



PUBLIC COMMENT SESSION SIGN IN SHEET

OCONEE COUNTY COUNCIL MEETING

Tuesday, August 4, 2009

7:00 PM

Oconee County Administrative Offices
415 South Pine Street, Walhalla, SC

Limited to forty [40] minutes, four [4] minutes per person.
**Comments MUST be related to a specific agenda item
slated for action at the meeting.**

PLEASE PRINT

	FULL NAME	AGENDA ITEM FOR DISCUSSION
x1	Bob Lindgren	Present DDSN Award
2	Susie Cornelius	7 (2)
3	Betsy Steinhilber	Spec Bldg.
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Water

Duke Energy Denied Water Quality Permit for Catawba-Wataree Hydroelectric Project

On July 9, 2008, the S.C. Board of Health and Environmental Control denied a request by Duke Energy Carolinas, LLC for a water quality permit, which the company must have before it can be approved for a new federal license to operate hydroelectric dams on the Catawba River ([pdf](#)).

Duke Energy's original federal license to operate 11 dams located in North and South Carolina expired in 2008. The Federal Energy Regulatory Commission (FERC) has granted the utility a temporary extension. The new license — also called a relicense — would authorize Duke Energy to continue operating the Catawba-Wataree Hydroelectric Project for another 30 to 50 years.

Whenever a company applies for a federal permit that may result in a discharge to South Carolina waters, they must obtain a Section 401 Water Quality Certification permit from DHEC. The certification, part of the Federal Clean Water Act, shows that the activity in question will not cause or contribute to a violation of water quality standards.

Board overrules DHEC staff

In denying Duke Energy the needed water quality certification, the DHEC board overruled a preliminary decision by DHEC staff to grant the permit. The board made its decision after a number of speakers at the July 9 board meeting expressed concerns over the permit.

One of the speakers, S.C. Attorney General Henry McMaster, questioned the validity of the data that DHEC used to reach its decision. He also said the permit decision may affect a water rights case pending before the U.S. Supreme Court, South Carolina vs. North Carolina ([pdf](#)).

In their recommendation, DHEC staff stated that if Duke Energy met certain conditions there was a "reasonable assurance" that the utility company would conduct the Catawba-Wataree Hydroelectric Project in a manner that meets Section 401 water quality certification requirements.

Duke Energy's FERC License Application

Duke Energy's Catawba-Wataree Hydroelectric Project (FERC Project #2232) includes 11 reservoirs and 13 hydropower facilities on the Catawba River. Five of the dams operated by Duke Energy are located in South Carolina.

Duke submitted its application for a new federal license to FERC on August 29, 2006. The company also submitted a Comprehensive Relicensing Agreement (CRA) signed by 70 stakeholder organizations.

After reviewing the application and CRA, FERC issued a "Ready for Environmental Analysis" (REA) notice in April, 2008. Duke Energy then had 60 days to submit an application for water quality analysis to DHEC.

Duke Energy's application package for DHEC water quality analysis

WQC application package submitted by Duke on June 5, 2008 ([pdf 70MB](#))

The application includes:

- A complete and signed FERC 401 Water Quality Certification Application form
- A supplemental information package that presents detailed explanations of:
 - The Catawba-Wataree Hydroelectric Project
 - The Catawba-Wataree Relicensing Process
 - The Catawba-Wataree Comprehensive Relicensing Agreement
 - The water quality assessment methodologies utilized by Duke Energy
 - Plant-by-plant descriptions of proposed equipment and operational modifications and projected compliance with applicable state water quality standards
 - Streamflow mitigation calculations
 - An assessment of water quality certification criteria, including cumulative impacts

- o Supporting appendices, including the Quality Assurance Project Plan (QAPP)
- o Historical water quality data collected by Duke

DHEC public [notice of 401 water quality certification application \(pdf\)](#)

Need More Information?

DHEC's project file is available for review at the above address and copies can be made for a fee by contacting our [Freedom of Information \(FOI\) Office](#).

Links

Links to non-DHEC organizations found at this site are provided solely as a service to our users. The links do not constitute an endorsement of these organizations or their programs. DHEC is not responsible for the content of the individual organization web pages found at these links:

- [FERC eLibrary: Draft Environmental Impact Statement for Catawba-Wateree Hydroelectric Project](#)

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

**COUNCIL MEETING DATE: August 4, 2009
COUNCIL MEETING TIME: 7:00 PM**

ITEM TITLE OR DESCRIPTION:

Second Reading of Ordinance 2008-21: An Ordinance Replacing Ordinance 2005-06, the Flood Damage Prevention Ordinance

BACKGROUND OR HISTORY:

On December 16, 2008, County Council approved Ordinance 2008-21 on First Reading in Caption Only. The new ordinance, which replaces Ordinance 2008-21 (commonly called the 'County Floodplain Ordinance'), is based on the state-approved model flood damage ordinance, and will resolve problems with the old ordinance identified by FEMA during a recent Community Assistance Visit (CAV). It should be noted that the mandated changes primarily correct references from sections of federal code, and will not impact current implementation practices. In addition, the new ordinance reflects the date for which the County's new Flood Insurance Rate Maps (FIRM) become official, a required component of our Flood Damage Prevention Ordinance.

SPECIAL CONSIDERATIONS OR CONCERNS:

A copy of the draft ordinance was submitted to FEMA for review in May. The deadline to adopt the corrected date for the new maps is September 11, 2009.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No [review #2001-15 on Procurement's website]
If no, explain briefly: N/A

STAFF RECOMMENDATION:

Adopt on Second Reading and schedule the required public hearing.

FINANCIAL IMPACT:

None anticipated.

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

Are Matching Funds Available: Yes / No
If yes, who is matching and how much:

ATTACHMENTS

Copy of draft Ordinance 2008-21

Reviewed By/ Initials:

_____ County Attorney



_____ Finance

_____ Grants

_____ Procurement

Submitted or Prepared By:



_____ Department Head/Elected Official

Approved for Submittal to Council:



_____ Kendra Brown, Interim County Administrator

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council.

Ordinance 2008-21

An Ordinance Reenacting Certain Sections of Ordinance 87-4 and 2005-06, The Flood Damage Prevention Ordinances

This Ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted August 18, 1987, as amended by Ordinance 2005-06, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued there under are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of Oconee County enacted on August 18, 1987, as amended by Ordinance 2005-06, which are not reenacted herein, are repealed.

Article I. General Standards

A. Statutory Authorization.

County: The Legislature of the State of South Carolina has in SC Code of Laws, Title 4, Chapters 9 (Article 1), 25, and 27, and amendments thereto, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Oconee County Council does ordain the following:

B. Findings of Fact The Special Flood Hazard Areas of Oconee County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

Furthermore, these flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

C. Statement of Purpose and Objectives. It is the purpose of this ordinance to protect human life and health, minimize property damage, and encourage appropriate construction practices to minimize public and private losses due to flood conditions by requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction. Uses of the floodplain which are dangerous to health, safety, and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion are restricted or prohibited. These provisions attempt to control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters, and control filling, grading, dredging and other development which may increase flood damage or erosion. Additionally, this ordinance prevents or regulates the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

The objectives of this ordinance are to protect human life and health, to help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize flood blight areas, and to insure that potential home buyers are notified that property is in a flood area. The provisions of the ordinance are intended to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets and bridges located in the floodplain, and prolonged business interruptions. Also, an important floodplain management objective of this ordinance is to minimize expenditure of public money for costly flood control projects and rescue and relief efforts associated with flooding.

Floodplains are an important asset to the community. They perform vital natural functions such as temporary storage of floodwaters, moderation of peak flood flows, maintenance of water quality, groundwater recharge, prevention of erosion, and habitat for diverse natural wildlife populations, recreational opportunities, and aesthetic quality. These functions are best served if floodplains are kept in their natural state. Wherever possible, the natural characteristics of floodplains and their associated wetlands and water bodies should be preserved and enhanced. Decisions to alter floodplains, especially floodways and stream channels, should be the result of careful planning processes that evaluate resource conditions and human needs.

D. Lands to Which this Ordinance Applies. This ordinance shall apply to all areas of special flood hazard within the jurisdiction of Oconee County as identified by the Federal Emergency Management Agency in its Flood Insurance Study, dated September 1, 1987 and officially amended on September 11, 2009 with accompanying maps and other supporting data that are hereby adopted by reference and declared to be a part of this ordinance. Upon annexation any special flood hazard areas identified by the Federal Emergency Management Agency in its Flood Insurance Study for the unincorporated areas of Oconee County, with accompanying map and other data are adopted by reference and declared part of this ordinance.

E. Establishment of Development Permit. A Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities.

F. Compliance. No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

G. Interpretation. In the interpretation and application of this ordinance all provisions shall be considered as minimum requirements, liberally construed in favor of the governing body, and deemed neither to limit nor repeal any other powers granted under State law. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

H. Partial Invalidity and Severability If any part of this Ordinance is declared invalid, the remainder of the Ordinance shall not be affected and shall remain in force.

I. Warning and Disclaimer of Liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Oconee County or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

J. Penalties for Violation. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for not more than 30 days, or both. Each day the violation continues shall be considered a separate offense. Nothing herein contained shall prevent Oconee County taking such other lawful action as is necessary to prevent or remedy any violation.

Article II. DEFINITIONS

A. General. Unless specifically defined below, words or phrases used in this ordinance shall be

interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

1. **Accessory Structure** - structures that are located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.
2. **Addition (to an existing building)** - an extension or increase in the floor area or height of a building or structure. Additions to existing buildings shall comply with the requirements for new construction regardless as to whether the addition is a substantial improvement or not. Where a firewall or load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and must comply with the standards for new construction.
3. **Agricultural structure** - a structure used solely for agricultural purposes in which the use is exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock. Agricultural structures are **not** exempt from the provisions of this ordinance.
4. **Appeal** - a request for a review of the Flood Plains/Stormwater Manager's interpretation of any provision of this ordinance.
5. **Area of shallow flooding** - a designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.
6. **Area of special flood hazard** - the land in the floodplain within a community subject to a one percent or greater chance of being equaled or exceeded in any given year.
7. **Base flood** - the flood having a one percent chance of being equaled or exceeded in any given year.
8. **Base flood elevation** - The height of the base flood, usually in feet, in relation to the specified geodetic vertical datum.
9. **Basement** - means any enclosed area of a building that is below grade on all sides.
10. **Building** - any structure built for support, shelter, or enclosure for any occupancy or storage.
11. **Coastal High Hazard Area** - an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to velocity wave action from storms or seismic sources.
12. **Critical Development** - Development that is critical to the community's public health and safety, is essential to the orderly functioning of a community, store or produce highly volatile, toxic or water-reactive materials, or house occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical development include jails, hospitals, schools, fire stations, nursing homes, wastewater treatment facilities, water plants, and gas/oil/propane storage facilities.

13. Development - any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

14. Elevated building - a non-basement building built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, columns, piers, or shear walls parallel to the flow of water.

15. Executive Order 11988 (Floodplain Management) - Issued by President Carter in 1977, this order requires that no federally assisted activities be conducted in or have the potential to affect identified special flood hazard areas, unless there is no practicable alternative.

16. Existing construction - means, for the purposes of determining rates, structures for which the start of construction commenced before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date.

17. Existing manufactured home park or manufactured home subdivision - a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before September 1, 1987.

18. Expansion to an existing manufactured home park or subdivision - the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).

19. Flood - a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, or the unusual and rapid accumulation of runoff of surface waters from any source.

20. Flood Hazard Boundary Map (FHBM) - an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

21. Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

22. Flood Insurance Study - the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

23. Flood proofing - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents

24. Flood-resistant material - any building material capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-

treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2-93, *Flood-Resistant Materials for Buildings Located in Special Flood Hazard Areas in Accordance with the National Flood Insurance Program*, document number FIA-TB-2, dated 4/93, and available from the Federal Emergency Management Agency. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

25. Floodway - the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

26. Freeboard - a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

27. Functionally dependent facility - a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

28. Highest Adjacent Grade - the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

29. Historic Structure - any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of the Interior (DOI)) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a State inventory of historic places; (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified (1) by an approved State program as determined by the Secretary of Interior, or (2) directly by the Secretary of Interior in states without approved programs. Some structures or districts listed on the State or local inventories **MAY NOT** be "Historic" as cited above, but have been included on the inventories because it was believed that the structures or districts have the **potential** for meeting the "Historic" structure criteria of the DOI. In order for these structures to meet NFIP historic structure criteria, it must be demonstrated and evidenced that the South Carolina Department of Archives and History has **individually determined** that the structure or district meets DOI historic structure criteria.

30. Increased Cost of Compliance (ICC) - applies to all new and renewed flood insurance policies effective on and after June 1, 1997. The NFIP shall enable the purchase of insurance to cover the cost of compliance with land use and control measures established under Section 1361. It provides coverage for the payment of a claim to help pay for the cost to comply with State or community floodplain management laws or ordinances after a flood event in which a building has been declared substantially or repetitively damaged.

31. Limited storage - an area used for storage and intended to be limited to incidental items that can withstand exposure to the elements and have low flood damage potential. Such an area must be of flood resistant or breakaway material, void of utilities except for essential lighting and cannot be temperature controlled. If the area is located below the base flood elevation in an A, AE and A1-A30 zone it must meet the requirements of Article IV.A.4 of this ordinance. If the area is located below the base flood elevation in a V, VE and V1-V30 zone it must meet the requirements of Article IV.F of this ordinance.

32. Lowest Adjacent Grade (LAG) - is an elevation of the lowest ground surface that touches any of the exterior walls of a building or proposed building walls.

33. Lowest Floor - the lowest floor of the lowest enclosed area. Any unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that such an enclosure is not built so as to render the structure in violation of other provisions of this ordinance.

34. Manufactured home - a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

35. Manufactured Home Park or subdivision - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

36. Mean Sea Level - the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD).

37. National Geodetic Vertical Datum (NGVD) - as corrected in 1929, elevation reference points set by National Geodetic Survey based on mean sea level.

38. North American Vertical Datum (NAVD) - datum point established at Pointe-au-Père on the St. Lawrence River, Quebec Province, Canada, based on the mass or density of the earth. The datum listed as the reference datum on Flood Insurance Rate Maps should be used for Elevation Certificate and floodproofing certificate completion.

39. New construction - structure for which the start of construction commenced after (the effective date of the first floodplain management code, ordinance, or standard based upon specific technical base flood elevation data which establishes the area of special flood hazard) or (specific date). The term also includes any subsequent improvements to such structure.

40. New manufactured home park or subdivision - a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or September 1, 1987.

41. Primary Frontal Dune - a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and subject to erosion and overtopping from high tides and waves during coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a

relatively mild slope.

42. Recreational vehicle - a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and, (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

43. Repetitive Loss – a building covered by a contract for flood insurance that has incurred flood-related damages on 2 occasions during a 10 year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the building at the time of each such flood event.

44. Section 1316 of the National Flood insurance Act of 1968 - The act provides that no new flood insurance shall be provided for any property found by the Federal Emergency Management Agency to have been declared by a state or local authority to be in violation of state or local ordinances.

45. Start of construction - (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

46. Structure - a walled and roofed building, a manufactured home, including a gas or liquid storage tank, or other man-made facility or infrastructure that is principally above ground.

47. Special Flood Hazard Area – (SFHA) An area delineated on a Flood Insurance Rate Map as being subject to inundation by the base flood and designated as Zone A, AE, AI-30, AR, AO, AH, V, VE, or V1-30.

48. Substantial damage - damage of any origin, sustained by a structure, whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Such repairs may be undertaken successively and their costs counted cumulatively. Please refer to the definition of "substantial improvement".

49. Substantial improvement - any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a) Any project of improvement to a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions (does not include American with Disabilities Act compliance standards); or,
- b) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.
- c) Permits shall be cumulative for a period of five years. If the improvement project is conducted in phases, the total of all costs associated with each phase, beginning with the issuance of the first permit, shall be utilized to determine whether "substantial improvement" will occur.

43. Substantially improved existing manufactured home park or subdivision - where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction, or improvement commenced.

44. Variance - is a grant of relief from a term or terms of this ordinance.

45. Violation – the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3 (b) (5), (c) (4), (c) (10), (d) (3), (e) (2), (e) (4), or (e) (5) of the Federal Regulations is presumed to be in violation until such time as the documentation is provided.

Article III. ADMINISTRATION

A. Designation of Flood Plains/Stormwater Manager. The Flood Plains/Stormwater Manager is hereby appointed to administer and implement the provisions of this ordinance.

B. Adoption of Letter of Map Revisions (LOMR) – Adopt all LOMRs that are issued in the areas identified in Article I Section D of this ordinance.

C. Designation of Party Responsible for Biennial Report – The Flood Plains/Stormwater Manager is hereby designated as the party responsible to submit the Biennial Report to FEMA.

D. Development Permit and Certification Requirements.

1. Development Permit: Application for a development permit shall be made to the local Flood Plains/Stormwater Manager on forms furnished by him or her prior to any development activities. The development permit may include, but not be limited to, plans in duplicate drawn to scale showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; and the location of fill materials, storage areas, and drainage facilities. Development permits shall be required for all development, including the placement of manufactured homes, so that the governing body may determine whether or not such construction or other development is proposed in the flood prone areas. The following information may be required to show compliance with this ordinance:

- a) A plot plan that shows the 100-year floodplain contour or a statement that the entire lot is within the floodplain must be provided by the development permit applicant when the lot is within or appears to be within the floodplain as mapped by the Federal Emergency Management Agency or the floodplain identified pursuant to either the Duties

and Responsibilities of the Flood Plains/Stormwater Managers of Article III.E.11 for the Standards for Subdivision Proposals of Article IV.B.12 and the Standards for streams without Estimated Base Flood Elevations and/or Floodways of Article IV.C. The plot plan must be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by it. The plot plan must show the floodway, if any, as identified by the Federal Emergency Management Agency or the floodway identified pursuant to either the duties or responsibilities of the Flood Plains/Stormwater Managers of Article III.E.11 or the standards for subdivision proposals of Article IV.B.13 and the standards for streams without estimated base flood elevations and/or floodways of Article IV.C.

b) Where base flood elevation data is provided as set forth in Article I.D or the duties and responsibilities of the Flood Plains/Stormwater Managers of Article III.E.11 the application for a development permit within the flood hazard area shall show:

- (1) the elevation (in relation to mean sea level) of the lowest floor of all new and substantially improved structures, and
- (2) if the structure will be flood proofed in accordance with the Non-Residential Construction requirements of Article IV.B.2 the elevation (in relation to mean sea level) to which the structure will be flood proofed.

c) Where Base Flood Elevation Data Is Not Provided. If no base flood elevation data is provided as set forth in Article I.D or the duties and responsibilities of the Flood Plains/Stormwater Managers of Article III.E.11, then the provisions in the standards for streams without estimated base flood elevations and/or floodways of Article IV.C. must be met.

d) Alteration of Watercourse: Where any watercourse will be altered or relocated as a result of proposed development, the application for a development permit shall include: a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and, a map showing the location of the proposed watercourse alteration or relocation.

2. Floodplain Development Permit (FDP)

a) **General Floodplain Development Permit (GFDP)**- this permit covers all activities or uses in any special flood hazard area in the unincorporated areas of Oconee County which inherently will not increase FEMA and/or any local base flood elevations. Such activities or uses include:

- (1) General farming, pasture, horticulture, forestry, wildlife sanctuaries, gardens, lawns, landscaping and other similar activities.
- (2) Utility infrastructure (poles, sewer manholes, vent pipes, underground utilities, etc.), sign poles, non-solid fences, and other similar activities.
- (3) On-grade driveways, trails, sidewalks, boardwalks, roads and road maintenance; storm drainage system construction, repairs and maintenance (major and minor system), and other similar activities. The floodplain Flood Plains/Stormwater Manager must be notified in writing, including a project description and sketch plan, prior to commencement of these activities.
- (4) Interior renovations with a value of less than \$10,000.00, to a structure with its lowest floor not meeting the requirements of subsections 9-102(1) and (2).
- (5) Interior renovations of any value, to a structure with its lowest floor meeting the requirements of subsections 9-102(1) and (2).

(6) No individual application, submittal of a flood study, or variance shall be required to conduct specified activities or uses, provided no technically measurable increases in FEMA and/or local base flood elevations result. In no case shall measurable increases in FEMA and/or local base flood elevations will be allowed under the provisions of the General Floodplain Development Permit.

b) **Special Floodplain Development Permits (SFDP)**- this permit allows for activities or uses in the special flood hazard area which will result in any increase in FEMA and/or local base flood elevations. All federal, state and local floodplain standards must be fully met prior to the issuance of a Special Floodplain Development Permit.

