The Lessee will not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the Premises. The Lessee will not subdivide nor develop the Premises into private residential development.

9. FEES, RATES AND PRICES

Fees may be charged by the Lessee for use of the Premises or facilities constructed thereon. The Lessor shall have the right to review such fees and require an increase or reduction when it is determined that the objectives of this lease have been violated. However, no user fees may be charged by the Lessee for use of facilities developed in whole or in part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law. All monies received by the Lessee from operations conducted on the Premises must be utilized by the Lessee for the administration, maintenance, operation and development of the Premises. Any such monies not so utilized or programmed for use within a reasonable time shall be paid to the Lessor at the end of each 5 year period. The Lessee shall furnish annual statements of receipts and expenditures to the Lessor.

10. DEVELOPMENT AND MANAGEMENT PLANS

The Lessee shall construct, operate and maintain the Premises in accordance with this Lease. All structures shall be constructed and landscaping accomplished in accordance with plans approved by the Lessor's representative having immediate jurisdiction over the Premises. The Lessee also agrees to prohibit any exclusive or private use of all or any part of the Premises

by any individual or group of individuals. Title to improvements constructed or placed on the Premises by the Lessee shall remain vested in the Lessee, subject to the Condition on **RESTORATION**, and shall be maintained by the Lessee to the satisfaction of the Lessor's representative having immediate jurisdiction over the Premises.

11. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to the Lessor's representative having immediate jurisdiction over the Premises, or at the election of the Lessor's representative having immediate jurisdiction over the Premises, reimbursement made therefore by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the Lessor's representative having immediate jurisdiction over the Premises.

12. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officers, agents and employees to enter upon the Premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Lessee, to flood the Premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

13. INSURANCE

a. At the commencement of this lease, the Lessee shall obtain, from a reputable insurance company or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit in the amount of \$1,000,000, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease. The Lessee shall require the insurance company or companies to furnish the Lessor a copy of the policy or policies, or if acceptable to the Lessor, certificates of insurance evidencing the purchase of such insurance. The Lessor shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved.

Lease No. DACW21-1-11-5037
W. Kerr Scott Dam and Reservoir

The Lessee shall require that the insurance company give the Lessor thirty (30) days written notice of any cancellation or change in such insurance. The Lessor may require closure of any or all of the Premises during any period for which the Lessee does not have the required insurance coverage.

c. As to those structures and improvements on the Premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the Premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain, at the Lessee's cost, a standard fire and extended coverage insurance policy or policies on the leased Premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purpose hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased Premises or any part thereof.

14. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents, or employees or others who may be on the Premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

15. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the Premises, remove the property of the Lessee, and restore the Premises to a condition satisfactory to the Lessor. If, however, this lease is revoked, the Lessee shall vacate the Premises, remove said property, and restore the Premises to the aforesaid condition within such time as the Lessor may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the Premises, then, at the option of the Lessor, said property shall either become the property of the United States without compensation therefore or the Lessor may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United

States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the Premises.

15. RESTORATION - <<Alternative Acceptable Restoration Clause>>

a. On or before the earlier of expiration, revocation, or termination date of this Lease, the Lessee and the Lessor shall prepare an inventory and condition report showing the improvements and related personal property located on the Premises. This report shall constitute the basis for settlement of RESTORATION obligations under this Condition.

b. The Lessee and the Lessor will negotiate which property will be removed by Lessee; which property will be surrendered to the United States, with title reverting to the United States without consideration; the restoration of the Premises required; and the time allowed for compliance with such actions. The Lessee will then remove the agreed upon property; restore the Premises; and vacate the Premises.

c. If the Lessee shall fail or neglect to remove said property, then, at the option of the Lessor, (a) title to said property shall revert to the United States without compensation therefore, or (b) the Lessor may cause the property to be removed as restoration of the Premises, set out in d. below.

d. If the Lessee shall fail or neglect to restore the Premises, as agreed, the Lessor may cause restoration work to be performed. The Lessee shall pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this Lease in restoring the Premises.

e. No claim for damages against the United States or its officers or agents shall be created by or made on account of such reversion, removal and restoration.

f. The Lessee grants the Lessor power of attorney to execute any deed, bill of sale or other documents to clear title to the personal property and improvements whose non-removal has been agreed to by the Lessor or where title is reverting to the United States. The Lessor may provide appropriate evidence of title in the Lessee to all property being removed by Lessee.

16. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased Premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board. The Lessee will comply with Department of Justice rules on non-discrimination.

Lease No. DACW21-1-11-5037
W. Kerr Scott Dam and Reservoir

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 195) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

17. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the Premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of the Lessor, interfere with the use of the Premises by the Lessee.

18. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Lessor will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the Premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

19. COMPLIANCE, CLOSURE, REVOCATION, AND RELINQUISHMENT

a. The Lessee and/or any sublessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the Lessor. This lease may be revoked in the event the Lessee violates any of its terms and conditions and continues and persists in such non-compliance or fails to obtain correction of deficiencies by sublessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the Premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the Premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving Ninety (90) days prior written notice to the Lessor in the manner prescribed in the condition on **NOTICES**.

20. HEALTH AND SAFETY

a. The Lessee shall keep the Premises in good order and in a clean, safe condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, the Lessor, upon discovery of any hazardous condition on the Premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the Premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected the Lessor will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

21. PUBLIC USE

The Lessee shall not forbid the full use by the public of the water areas of the project, subject however, to the authority and responsibility of the Lessee to carry out its responsibilities under this lease to manage the Premises and provide safety and security to the facility users.

22. PROHIBITED USES

a. The Lessee shall not permit gambling on the Premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the Premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the Premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the Lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to the Lessor.

b. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the Premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

23. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the Premises, except as may be authorized under and pursuant to

W. Kerr Scott Dam and Reservoir

the condition on **DEVELOPMENT AND MANAGEMENT PLANS**. The Lessee may salvage fallen or dead timber on the leased Premises for use as firewood. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

24. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the "CDA"), all disputes arising under or related to this Lease shall be resolved under this Condition 24 and the provisions of the CDA. However, if the Parties mutually agree, they can concurrently pursue alternative dispute resolution.

b. A claim by the Lessee shall be made in writing and submitted to the Lessor for a written decision in conformance with the CDA.

c. The Parties shall proceed diligently with performance of this Lease, pending final resolution of any request for relief, claim, appeal, or action arising under this Lease.

25. ENVIRONMENTAL PROTECTION

a. The Lessee, including the Lessee's subtenants/successors or assigns, employees, agents, contractors and invitees of any of them, will use all reasonable means available to protect the environmental and natural resources and where damage nonetheless occurs from activities of the Lessee, including the Lessee's subtenant/successors or assigns, employees, agents, contractors and invitees of any of them, the Lessee shall be liable to restore the damaged resources.

b. The Lessee, including the Lessee's subtenants/successors or assigns, employees, agents, contractors and invitees of any of them, shall protect the project against pollution of its air, ground and waters by complying, at its sole cost and expense, with all Environmental Laws that are or may become applicable to the Premises or the Lessee's activities on the Premises, including but not limited to all applicable federal, state, and local laws, regulations, Lessor policies, and other requirements. The disposal of any toxic or hazardous materials within the Premises is specifically prohibited.

c. The term "Environmental Law", as used herein, means any statute, law, act, ordinance, rule, regulation, order, decree, or ruling of any Federal, State and/or local governmental, quasi-governmental, administrative or judicial body, agency, board, commission or other authority relating to the protection of health and/or the environment or otherwise regulating and/or restricting the use, storage, disposal, treatment, handling, release, and/or transportation of Hazardous Substances, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Clean Air Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Emergency Planning and Community

Lease No. DACW21-1-11-XXXX
W. Kerr Scott Dam and Reservoir

Right To Know Act, and the environmental control laws of the State of North Carolina, each as now or hereafter amended, and all regulations and interpretive guidelines respectively promulgated thereunder. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this Lease.

d. The Lessee is required to participate in all aspects of an Environmental Review Guide for Operations (ERGO) assessment, including but not limited to pre-briefings, the Outgrant Pre Visit Questionnaire, the assessment, exit briefings, etc., of their outgranted area. The Lessee shall promptly initiate and complete all necessary corrective actions, as determined and directed by the Lessor in order to fully resolve those findings contained in Environmental Assessment Reports that the District Engineer determines must be implemented. Failure of the Lessee to take the required corrective action(s) identified in the ERGO assessments may be referred to the appropriate enforcement agency who will render final determinations with respect to compliance with relevant laws or regulations. Continued non-compliance by the Lessee may also serve as grounds for revocation of this Lease.

e. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pumpout of watercraft, shall be provided by the Lessee's as appropriate. The Lessee shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

f. The Lessee must obtain approval in writing from the Government before any pesticides or herbicides are applied to the Premises.

26. ENVIRONMENTAL ASSESSMENT

An environmental condition/assessment of the property documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, [is attached hereto and made a part hereof as Exhibit ____]. Upon expiration, revocation or relinquishment of this Lease another environmental condition/assessment of the property shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the Lessor in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on RESTORATION.

27. HISTORIC PRESERVATION

Except as may be otherwise provided in the Agreement, the Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Premises, the Lessee shall immediately notify the Lessor and protect

the site and the material from further disturbance until the Lessor gives clearance to proceed.

28. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the Lessor, all soil and water conservation structures that may be in existence upon said Premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the Premises. Any soil erosion occurring outside the Premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the Lessor.

29. TRANSIENT USE

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the Premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the Premises for security purposes, if authorized by the Lessor.

30. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

31. MODIFICATIONS

No modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this condition as well as all other conditions of this lease.

32. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the Premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state or local statute in connection with the use of the Premises. It is understood that the granting

of this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States pursuant to the provisions Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Water Act (33 USC 1344).

33. IDENTIFICATION OF GOVERNMENT AGENCIES, STATUTES, PROGRAMS AND FORMS

Any reference in this Lease, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor, amendment, or similar department, agency, statute, regulation, program or form.

34. NO INDIVIDUAL LIABILITY OF GOVERNMENT OFFICIALS

No covenant or agreement contained in this Lease shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the Government, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Lease, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

{SIGNATURE PAGES FOLLOW}

**Lease No. DACW21-1-11-XXXX
W. Kerr Scott Dam and Reservoir**

THIS LEASE is not subject to Title 10 United States Code, Section 2662, as amended.

IN WITNESS WHEREOF I have hereunto set my hand by authority of the Secretary of the Army, this _____ day of _____, 20__.

By: _____

Signed and sealed
in the presence of:

Notary Public

THIS LEASE is also executed by the Lessee this _____ day of _____, 20__.

FRIENDS OF THE W. KERR SCOTT LAKE

Signature: _____

Title: _____

Signed and sealed
in the presence of:

Notary Public

CORPORATE CERTIFICATE

I, _____, certify that I am the
_____ of the corporation named as **FRIENDS OF THE W. KERR
SCOTT LAKE**, herein, that _____ who signed the foregoing
instrument on behalf of the corporation was then _____ of the corporation.
I further certify that the Lessor was acting within the scope of powers delegated to this officer
by the governing body of the corporation in executing said instrument.

SIGNATURE: _____

DATE: _____

(CORPORATE SEAL)

ACKNOWLEDGEMENT

STATE OF GEORGIA)

:SS

COUNTY OF CHATHAM

Before me a Notary Public in and for the County of Chatham, personally appeared _____, to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledge to me that he/she executed the said instrument by direction of the Assistant Secretary of the Army (I,&E) for the purpose therein expressed as the act and deed of the United States of America.

GIVEN under my hand and seal, this _____ day of _____, 20 ____.

NOTARY PUBLIC (SEAL)

My Commission Expires:

EXHIBIT “F”

DIVISION OF RESPONSIBILITIES

ACTIVITY	FOL	CORPS
1. Concession Area Activities		
Sales	X	
Inventory	X	
Operate Sales Area	X	
2. Park Area Activities		
O&M Campsites	X	
O&M Shower houses	X	
O&M Entrance station	X	
O&M Roads and parking areas	X	
O&M Water system	X	
O&M Wastewater system	X	
O&M Shelters	X	
O&M Swim beach	X	
O&M Boat ramp	X	
O&M Dump station	X	
O&M Trails	X	
O&M Playground	X	
O&M Utilities	X	
O&M Mowing & Grounds Maint	X	
O&M Collect User Fees	X	
MR&R Campsites		X
MR&R Shower houses		X
MR&R Entrance station		X
MR&R Maintain/Resurface roads and parking areas		X
MR&R Water system		X
MR&R Wastewater system		X
MR&R Shelters		X
MR&R Boat ramp		X
MR&R Dump station		X
MR&R Playground		X
Visitor Assistance		X
Law Enforcement Contracts		X
O&M Interpretive Services	X	X
3. Park Area Development Plan	X	X
4. Park Area Forest Management		X
5. Park Area Shoreline Maintenance		
Debris removal	X	
Control of erosion		X
6. Forest Edge Amphitheater		
O&M Amphitheater	X	

O&M Mowing & Grounds Maint	X	
O&M Roads and parking	X	
O&M Collect User Fees	X	
O&M Schedule Use	X	
Utilities	X	
MR&R Amphitheater		X
Visitor Assistance		X
Law Enforcement Contracts		X
O&M Interpretive Services	X	X

Areas Covered by Division of Responsibility:

1. Designated Concession Areas
 - (1) Visitor Assistance Center
 - (2) Environmental Education Center
 - (3) Bandits Roost Park
2. Park Areas
 - a. Bandits Roost Park
3. Forest Edge Amphitheater

Definition of Responsibilities: NOTE: The above division of responsibilities will be explicitly defined with footnotes to this table when needed to ensure a clear understanding. In general, the following definitions are understood as they relate to the above responsibilities:

Operations and Maintenance(O&M) – This includes routine maintenance activities that are of a recurring nature(i.e mowing, cleaning, trash removal, custodial services, painting, minor repairs) and park operations such as fee collection and interpretative services.

Major Maintenance, Repairs, and Replacements(MR&R) – This include major repairs, replacements, and non-recurring, non-routine maintenance such as roof repairs, renovation and rehabilitation of facilities,

Utilities - pay utility bills (water, sewer, electric, cable, phone)