3. Certifications

a) **Floodproofing Certification** - When a structure is floodproofed, the applicant shall provide certification from a registered, professional engineer or architect that the non-residential, floodproofed structure meets the floodproofing criteria in the non-residential construction requirements of Article IV.B.2.

b) **Certification During Construction** - A lowest floor elevation or floodproofing certification is required after the lowest floor is completed. As soon as possible after completion of the lowest floor and before any further vertical construction commences, or floodproofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the Flood Plains/Stormwater Manager a certification of the elevation of the lowest floor, or floodproofed elevation, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by it. Any work done prior to submission of the certification shall be at the permit holder's risk. The Flood Plains/Stormwater Manager shall review the floor elevation survey data submitted. The permit holder immediately and prior to further progressive work being permitted to proceed shall correct deficiencies detected by such review. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

c) **V-Zone Certification** - When a structure is located in Zones V, VE, or V1-30, certification shall be provided from a registered professional engineer or architect, separate from submitted plans, that new construction or substantial improvement meets the criteria for the coastal high hazard areas outlined in Article IV.F.5.

d) **As-built Certification** - Upon completion of the development a registered professional engineer, land surveyor or architect, in accordance with SC law, shall certify according to the requirements of Article III.D.2a, 2b, and 2c that the development is built in accordance with the submitted plans and previous pre-development certifications.

F. Duties and Responsibilities of the Flood Plains/Stormwater Manager. Duties of the Flood Plains/Stormwater Manager shall include, but not be limited to:

1. **Permit Review** - Review all development permits to assure that the requirements of this ordinance have been satisfied and to review all proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. All permits will also be reviewed to determine whether sites will be reasonably safe from flooding.

2. **Requirement of Federal and/or state permits** - Advise permittee that additional federal or State permits may be required, and if specific federal or State permits are known, require that copies of such permits be provided and maintained on file with the development permit.
3. **Watercourse alterations** –
 - a) Notify adjacent communities and the South Carolina Department of Natural Resources, Land Resources and Conservation Districts Division, State Coordinator for the National Flood Insurance Program, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
 - b) In addition to the notifications required watercourse alterations per Article III.E.3a, written reports of maintenance records must be maintained to show that maintenance has been provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished. This maintenance must consist of a comprehensive program of periodic inspections, and routine channel clearing and dredging, or other related functions. The assurance shall consist of a description of maintenance activities, frequency of performance, and the local official responsible for maintenance performance. Records shall be kept on file for FEMA inspection.
 - c) If the proposed project will impact the configuration of the watercourse, floodway, or base flood elevation for which a detailed Flood Insurance Study has been developed, the applicant shall apply for and must receive approval for a Conditional Letter of Map Revision with the Federal Emergency Management Agency prior to the start of actual construction.
 - d) Within 60 days of completion of an alteration of a watercourse, referenced in the certification requirements of Article III.D.2.d(1), the applicant shall submit as-built certification, by a registered professional engineer, to the Federal Emergency Management Agency.
4. **Floodway encroachments** - Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of Article IV.B.5 are met.
5. **Development Proposals** – Require development proposals for proposed developments prior to signing off on and CLOMRs or LOMRs.
6. **Adjoining Floodplains** - Cooperate with neighboring communities with respect to the management of adjoining floodplains and/or flood-related erosion areas in order to prevent aggravation of existing hazards.
7. **Notifying Adjacent Communities** – Notify adjacent communities prior to permitting substantial commercial developments and large subdivisions to be undertaken in areas of special flood hazard and/or flood-related erosion hazards.
8. **Certification requirements** –
 - a) Obtain and review actual elevation (in relation to mean sea level) of the lowest floor of all new or substantially improved structures, in accordance with administrative procedures outlined in Article III.D.2.b or the coastal high hazard area requirements outlined in Article IV.F.5.
 - b) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed, in accordance with the

floodproofing certification outlined in Article III.D.2.a.

c) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the non-residential construction requirements outlined in Article IV.B.2.

d) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in the coastal high hazard area requirements outlined in Article IV.F.4, Article IV.F.6, and Article IV.F.8 of this ordinance.

9. Map Interpretation - Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

10. Prevailing Authority – Where a map boundary showing an area of special flood hazard and field elevations disagree, the base flood elevations for flood protection elevations (as found on an elevation profile, floodway data table, etc.) shall prevail. The correct information should be submitted to FEMA as per the map maintenance activity requirements outlined in Article IV.B.7.b.

11. Use Of Best Available Data - When base flood elevation data or floodway data has not been provided in accordance with Article I.D, obtain, review, and reasonably utilize best available base flood elevation data and floodway data available from a federal, State, or other source, including data developed pursuant to the standards for subdivision proposals outlined in Article IV.D.4, in order to administer the provisions of this ordinance. Data from preliminary, draft, and final Flood Insurance Studies constitutes best available data from a federal, state, or other source. Data must be developed using hydraulic models meeting the minimum requirement of NFIP approved model. If an appeal is pending on the study in accordance with 44 CFR Ch. 1, Part 67.5 and 67.6, the data does not have to be used.

12. Special Flood hazard Area/topographic Boundaries Conflict - When the exact location of boundaries of the area's special flood hazards conflict with the current, natural topography information at the site, the property owner may apply and be approved for a Letter of Map Amendment (LOMA) by FEMA. The Flood Plains/Stormwater Manager will maintain a copy of the Letter of Map Amendment issued from FEMA.

13. On-Site inspections - Make on-site inspections of projects in accordance with the administrative procedures outlined in Article III.F.4.

14. Administrative Notices - Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with the administrative procedures in Article III.F.

15. Records Maintenance - Maintain all records pertaining to the administration of this ordinance and make these records available for public inspection.

16. Annexations and Detachments - Notify the South Carolina Department of Natural Resources Land, Water and Conservation Division, within six (6) months, of any annexations or detachments that include special flood hazard areas. The community must incorporate applicable maps from surrounding jurisdictions into this ordinance within 90 days of date of the annexation.

17. Federally Funded Development - The President issued Executive Order 11988, Floodplain

Management May 1977. E.O. 11988 directs federal agencies to assert a leadership role in reducing flood losses and losses to environmental values served by floodplains. Proposed developments must go through an eight-step review process. Evidence of compliance with the executive order must be submitted as part of the permit review process.

18. Substantial Damage Determination – Perform an assessment of damage from any origin to the structure using FEMA's Residential Substantial Damage Estimator (RSDE) software to determine if the damage equals or exceeds 50 percent of the market value of the structure before the damage occurred.

19. Substantial Improvement Determinations – Perform an assessment of permit applications for improvements or repairs to be made to a building or structure equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. Cost of work counted for determining if and when substantial improvement to a structure occurs shall be cumulative for a period of five years. If the improvement project is conducted in phases the total of all cost associated with each phase, beginning with the issuance of the first permit, shall be utilized to determine whether "substantial improvement" will occur.

a) **Methods of Market Value Determination.** The market values shall be determined by one of the following methods:

(1) the current assessed building value as determined by the county's assessor's office or the value of an appraisal performed by a licensed appraiser at the expense of the owner; or,

(2) one or more certified appraisals from a registered professional licensed appraiser in accordance with the laws of South Carolina. The appraisal shall indicate actual replacement value of the building or structure in its pre-improvement condition, less depreciation for functionality and obsolescence and site improvements. The Marshall & Swift Residential Cost Handbook shall be used to determine costs for buildings or structures.

(3) Real Estate purchase contract within 12 months prior to the date of the application for a permit.

F. Administrative Procedures.

1. **Inspections of Work in Progress:** As the work pursuant to a permit progresses, the Flood Plains/Stormwater Manager shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Flood Plains/Stormwater Manager has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.

2. **Stop-Work Orders:** Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Flood Plains/Stormwater Manager may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

3. **Revocation of Permits:** The Flood Plains/Stormwater Manager may revoke and require the

return of the development permit by notifying the permit holder in writing, stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked.

4. **Periodic Inspections:** The Flood Plains/Stormwater Manager and each member of his inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

5. **Violations to be Corrected:** When the Flood Plains/Stormwater Manager finds violations of applicable State and local laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law on the property he owns.

6. **Actions in Event of Failure to Take Corrective Action:** If the owner of a building or property shall fail to take prompt corrective action, the Flood Plains/Stormwater Manager shall give him written notice, by certified or registered mail to his last known address or by personal service, that:

- a) the building or property is in violation of the Flood Damage Prevention Ordinance,
- b) a hearing will be held before the Flood Plains/Stormwater Manager at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
- c) following the hearing, the Flood Plains/Stormwater Manager may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

7. **Order to Take Corrective Action:** If, upon a hearing held pursuant to the notice prescribed above, the Flood Plains/Stormwater Manager shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he shall make an order in writing to the owner, requiring the owner to remedy the violation within such period, the Flood Plains/Stormwater Manager may prescribe, not less than 60 days; provided that where the Flood Plains/Stormwater Manager finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

8. **Appeal:** Any owner who has received an order to take corrective action may appeal from the order to County Council by giving notice of appeal in writing to the Flood Plains/Stormwater Manager and the Clerk to County Council within 10 days following issuance of the final order. In the absence of an appeal, the order of the Flood Plains/Stormwater Manager shall be final. County Council shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

9. **Failure to Comply with Order:** If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

10. Denial of Flood Insurance under the NFIP: If a structure is declared in violation of this ordinance and the violation is not remedied then the Flood Plains/Stormwater Manager shall notify the Federal Emergency Management Agency to initiate a Section 1316 of the National Flood Insurance Act of 1968 action against the structure upon the finding that the violator refuses to bring the violation into compliance with the ordinance. Once a violation has been remedied the Flood Plains/Stormwater Manager shall notify FEMA of the remedy and ask that the Section 1316 be rescinded.

11. The following documents are incorporated by reference and may be used by the Flood Plains/Stormwater Manager to provide further guidance and interpretation of this ordinance as found on FEMA's website at www.fema.gov:

1. FEMA 55 Coastal Construction Manual
2. All FEMA Technical Bulletins
3. All FEMA Floodplain Management Bulletins
4. FEMA 348 Protecting Building Utilities from Flood Damage
5. FEMA 499 Home Builder's Guide To Coastal Construction Technical Fact Sheets

Article IV. PROVISIONS FOR FLOOD HAZARD REDUCTION

A. General Standards. Development may not occur in the floodplain where alternative locations exist due to the inherent hazards and risks involved. Before a permit is issued, the applicant shall demonstrate that new structures cannot be located out of the floodplain and that encroachments onto the floodplain are minimized. In all areas of special flood hazard the following provisions are required:

1. **Anchoring** - All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
2. **Flood Resistant Materials and Equipment** - All new construction and substantial improvements shall be constructed with flood resistant materials and utility equipment resistant to flood damage.
3. **Minimize Flood Damage** - All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.
4. **Critical Development** - shall be elevated to the 500 year flood elevation or be elevated to the highest known historical flood elevation (where records are available), whichever is greater. If no data exists establishing the 500 year flood elevation or the highest known historical flood elevation, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates 500 year flood elevation data.
5. **Utilities** - Electrical, ventilation, plumbing, heating and air conditioning equipment (including ductwork), and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of the base flood plus 3 ft. This requirement does not preclude the installation of outdoor faucets for shower heads, sinks, hoses, etc., as long as cut off devices and back flow devices are installed to prevent contamination to the service components and thereby minimize any flood damages to the building.

6. **Water Supply Systems** - All new and replacement water supply systems within flood-prone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems.

7. **Sanitary Sewage Systems** – New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

8. **Gas Or Liquid Storage Tanks** – All gas or liquid storage tanks, either located above ground or buried, shall be anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.

9. **Alteration, Repair, Reconstruction, Or Improvements** - Any alteration, repair, reconstruction, or improvement to a structure that is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance. This includes post-FIRM development and structures. Alterations, repairs, reconstruction, or improvements shall not alter the flood carrying capacity within the altered or relocated portion of any watercourses.

10. **Non-Conforming Buildings or Uses.** Non-conforming buildings or uses may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this ordinance. Provided, however, nothing in this ordinance shall prevent the repair, reconstruction, or replacement of an existing building or structure located totally or partially within the floodway, provided that the bulk of the building or structure below base flood elevation in the floodway is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

11. **American with Disabilities Act (ADA).** A building must meet the specific standards for floodplain construction outlined in Article IV.B, as well as any applicable ADA requirements. The ADA is not justification for issuing a variance or otherwise waiving these requirements. Also, the cost of improvements required to meet the ADA provisions shall be included in the costs of the improvements for calculating substantial improvement.

B. Specific Standards. In all areas of special flood hazard (Zones A, AE, AH, AO, A1-30, V, and VE) where base flood elevation data has been provided, as set forth in Article I.D or outlined in the Duties and Responsibilities of the Flood Plains/Stormwater Manager Article III.E, the following provisions are required:

1. **Residential Construction.** New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor elevated no lower than 3 feet above the base flood elevation. No basements are permitted. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the elevated buildings requirements in Article IV B.4.

2. **Non-Residential Construction** New construction or substantial improvement of any commercial, industrial, or non-residential structure (including manufactured homes) shall have the lowest floor elevated no lower than 3 feet, above the level of the base flood elevation.

Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the elevated buildings requirements in Article IV B.4. No basements are permitted. Structures located in A-zones may be floodproofed in lieu of elevation provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered, professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in the floodproofing certification requirements in Article III.D.2.a. A variance may be considered for wet-floodproofing agricultural structures in accordance with the criteria outlined in Article V.D of this ordinance. Agricultural structures not meeting the criteria of Article V.D must meet the non-residential construction standards and all other applicable provisions of this ordinance. Structures that are floodproofed are required to have an approved maintenance plan with an annual exercise. The Flood Plains/Stormwater Manager must approve the maintenance plan and notification of the annual exercise shall be provided to it.

3. Manufactured Homes.

a) Manufactured homes that are placed or substantially improved on sites outside a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated no lower than 3 feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

b) Manufactured homes that are to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions for residential construction in Article IV.B.1 of this ordinance must be elevated so that the lowest floor of the manufactured home is elevated no lower 3 feet than above the base flood elevation, and be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement.

c) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist flotation, collapse, or lateral movement in accordance with Section 19-425.39 of the *South Carolina Manufactured Housing Board Regulations*, effective date May 25, 1990, as amended. Additionally, when the elevation requirement would be met by an elevation of the chassis at least 36 inches or less above the grade at the sight, reinforced piers or other foundation elements of at least equivalent strength shall support the chassis. When the elevation of the chassis is above 36 inches in height an engineering certification is required.

d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood-prone areas. This plan shall be filed with and approved by the Flood Plains/Stormwater Manager and the County Emergency Preparedness Department.

4. **Elevated Buildings** New construction or substantial improvements of elevated buildings that include fully enclosed areas that are usable solely for the parking of vehicles, building access, or

limited storage in an area other than a basement, and which are subject to flooding shall be designed to preclude finished space and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

- (1) Provide a minimum of two openings on different walls having a *total net area* of not less than one square inch for every square foot of enclosed area subject to flooding.
- (2) The bottom of all openings shall be no higher than one foot above grade.
- (3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions; and,
- (4) Fill placed around foundation walls must be graded so that the grade inside the enclosed area is equal to or higher than the adjacent grade outside the building on at least one side of the building.

b) **Hazardous Velocities.** Hydrodynamic pressure must be considered in the design of any foundation system where velocity waters or the potential for debris flow exists. If flood velocities are excessive (greater than 5 feet per second), foundation systems other than solid foundations walls should be considered so that obstructions to damaging flood flows are minimized.

c) **Enclosures below BFE**

- (1) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
- (2) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose a single storage area and must be void of utilities except for essential lighting as required, and cannot be temperature controlled.
- (3) One wet location switch and/or outlet connected to a ground fault interrupt breaker may be installed below the required lowest floor elevation specified in the specific standards outlined in Article IV.B.1, 2 and 3.
- (4) All construction materials below the required lowest floor elevation specified in the specific standards outlined in Article IV.B 1, 2 and 3 should be of flood resistant materials.

5. **Floodways.** Located within areas of special flood hazard established in Article 1.D, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles and has erosion potential. The following provisions shall apply within such areas:

- a) No encroachments, including fill, new construction, substantial improvements, additions, and other developments shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood. Such certification and technical data shall be presented to the Flood Plains/Stormwater Manager.
- b) If Article IV.B.5a is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article IV.
- c) Stream crossings for any purpose (i.e. timber harvesting operations), if temporary, shall be permitted in accordance with floodway requirements of Article IV.B.5 and the temporary development provisions of Article IV.B.11. Otherwise, the development shall comply with all applicable flood hazard reduction provisions of Article IV.
- d) No manufactured homes shall be permitted, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and the elevation standards of Article IV B.3 are met.
- e) Permissible uses within floodways may include: general farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife, and related uses. Also, lawns, gardens, play areas, picnic grounds, and hiking and horseback riding trails are acceptable uses, provided that they do not employ structures or fill. Substantial development of a permissible use may require a no-impact certification. The uses listed in this subsection are permissible only if and to the extent that they do not cause any increase in base flood elevations or changes to the floodway configuration.

6. Recreational Vehicles

- a) A recreational vehicle is ready for highway use if it is:
 - (1) on wheels or jacking system;
 - (2) attached to the site only by quick-disconnect type utilities and security devices; and,
 - (3) has no permanently attached additions.
- b) Recreational vehicles placed on sites shall either be:
 - (1) on site for fewer than 180 consecutive days and fully licensed and ready for highway use, or
 - (2) meet the development permit and certification requirements of Article III.D, general standards outlined in Article IV.A, and manufacture homes standards in Article IV.B.3.

7. Map Maintenance Activities – The National Flood Insurance Program requires flood data to be reviewed and approved by FEMA. This ensures that flood maps, studies and other data identified in Article I.D accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

a) **Requirement to Submit New Technical Data**

(1) For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:

- (a) Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;
- (b) Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;
- (c) Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and
- (d) Subdivision or large scale development proposals requiring the establishment of base flood elevations in accordance with Article IV.B.12.d.

(2) It is the responsibility of the applicant to have technical data, required in accordance with Article IV.B.7, prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall also be the responsibility of the applicant.

(3) The Floodplain Flood Plains/Stormwater Manager shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:

- (a) Proposed floodway encroachments that increase the base flood elevation; and
- (b) Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.

(4) Floodplain development permits issued by the Floodplain Flood Plains/Stormwater Manager shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to Article IV B.7.

(5) Conditional Letter of Map revisions (CLOMR) and/or Letters of Map Revision (LOMR) must go through the variance process outlined in Article V.

b) **Right to Submit New Technical Data** - The Floodplain Flood Plains/Stormwater Manager may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the local jurisdiction and may be submitted at any time.

8. Accessory Structures.

- a) A detached accessory structure or garage, the cost of which is greater than \$3,000, must comply with the requirements as outlined in FEMA's Technical Bulletin 7-93 *Wet Floodproofing Requirements or be elevated in accordance with Article IV Section B(1) and B (4) or dry floodproofed in accordance with Article IV B (2).*
- b) When accessory structures of \$3,000 or less are to be placed in the floodplain, the following additional criteria shall be met:
 - (1) Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas),
 - (2) Accessory structures shall be designed to have low flood damage potential,
 - (3) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters,
 - (4) Accessory structures shall be firmly anchored to prevent flotation, collapse or lateral movement of the structure,
 - (5) Service facilities such as electrical and heating equipment shall be installed in accordance with Article IV.A.5; and
 - (6) Openings to relieve hydrostatic pressure during a flood shall be provided below base flood elevation in conformance with Article IV.B.4a

9. **Swimming Pool Utility Equipment Rooms**

If the building can not be built at or above the BFE, because of functionality of the equipment then a structure to house the utilities for the pool may be built below the BFE with the following provisions:

- a) Meet the requirements for accessory structures in Article IV.B.8
- b) The utilities must be anchored to prevent flotation and shall be designed to prevent water from entering or accumulating within the components during conditions of the base flood.
- c) A variance may be granted to allow wet floodproofing of the structure.

10. **Elevators**

- a) Install a float switch system or another system that provides the same level of safety is necessary for all elevators where there is a potential for the elevator cab to descend below the BFE during a flood per FEMA's Technical Bulletin 4-93 *Elevator Installation for Buildings Located in Special Flood Hazard Areas.*
- b) All equipment that may have to be installed below the BFE such as counter weight roller guides, compensation cable and pulleys, and oil buffers for traction elevators and

the jack assembly for a hydraulic elevator must be constructed using flood-resistant materials where possible per FEMA's Technical Bulletin 4-93 Elevator Installation for Buildings Located in Special Flood Hazard Areas.

11. Temporary Development Certain types of structures (e.g. fruit stands, construction site offices, portable toilets, etc.) may be situated temporarily on flood-prone property without having to comply with the elevation or floodproofing criteria of Article IV.B.1 and Article IV B.2, respectively, provided that the following criteria are met:

- a) All applicants must submit to the Flood Plains/Stormwater Manager, prior to the issuance of the development permit, a written plan for the removal of any temporary structures or development in the event of a hurricane or flash flood warning notification. The plan shall be reviewed and approved in writing, and must include the following information:
 - (1) a specified time period for which the temporary use will be permitted,
 - (2) the name, address and phone number of the individual responsible for the removal of temporary structures or development;
 - (3) the time frame prior to the event at which any structures will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - (4) a copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed,
 - (5) designation, accompanied by documentation, of a location outside the floodplain to which any temporary structure will be moved;
 - (6) a determination of permanent structures which would be adversely affected by increased flooding upstream or downstream, and a method for covering this liability, such as a performance bond; and,
 - (7) a plan to restore the area to its natural condition once the temporary permit expires or the temporary use is terminated, whichever is first.
- b) The structure is mobile, or can be made so, and is capable of being removed from the site with a maximum of four (4) hours warning.
- c) The structure will not remain on the property for more than 180 days.

12. Fill. An applicant shall demonstrate that fill is the only alternative to raising the building to meet the residential and non-residential construction requirements of Article IV B(1) or B (2), and that the amount of fill used will not affect the flood storage capacity or adversely affect adjacent properties. The following provisions shall apply to all fill placed in the special flood hazard area:

- a) Fill may not be placed in the floodway unless it is in accordance with the requirements in Article IV.B.5a.
- b) Fill may not be placed in tidal or non-tidal wetlands without the required State and federal permits.

- c) Fill must consist of soil and rock materials only. A registered professional geotechnical engineer may use dredged material as fill only upon certification of suitability. Landfills, rubble fills, dumps, and sanitary fills are not permitted in the floodplain.
- d) Fill used to support structures must comply with ASTM Standard D-698, and its suitability to support structures certified by a registered, professional engineer.
- e) Fill slopes shall be no greater than two horizontal to one vertical. Flatter slopes may be required where velocities may result in erosion; and,
- f) The use of fill shall not increase flooding or cause drainage problems on neighboring properties.
- g) Fill may not be used for structural support in the coastal high hazard areas.
- h) Will meet the requirements of FEMA Technical Bulletin 10-01, *Ensuring That Structures Built On Fill In Or Near Special Flood Hazard Areas Are Reasonable Safe From Flooding*.

13. Standards for Subdivision Proposals.

- a) All subdivision proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations.
- b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- d) In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and other proposed developments containing at least 50 lots or 5 acres, whichever is less.
- e) If the areas of special flood hazard is identified as an area of open space and is deemed as such, then a hydrologic and hydraulic engineering analysis that generates base flood elevations for the subdivision proposal will not be required.
- f) The applicant shall meet the requirement to submit technical data to FEMA in Article IV B.7. when a hydrologic and hydraulic analysis is completed that generates base flood elevations.

14. Zones AH or AO shall require that drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

C. Standards for Streams without Established Base Flood Elevations and/or Floodways: Located within the areas of special flood hazard (Zones A and V) established in Article I.D, are small streams where no base flood data has been provided or where no floodways have been identified. The following provisions apply within such areas:

1. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within 100 feet of the stream bank unless certification with supporting technical data by a registered, professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. If Article IV.C.1 is satisfied and base flood elevation data is available from other sources, all new construction and substantial improvements within such areas shall comply with all applicable flood hazard ordinance provisions of Article IV and shall be elevated or floodproofed in accordance with elevations established in accordance with Article III.E.11.
3. Data from preliminary, draft, and final Flood Insurance Studies constitutes best available data. Refer to FEMA Floodplain Management Technical Bulletin 1-98 *Use of Flood Insurance Study (FIS) Data as Available Data*. If an appeal is pending on the study in accordance with 44 CFR Ch. 1, Part 67.5 and 67.6, the data does not have to be used.
4. When base flood elevation data is not available from a federal, State, or other source one of the following methods may be used to determine a BFE. For further information regarding the methods for determining BFEs listed below refer to FEMA's manual *Managing Floodplain Development in Approximate Zone A Areas*.
 - a) Contour Interpolation
 - (1) Superimpose approximate Zone A boundaries onto a topographic map and estimate a BFE.
 - (2) Add one-half of the contour interval of the topographic map that is used to the BFE.
 - b) Data Extrapolation - A BFE can be determined if a site within 500 feet upstream of a reach of a stream reach for which a 100-year profile has been computed by detailed methods, and the floodplain and channel bottom slope characteristics are relatively similar to the downstream reaches.
 - c) Hydrologic and Hydraulic Calculations- Perform hydrologic and hydraulic calculations to determine BFEs using FEMA approved methods and software. These methods include, but are not limited to the following:
 - (1) HEC-RAS 3.1.1 and up
 - (2) HEC-1 4.0.1 and up
 - (3) HEC-2 4.6.2
 - (4) HEC-HMS 1.1 and up
 - (5) FLO-2D
 - (6) QUICK-2
 - (7) SFD
 - (8) WSPRO

D. Standards for Streams with Established Base Flood Elevations but without Floodways. Along rivers and streams where Base Flood Elevation (BFE) data is provided but neither floodway are identified for a Special Flood Hazard Area on the FIRM or in the FIS. The following provisions apply within such areas:

1. No encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not

increase the water surface elevation of the base flood more than one foot at any point within the community.

E. Standards for Areas of Shallow Flooding (AO Zones). Located within the areas of special flood hazard established in Article I.D, are areas designated as shallow flooding. The following provisions shall apply within such areas:

1. All new construction and substantial improvements of residential structures shall have the lowest floor elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor shall be elevated at least three (3) feet above the highest adjacent grade.
2. All new construction and substantial improvements of non-residential structures shall:
 - a) have the lowest floor elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor shall be elevated at least three (3) feet above the highest adjacent grade; or,
 - b) be completely floodproofed together with attendant utility and sanitary facilities to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

F. Coastal High Hazard Areas (V-Zones). Located within the areas of special flood hazard established in Article I.D or Article III.E.11 are areas designated as coastal high hazard areas. These areas have special flood hazards associated with wave wash. The following provisions shall apply within such areas:

1. All buildings or structures shall be located landward of the first line of stable natural vegetation and comply with all applicable Department of Health and Environmental Control (DHEC) Ocean and Coastal Resource Management (OCRM) setback requirements.
2. All buildings or structures shall be elevated so that the bottom of the lowest supporting horizontal member (excluding pilings or columns) is located no lower than ____ above the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Prior to construction, plans for any structures that will have lattice work or decorative screening must be submitted to the Flood Plains/Stormwater Manager for approval. Open lattice work or decorative screening may be permitted for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with Article IV.F.8.
3. All buildings or structures shall be securely anchored on pilings or columns, extending vertically below a grade of sufficient depth and the zone of potential scour, and securely anchored to the subsoil strata.
4. All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, lateral movement and scour due to the effect of wind and water loads acting simultaneously on all building components.
5. A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in Article IV Section F 3, 4, 6 and 9 of this ordinance.

6. There shall be no fill used as structural support. Non-compacted fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge, thereby rendering the building free of obstruction prior to generating excessive loading forces, ramping effects, or wave deflection. Only beach compatible sand may be used. The Flood Plains/Stormwater Manager shall approve design plans for landscaping/ aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist that demonstrates that the following factors have been fully considered:

- a) Particle composition of fill material does not have a tendency for excessive natural compaction,
- b) Volume and distribution of fill will not cause wave deflection to adjacent properties; and,
- c) Slope of fill will not cause wave run-up or ramping.

7. There shall be no alteration of sand dunes that would increase potential flood damage.

8. Lattice work or decorative screening shall be allowed below the base flood elevation provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are to be used and provided the following design specifications are met:

- a) No solid walls shall be allowed.
- b) Breakaway wall material shall consist of wood or mesh screening only.
- c) Design safe loading resistance of each breakaway wall shall be not less than 10 nor more than 20 pounds per square foot; or
- d) If more than 20 pounds per square foot, a registered professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the IBC International Building Code.
- e) Breakaway wall material shall be constructed with flood resistant materials.

9. If aesthetic lattice work or screening is utilized, such enclosed space shall not be designed to be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises.

- a) Only flood resistant materials shall be used below the required flood elevation specified in Article IV A.2.
- b) One wet location switch and/or outlet connected to a ground fault interrupt breaker may be installed below the required lowest floor elevation specified in Article IV A.4.

- c) The total area of an enclosed space shall not exceed 299 square feet per building.

10. Any alteration, repair, reconstruction or improvement to a structure shall not enclose the space below the lowest floor except with lattice work or decorative screening, as provided for in Article IV.F.8 and 9.

11. No manufactured homes shall be permitted except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards of Article IV.B.3.

12. Recreational vehicles shall be permitted in Coastal High Hazard Areas provided that they meet the Recreational Vehicle criteria of Article IV B.6 and the Temporary Structure provisions of Article IV B.11

13. Temporary structures are permitted in accordance with Article IV.B.11.

14. Accessory structures, below the required lowest floor elevation specified in Article IV F.2, are prohibited except for the following:

a) Swimming Pools

- (1) They are installed at-grade or elevated so long as the pool will not act as an obstruction
- (2) They must be structurally independent of the building and its foundation.
- (3) They may be placed beneath a coastal building only if the top of the pool and any accompanying decking or walkway are flush with the existing grade and only if the lower area remains unenclosed.
- (4) As part of the certification process for V-zone buildings the design professional must consider the effects that any of these elements will have on the building in question and any nearby buildings.

b) Pool Utility Equipment Rooms

- (1) If the building can not be built at or above the BFE, because of functionality of the equipment then a structure to house the utilities for the pool may be built below the BFE with the following provisions:
 - (a) It must be structurally independent from the main structure.
 - (b) It must be built with breakaway walls.
 - (c) The utilities must be anchored to prevent flotation and shall be designed to prevent water from entering or accumulating within the components during conditions of the base flood.

c) Access Stairs Attached to or Beneath an Elevated Building:

- (1) Must be constructed of flood-resistant materials..
- (2) Must be constructed as open staircases so they do not block flow under the

structure in accordance with 44CFR60.3(e)(5).

d) Decks

(1) If the deck is structurally attached to a building then the bottom of the lowest horizontal member must be at or above the elevation of the building's lowest horizontal member.

(2) If the deck is to be built below the BFE then it must be structurally independent of the main building and must not cause an obstruction.

(3) If an at-grade, structurally independent deck is proposed then a design professional must evaluate the design to determine if it will adversely affect the building and nearby buildings.

e) Elevators

(1) Installing a float switch system or another system that provides the same level of safety is necessary for all elevators where there is a potential for the elevator cab to descend below the BFE during a flood per FEMA's Technical Bulletin 4-93 Elevator Installation for Buildings Located in Special Flood Hazard Areas.

(2) All equipment that may have to be installed below the BFE such as counter weight roller guides, compensation cable and pulleys, and oil huffers for traction elevators and the jack assembly for a hydraulic elevator must be constructed using flood-resistant materials where possible per FEMA's Technical Bulletin 4-93 Elevator Installation for Buildings Located in Special Flood Hazard Areas.

15. Parking areas should be located on a stable grade under or landward of a structure. Any parking surface shall consist of gravel or ROC aggregate.

16. Electrical, ventilation, plumbing, heating and air conditioning equipment (including ductwork), and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of base flood event plus _____ feet. This requirement does not preclude the installation of outdoor faucets for shower heads, sinks, hoses, etc., as long as cut off devices and back flow devices are installed to prevent contamination to the service components and thereby minimize any flood damages to the building. No utilities or components shall be attached to breakaway walls.

Article V. VARIANCE PROCEDURES

A. Establishment of Appeal Board. The Board of Zoning Appeals of Oconee County shall hear and decide requests for variances from the requirements of this ordinance.

B. Right to Appeal. Any person aggrieved by the decision of the board or any taxpayer may appeal such decision to the Court.

C. Historic Structures. Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

D. Agricultural Structures. Variances may be issued to “wet flood proof” an agricultural structure in accordance with Technical Bulletin 7-93, *Wet Floodproofing Requirements for Structures Located in Special Flood Hazard Areas in accordance with the National Flood Insurance Program*, document number FIA-TB-7, dated 12/93, and available from the Federal Emergency Management Agency. In order to minimize flood damages during the base flood and the threat to public health and safety, the structure must meet all of the conditions and considerations of Article V.II, this section, and the following standards:

1. Use of the structure must be limited to agricultural purposes as listed below:
 - a) pole frame buildings with open or closed sides used exclusively for the storage of farm machinery and equipment,
 - b) steel grain bins and steel frame corncribs,
 - c) general-purpose barns for the temporary feeding of livestock that are open on at least one side;
 - d) for livestock confinement buildings, poultry houses, dairy operations, and similar livestock operations, variances may not be issued for structures that were substantially damaged. New construction or substantial improvement of such structures must meet the elevation requirements of Article IV.B.2 of this ordinance; and,
 - e) detached garages and storage sheds solely used for parking and limited storage in connection with agricultural uses only, which are no greater than 400 square feet in area.
2. The agricultural structure must be built or rebuilt, in the case of an existing building that is substantially damaged, with flood-resistant materials for the exterior and interior building components and elements below the base flood elevation.
3. The agricultural structure must be adequately anchored to prevent flotation, collapse, or lateral movement. All of the structure's components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, hydrodynamic, and debris impact forces. Where flood velocities exceed 5 feet per second, fast-flowing floodwaters can exert considerable pressure on the building's enclosure walls or foundation walls.
4. The agricultural structure must meet the venting requirement of Article IV.B.4 of this ordinance.
5. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article IV.A.5 of this ordinance.
6. The agricultural structure must comply with the floodway encroachment provisions of Article IV.B.5 of this ordinance.
7. Major equipment, machinery, or other contents must be protected. Such protection may include protective watertight floodproofed areas within the building, the use of equipment hoists for readily elevating contents, permanently elevating contents on pedestals or shelves above the base flood elevation, or determining that property owners can safely remove contents without risk to lives and that the contents will be located to a specified site out of the floodplain in accordance

with the temporary development provisions of Article IV.B.11.

E. Considerations. In passing upon such applications, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

1. the danger that materials may be swept onto other lands to the injury of others;
2. the danger to life and property due to flooding or erosion damage, and the safety of access to the property in times of flood for ordinary and emergency vehicles;
3. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. the importance of the services provided by the proposed facility to the community;
5. the necessity to the facility of a waterfront location, where applicable;
6. the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
7. the compatibility of the proposed use with existing and anticipated development, and the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
8. the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
9. the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges and,
10. agricultural structures must be located in wide, expansive floodplain areas, where no other alternative location for the agricultural structure exists. The applicant must demonstrate that the entire farm acreage, consisting of a contiguous parcel of land on which the structure is to be located, must be in the Special Flood Hazard Area and no other alternative locations for the structure are available.

F. Findings. Findings listed above shall be submitted to the Board of Zoning Appeals, in writing, and included in the application for a variance. Additionally, comments from the Department of Natural Resources, Land, Water and Conservation Division, State Coordinator's Office, must be taken into account and included in the permit file.

G. Floodways. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result unless a CLOMR is obtained prior to issuance of the variance. In order to insure the project is built in compliance with the CLOMR for which the variance is granted the applicant must provide a bond for 100% of the cost to perform the development.

H. Conditions. Upon consideration of the factors listed above and the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance. The following conditions shall apply to all variances:

1. Variances may not be issued when the variance will make the structure in violation of other

Federal, State, or local laws, regulations, or ordinances.

2. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

3. Variances shall only be issued upon a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship, and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

4. The Board shall consider the possible impacts on flood insurance premiums and the size of the lot in question.

5. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.

6. The Flood Plains/Stormwater Manager shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

7. Variances shall not be issued for unpermitted development or other development that is not in compliance with the provisions of this ordinance. Violations must be corrected in accordance with Article III.F.5 of this ordinance.

Article VI. LEGAL STATUS PROVISIONS

A. Effect on Rights and Liabilities under the Existing Flood Damage Prevention Ordinance. This Ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted August 18, 1987, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued there under are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of Oconee County enacted on August 18, 1987, as amended, which are not reenacted herein, are repealed.

B. Effect upon Outstanding Building Permits. Nothing herein contained shall require any change in the plans, construction, size or designated use of any building, structure or part thereof for which a building permit has been granted by the Chief Building Inspector or his authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of sixty (60) days subsequent to passage of this ordinance, construction or use shall be in conformity with the provisions of this ordinance.

C. Effective Date. This ordinance shall become effective upon adoption.

D. Adoption Certification.

I hereby certify that this is a true and correct copy of the flood damage prevention ordinance as adopted by the _____ governing body of Oconee County, South Carolina on

July 10, 2008 Draft

the day of _____ 200__.

PASSED:

1st Reading: _____

2nd Reading: _____

3rd Reading: _____

WITNESS my hand and the official seal of _____ this the
_____ day of, _____ 200__.

Signature

AGENDA ITEM SUMMARY
OCONEE COUNTY, SC

COUNCIL MEETING DATE: August 4, 2009
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

ORDINANCE 2009-14 - "AMENDMENT AND RESTATEMENT OF TRUST INDENTURE AND AMENDMENT AND RESTATEMENT OF LOAN AGREEMENT RELATING TO \$77,000,000 OCONEE COUNTY, SOUTH CAROLINA POLLUTION CONTROL FACILITIES REVENUE REFUNDING BONDS, SERIES 1993 (DUKE POWER COMPANY PROJECT) (THE "BONDS") TO PROVIDE FOR CHANGE IN INTEREST RATE FROM VARIABLE RATE TO FIXED RATE, TO PROVIDE FOR APPOINTMENT OF WACHOVIA BANK, NATIONAL ASSOCIATION, AS REMARKETING AGENT, REMARKETING OF THE BONDS AND EXECUTION OF DOCUMENTS RELATING THERETO, AND TO PROVIDE FOR CHANGE IN COLLATERAL SUPPORT FOR THE BONDS BY DELIVERY OF FIRST AND REFUNDING MORTGAGE BONDS ISSUED BY DUKE ENERGY CAROLINAS, LLC."

BACKGROUND OR HISTORY:

Duke Power bonds issued in 1993 for pollution control facilities. Duke wishes to change some of the terms of the debt and needs the County to approve via an ordinance.

SPECIAL CONSIDERATIONS OR CONCERNS:

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No (review #2001-15 on Procurement's website)
If no, explain briefly: N/A

STAFF RECOMMENDATION:

Approve 2nd reading of ordinance 2009-14

FINANCIAL IMPACT:

Legal fees incurred are expected to be reimbursed from bond proceeds. No county liability related to the bonds.

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

Are Matching Funds Available; Yes / No
If yes, who is matching and how much:

ATTACHMENTS

1. Second Amended and Restate Trust Indenture (to be attached as Exhibit A to the Ordinance)
2. Amended and Restate Loan Agreement (to be attached as Exhibit B to the Ordinance)
3. Preliminary Rcoffering Circular (to be attached as Exhibit C to the Ordinance)

Reviewed By/ Initials:

Via Email County Attorney Finance Grants Procurement

Submitted or Prepared By:

Kendra B
Department Head/Elected Official

Approved for Submission to Council:

Kendra B
Kendra Brown, Interim County Administrator

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council.

State of South Carolina
County of Oconee County
ORDINANCE 2009-14

AMENDMENT AND RESTATEMENT OF TRUST INDENTURE AND AMENDMENT AND RESTATEMENT OF LOAN AGREEMENT RELATING TO \$77,000,000 OCONEE COUNTY, SOUTH CAROLINA POLLUTION CONTROL FACILITIES REVENUE REFUNDING BONDS, SERIES 1993 (DUKE POWER COMPANY PROJECT) (THE "BONDS") TO PROVIDE FOR CHANGE IN INTEREST RATE FROM VARIABLE RATE TO FIXED RATE, TO PROVIDE FOR APPOINTMENT OF WACHOVIA BANK, NATIONAL ASSOCIATION, AS REMARKETING AGENT FOR REMARKETING OF THE BONDS AND EXECUTION OF DOCUMENTS RELATING THERETO, AND TO PROVIDE FOR CHANGE IN COLLATERAL SUPPORT FOR THE BONDS BY DELIVERY OF FIRST AND REFUNDING MORTGAGE BONDS ISSUED BY DUKE ENERGY CAROLINAS, LLC.

WHEREAS, the County has previously issued its \$77,000,000 Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Power Company Project) (the "Bonds"), pursuant to Chapter 3, Title 48 of the Code of Laws of South Carolina 1976, as amended, (the "Act") and a Trust Indenture dated as of April 1, 1993, for the purpose of refunding its Pollution Control Revenue Bonds, Series A (Duke Power Company Project) issued in 1983; and

WHEREAS, in connection with the issuance of the Bonds, the County and Duke Power Company (now known as Duke Energy Carolinas, LLC) (the "Corporation") entered into a Loan Agreement, dated as of April 1, 1993; and

WHEREAS, the County and the Trustee entered into an Amended and Restated Trust Indenture dated as of November 1, 2003 (the "First Amended and Restated Indenture"); and

WHEREAS, concurrently with the First Amended and Restated Indenture, the County and the Duke Energy Corporation (formerly known as Duke Power Company and now known as Duke Energy Carolinas, LLC) entered into a First Loan Agreement dated as of November 1, 2003; and

WHEREAS, the Bonds currently bear interest at a weekly rate and the Corporation has given notice of its intent, in accordance with the terms of the First Amended and Restated Indenture, to convert the interest rate computation method on the Bonds to a fixed rate and, in connection therewith, the Corporation has requested that the County and the Trustee enter into a Second Amended and Restated Trust Indenture and has requested the County to enter into an Amended and Restated Loan Agreement, together to provide for (i) the delivery by the Corporation of mortgage bonds to support the payment of principal, interest, and redemption price of the Bonds, in substitution for the letter of credit delivered as collateral security under the First Amended and Restated Indenture and (ii) other modifications as reflected therein; and

WHEREAS, the Corporation has caused to be prepared and presented to this meeting the following documents (the "Documents") and has requested that the County execute and deliver such Documents:

1. The form of the Second Amended and Restated Trust Indenture by and between the County and the Trustee (the "Indenture"), including a form of Amended and Restated Bond, attached hereto as Exhibit A;

2. The form of the Amended and Restated Loan Agreement by and between the County and the Corporation (the "Loan Agreement") attached hereto as Exhibit B; and

3. The form of a Reoffering Circular prepared in connection with the offering and sale of the Amended and Restated Bonds attached hereto as Exhibit C.

WHEREAS, it appears that each of the Documents above referred to, which are now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by Oconee County, South Carolina, as follows:

Section 1. In order to further the purposes of the Act by assisting the Corporation in the purposes contemplated by the Documents, the Documents are approved.

Section 2. Nothing in this Ordinance or the Documents shall be construed to change the fact that the Bonds are limited obligations of the County, the principal and interest on which are payable solely out of the revenues derived from the Loan Agreement. The Bonds and the interest thereon shall never constitute an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing powers.

Nothing in this Ordinance or the Documents shall be construed as an obligation or commitment by the County to expend any of its funds other than (i) the proceeds of the Bonds, (ii) the revenues derived from the Loan Agreement, and (iii) any moneys arising out of the investment or reinvestment of said proceeds, revenues or moneys.

Section 3. The Amended and Restated Bonds shall be executed in the name the County with the manual or facsimile signature of the Chairman of the County Council, shall be attested by the manual or facsimile signature of the Clerk to County Council, and shall have the seal of the County impressed or imprinted thereon.

Section 4. The Amended and Restated Bonds shall be in substantially the form set forth in the Indenture, with necessary or appropriate variations, omissions and insertions as permitted or required by the Indenture.

Section 5. The form, terms and provisions of the Loan Agreement attached hereto as Exhibit B be and they are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Loan Agreement were set out in this

ordinance in its entirety. The Chairman of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Loan Agreement in the name and on behalf of the County, and thereupon to cause the Loan Agreement to be delivered to the Corporation. The Loan Agreement is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Loan Agreement now before this meeting.

Section 6. To prescribe the terms and conditions upon which the Amended and Restated Bonds are to be secured, executed, accepted and held, and for the purpose of assigning the interests of the County under the Agreement, the form, terms and provisions of the Indenture attached hereto as Exhibit A be and they are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Indenture were set out in this ordinance in its entirety. The Chairman of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Indenture to the Trustee. The Indenture is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Indenture now before this meeting.

Section 7. The Chairman of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Amended and Restated Bonds to the Trustee. The Amended and Restated Bonds are to be in substantially the form included in the Indenture now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Amended and Restated Bonds before this meeting.

Section 8. The forms, terms and provisions of the Reoffering Circular attached hereto as Exhibit C be and they are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Reoffering Circular were set out in this ordinance in their entirety. The Chairman of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Reoffering Circular in the name and on behalf of the County, and thereupon to cause the Reoffering Circular to be delivered to the Corporation. The Reoffering Circular is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the officials of the County, their delivery thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Reoffering Circular now before this meeting.

Section 9. The Chairman of County Council, the County Administrator of the County and the Clerk to County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Loan Agreement, the Indenture and the performance of all obligations of the County under and

pursuant to the Loan Agreement, the Indenture, and the Bonds and the execution and delivery of the Amended and Restated Bonds.

The Chairman of County Council, the County Administrator of the County and the Clerk to County Council are each further authorized to execute and deliver such other documents and certificates necessary to effectuate the Documents as contemplated in this ordinance.

Section 10. No approvals granted in connection with the Bonds have been made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign.

Section 11. The provisions of this ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 12. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this ordinance shall take effect and be in full force from and after its passage and approval.

Enacted this 18th day of August, 2009.

**OCONEE COUNTY,
SOUTH CAROLINA**

By: _____
Chairman of County Council
Oconee County, South Carolina

ATTEST:

Clerk to County Council
Oconee County, South Carolina

First Reading: July 21, 2009
Second Reading: August 4, 2009
Third Reading: August 18, 2009

Exhibit A
Form of Indenture

Exhibit B
Form of Loan Agreement

Exhibit C
Form of Reoffering Circular

SECOND AMENDED AND RESTATED TRUST INDENTURE

by and between

OCONEE COUNTY, SOUTH CAROLINA

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,

as Trustee

Dated as of August 1, 2009

Amending and Restating:
the Amended and Restated Trust Indenture dated as of November 1, 2003
between Oconee County, South Carolina and The Bank of New York (now known as The
Bank of New York Mellon Trust Company, N.A.) which amended and restated
the Trust Indenture dated as of April 1, 1993
between Oconee County, South Carolina and Wachovia Bank of North Carolina, N.A.
(now known as Wachovia Bank, National Association)

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SECOND AMENDED AND RESTATED TRUST INDENTURE

THIS SECOND AMENDED AND RESTATED TRUST INDENTURE (the "Indenture"), dated as of August 1, 2009, is made and entered into by and between **OCONEE COUNTY, SOUTH CAROLINA**, a political subdivision duly organized and existing under the Constitution and laws of the State of South Carolina (the "Issuer"), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, as trustee, and its successors and assignees in trust (the "Trustee").

WITNESSETH:

WHEREAS, the Issuer has previously issued its \$77,000,000 Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Power Company Project) (the "Bonds"), pursuant to Chapter 3, Title 48 of the Code of Laws of South Carolina 1976, as amended (the "Act"), and a Trust Indenture dated as of April 1, 1993 (the "Original Indenture"), for the purpose of refunding its Pollution Control Revenue Bonds, Series A (Duke Power Company Project), issued in 1983 (the "Prior Bonds"), and the proceeds of the Bonds have been applied to the refunding of the Prior Bonds; and

WHEREAS, in connection with the issuance of the Bonds, the Issuer and Duke Power Company (now known as Duke Energy Carolinas, LLC) (the "Company") entered into a Loan Agreement, dated as of April 1, 1993 (as amended, the "Original Loan Agreement"); and

WHEREAS, the Issuer and the Trustee entered into an Amended and Restated Trust Indenture dated as of November 1, 2003 (the "First Amended and Restated Indenture") for the purpose of (i) extending the maturity of the Bonds, (ii) providing for the securing of the payment of interest, purchase price and redemption of the Bonds by a letter of credit and (iii) making other technical changes in connection with the foregoing; and

WHEREAS, concurrently with the First Amended and Restated Indenture, the Issuer and the Duke Energy Corporation (formerly known as Duke Power Company and now known as Duke Energy Carolinas, LLC) entered into a First Amendment to Loan Agreement dated as of November 1, 2003 (the "First Amendment to Original Loan Agreement"); and

WHEREAS, the Bonds currently bear interest at a weekly rate and the Company has given notice of its intent, in accordance with the terms of the First Amended and Restated Indenture, to convert the interest rate computation method on the Bonds to a fixed rate and, in connection therewith, the Company has requested that the Issuer and the Trustee enter into this Indenture to amend and restate the terms of the First Amended and Restated Indenture and the Bonds to provide for (i) the delivery by the Company of mortgage bonds to support the payment of principal, interest, and redemption price of the Bonds, in substitution for the letter of credit delivered as collateral security under the First Amended and Restated Indenture and (ii) other modifications as reflected herein; and

WHEREAS, the Issuer has agreed to amend and restate the First Amended and Restated Indenture as provided herein.

NOW, THEREFORE, in consideration of the premises and of the covenants and undertakings herein expressed, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 **Defined Terms.** In addition to terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

“Act” has the meaning specified in the recitals.

“Act of Bankruptcy” means any of the following events:

(i) The Company (or any other Person obligated, as guarantor or otherwise, to make payments on the Bonds or under the Loan Agreement or the Credit Agreement or an “affiliate” of the Company as defined in Bankruptcy Code § 101(2)) or the Issuer shall (1) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the Company (or such other Person) or the Issuer or of all or any substantial part of their respective property, (2) commence a voluntary case under the Bankruptcy Code, or (3) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts; or

(ii) A proceeding or case shall be commenced, without the application or consent of the Company (or any other Person obligated, as guarantor or otherwise, to make payments on the Bonds or under the Loan Agreement or the Credit Agreement or an “affiliate” of the Company as defined in Bankruptcy Code § 101(2)) or the Issuer in any court of competent jurisdiction, seeking (1) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts, of the Company (or any such other Person) or the Issuer, (2) the appointment of a trustee, receiver, custodian, liquidator or the like of the Company (or any such other Person), the Issuer or of all or any substantial part of their respective property, or (3) similar relief in respect of the Company (or any such other Person) or the Issuer under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts.

“Alternate Credit Facility” means an irrevocable, direct-pay letter of credit delivered to, and accepted by, the Trustee pursuant to **Section 3.8(e)**, in substitution for the Credit Facility then in effect.

“Alternate Credit Facility Effective Date” has the meaning specified in **Section 3.8(e)**.

“Alternate Weekly Index” means, for any Computation Date, (i) if the Bonds are (or were) bearing interest at a Weekly Rate during the Interest Period ending on or immediately after such Computation Date that was determined by the Remarketing Agent without applying the

Alternate Weekly Index, the Weekly Rate for such Interest Period, and (ii) if the Weekly Rate for the Interest Period ending on or immediately after such Computation Date was determined by applying the Alternate Weekly Index or if such Computation Date is the first Computation Date that occurs in connection with any change or deemed change in the Interest Rate Determination Method to a Weekly Rate pursuant to **Sections 2.3(c) or (d) or Section 2.4(a)**, the greater of: (1) 70% of LIBOR, or (2) the SIFMA Index plus 0.10%.

“Authorized Denomination” means (i) during any Short-Term Rate Period or any Medium-Term Rate Period, \$100,000 and multiples of \$5,000 in excess thereof, and (ii) during the Fixed Rate Period, \$5,000 and integral multiples thereof.

“Bankruptcy Code” means Title 11 of the United States Code, as amended, and any successor statute or statutes having substantially the same function.

“Beneficial Owner” means the Person in whose name a Bond is recorded as beneficial owner of such Bond by the Securities Depository or a Participant or an Indirect Participant on the records of such Securities Depository, Participant or Indirect Participant, as the case may be, or such Person’s subrogee.

“Bond” or “Bonds” means the Bonds authorized under this Indenture.

“Bond Counsel” means an attorney, or firm of attorneys, nationally recognized and experienced in legal work relating to the financing of facilities through the issuance of tax-exempt bonds.

“Bond Documents” means, collectively, the Bonds, the Loan Agreement, this Indenture, the Credit Facility (if any), the Credit Agreement (if any), the Remarketing Agreement (if any) and the Remarketing Circular prepared and used in connection with the remarketing of the Bonds on the Effective Date.

“Bond Fund” means the fund of that name created pursuant to **Section 4.1**.

“Bond Purchase Fund” means the fund of that name created pursuant to **Section 4.3**.

“Book-Entry System” means a book-entry system established and operated for the recordation of Beneficial Owners of the Bonds pursuant to **Section 2.20**.

“Business Day” means any day on which the offices of the Credit Issuer at which drawings on the Credit Facility are made (if a Credit Facility is in effect), the Trustee, the Paying Agent, the Registrar and the Remarketing Agent are each open for business and on which The New York Stock Exchange is not closed and on which funds transfers can be made on the fedwire system.

“Ceiling Rate” means 12% per annum.

“Code” means the Internal Revenue Code of 1986, as amended, and the rulings and regulations (including temporary and proposed regulations) promulgated thereunder or under the Internal Revenue Code of 1954, as amended.

"Company" means Duke Energy Carolinas, LLC, formerly known as Duke Energy Corporation and Duke Power Company, a North Carolina limited liability company, and its successors and assigns.

"Company Agent" shall have the meaning set forth in **Section 7.2**.

"Company Representative" means any one of the persons at the time designated to act on behalf of the Company by written certificate furnished to the Issuer and the Trustee containing the specimen signatures of such persons and signed on behalf of the Company by the President or any Vice President of the Company.

"Computation Date" means (i) the Business Day next preceding the first day of each Interest Period during which the Bonds bear interest at a Weekly Rate, (ii) the first Business Day of each Flexible Term Rate Period and (iii) a date that is not more than twenty (20) nor less than two (2) days prior to any Conversion Date relating to conversion to a Long-Term Rate.

"Conversion Date" means (i) each date on which the Interest Rate Determination Method then in effect is changed to another Interest Rate Determination Method, including a Fixed Rate Conversion Date and (ii) each date on which the interest rate borne by the Bonds is changed from the interest rate applicable during a Medium-Term Rate Period to the interest rate applicable during another Medium-Term Rate Period; provided, however, that Conversion Date shall not include deemed conversions under **Sections 2.3(c)** or **(d)**.

"Conversion Notice" shall have the meaning set forth in **Section 2.4(a)**.

"Counsel" means an attorney, or firm of attorneys, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia, including any Bond Counsel.

"Credit Agreement" means any agreement between the Company and a Credit Issuer relating to a Credit Facility, as such agreement may be amended or supplemented from time to time pursuant to its terms.

"Credit Facility" means any irrevocable, direct-pay letter of credit, issued by a Credit Issuer pursuant to **Section 2.5** in favor of the Trustee, for the account of the Company, and any amendments or supplements thereto or extensions thereof, that provides security for the payment of certain payments on or with respect to the Bonds as contemplated pursuant to **Section 3.8** and, upon acceptance by the Trustee of any Alternate Credit Facility, such Alternate Credit Facility.

"Credit Issuance Date" means any date on which a Credit Facility is issued pursuant to **Section 2.5**.

"Credit Issuance Notice" shall have the meaning set forth in **Section 2.5(a)(i)(1)**.

"Credit Issuer" means the issuer of any Credit Facility, its successors and assigns; provided, however, that in connection with the acceptance of an Alternate Credit Facility that results in the occurrence of a Mandatory Purchase Date, until the occurrence of such Mandatory

Purchase Date, "Credit Issuer" shall mean the issuer of the Credit Facility in effect immediately prior to acceptance of such Alternate Credit Facility.

"Credit Modification Date" means either (a) the second Business Day next preceding the date on which a Credit Facility then in effect is stated to expire (unless extended), or (b) if the Credit Facility will terminate prior to its stated expiration date on account of the delivery of an Alternate Credit Facility, the proposed Alternate Credit Facility Effective Date with respect to such Alternate Credit Facility.

"Current Account" means the account of that name within the Bond Fund established pursuant to **Section 4.1**.

"Effective Date" means August __, 2009.

"Eligible Funds" means, when a Credit Facility is in effect, moneys held by the Trustee, the Paying Agent or the Remarketing Agent under this Indenture which consist of any of the following:

(iii) any moneys if, in the written opinion of Counsel experienced in bankruptcy law matters (which opinion shall be delivered to the Trustee and the Rating Agency, if any, rating the Bonds at or prior to the time of the deposit of such moneys with the Trustee and shall be in form and substance satisfactory to the Rating Agency, if any, rating the Bonds), the deposit and use of such moneys will not constitute an avoidable preferential payment pursuant to Section 547 of the Bankruptcy Code, or an avoidable post-petition transfer pursuant to Section 549 of the Bankruptcy Code, recoverable from Holders of the Bonds pursuant to Section 550 of the Bankruptcy Code in the event of an Act of Bankruptcy; or

(iv) moneys paid by the Credit Issuer to the Trustee under the Credit Facility which are not commingled with any other moneys.

If no Credit Facility is in effect, any moneys held by the Trustee, the Paying Agent or the Remarketing Agent under this Indenture shall constitute "Eligible Funds."

"Event of Default" means any of the events specified in **Section 6.1**.

"Financing Statements" means any and all financing statements (including continuation statements) or other instruments filed or recorded to perfect the Security Interest created in this Indenture.

"First Amended and Restated Indenture" means the Amended and Restated Trust Indenture dated as of November 1, 2003 between the Issuer and the Trustee.

"Fitch" means Fitch, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Company with the approval of the Remarketing Agent, by notice to the Issuer and the Trustee.

“Fixed Rate” means the Fixed Rate established in accordance with **Section 2.3(e)**.

“Fixed Rate Conversion Date” means the day on which the Interest Rate Determination Method shall be converted to the Fixed Rate.

“Fixed Rate Period” means any period during which the Bonds bear interest at the Fixed Rate.

“Flexible Term Rate” means the Flexible Term Rate established for each of the Bonds in accordance with **Section 2.3(c)**.

“Flexible Term Rate Period” means any and all periods during which each of the Bonds bears interest at a Flexible Term Rate, such periods not to be of a duration in excess of 270 days as may be determined by the Remarketing Agent pursuant to **Section 2.3(c)**.

“Government Obligations” means (i) direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, and (ii) obligations issued by a Person controlled or supervised by and acting as an instrumentality of the United States of America, the full and timely payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (i) or (ii) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), which obligations, in either case, are not subject to redemption prior to maturity at less than par at the option of anyone other than the holder thereof.

“Holder” means the Person who shall be the registered owner of any Bond.

“Indenture” means this Second Amended and Restated Trust Indenture dated as of August 1, 2009 between the Issuer and the Trustee, as the same may be amended or supplemented from time to time as permitted hereby.

“Indirect Participant” means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository through a Participant.

“Interest Payment Date” means (i) during any Weekly Rate Period, each Monthly Interest Payment Date, (ii) during any Flexible Term Rate Period, the first Business Day immediately succeeding the last day of each Flexible Term Rate Period, but only as to Bonds for which such Flexible Term Rate Period is applicable, (iii) during any Long-Term Rate Period, each Semiannual Interest Payment Date, and (iv) each Conversion Date.

“Interest Period” means, with respect to the Bonds bearing interest at a Weekly Rate, the period from and including the Conversion Date on which the Interest Rate Determination Method is changed to the Weekly Rate to and including the next Wednesday and, in each case, each succeeding period from and including each Thursday to and including the following Wednesday.

“Interest Rate Determination Method” means any of the methods of determining the interest rate on the Bonds described in **Section 2.3**.

"Issue Date" means the date on which the Bonds were delivered to the purchaser or purchasers thereof upon original issuance.

"Issuer" means Oconee County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, or any successor to its rights and obligations under the Loan Agreement and this Indenture.

"LIBOR" means, for any Computation Date, the rate per annum determined on the basis of the rate for deposits in United States dollars of amounts equal to or comparable to the principal amount of the Bonds to which the Alternate Weekly Index will apply, offered for a term of one month, which rate appears on the display designated as Page 3750 of the Telerate Service (or such other page as may replace page 3750 of that service or such other service or services as may be nominated by the British Bankers' Association for the purpose of displaying London interbank offered rates for United States dollar deposits), determined as of approximately 11:00 a.m., London time, two (2) London business days prior to such Computation Date, or if such rate is not available, another rate determined to be comparable by the Remarketing Agent or, if the Remarketing Agent fails to do so, the Trustee (who may rely upon an opinion of a commercial or investment banking firm knowledgeable in municipal finance).

"Loan Agreement" means Amended and Restated Loan Agreement dated as of August 1, 2009 between the Issuer and the Company and any further modifications, amendments and supplements thereto permitted hereunder.

"Local Time" means eastern time (daylight or standard, as applicable) in New York, New York.

"Long-Term Rate" means either a Medium-Term Rate or the Fixed Rate.

"Long-Term Rate Period" means either a Medium-Term Rate Period or the Fixed Rate Period.

"Mandatory Purchase Date" means (i) a proposed Conversion Date, (ii) a Credit Modification Date, (iii) a proposed Credit Issuance Date, (iv) with respect to each Bond then bearing interest at a Flexible Term Rate, the first Business Day immediately succeeding the last day of each Flexible Term Rate Period applicable to such Bond, (v) the fourth Business Day after receipt by the Trustee of a written notice from the Credit Issuer that an event of default under the Credit Agreement has occurred and is continuing and a written request from the Credit Issuer that all of the Bonds be required to be tendered for purchase, or (vi) while the Bonds bear interest at the Weekly Rate, any Business Day designated by the Company with the consent of the Remarketing Agent and the Credit Issuer, provided that such designation and consent are made in writing and delivered to the Trustee at least twenty-five (25) days (or such shorter period of time acceptable to the Trustee) prior to such Mandatory Purchase Date.

"Medium-Term Rate" means the interest rate on the Bonds established from time to time pursuant to **Section 2.3(d)**.

"Medium-Term Rate Period" means any period of not less than 271 days during which the Bonds bear interest at a Medium-Term Rate.

"Monthly Interest Payment Date" means the first Business Day of each calendar month.

"Moody's" means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Company with the approval of the Remarketing Agent, by notice to the Issuer and the Trustee.

"Mortgage" means the First and Refunding Mortgage dated as of December 1, 1927, from the Company to the Mortgage Trustee, as amended and supplemented by various indentures supplemental thereto, including the Supplemental Mortgage Trust Indenture.

"Mortgage Bonds" means the First and Refunding Mortgage Bonds of any series issued under the Mortgage for the purpose of securing the Bonds.

"Mortgage Trustee" means The Bank of New York Mellon Trust Company, N.A. (successor to JPMorgan Chase Bank, N.A.) as trustee under the Mortgage, or its successor as trustee.

"Opinion of Bond Counsel" means any opinion of Bond Counsel delivered pursuant to this Indenture with respect to the excludability of interest on the Bonds from gross income of the Holders thereof for federal income tax purposes. Each such opinion shall be addressed to the Trustee, the Remarketing Agent, the Company, the Issuer and the Paying Agent. No such opinion delivered pursuant hereto shall be deemed unsatisfactory when required as a condition to any provision hereunder because such opinion states that interest on the Bonds is an item of tax preference or is includable in determining alternative minimum taxable income under the Code.

"Optional Tender Date" means, during any Weekly Rate Period, any Business Day.

"Original Indenture" has the meaning assigned to such term in the recitals.

"Original Loan Agreement" has the meaning assigned to such term in the recitals.

"Outstanding" means, when used with reference to the Bonds at any date as of which the amount of outstanding Bonds is to be determined, all Bonds that have been authenticated and delivered by the Trustee hereunder, except:

- (v) Bonds cancelled or delivered for cancellation at or prior to such date;
- (vi) Bonds deemed to be paid in accordance with **Section 5.2**;
- (vii) Bonds in lieu of which others have been authenticated under **Sections 2.13, 2.14 and 2.15**;

(viii) Untendered Bonds to the extent that there shall be on deposit with the Remarketing Agent on the date purchase thereof is required as provided herein an amount to pay the Purchase Price thereof; and

(ix) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the Holders of a specified percentage of Outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer, the Company or any affiliate of the Company; provided, however, that for purposes of any such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being outstanding only Bonds known by the Trustee by actual notice thereof to be so held; provided, further, that if all of the Bonds are at any time held by or for the account of the Company or any affiliate of the Company, then such Bonds shall be deemed to be Outstanding at such time for the purposes of this subparagraph (v).

"Participant" means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository.

"Paying Agent" means The Bank of New York Mellon Trust Company, N.A., and its successors appointed and serving under this Indenture.

"Permitted Investments" means any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein:

- (i) Bonds or other obligations of the United States;
- (ii) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;
- (iii) Direct obligations issued by the United States or obligations guaranteed in full as to principal and interest by the United States or repurchase agreements with a qualified depository bank or securities dealers fully collateralized by such obligations, maturing on or before the date when such funds will be required for disbursement;
- (iv) Obligations of state and local government and municipal bond issuers, which are rated investment-grade by either S&P or Moody's or other non-rated obligations of such issuers guaranteed or credit enhanced by a Person whose long-term debt or long-term deposits or other obligations are rated investment-grade by either S&P or Moody's;
- (v) Prime commercial paper rated either "A-1" by S&P or "P-1" by Moody's and, if rated by both, not less than "A-1" by S&P and "P-1" by Moody's;
- (vi) Bankers' acceptances drawn on and accepted by commercial banks;
- (vii) Interests in any money market fund or trust, the investments of which are restricted to obligations described in clauses (i) through (vi) of this definition or

obligations determined to be of comparable quality by the board of directors of such fund or trust; and

(viii) Such other obligations as may at any time hereafter be authorized by applicable law, provided that the Trustee may require as a condition to the investment of funds under this clause (viii) there having first been delivered to the Trustee an opinion of Counsel to the effect that investment in such other obligations is permitted under any applicable laws of the State.

“Person” means any natural person, firm, partnership, association, corporation, limited liability company or public body.

“Prior Bonds” has the meaning assigned to such term in the recitals.

“Project” means the Project as defined in the Loan Agreement.

“Purchase Price” means an amount equal to 100% of the principal amount of any Bond tendered or deemed tendered for purchase pursuant to **Section 2.6**, plus accrued and unpaid interest thereon to the date of purchase.

“Rate” means any Weekly Rate, Flexible Term Rate or Long-Term Rate.

“Rate Period” means any Weekly Rate Period, Flexible Term Rate Period, Medium-Term Rate Period or Fixed Rate Period.

“Rating Agency” means Fitch when the Bonds are rated by Fitch, Moody’s when the Bonds are rated by Moody’s, and S&P when the Bonds are rated by S&P.

“Record Date” means with respect to each Interest Payment Date (i) during any Short-Term Rate Period, the Trustee’s close of business on the Business Day next preceding such Interest Payment Date, and (ii) during any Long-Term Rate Period, the Trustee’s close of business on the fifteenth (15th) day of the calendar month next preceding the calendar month during which such Interest Payment Date occurs, regardless of whether such day is a Business Day.

“Register” means the register of the record owners of Bonds maintained by the Registrar.

“Registrar” means the Trustee.

“Remarketing Agent” means Wachovia Bank, National Association and its successors appointed and serving in such capacity under this Indenture.

“Remarketing Agreement” means any agreement between the Company and a Remarketing Agent relating to the Bonds, as such agreement may be amended or supplemented from time to time pursuant to its terms.

“Repayments” means all amounts required to be paid by the Company to the Issuer (and the Trustee, as the assignee of the Issuer) pursuant to **Section 5.2** of the Loan Agreement.

"Replacement Bonds" means Bonds issued pursuant to **Section 2.15**, which Bonds shall contain the terms and provisions specified herein as being applicable to the Bonds following a Mandatory Purchase Date and have excised therefrom the terms and provisions that are not so applicable and added thereto terms that have become applicable.

"Reserved Rights" means the rights of the Issuer pursuant to **Sections 5.2(b), 5.2(c), 8.1, 8.6, 8.7, 12.6 and 12.7** of the Loan Agreement and the rights of the Issuer pursuant to other sections of the Loan Agreement providing that notices, reports and other statements be given to the Issuer and that specified consents be obtained from the Issuer.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., a corporation organized and existing under the laws of the State of New York, its successors and their assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Company with the approval of the Remarketing Agent, by notice to the Issuer and the Trustee.

"Securities Depository" means The Depository Trust Company and any substitute for or successor to such securities depository that shall maintain a Book-Entry System with respect to the Bonds.

"Securities Depository Nominee" means the Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the Register the Bonds to be delivered to such Securities Depository during the continuation with such Securities Depository of participation in its Book-Entry System.

"Security" means the revenues (including Repayments), funds, rights and interests specified in **Section 3.1**, including the Series 1993 Mortgage Bonds.

"Security Interest" or "Security Interests" means the security interests created herein and shall have the meanings set forth in the U.C.C.

"Semiannual Interest Payment Date" means each February 1 and August 1.

"Series 1993 Mortgage Bonds" means the \$77,000,000 aggregate principal amount of the First and Refunding Mortgage Bonds, Pollution Control Facilities Revenue Refunding Series Due 2017 of the Company.

"Short-Term Rate" means either the Weekly Rate or the Flexible Term Rate.

"Short-Term Rate Period" means any period during which the Bonds bear interest at a Short-Term Rate.

"SIFMA Index" means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) ("SIFMA") or any Person acting in

cooperation with or under the sponsorship of SIFMA and acceptable to the Paying Agent and effective from such date.

“State” means the State of South Carolina.

“Supplemental Mortgage Trust Indenture” means the Eighty-Ninth Supplemental Indenture, dated as of August __, 2009, creating the Series 1993 Mortgage Bonds.

“Trustee” means The Bank of New York Mellon Trust Company, N.A., (as successor to The Bank of New York Mellon (formerly known as The Bank of New York)) as trustee hereunder, and any successor trustee appointed under this Indenture.

“U.C.C.” means the Uniform Commercial Code of the State as now in effect or hereafter amended.

“Untendered Bond” means any Untendered Bond as defined in **Section 2.6(f)**.

“Weekly Rate” means the interest rate on the Bonds established pursuant to **Section 2.3(b)**.

“Weekly Rate Period” means any period during which the Bonds bear interest at a Weekly Rate.

Section 1.2 **Rules of Construction**. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Indenture:

(a) All terms defined in the Loan Agreement and not defined herein shall have the meaning ascribed thereto in the Loan Agreement.

(b) Words importing the singular number shall include the plural number and vice versa.

(c) The table of contents, captions, and headings herein are for convenience of reference only and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

(d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(e) All references in this Indenture to particular Articles or Sections are references to Articles or Sections of this Indenture, unless otherwise indicated.

ARTICLE II

THE BONDS

Section 2.1 **Authorized Amount of Bonds.** No Bonds may be delivered under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be outstanding hereunder is expressly limited to \$77,000,000, subject to the provisions of Sections 2.13, 2.14 and 2.15. The Bonds shall be designated "Oconee County, South Carolina Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Energy Carolinas, LLC Project)." The form of the Bond attached as Exhibit A to this Indenture shall be the form of Bond referred to herein.

Section 2.2 **General.** The Bonds shall bear interest from the Effective Date, until paid, at the rates set forth in Section 2.3 (computed on the basis of a 365-day year (366 days in a leap year) for the actual days elapsed during any Weekly Rate Period, a 360-day year of twelve 30-day months during any Long-Term Rate Period and a 360-day year for actual days elapsed during any Flexible Term Rate Period (calculated by multiplying the principal amount of Bonds by the interest rate, dividing that sum by 360, and multiplying that amount by the actual days elapsed)), and shall mature, unless sooner paid, on February 1, 2017, on which date all unpaid principal, redemption premium, if any, and interest on the Bonds shall be due and payable.

The Bonds shall be fully registered bonds without coupons in Authorized Denominations. The Bonds shall be numbered from R-1 upwards bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Registrar.

The Bonds shall be dated April 1, 1993. Interest on the Bonds shall be computed from the Interest Payment Date to which interest has been paid or duly provided for next preceding the date of authentication thereof, unless (a) such date of authentication shall be prior to the first Interest Payment Date after the Effective Date, in which case interest shall be computed from the Effective Date, or (b) such date of authentication shall be an Interest Payment Date to which interest on the Bonds has been paid in full or duly provided for, in which case interest shall be computed from such date of authentication; provided, however, that if interest on the Bonds shall be in default, Bonds delivered in exchange for Bonds surrendered for registration of transfer or exchange shall bear interest from the last date to which interest has been paid or duly provided for on the Bonds.

The principal of, redemption premium, if any, and the interest on the Bonds shall be payable in lawful currency of the United States. The principal of and redemption premium, if any, on the Bonds shall be payable at the principal office of the Paying Agent upon presentation and surrender of the Bonds. Payments of interest on the Bonds will be mailed to the persons in whose names the Bonds are registered on the Register at the close of business on the Record Date next preceding each Interest Payment Date; provided that, prior to a Fixed Rate Conversion Date, any Holder of a Bond or Bonds in an aggregate principal amount of not less than \$250,000 may, by prior written instructions filed with the Paying Agent (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments for any period prior to the Fixed Rate Conversion Date be made by wire transfer to an account in the continental United States or other means acceptable to the Paying Agent.

Section 2.3 Interest Rates on Bonds.

(a) **Interest Rate - General.** The Bonds as issued under the Original Indenture have borne interest as provided therein and as of November of 2003, have borne interest as provided in the First Amended and Restated Indenture. The Bonds shall bear interest as provided herein from the Effective Date to the date of payment in full of the Bonds. Interest accrued on the Bonds shall be paid on each Interest Payment Date (or, if such day is not a Business Day, the next succeeding Business Day) commencing on February 1, 2010. The interest rate on the Bonds will be determined as provided in this Section except that no rate shall exceed the lesser of (i) the Ceiling Rate or (ii) the maximum rate permitted by applicable law. The Bonds shall bear interest at a Fixed Rate from the Effective Date until the date of payment in full of the Bonds. Such Fixed Rate shall be determined by the Remarketing Agreement on or before the Effective Date in the manner set forth in **Section 2.3(c)**.

(b) **Weekly Rate.** During any Weekly Rate Period the Bonds will bear interest at the Weekly Rate. During any Weekly Rate Period, the Remarketing Agent will determine the Weekly Rate for the applicable Interest Period by 4:00 p.m., Local Time, on the applicable Computation Date. Each Weekly Rate shall be the rate of interest which, if borne by the Bonds, would, in the judgment of the Remarketing Agent, having due regard for the prevailing financial market conditions for revenue bonds or other securities the interest on which is excluded from gross income of the holders thereof for federal income tax purposes of the same general nature as the Bonds or securities the interest on which is excluded from gross income of the holders thereof for federal income tax purposes that are comparable as to credit and maturity (or comparable with respect to optional tender provisions) with the credit and maturity or the optional tender provisions of the Bonds, be the interest rate necessary, but would not exceed the interest rate necessary, to enable the Remarketing Agent to place the Bonds at a price of par (plus accrued interest, if any) on the first Business Day of such Interest Period; provided, that, if for any reason the Weekly Rate for any Interest Period is not established as aforesaid by the Remarketing Agent, no Remarketing Agent shall be serving as such hereunder or the rate so established is held to be invalid or unenforceable with respect to any Interest Period, then the Weekly Rate for such Interest Period shall be 100% of the Alternate Weekly Index on the date such interest rate was (or would have been) determined as provided above. The Remarketing Agent (or if no Remarketing Agent is serving as such hereunder, the Trustee) shall notify the Company immediately by telephone if the Alternate Weekly Index is applicable, with written notice to follow promptly. In connection with any change or deemed change in the Interest Rate Determination Method to a Weekly Rate pursuant to **Sections 2.3(c)** or **(d)** or **Section 2.4(a)**, the initial Weekly Rate shall be determined as provided above on the applicable Computation Date.

(c) **Flexible Term Rate.** During any Flexible Term Rate Period, each of the Bonds will bear interest at a Flexible Term Rate. During any Flexible Term Rate Period, the Remarketing Agent will determine the Flexible Term Rate and Flexible Term Rate Period to be applicable to each Bond by 1:00 p.m., Local Time, on the applicable Computation Date. For each Flexible Term Rate Bond, the Flexible Term Rate Period shall be the period which would, in the judgment of the Remarketing Agent, having due regard to prevailing financial market conditions for securities of the same general nature as such Bond which are comparable as to credit and maturity (or period for tender) with the credit and maturity of such Bond, ultimately produce the lowest overall net interest cost on such Bond to maturity. No Flexible Term Rate

Period applicable to any Bond may (A) be less than one or more than 270 days in length, (B) extend beyond any scheduled Mandatory Purchase Date or the final maturity date of the Bonds, or (C) end on a day preceding a non-Business Day. The Remarketing Agent may assign different Flexible Term Rate Periods to different Flexible Term Rate Bonds. For each Flexible Term Rate Bond, the Flexible Term Rate shall be the rate of interest which, if borne by such Bond for its applicable Flexible Term Rate Period, would, in the judgment of the Remarketing Agent, having due regard for the prevailing financial market conditions for revenue bonds or other securities the interest on which is excluded from gross income of the holders thereof for federal income tax purposes of the same general nature as such Bond or securities the interest on which is excluded from gross income of the holders thereof for federal income tax purposes which are comparable as to credit and maturity (or period for tender) with the credit and maturity of such Bond, be the interest rate necessary, but would not exceed the interest rate necessary, to enable the Remarketing Agent to place such Bond at a price of par (plus accrued interest, if any) on the first Business Day of such Flexible Term Rate Period. If for any reason the applicable rate is not established as aforesaid by the Remarketing Agent, no Remarketing Agent shall be serving as such hereunder or the rate so established is held to be invalid or unenforceable, then the Interest Rate Determination Method shall be deemed to have converted to the Weekly Rate on the date such interest rate was (or would have been) determined as provided above. The Remarketing Agent (or if no Remarketing Agent is serving as such hereunder, the Trustee) shall notify the Company, the Trustee and the Paying Agent immediately by telephone if such a conversion is deemed to have occurred, with written notice to follow promptly. In connection with any change in the Interest Rate Determination Method to a Flexible Term Rate pursuant to **Section 2.4**, the initial Flexible Term Rate and Flexible Term Rate Period for each Bond shall be determined as provided above on the applicable Computation Date.

(d) **Medium-Term Rate.** During any Medium-Term Rate Period, the Bonds shall bear interest at the Medium-Term Rate. The interest rate to be borne by the Bonds from the applicable Conversion Date to the last day of the applicable Medium-Term Rate Period shall be the rate determined by the Remarketing Agent on the applicable Computation Date to be the rate which, if borne by the Bonds would, in the judgment of the Remarketing Agent having due regard for prevailing market conditions for revenue bonds or other securities the interest on which is excluded from gross income of the holders thereof for federal income tax purposes and that are comparable to the Bonds, be the interest rate necessary, but would not exceed the interest rate necessary, to enable the Remarketing Agent to place the Bonds at a price of par (plus accrued interest, if any) on the applicable Conversion Date. If for any reason the applicable rate is not established as aforesaid by the Remarketing Agent, no Remarketing Agent shall be serving as such hereunder or the rate so established is held to be invalid or unenforceable, then the Interest Rate Determination Method shall be deemed to have converted to the Weekly Rate on the date such interest rate was (or would have been) determined as provided above. The Remarketing Agent (or if no Remarketing Agent is serving as such hereunder, the Trustee) shall notify the Company, the Trustee and the Paying Agent immediately by telephone if such a conversion is deemed to have occurred, with written notice to follow promptly.

On the Computation Date with respect to a Medium-Term Rate, the Remarketing Agent shall determine the Medium-Term Rate Period. Each Medium-Term Rate Period shall be at least 271 days and shall end no later than the date of maturity of the Bonds or, if earlier, on a day immediately preceding a Business Day. If the Remarketing Agent fails to determine the

Medium-Term Rate Period or the Medium-Term Rate Period so established is held to be invalid or unenforceable, the Medium-Term Rate Period shall be (i) if the Interest Rate Determination Method in effect immediately prior to such Conversion Date was a Medium-Term Rate, the shorter of (a) the period equal to the Medium-Term Rate Period for such Medium-Term Rate (provided, however, that if the last day of such period would not be a day immediately preceding a Business Day, such period shall be extended to the next succeeding day that is a day immediately preceding a Business Day) and (b) the remaining maturity of the Bonds, or (ii) if the Interest Rate Determination Method in effect immediately prior to such Conversion Date was not a Medium-Term Rate, the shorter of (a) the period ending on the first date that is a day immediately preceding a Business Day and is at least 271 days after the Conversion Date and (b) the remaining maturity of the Bonds.

If requested in the Conversion Notice by the Company, the Remarketing Agent may also determine on the Computation Date redemption premiums, different from those set forth in **Section 2.18**, for optional redemption of the Bonds during the Medium-Term Rate Period. These redemption premiums shall be consistent with the prevailing market conditions, in the reasonable judgment of the Remarketing Agent. The Remarketing Agent shall not, however, establish redemption premiums different from those set forth in **Section 2.18** unless an Opinion of Bond Counsel shall be furnished to the effect that such action will not adversely affect the exclusion of interest on the Bonds from gross income of the Holders thereof for federal income tax purposes.

(c) **Fixed Rate.** The Bonds shall bear interest at the Fixed Rate during the Fixed Rate Period. The interest rate to be borne by the Bonds from the Fixed Rate Conversion Date to the date of payment in full of the Bonds shall be the rate determined by the Remarketing Agent on the applicable Computation Date to be the rate which, if borne by the Bonds would, in the judgment of the Remarketing Agent having due regard for the prevailing market conditions for revenue bonds or other securities the interest on which is excluded from gross income of the holders thereof for federal income tax purposes and that are comparable to the Bonds, be the interest rate necessary, but would not exceed the interest rate necessary, to enable the Remarketing Agent to place the Bonds at a price of par (plus accrued interest, if any) on the Fixed Rate Conversion Date. If for any reason the Fixed Rate is not established as aforesaid by the Remarketing Agent or no Remarketing Agent shall be serving as such hereunder, then the provisions of the last paragraph of **Section 2.4(e)** shall apply; if the Fixed Rate established by the Remarketing Agent is held to be invalid or unenforceable, the interest rate to be borne by the Bonds from the Fixed Rate Conversion Date to the date of payment in full of the Bonds shall be determined by the Remarketing Agent based on the criteria in the preceding sentence and avoiding the cause of invalidity or unenforceability.

(f) **Notice of Rates and Deemed Conversions.** Promptly following the determination of any Rate, the Remarketing Agent shall give notice thereof to the Trustee and the Paying Agent. Promptly upon receipt from the Remarketing Agent of any Medium-Term Rate or Fixed Rate, the Paying Agent shall give each Holder notice of the new Rate. The Company and any Holder or Beneficial Owner may obtain any Rate on or after the applicable Computation Date upon request to the Remarketing Agent. Promptly upon receipt from the Remarketing Agent or the Trustee of notice of any deemed conversion to the Weekly Rate under

this Section, the Paying Agent shall give each Holder, the Credit Issuer, if any, and the Rating Agency, if any, then rating the Bonds notice of the deemed conversion.

(g) **Determination of Rate Conclusive.** The determination of any Rate by the Remarketing Agent shall be conclusive and binding upon the Issuer, the Company, the Trustee, the Paying Agent, the Remarketing Agent and the Holders or Beneficial Owners.

(h) **No Liability.** In determining the interest rate or rates that the Bonds shall bear as provided in this Section, the Remarketing Agent shall have no liability to the Issuer, the Company, the Trustee, the Paying Agent, the Registrar, the Credit Issuer or any Holder or Beneficial Owners except for its gross negligence or willful misconduct.

Section 2.4 Conversion of Interest Rate Determination Method.

(a) **Conversion Notice.** The Interest Rate Determination Method for the Bonds may be changed under this Section from any Short-Term Rate or a Medium-Term Rate to any other Interest Rate Determination Method or from a Medium-Term Rate to a new Medium-Term Rate on any Conversion Date by the Company giving written notice of such change (a "Conversion Notice") to the Remarketing Agent and the Trustee with a copy to the Issuer, the Paying Agent, the Rating Agency, if any, rating the Bonds and the Credit Issuer (if any). The Conversion Notice must be received by the Remarketing Agent and the Trustee at least twenty-five (25) days prior to the proposed Conversion Date.

Each Conversion Notice shall state (i) that the Company elects to change the Interest Rate Determination Method to a new Interest Rate Determination Method, or from the interest rate applicable during a Medium-Term Rate Period to a new interest rate during a new Medium-Term Rate Period, (ii) the proposed Conversion Date, (iii) the Interest Rate Determination Method to be in effect from and after such Conversion Date, (iv) whether a Credit Facility is to be in effect from and after such Conversion Date, and, if so, the terms of such Credit Facility, and (v) if a Long-Term Rate is to be in effect from and after such Conversion Date, and if redemption premiums different from those set forth in Section 2.18 are to be applicable as described in Section 2.3(d) and (e), the redemption premiums to be applicable during such Long-Term Rate Period.

(b) **Opinions With Respect to Conversions.** Each Conversion Notice given to the Remarketing Agent and the Trustee shall be accompanied by an Opinion of Bond Counsel to the effect that the change in the Interest Rate Determination Method or the change from a Medium-Term Rate to a new Medium-Term Rate will not cause the interest on the Bonds to be included in the gross income of the Holders thereof for federal income tax purposes and that such change is permitted under this Indenture.

The Company shall deliver to the Remarketing Agent and the Trustee, by 10:00 a.m., Local Time, on the proposed Conversion Date under this Section a supplemental Opinion of Bond Counsel to the effect that the change in the Interest Rate Determination Method or from a Medium-Term Rate to a new Medium-Term Rate is permitted under this Indenture and, under the laws existing on such Conversion Date, the change will not cause the interest on the Bonds to be included in the gross income of the Holders thereof for federal income tax purposes.

(c) **Conversion Date.** If the Interest Rate Determination Method in effect prior to the Conversion Date under this Section is:

(i) a Weekly Rate, the Conversion Date may be any Business Day;

(ii) a Flexible Term Rate, the Conversion Date must be the day that would otherwise be an Interest Payment Date for all of the Bonds, such Interest Payment Date to be determined at the time the Conversion Notice is received by the Remarketing Agent; or

(iii) a Medium-Term Rate, the Conversion Date must be the Business Day immediately succeeding the last day of the Medium-Term Rate Period.

(d) **Notice of Conversions to Holders.** The Trustee shall give written notice to the Holders of a Conversion Date, which notice shall be in substantially the form attached to this Indenture as **Exhibit B**, appropriately completed, and shall be sent by first-class mail, postage prepaid, at least fifteen (15) days prior to the proposed Conversion Date.

(e) **Failure or Revocation of Conversion.** If (i) the Company fails to deliver to the Trustee and the Remarketing Agent by 10:00 a.m., Local Time, on the proposed Conversion Date any supplemental Opinion of Bond Counsel required by **subsection (b)** of this Section, or (ii) an Event of Default shall have occurred and be continuing hereunder, the Interest Rate Determination Method for the Bonds shall not be changed on the proposed Conversion Date and the Trustee shall immediately notify by telephone the Credit Issuer, if any, the Remarketing Agent, the Issuer and the Paying Agent that the Interest Rate Determination Method for the Bonds shall not be changed on the proposed Conversion Date.

Notwithstanding any other provision in this Indenture to the contrary, no conversion of the Interest Rate Determination Method to the Fixed Rate shall occur if the Company, not later than 10:00 a.m., Local Time, on the Business Day immediately preceding the applicable Computation Date, directs the Remarketing Agent not to change the Interest Rate Determination Method to the Fixed Rate by written notice, with a copy to the Trustee, the Issuer, the Paying Agent, the Remarketing Agent and the Credit Issuer, if any.

If a proposed conversion of the Interest Rate Determination Method is cancelled pursuant to the provisions of the two preceding paragraphs, all Bonds shall nevertheless be tendered for purchase on the proposed Conversion Date and shall be purchased on the proposed Conversion Date. The Bonds shall continue to bear interest in accordance with the Interest Rate Determination Method in effect prior to the proposed Conversion Date and, in the case of a proposed change from a Medium-Term Rate, for a Medium-Term Rate Period ending on the first day that is a day immediately preceding a Business Day and that occurs on or after the day that is the same number of days after the proposed Conversion Date as the number of days in the immediately preceding Medium-Term Rate Period (but in no event later than the maturity of the Bonds); provided, however, that the rate of interest that the Bonds will bear shall be determined on the proposed Conversion Date.

(f) **Failure to Mail Certain Notices.** Failure to mail the notice described in **subsection (d)**, or any defect therein, shall not affect the validity of any interest rate or change in

the Interest Rate Determination Method on any of the Bonds or the requirement that the Bonds shall be tendered pursuant to **Section 2.6(e)** or extend the period for tendering any of the Bonds for purchase, and the Trustee shall not be liable to any Holder by reason of its failure to mail such notice or any defect therein.

(g) **Compliance with Rule 15c2-12.** Notwithstanding any provision in this Indenture to the contrary, no conversion to a Long-Term Rate shall be permitted unless the Trustee, the Issuer and the Remarketing Agent shall have received, at least two (2) Business Days prior to the proposed Conversion Date, a copy of a continuing disclosure agreement imposing obligations upon the Company, the Trustee or any other responsible party to comply with the requirements of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (the "Rule"), with respect to the Bonds, together with such disclosure documents as the Remarketing Agent shall require in order to comply with the Rule, if the Rule will be applicable upon such conversion.

(h) **Conversion to Flexible Term Rate or a Long-Term Rate.** The Interest Rate Determination Method may not be converted to (i) the Flexible Term Rate unless the interest component of the Credit Facility to be in effect immediately following such conversion, if any, provides for payment of at least 271 days of interest on the Bonds at the Ceiling Rate or (ii) a Long-Term Rate unless the interest component of the Credit Facility to be in effect immediately following such conversion, if any, provides for payment of at least 183 days of interest on the Bonds at the (A) Ceiling Rate in the case of a conversion to the Medium-Term Rate or (B) Fixed Rate in the case of a conversion to the Fixed Rate. If a rating for the Bonds is to be maintained after any such conversion, the Trustee and the Remarketing Agent must receive, prior to the effective date of such conversion, written confirmation from each Rating Agency rating the Bonds that such rating will not be reduced or withdrawn.

Section 2.5 **Issuance of a Credit Facility.**

(a) **Issuance by a Credit Issuer.** If no Credit Facility is in effect during any Short-Term Rate Period or will be in effect on the first day of any Long-Term Rate Period, the Company may, with the consent of the Remarketing Agent, arrange for issuance by a Credit Issuer of a Credit Facility, on the terms and subject to the conditions hereof and upon delivery by the Company to the Trustee, the Remarketing Agent, the Paying Agent and the Issuer:

(i) of (1) a notice (the "Credit Issuance Notice") stating that the Company has, with the consent of the Remarketing Agent, arranged for the issuance of a Credit Facility and specifying a proposed Credit Issuance Date at least twenty-five (25) days after receipt of such notice by the Trustee, and (2) an Opinion of Bond Counsel to the effect that the issuance of such Credit Facility will not cause interest on the Bonds to be included in the gross income of the Holders thereof for federal income tax purposes and that such issuance is permitted under this Indenture; and

(ii) by 10:00 a.m., Local Time, on the proposed Credit Issuance Date, of (1) a supplemental Opinion of Bond Counsel stating that under the laws existing on the Credit Issuance Date the issuance of the Credit Facility will not cause the interest on the Bonds to be included in gross income of the Holders thereof for federal income tax purposes, (2) an opinion of Counsel satisfactory to the Trustee, the Rating Agency, if any, rating the

Bonds, the Issuer and the Remarketing Agent, to the effect (a) that the Credit Facility has been duly executed, issued and delivered by the Credit Issuer and is the legal, valid and binding obligation of the Credit Issuer (or, in the case of a branch or agency of a foreign commercial bank, such branch or agency) enforceable in accordance with its terms, and (b) that the Credit Facility is not and the issuance of the Credit Facility will not cause the Bonds to be subject to the registration requirements of the Securities Act of 1933, as amended, (3) if required by the Rating Agency, if any, rating the Bonds, an opinion of Counsel satisfactory to the Rating Agency to the effect that payments of principal, premium, if any, or Purchase Price of or interest on the Bonds from the proceeds of a drawing on such Credit Facility will not constitute avoidable preferential payments pursuant to the provisions of Section 547 of the Bankruptcy Code recoverable from Holders of the Bonds pursuant to Section 550 of the Bankruptcy Code, and (4) evidence of the consent of the Remarketing Agent. In addition, if the Credit Facility is issued by a branch or agency of a foreign commercial bank, there shall also be delivered an opinion of Counsel licensed to practice law in the jurisdiction in which the main office of such bank is located, satisfactory to the Trustee, the Rating Agency, if any, rating the Bonds, the Issuer and the Remarketing Agent, to the effect that such Credit Facility has been duly executed, issued and delivered and is the legal, valid and binding obligation of such Credit Issuer enforceable in accordance with its terms.

(b) **Credit Issuance Date.** A Credit Issuance Date must be (i) during any Weekly Rate Period, any Business Day, (ii) during any Flexible Term Rate Period, a day that would otherwise be an Interest Payment Date for all of the Bonds, or (iii) the first day of a Long-Term Rate Period.

(c) **Notice of Credit Facility to Holders.** Upon receipt of a Credit Issuance Notice from the Company meeting the requirements set forth in **subsection (a)** hereof, the Trustee shall give notice by first-class mail, postage prepaid, to the Holders at least fifteen (15) days prior to the proposed Credit Issuance Date which notice shall be in substantially the form of **Exhibit C** hereto, appropriately completed.

(d) **Nonacceptance of Credit Facility.** If the Company fails to deliver to the Trustee, the Paying Agent and the Remarketing Agent by 10:00 a.m., Local Time, on the proposed Credit Issuance Date (i) the opinions of Bond Counsel and other Counsel required by **subsection (a)(ii)** of this Section or (ii) evidence that the anticipated ratings specified in the Trustee's notice to Holders pursuant to **subsection (c)** of this Section have been received, the Trustee shall not accept the Credit Facility, but all Bonds shall be tendered for purchase on the proposed Credit Issuance Date and shall be purchased on such date. The Trustee shall immediately notify by telephone the Issuer and the Company if the Credit Facility is not accepted on the proposed Credit Issuance Date.

Section 2.6 **Tender of Bonds for Purchase.**

(a) **Optional Tender During Weekly Rate Period.** During any Weekly Rate Period, the Holders of the Bonds shall have the right to tender any such Bond (or portion thereof in an Authorized Denomination, provided that any Bond or portion thereof remaining is also in an Authorized Denomination), for purchase on any Optional Tender Date, but only upon:

(i) delivery to the Remarketing Agent at its principal office, not later than 4:00 p.m., Local Time, on or before the seventh (7th) day (or on the immediately preceding Business Day, if such seventh (7th) day is not a Business Day) next preceding such Optional Tender Date, of an irrevocable written, telephonic (followed, if requested by the Remarketing Agent, by written or facsimile confirmation delivered to the Remarketing Agent no later than the close of business on the next succeeding Business Day), facsimile or telegraphic notice (with a written or facsimile copy to the Paying Agent) stating (1) that such Holder will tender for purchase all or any portion of his/her Bonds in an Authorized Denomination and the amount of Bonds to be tendered and (2) the Optional Tender Date on which such Bonds will be tendered; and

(ii) delivery of such Bond (with an appropriate instrument of transfer duly executed in blank) to the Remarketing Agent at its principal office at or prior to 10:00 a.m., Local Time, on such Optional Tender Date; provided, however, that no Bond (or portion thereof) shall be purchased unless such Bond as delivered to the Remarketing Agent shall conform in all respects to the description thereof in the aforesaid notice.

(b) **Optional Tender By Beneficial Owners.** If the Bonds are held in a Book-Entry System, a purchase notice pursuant to **Section 2.6(a)(i)** may be delivered by a Beneficial Owner. Such purchase notice must be delivered as set forth in **Section 2.6(a)(i)** and must state that such Beneficial Owner will cause its beneficial interest (or portion thereof in an Authorized Denomination) to be tendered, the amount of such interest to be tendered, the Optional Tender Date on which such interest will be tendered and the identity of the Participant through which the Beneficial Owner maintains its interest. Upon delivery of such notice, the Beneficial Owner must make arrangements to have its beneficial ownership interest in the Bonds being tendered transferred to the Remarketing Agent at or prior to 10:00 a.m., Local Time, on the Optional Tender Date, but need not otherwise comply with **Section 2.6(a)(ii)**.

(c) **Election to Tender Irrevocable.** Any election of a Holder to tender Bonds for purchase on an Optional Tender Date in accordance with **subsection (a)** above shall be irrevocable and shall be binding on the Holder making such election and on any transferee of such Holder.

(d) **Notices.** The Remarketing Agent shall give prompt notice by telephone of receipt of (i) any tender notice received by it in accordance with **paragraph (i)** of **subsection (a)** above to the Trustee, the Paying Agent and the Credit Issuer, if any, or (ii) any Credit Issuance Notice received by it from the Company in accordance with **Section 2.5(a)** to the Trustee and the Paying Agent.

(e) **Mandatory Purchase on Mandatory Purchase Date.** The Bonds (or the applicable portion of the Bonds during any Flexible Term Rate Period) shall be subject to mandatory tender for purchase on any Mandatory Purchase Date at the Purchase Price thereof. Notwithstanding the preceding sentence, there shall be no purchase pursuant to this subsection of Bonds to be redeemed on the Mandatory Purchase Date, nor of Bonds issued in exchange for or upon the registration of transfer of Bonds to be redeemed on the Mandatory Purchase Date. Holders of Bonds shall tender such Bonds to the Remarketing Agent by 10:00 a.m., Local Time, on each Mandatory Purchase Date.

(f) **Bonds Deemed Tendered.** If (i) with respect to a Mandatory Purchase Date, a Holder fails to deliver such Bond to the Remarketing Agent on or before the Mandatory Purchase Date, or (ii) with respect to an Optional Tender Date, a Holder gives notice pursuant to **Section 2.6(a)** to the Remarketing Agent and thereafter fails to deliver such Bonds (or portion thereof) to the Remarketing Agent, as required, then such Bond (or portion thereof) that is not delivered to the Remarketing Agent shall be deemed to have been properly tendered (such Bond being hereinafter referred to as an "Untendered Bond") and, to the extent that there shall be on deposit with the Remarketing Agent on the date purchase thereof is required as provided herein an amount sufficient to pay the Purchase Price thereof, such Untendered Bond shall cease to constitute or represent a right to payment of principal or interest thereon and shall constitute and represent only the right to the payment of the Purchase Price payable on such date.

(g) **Source of Funds for Purchase of Bonds.** On each Optional Tender Date and each Mandatory Purchase Date there shall be purchased (but solely from funds set forth below) the Bonds (or portions thereof), tendered (or deemed tendered) to the Remarketing Agent for purchase in accordance with this Section at the applicable Purchase Price. Funds for the payment of the Purchase Price for such Bonds (or portions thereof), shall be paid by the Remarketing Agent solely from the following sources and in the following order of priority:

(i) proceeds of the remarketing of such Bonds (or portions thereof) pursuant to **Section 2.7**;

(ii) if a Credit Facility is then in effect, moneys drawn under such Credit Facility pursuant to **Section 3.8(a)(ii)**;

(iii) if a Credit Facility is then in effect, moneys from the Bond Purchase Fund constituting Eligible Funds, if any, under clause (i) of the definition of Eligible Funds that have been transferred to the Remarketing Agent pursuant to **Section 4.3**; and

(iv) any other moneys furnished by or on behalf of the Company for purchase of Bonds.

Bonds (or portions thereof) purchased as provided above shall be delivered as provided in **Section 2.8**.

(h) **Notice of Mandatory Purchase Date.** Not less than fifteen (15) days prior to each Mandatory Purchase Date occurring as a result of a Credit Modification Date or at the Company's direction, and not less than three (3) days prior to each Mandatory Purchase Date occurring at the Credit Issuer's direction, the Trustee shall give written notice of such Mandatory Purchase Date to the Remarketing Agent and, by first-class mail, postage prepaid, the Holders, which notice shall be in substantially the form of **Exhibits D** or **E** hereto, as the case may be, appropriately completed. Failure to mail such notice or any defect therein shall not affect the rights or obligations of Holders and the Trustee shall not be liable to any Holder by reason of its failure to mail such notice or any defect therein. With respect to a Mandatory Purchase Date that is a Conversion Date, the Trustee shall provide notice to the Holders as set forth in **Section 2.4(d)**. With respect to a Mandatory Purchase Date that is a Credit Issuance Date, the Trustee shall provide notice to the Holders as set forth in **Section 2.5(c)**. With respect to a Mandatory

Purchase Date that is the first Business Day immediately succeeding the last day of each Flexible Term Rate Period applicable to a Bond, no notice of mandatory tender shall be sent to the Holder of such Bond.

Section 2.7 Remarketing of Bonds.

(a) **Best Efforts to Place Bonds.** The Remarketing Agent shall use its best efforts to place Bonds (or portions thereof) at a price of par plus accrued interest, if any, on each date that such Bonds (or portions thereof) are required to be purchased pursuant to **Section 2.6** and if such Bonds are not placed on such date (such Bonds being hereinafter referred to as "Unremarketed Bonds"), the Remarketing Agent shall continue, for a period not in excess of thirty (30) days thereafter, to use its best efforts to place such Unremarketed Bonds at a price of par plus accrued interest, if any. The Remarketing Agent shall use its best efforts to place Unremarketed Bonds on a particular date that is more than thirty (30) days after the date on which such Unremarketed Bonds were tendered (or deemed tendered) for purchase and became Unremarketed Bonds upon receipt by the Remarketing Agent and the Trustee by 10:00 a.m., Local Time, on such date, of an Opinion of Bond Counsel to the effect that under the laws existing on such date, the placement of such Unremarketed Bonds on such date will not adversely affect the exclusion of interest on the Bonds from gross income of the Holders thereof for federal income tax purposes. By 12:00 noon, Local Time, on the Business Day prior to each date that the Bonds (or portions thereof) are required to be purchased pursuant to **Section 2.6**, the Remarketing Agent shall give initial notice by telephone (promptly confirmed by telecopy) of the principal amount of the Bonds for which it has arranged placement, together with the principal amount of the Bonds, if any (and such other particulars with respect thereto as the Trustee may deem necessary), for which it has not arranged placement, to the Trustee, the Company and the Credit Issuer, if any.

Such initial notice shall be confirmed by telephone notice by 9:00 a.m., Local Time, on the date that such Bonds are to be purchased (such notice to be promptly confirmed in writing) of the amount of Bonds not remarketed, the amount of remarketing proceeds received and the information necessary to enable the Trustee to prepare new Bond certificates with respect to the Bonds that were remarketed.

Notwithstanding anything herein to the contrary, Bonds may be remarketed only at a price of par.

(b) **Draws on Credit Facility.** In the event that moneys from the source described in **Section 2.6(g)(i)** are insufficient to pay the Purchase Price of Bonds tendered or deemed tendered on an Optional Tender Date or a Mandatory Purchase Date, the Trustee shall, by 11:00 a.m., Local Time, on such Optional Tender Date or Mandatory Purchase Date, take all action required to cause the Purchase Price of such Bonds, to the extent not available from the source described in **Section 2.6(g)(i)**, to be paid from the Credit Facility. In the event the Purchase Price of Bonds is paid from the Credit Facility as described herein, and the Company does not reimburse the Credit Issuer for such Purchase Price, upon the remarketing of such Bonds as described in **Section 2.7(a)**, the Remarketing Agent shall deliver the proceeds of the remarketing of such Bonds to the Credit Issuer.

(c) **No Remarketing During Default.** The Remarketing Agent shall not be required to remarket any Bonds pursuant to this Section if it has actual knowledge that an Event of Default shall have occurred and be continuing hereunder or if the Remarketing Agent determines, in its sole discretion, that the remarketing of the Bonds would be unlawful or would be likely to result in the imposition of liability or damages against the Issuer, the Remarketing Agent, the Paying Agent, the Trustee, the Credit Issuer, if any, or the Company.

(d) **Remarketing to Company or Issuer.** If a Credit Facility is then in effect, the Remarketing Agent shall not remarket any Bonds to (i) the Company, (ii) any other Person obligated (as guarantor or otherwise) to make payments on the Bonds or under the Loan Agreement or the Credit Agreement, (iii) an "affiliate" of the Company as defined in Bankruptcy Code § 101(2) (if the Remarketing Agent has actual knowledge that such Person is an "affiliate" at the time of such remarketing), or (iv) the Issuer, pursuant to this Section prior to the expiration or earlier termination of the Credit Facility unless, prior to such remarketing, the Trustee, the Rating Agency, if any, rating the Bonds, and the Remarketing Agent shall have received an unqualified opinion of Counsel experienced in bankruptcy law matters to the effect that such remarketing would not result in a preferential payment pursuant to the provisions of Section 547 of the Bankruptcy Code recoverable from Holders of the Bonds pursuant to Section 550 of the Bankruptcy Code in the event of an Act of Bankruptcy, and if a Rating Agency is rating the Bonds, such Rating Agency has confirmed to the Trustee in writing that its rating will not be withdrawn or reduced as a result of such remarketing.

(e) **Notice to Proposed Purchasers of Bonds.** The Remarketing Agent will give any Person to whom Bonds are proposed to be remarketed written notice of any Mandatory Purchase Date, acceleration of maturity of Bonds or redemption of Bonds, notice of which has been given to Holders, prior to remarketing Bonds to such Person.

(f) **No Remarketing Under Certain Conditions.** Notwithstanding anything to the contrary herein provided, the Bonds shall not be remarketed unless (i) a Credit Facility providing for the payment of the principal of and interest on, and Purchase Price of, the Bonds will be in effect following the remarketing of such Bonds, (ii) no such Credit Facility will be in effect, but at the time of such remarketing, the Bonds are rated by a Rating Agency and such long-term and/or short-term rating is satisfactory to the Remarketing Agent in its sole discretion, or (iii) no such Credit Facility will be in effect, but following the remarketing of such Bonds, the Bonds will bear interest at a Long-Term Rate. Notwithstanding anything to the contrary herein provided, the Bonds shall not be remarketed following a Mandatory Purchase Date occurring at the Credit Issuer's direction unless and until the Remarketing Agent has received the consent of the Credit Issuer to such remarketing.

Section 2.8 **Delivery of Purchased Bonds.** Bonds (or portions thereof) purchased pursuant to Section 2.6 shall be delivered as follows:

(a) **Bonds Purchased from Remarketing Proceeds.** Bonds purchased with moneys described in Section 2.6(g)(i) shall be delivered to the purchasers thereof upon receipt of payment therefor. Prior to such delivery the Registrar shall provide for registration of transfer to the Holders, as provided in a written notice from the Remarketing Agent.

(b) **Bonds Purchased from Draws Under Credit Facility.** Bonds (or portions thereof) purchased with moneys drawn under the Credit Facility ("Pledged Bonds") shall be surrendered to the Trustee for registration of transfer to the Company and upon such registration of transfer, the Bonds issued in respect thereof shall be (i) delivered to and held by the Trustee for the account of the Company, and no such Bond shall be released, pledged or otherwise transferred or disposed of until the Trustee shall have received written notice from the Credit Issuer that the amounts so drawn under the Credit Facility, together with interest thereon, if any, due pursuant to any Credit Agreement, have been reimbursed to the Credit Issuer and that the amount so drawn under the Credit Facility with respect to such Bonds has been, or upon such release will be, correspondingly and fully reinstated, and thereupon shall be delivered to, or in accordance with the written direction of, the Company or (ii) if required pursuant to any Credit Agreement, issued to a pledge agent for the account of the Credit Issuer as pledgee of such Bonds and no such Bond shall be released, pledged or otherwise transferred or disposed of until the Trustee shall have received written notice from the Credit Issuer that the amounts so drawn under the Credit Facility, together with interest thereon, if any, due pursuant to any Credit Agreement, have been reimbursed to the Credit Issuer and that the amount so drawn under the Credit Facility with respect to such Bonds has been, or upon such release will be, correspondingly and fully reinstated. If the Book-Entry System is in effect and less than all of the Bonds become Pledged Bonds, the Trustee shall withdraw any Pledged Bonds from the Book-Entry System and shall authenticate and hold physical bonds as described in this subsection until such Bonds are released as provided in this subsection, at which time the Trustee shall reinstate the Book-Entry System with respect to such Bonds.

(c) **Bonds Purchased with Other Moneys.** Bonds (or portions thereof) purchased with any other moneys pursuant to **Section 2.6(g)** shall be delivered to the Trustee (i) for cancellation and shall be cancelled, or (ii) if the Company requests, for registration of transfer to the Company.

(d) **During Book-Entry System.** Notwithstanding anything herein to the contrary, so long as the Bonds are held under the Book-Entry System, Bonds will not be delivered as set forth in (a) through (c) above (except as set forth in the last sentence of **Section 2.8(b)** above); rather, transfers of beneficial ownership and pledges of the Bonds to the persons indicated above will be effected on the books of the Securities Depository and its Participants pursuant to its rules and procedures.

Section 2.9 Execution; Limited Obligation. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Chairman-Supervisor of the Oconee County Council and attested by the manual or facsimile signature of the Clerk to the Oconee County Council and shall have impressed or imprinted thereon the seal (or a facsimile thereof), if any, of the Issuer.

In case any officer whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such manual or facsimile signatures shall nevertheless be valid and sufficient for all purposes.

The Bonds shall be limited obligations of the Issuer. The Bonds and the interest thereon and redemption premium, if any, shall not be deemed to constitute or create an indebtedness,

liability or obligation of the Issuer, the State or any political subdivision or agency thereof within the meaning of any State constitutional provision or statutory limitation or a pledge of the faith and credit or the taxing power of the State or any such political subdivision or agency. The Bonds and the interest thereon are payable solely from and secured by the Security, including the moneys available to be drawn by the Trustee under any Credit Facility that may be in effect from time to time to support payments due on or with respect to the Bonds and including the Series 1993 Mortgage Bonds, all as described in and subject to limitations set forth in this Indenture, for the equal and ratable benefit of the Holders, from time to time, of the Bonds.

Section 2.10 **Certificate of Authentication**. No Bonds shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of authentication, substantially in the form as set forth in the form of Bond referred to in Section 2.11, executed by an authorized representative of the Trustee; and such certificate on any Bond issued by the Issuer shall be conclusive evidence and the only competent evidence that it has been duly authenticated and delivered hereunder.

Section 2.11 **Form of Bonds**.

(a) The Bonds, the Trustee's certificate of authentication and the form of assignment shall be in substantially the form set forth as Exhibit A hereto, with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or are required by law and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by the officers of the Issuer executing such Bonds, as evidenced by their execution of the Bonds.

(b) The Bonds shall be in either typewritten or printed form, as the Company shall direct, on behalf of the Issuer, with approval of the Trustee; provided that any expenses, including but not limited to expenses of printing, incurred in connection therewith shall be paid by the Company.

Section 2.12 **Delivery of Bonds**. Upon the execution and delivery hereof, the Issuer shall execute the Bonds and deliver them to the Trustee, and the Trustee shall authenticate the Bonds and deliver them to such purchaser or purchasers as shall be directed in writing by the Issuer as hereinafter provided in this Section.

Prior to the direction by the Issuer to the Trustee to deliver any of the Bonds there shall be filed with the Trustee:

(a) A certified copy of all resolutions adopted and proceedings had by the Issuer authorizing execution of the Indenture and the Loan Agreement and the execution and delivery of the Bonds;

(b) An original executed counterpart of this Indenture and the Loan Agreement;

(c) A copy of completed IRS Form 8038 to be filed by or on behalf of the Issuer pursuant to Section 149(c) of the Code;

(d) An opinion of Counsel to the effect that this Indenture and Loan Agreement have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding agreements of the Issuer, and an approving opinion of Bond Counsel that [the **amendment and restatement of the First Amended and Restated Indenture, the amendment and restatement of the Original Loan Agreement, and the delivery of the Bonds will not, in and of themselves, cause interest on the Bonds to be included in gross income of the Holders thereof for federal income tax purposes**];

(e) An opinion of Counsel for the Company to the effect that the Loan Agreement and the Remarketing Agreement have been duly authorized, executed and delivered by the Company and are legal, valid and binding agreements of the Company;

(f) Series 1993 Mortgage Bonds which will:

(i) be registered in the name of and payable to the Trustee;

(ii) be issued in an aggregate principal amount equal to the aggregate principal amount of the Bonds;

(iii) provide for payments of interest equal to the payments of interest on the Bonds;

(iv) require payments of principal equal to the payments of principal on the Bonds;

(v) require all payments on such Series 1993 Mortgage Bonds to be made on or prior to the due date for the corresponding payment to be made on the Bonds;

(vi) contain redemption provisions corresponding to such provisions of the Bonds, subject to subparagraph (vii) below;

(vii) contain mandatory redemption provisions as required in Section 5.4(e) of the Loan Agreement;

(g) An original executed counterpart of the Supplemental Mortgage Trust Indenture;
and

(h) A request and authorization to the Trustee on behalf of the Issuer and signed by a duly authorized officer of the Issuer directing the Trustee to authenticate and deliver the Bonds in such specified denominations as permitted herein to the purchaser or purchasers upon payment to the Trustee of a specified sum of money.

Upon receipt of the foregoing, the Trustee shall authenticate and deliver the Bonds as provided above.

Section 2.13 **Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond of the same maturity, interest rate, principal amount and tenor in lieu of and in

substitution for the Bond mutilated, lost, stolen or destroyed; provided, that there shall be first furnished to the Trustee evidence satisfactory to it and the Issuer of the ownership of such Bond and of such loss, theft or destruction (or, in the case of a mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee), together with indemnity satisfactory to the Trustee and the Issuer and compliance with such other reasonable regulations as the Issuer and the Trustee may prescribe. If any such Bond shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Bond the Issuer may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond with their reasonable fees and expenses in connection with this Section.

Section 2.14 **Exchangeability and Transfer of Bonds; Persons Treated as Owners.**
Books for the registration of the Bonds and for the registration of transfer of the Bonds as provided herein shall be kept by the Registrar.

Any Holder of a Bond, in person or by his/her duly authorized attorney, may transfer title to his/her Bond on the Register upon surrender thereof at the principal office of the Trustee, and by providing the Registrar with a written instrument of transfer (in substantially the form of assignment attached to the Bond) executed by the Holder or his/her duly authorized attorney, and thereupon, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same aggregate principal amount and tenor as the Bond surrendered (or for which transfer of registration has been effected) and of any Authorized Denomination or Authorized Denominations.

Bonds may be exchanged upon surrender thereof at the principal office of the Registrar with a written instrument of transfer satisfactory to the Registrar executed by the Holder or such Holder's attorney duly authorized in writing, for an equal aggregate principal amount of Bonds of the same tenor as the Bonds being exchanged and of any Authorized Denomination or Authorized Denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds that the Holder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

Such registrations of transfer or exchanges of Bonds shall be without charge to the Holders of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder of the Bond requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Registrar for any such registration of transfer or exchange and all reasonable expenses of the Issuer and the Trustee shall be paid by the Company.

The Registrar shall not register any transfer of any Bond, except pursuant to a tender of Bonds on an Optional Tender Date or a Mandatory Purchase Date, after notice calling such Bond (or portion thereof) for redemption has been given and prior to such redemption, except in the case of any Bond to be redeemed in part, the portion thereof not to be redeemed. In connection with any such transfer pursuant to a tender of Bonds on an Optional Tender Date or a Mandatory Purchase Date, the Registrar shall deliver to the transferee a copy of the applicable notice of redemption.

The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of either principal or interest shall be made only to or upon the order of the registered owner thereof or his/her duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

All Bonds delivered upon any registration of transfer or exchange of Bonds shall be legal, valid and binding limited obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Bonds surrendered upon such registration of transfer or exchange.

Notwithstanding the foregoing, for so long as the Bonds are held under the Book-Entry System, transfers of beneficial ownership will be effected pursuant to rules and procedures established by the Securities Depository.

Section 2.15 **Replacement Bonds.** Except when the Bonds are held in the Book-Entry System, the Issuer shall execute and the Trustee shall authenticate and deliver Replacement Bonds to replace Untendered Bonds. Any such Replacement Bond shall be executed and authenticated as provided in this Indenture. The Company shall bear all expenses in connection with the preparation and delivery of the Replacement Bonds.

Section 2.16 **Cancellation.** All Bonds that have been surrendered to the Registrar pursuant to Sections 2.13, 2.14 or 2.15 of this Indenture or for the purpose of purchase upon an Optional Tender Date or a Mandatory Purchase Date, or for payment upon maturity or redemption prior to maturity, shall be cancelled and destroyed by the Registrar and a certificate of destruction shall be delivered to the Issuer and the Company.

Section 2.17 **Ratably Secured.** All Bonds delivered hereunder are and are to be, to the extent provided in this Indenture, equally and ratably secured by this Indenture without preference, priority or distinction on account of the actual time or times of the authentication, delivery or maturity of the Bonds so that subject as aforesaid, all Bonds at any time Outstanding shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date. Notwithstanding the foregoing, any Bond that is registered in the name of the Company or held or required to be held by the Trustee or any pledge agent under a pledge agreement pursuant to Section 2.8 shall not be entitled to any benefit of the Credit Facility, if any.

Section 2.18 **Redemption of Bonds; Partial Redemption of Bonds.**

(a) **Optional Redemption.** During any Weekly Rate Period the Bonds are subject to redemption, at the direction of the Company, in whole on any Business Day or in part on any Interest Payment Date at a redemption price equal to the principal amount of the Bonds to be redeemed plus accrued interest thereon to, but not including, the redemption date.

During any Flexible Term Rate Period each of the Bonds is subject to redemption, at the direction of the Company, in whole or in part on any Interest Payment Date applicable to such Bond to be redeemed, at a redemption price equal to the principal amount of such Bond plus accrued interest thereon to, but not including, the redemption date.

(b) **Extraordinary Optional Redemption.** The Bonds are subject to redemption in whole, at the direction of the Company, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus accrued interest thereon to, but not including, the redemption date, on any date for which the requisite notice of redemption can be given, within one hundred eighty (180) days of the occurrence of any of the following events:

(i) the Project shall have been damaged or destroyed to such an extent that in the judgment of the Company (A) it cannot reasonably be restored within a period of three (3) consecutive months to the condition thereof immediately preceding such damage or destruction, (B) the Company is thereby prevented from carrying on its normal operations at the Project for a period of three (3) consecutive months, or (C) it would not be economically feasible for the Company to replace, repair, rebuild or restore the same;

(ii) title in and to, or the temporary use of, all or substantially all of the Project shall have been taken under the exercise of the power of eminent domain by any governmental authority or any Person acting under governmental authority (including such a taking as, in the judgment of the Company, results in the Company being prevented thereby from carrying on its normal operations at the Project for a period of three (3) consecutive months);

(iii) as a result of any changes in the Constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), the Loan Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein;

(iv) unreasonable burdens or excessive liabilities shall have been imposed on the Company with respect to the operations of the Project, including, without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Indenture that, in the judgment of the Company, render the continued operation of the Project uneconomical;

(v) changes which the Company cannot reasonably control or overcome in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Project for the purposes contemplated by the Loan Agreement shall have occurred or technological changes that the Company cannot reasonably overcome shall have occurred that, in the judgment of the Company, render the continued operation of the Project uneconomical;

(vi) legal curtailment of the Company's use and occupancy of all or substantially all of the Project for any reason other than that set forth in (ii) above, which

curtailment shall, in the judgment of the Company, prevent the Company from carrying on its normal operations at the Project for a period of three (3) consecutive months; or

(vii) the Loan Agreement is terminated prior to its expiration for any reason other than the occurrence of an Event of Default under the Loan Agreement.

(c) **Selection of Bonds to be Redeemed.** If less than all the Outstanding Bonds shall be called for redemption, the Registrar or, if the Bonds are held in the Book-Entry System, the Securities Depository shall first select and call for redemption Bonds held by the Trustee or a pledge agent for the account of the Company and pledged to the Credit Issuer as contemplated in **Section 2.8(b)**. If, following such selection, additional Bonds must be selected and called for redemption, the Registrar or, if the Bonds are held in the Book-Entry System, the Securities Depository shall select or arrange for the selection, in such manner as it shall deem fair and equitable and pursuant to its rules and procedures, the Bonds, in Authorized Denominations, provided that any Bond or portion thereof remaining Outstanding shall be in an Authorized Denomination. If there shall be called for redemption less than the principal amount of a Bond, the Issuer shall execute and the Trustee shall authenticate and deliver, upon surrender of such Bond, without charge to the Holder thereof in exchange for the unredeemed principal amount of such Bond at the option of such Holder, Bonds in any of the Authorized Denominations or, if the Bonds are held in the Book-Entry System, the Securities Depository shall, acting pursuant to its rules and procedures, reflect in said system the partial redemption and the Trustee shall (i) either exchange the Bond or Bonds held by the Securities Depository for a new Bond or Bonds in the appropriate principal amount, if such Bond is presented to the Trustee by the Securities Depository, or (ii) obtain from the Securities Depository a written confirmation of the reduction in the principal amount of the Bonds held by such Securities Depository.

Section 2.19 Notice of Redemption. The Company shall exercise its option to prepay Repayments (and thereby cause a redemption of Bonds) by giving written notice to the Remarketing Agent, the Trustee, the Paying Agent, the Mortgage Trustee (which notice shall contain a waiver of notice of such redemption of the Mortgage Bonds by the Trustee) and the Credit Issuer, if a Credit Facility is then in effect, not less than forty-five (45) days prior to the date selected for redemption; provided, however, that, if such redemption is pursuant to **Section 2.18(b)**, the Company shall also deliver a certificate of a Company Representative certifying that the conditions precedent to such redemption have been met. To exercise any optional redemption pursuant to **Section 2.18(a)** so long as a Credit Facility is in effect, then at least one day before the Trustee is to give notice of such redemption, the Trustee must have received written consent from the Credit Issuer to a draw on the Credit Facility in the amount of such redemption price if moneys in the Bond Fund constituting Eligible Funds under clause (i) of the definition of Eligible Funds will not be available to reimburse the Credit Issuer for such drawing on the date of such redemption. If the Credit Issuer does not consent to a drawing for such optional redemption of Bonds pursuant to **Section 2.18(a)** and/or a redemption premium the payment of which is not provided for in the Credit Facility will be payable in connection with such optional redemption of Bonds pursuant to **Section 2.18(a)**, the Trustee shall condition such call for redemption upon the deposit with the Trustee of sufficient Eligible Funds on or prior to the date selected for redemption to reimburse the Credit Issuer for such drawing and/or to pay such redemption premium, and if sufficient Eligible Funds are not so available on the date selected for redemption, such call for redemption shall be revoked. If such call for redemption is

revoked, then notice thereof shall be given by the Trustee to the Mortgage Trustee. Notice of redemption shall be mailed by the Trustee by first-class mail, postage prepaid, at least thirty (30) days before the redemption date to each Holder of the Bonds to be redeemed in whole or in part at his/her last address appearing on the Register, but no defect in or failure to give such notice of redemption shall affect the validity of the redemption. A notice of optional redemption shall describe whether and the conditions under which the call for redemption shall be revoked. All Bonds properly called for redemption will cease to bear interest on the date fixed for redemption, provided Eligible Funds for their redemption have been duly deposited with the Trustee and, thereafter, the Holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Trustee and a new Bond for any portion not redeemed.

Section 2.20 **Book-Entry System.** The Bonds shall be initially delivered pursuant to a Book-Entry System administered by the Securities Depository with no physical distribution of Bond certificates to be made except as provided in this Section. Any provision of this Indenture or the Bonds requiring physical delivery of the Bonds (other than the final sentence of **Section 2.8(b)**) shall, with respect to any Bonds held under the Book-Entry System, be deemed to be satisfied by a notation on the Register maintained by the Registrar that such Bonds are subject to the Book-Entry System.

So long as a Book-Entry System is being used, one Bond in the aggregate principal amount of the Bonds and registered in the name of the Securities Depository Nominee will be delivered and deposited with the Securities Depository and held in its custody. The Book-Entry System will be maintained by the Securities Depository and the Participants and Indirect Participants and will evidence beneficial ownership of the Bonds in Authorized Denominations, with registration of transfers of ownership effected on the records of the Securities Depository, the Participants and the Indirect Participants pursuant to rules and procedures established by the Securities Depository, the Participants and the Indirect Participants. The principal of, interest and any premium on each Bond shall be payable to the Securities Depository Nominee or any other person appearing on the Register as the registered Holder of such Bond or his/her registered assigns or legal representative at the principal office of the Registrar. So long as the Book-Entry System is in effect, the Securities Depository will be recognized as the Holder of the Bonds for all purposes (except as provided in **Section 2.6(b)**). Transfer of principal, interest and any premium payments or notices to Participants and Indirect Participants will be the responsibility of the Securities Depository, and transfer of principal, interest and any premium payments or notices to Beneficial Owners will be the responsibility of the Participants and the Indirect Participants. No other party will be responsible or liable for such transfers of payments or notices or for maintaining, supervising or reviewing such records maintained by the Securities Depository, the Participants or the Indirect Participants. While the Securities Depository Nominee or the Securities Depository, as the case may be, is the registered owner of the Bonds, notwithstanding any other provisions set forth herein, payments of principal of, redemption premium, if any, and interest on the Bonds shall be made to the Securities Depository Nominee or the Securities Depository, as the case may be, by wire transfer in immediately available funds to the account of said Holder as may be specified in the Register maintained by the Registrar or by such other method of payment as the Trustee may determine to be necessary or advisable with the concurrence of the Securities Depository.

If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds, or (ii) the Remarketing Agent, with the consent of the Trustee, elects to remove the Securities Depository, then the Remarketing Agent, with the consent of the Trustee, may appoint a new Securities Depository. The Remarketing Agent may elect to remove the Securities Depository at any time.

If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds or has been removed and the Remarketing Agent fails to appoint a new Securities Depository, or (ii) the Remarketing Agent, with the consent of the Trustee, determines that continuation of a Book-Entry System of evidence and transfer of ownership of the Bonds would adversely affect the interests of the Beneficial Owners, the Book-Entry System will be discontinued, in which case the Trustee will deliver replacement Bonds in the form of fully registered certificates in Authorized Denominations in exchange for the Outstanding Bonds as required by the Trustee and the Beneficial Owners.

ARTICLE III

SECURITY

Section 3.1 Security.

The Bonds and the interest and any premium thereon shall be a limited obligation of the Issuer as provided in **Section 2.9**, and shall be secured by and payable from and the Issuer hereby pledges and assigns to the Trustee as such security the following:

(i) all Repayments received by the Issuer under the Loan Agreement, which Repayments are to be paid directly by the Company to the Trustee and deposited in the Bond Fund or the Bond Purchase Fund in accordance with this Indenture;

(ii) all moneys in the Bond Fund and the Bond Purchase Fund, including the proceeds of the Bonds pending disbursement thereof;

(iii) all of the Issuer's rights, title and interest in the Loan Agreement, except Reserved Rights;

(iv) all other rights and interests granted to the Issuer in connection with the Loan Agreement (except Reserved Rights) as set forth herein or granted directly to the Trustee as provided herein; and

(v) all of the proceeds of the foregoing (except the amounts payable to or on behalf of the Issuer on account of its Reserved Rights), including without limitation investments thereof.

[Additionally, the Issuer shall cause the Company to issue the Series 1993 Mortgage Bonds and deliver the Series 1993 Mortgage Bonds to the Trustee as security for, and to further evidence the Company's obligations pursuant to the Loan Agreement.]

The foregoing are collectively the "Security" and, in consideration of the purchase of the Bonds and to secure payment of the principal of, premium, if any, and interest on the Bonds and any other cost or pecuniary liability of the Issuer relating to the Bonds or any proceeding, document or certification incidental to the delivery of the Bonds, and to secure performance and observance of all covenants, terms and conditions upon which the Bonds are to be delivered, including without limitation this Indenture, the Issuer, without recourse, representation or warranty, pursuant to law hereby conveys, assigns and pledges all of its right, title and interest in, and grants a security interest in, the Security to the Trustee, and its successors and assigns, in trust for the benefit of the Holders, and their successors and assigns. For reference purposes, any Credit Facility shall be deemed a part of the Security during any period during which it is in effect.

Section 3.2 **Payment of Bonds and Performance of Covenants.** The Issuer shall promptly pay, but only out of the Security, the principal of, premium, if any, and interest on the Bonds at the place, on the dates and in the manner provided in the Bonds. The Issuer shall promptly perform and observe all covenants, undertakings and obligations set forth herein, in the Loan Agreement or the Bonds on its part to be performed or observed. The Issuer shall fully cooperate with the Trustee in the enforcement by the Trustee of any such rights granted to the Issuer under the Loan Agreement.

Section 3.3 **Authority.** The Issuer represents and warrants that (i) it is duly authorized under the Constitution and laws of the State to issue the Bonds, and to execute, deliver and perform the terms of the Loan Agreement and this Indenture; (ii) all action on its part for the delivery of the Bonds and execution and delivery of the Loan Agreement and this Indenture has been duly taken; (iii) the Bonds, upon delivery and authentication, and the Loan Agreement and this Indenture upon delivery, assuming that they are the respective legal, valid, binding and enforceable obligations of the other parties thereto, shall be valid and enforceable obligations of the Issuer in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles; (iv) it has not heretofore conveyed, assigned, pledged, granted a security interest in or otherwise disposed of the Security; (v) without making any independent investigation, it has no knowledge of any right of set-off, defense or counterclaim to payment or performance of the terms or conditions of the Loan Agreement; and (vi) the execution, delivery and performance of the Loan Agreement and this Indenture and delivery of the Bonds are not in contravention of law or any agreement, instrument, indenture or other undertaking to which it is a party or by which it is bound and no other approval, consent or notice from any governmental agency is required on the part of the Issuer.

Section 3.4 **No Litigation.** The Issuer represents and warrants that there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, this Indenture or the Loan Agreement or (ii) the tax-exempt status of interest on the Bonds.

Section 3.5 **Further Assurances.** The Issuer covenants that it will cooperate to the extent necessary with the Company, the Trustee and any Credit Issuer in their defenses of the

Security against the claims and demands of all Persons and, upon payment or provision for payment of the fees and expenses to be incurred by the Issuer in connection therewith, will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee or any Credit Issuer may reasonably require for the better pledging of the Security. The Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement without the prior written consent of the Trustee, which consent shall be governed by **Article VIII**.

Section 3.6 No Other Encumbrances. The Issuer covenants that, except as otherwise provided herein and in the Loan Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security.

Section 3.7 No Personal Liability. No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the Bonds or the other Bond Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, member, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any member, officer, agent, attorney or employee as such, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into in the Bonds or between the Issuer and the Trustee, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such director, member, officer, agent, attorney and employee is, by the execution of this Indenture and as a condition of, and as part of the consideration for, the execution of this Indenture, expressly waived and released.

Section 3.8 Credit Facility.

(a) **Draws on Credit Facility.** Except with respect to Bonds registered in the name of the Company, or held or required to be held by the Trustee or any pledge agent under a pledge agreement pursuant to **Section 2.8** (which Bonds shall not be entitled to any benefit of any Credit Facility) at any time a Credit Facility is in effect (i) the Trustee shall draw moneys under such Credit Facility in accordance with the terms of the Credit Facility to the extent necessary to make timely payments of principal, premium, if any (if such Credit Facility provides for payment of such premium), and interest on the Bonds, in accordance with **Section 4.1**, (ii) the Trustee shall draw moneys, in accordance with **Section 2.7**, under such Credit Facility in accordance with the terms of the Credit Facility to the extent available in order to effect the purchase of Bonds (or portions thereof in Authorized Denominations) on a Mandatory Purchase Date or an Optional Tender Date, and (iii) upon declaration of acceleration of the Bonds pursuant to **Section 6.2**, the Trustee shall draw on the Credit Facility in accordance with the terms of the Credit Facility to the extent available in an amount equal to the full unpaid principal of and accrued interest on the Bonds. The Paying Agent shall promptly provide notice to the Trustee of any failure to pay

principal of, premium, if any, or interest on the Bonds. The Remarketing Agent shall promptly provide notice to the Trustee of any failure to pay the Purchase Price of the Bonds.

(b) **Reduction of Credit Facility.** Upon any redemption or defeasance of any Bonds or upon cancellation of any Bonds upon purchase thereof as contemplated by **Section 6.8**, the Trustee shall send notice to the Credit Issuer to reduce the amount available to be drawn on the Credit Facility (with written notice of the same to the Company) and the Trustee shall, upon request, confirm to the Credit Issuer and the Company the principal amount of Bonds redeemed, cancelled or defeased.

(c) **Extensions of Credit Facility.** In the event that the term of the Credit Facility is extended, unless it is automatically extended by its terms or is extended by amendment, the Trustee shall surrender the instrument evidencing the Credit Facility to the Credit Issuer in exchange for a new instrument conforming, in the opinion of Counsel, in all material respects to the instrument evidencing the Credit Facility being surrendered, except that the term thereof shall reflect the new term of the Credit Facility. The Trustee shall promptly surrender the instrument evidencing the Credit Facility to the Credit Issuer for cancellation upon discharge of the Indenture pursuant to **Section 5.1** or following a Credit Modification Date. If the Bonds are rated by a Rating Agency, notice of any extension of the Credit Facility (unless automatically extended by its terms) shall be furnished to such Rating Agency by the Trustee.

(d) **Expiration or Termination of Credit Facility.** If the Credit Facility provides that its term will be extended automatically unless the Credit Issuer notifies the Trustee that the term will not be extended, then if the Trustee receives notice from the Credit Issuer at least 30 days prior to expiration of the Credit Facility that the term of the Credit Facility will not be extended the Trustee shall mail a copy of such notice to the Company, the Remarketing Agent, the Paying Agent and any Rating Agency then rating the Bonds no later than the Business Day after the Trustee receives such notice. The Trustee shall give notice to the Remarketing Agent and the Paying Agent, in the name of the Credit Issuer, of the expiration or earlier termination of any Credit Facility then in effect, which notice shall specify the date of such expiration or earlier termination of the Credit Facility. If the Bonds are rated by a Rating Agency, notice of any such expiration or termination of the Credit Facility shall be furnished to such Rating Agency by the Trustee. If such nonextension notice is received by the Trustee from the Credit Issuer, the Trustee shall give notice of the resulting Mandatory Purchase Date in accordance with **Section 2.6(h)**. On any Credit Modification Date, the Trustee shall not surrender any evidence of the Credit Facility that is expiring or being terminated until the Trustee shall have made such drawings, if any, and taken such other actions, if any, thereunder as shall be required under this Indenture in order to provide sufficient money for payment of the Purchase Price of Bonds tendered or deemed tendered on such Credit Modification Date to the extent necessary pursuant to **Section 2.6(g)**, and shall have received the proceeds of such drawing from the Credit Issuer. Notwithstanding any provision hereof to the contrary, the Company may not cause any Credit Facility to be terminated prior to its stated expiration date (whether in connection with the delivery of an Alternate Credit Facility or otherwise) during a Flexible Term Rate Period or a Long-Term Rate Period.

(e) **Alternate Credit Facility.** At any time, upon at least twenty-five (25) days prior written notice to the Trustee, the Paying Agent, the Rating Agency, if any, rating the Bonds, and

the Remarketing Agent, the Company may, with the consent of the Remarketing Agent, which consent may not be unreasonably withheld, provide for delivery to the Trustee of an Alternate Credit Facility in accordance with the terms and conditions contained in this Section. Not less than fifteen (15) days prior to the proposed Alternate Credit Facility Effective Date (as defined below), which shall be a Credit Modification Date, the Trustee shall give each Holder notice of such Credit Modification Date by first-class mail, postage prepaid, which notice shall be in substantially the form of **Exhibit D** hereto, appropriately completed; provided, however, that if the proposed Alternate Credit Facility Effective Date (as defined below) is also a Conversion Date, the notice provisions of **Section 2.4(d)** shall apply.

If the terms and conditions contained in this Section are satisfied, the Trustee shall accept an Alternate Credit Facility, and such Alternate Credit Facility shall become effective, on the date such Alternate Credit Facility is delivered to the Trustee (the "Alternate Credit Facility Effective Date"). During any Weekly Rate Period, the Alternate Credit Facility Effective Date may be any Business Day. During any Flexible Term Rate Period, the Alternate Credit Facility Effective Date must be a day that would otherwise be an Interest Payment Date for all of the Bonds. During any Long-Term Rate Period, the Trustee shall not accept any Alternate Credit Facility. The Trustee may accept an Alternate Credit Facility on the first day of any Long-Term Rate Period.

An Alternate Credit Facility shall be an irrevocable direct-pay letter of credit issued by a commercial bank organized and doing business in the United States or a branch or agency of a foreign commercial bank located in the United States and subject to regulation by state or federal banking regulatory authorities and shall have an expiration date that shall be at least one (1) year following the effective date thereof or on the second Business Day following the final maturity date of the Bonds, if sooner. On or before the date of the delivery of any Alternate Credit Facility to the Trustee, as a condition to the acceptance of any Alternate Credit Facility by the Trustee, the Company shall furnish to the Issuer and the Trustee (i) written evidence that the issuer of such Alternate Credit Facility is a commercial bank organized and doing business in the United States or a branch or agency of a foreign commercial bank located and doing business in the United States and subject to regulation by state or federal banking regulatory authorities, (ii) an Opinion of Bond Counsel to the effect that the delivery of such Alternate Credit Facility will not cause interest on the Bonds to be included in the gross income of the Holders thereof for federal income tax purposes and that such delivery is permitted under this Indenture, (iii) an opinion of Counsel satisfactory to the Trustee, the Rating Agency, if any, rating the Bonds, the Issuer, and the Remarketing Agent to the effect that the Alternate Credit Facility has been duly executed, issued and delivered by, and is the legal, valid and binding obligation of, the Credit Issuer (or, in the case of a branch or agency of a foreign commercial bank, the branch or agency) issuing the same, enforceable in accordance with its terms, that the Alternate Credit Facility is not subject to the registration requirements of the Securities Act of 1933, as amended, and if required by the Rating Agency, if any, rating the Bonds, that payments of principal, premium, if any, or Purchase Price of or interest on the Bonds from the proceeds of a drawing on the Alternate Credit Facility will not constitute avoidable preferences under the Bankruptcy Code, and (iv) evidence of written consent of the Remarketing Agent. In the case of an Alternate Credit Facility issued by a branch or agency of a foreign commercial bank there shall also be delivered an opinion of Counsel licensed to practice law in the jurisdiction in which the head office of such bank is located, satisfactory to the Trustee, the Rating Agency, if any, rating the

Bonds, the Issuer and the Remarketing Agent, to the effect that the Alternate Credit Facility has been duly executed, issued and delivered by and is the legal, valid and binding obligation of such bank enforceable in accordance with its terms. The Trustee shall accept any such Alternate Credit Facility only in accordance with the terms, and upon the satisfaction of the conditions, contained in this Section and any other provisions applicable to acceptance of an Alternate Credit Facility under this Indenture.

ARTICLE IV

FUNDS

Section 4.1 **Establishment and Use of Bond Fund and Current Account.** There is hereby created and established with the Trustee the Bond Fund and, while a Credit Facility is in effect, within such Fund a special account designated the "Current Account." The Trustee shall establish with the Paying Agent a separate subaccount of the Bond Fund that, while a Credit Facility is in effect, shall be used for depositing moneys drawn by the Trustee under the Credit Facility for the payment of principal and interest on the Bonds. Neither the Trustee nor the Paying Agent shall commingle proceeds of a drawing under the Credit Facility with any other funds. There shall be deposited in the Bond Fund (a) all Repayments specified in the Loan Agreement to be deposited in the Bond Fund, including all proceeds resulting from the enforcement of the Security or its realization as collateral, (b) all other moneys received by the Trustee under the Loan Agreement for deposit by it in the Bond Fund and (c) all moneys drawn under any Credit Facility to pay principal, premium, if any (if the Credit Facility provides for the payment of such premiums), or interest on the Bonds.

While a Credit Facility is in effect, each deposit into the Bond Fund not constituting Eligible Funds shall be placed in the Current Account within the Bond Fund and shall not be commingled with other moneys in the Bond Fund. The Trustee shall establish separate subaccounts within the Current Account for each deposit (including any investment income thereon) made into the Bond Fund so that the Trustee may at all times ascertain the date of deposit of the moneys in each subaccount.

Moneys in the Bond Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the payment of the interest on the Bonds and for the payment of principal of and premium, if any, on the Bonds upon maturity, whether stated or accelerated, or upon mandatory or optional redemption.

The Issuer hereby authorizes and directs the Trustee, and the Trustee hereby agrees, to withdraw and make available at the principal office of the Paying Agent sufficient funds from the Bond Fund to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable, but only in the following order of priority:

FIRST: Amounts drawn by the Trustee under a Credit Facility then in effect (provided, however, that such amounts shall not be used to pay any premium on the Bonds unless such Credit Facility provides for the payment of such premium);

SECOND: If a Credit Facility is then in effect, from the sources provided in clause (i) of the definition of Eligible Funds; and

THIRD: Any other amounts (whether or not Eligible Funds) in the Bond Fund.

If moneys in the Bond Fund available pursuant to items FIRST and SECOND above are insufficient to make any payment of principal of, premium, if any or interest on the Bonds, whether due by maturity, acceleration, redemption or otherwise, or if the Credit Issuer has dishonored its obligations under the Credit Facility, the Trustee, on the date such payment is to be made, shall apply any moneys described in item THIRD above.

To the extent that a Credit Facility is drawn on to make a payment to any Holder, the Trustee shall use any moneys in the Bond Fund not then needed to make payments to Holders, regardless of whether such moneys constitute Eligible Funds, to reimburse the Credit Issuer.

After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to **Section 5.2**, and the payment of all other amounts owing hereunder, any amounts remaining in the Bond Fund shall be paid first to the Credit Issuer, if any, if there is then any amount owing by the Company to the Credit Issuer, and second to the Company.

Section 4.2 Original Bond Proceeds. The parties acknowledge that the proceeds of the initial sale of the Bonds were deposited in the Escrow Fund, as defined in the Original Indenture and in the Bond Fund established under the Original Indenture and that all such proceeds have been disbursed as contemplated by the Original Indenture.

Section 4.3 Establishment and Use of Bond Purchase Fund. There is hereby established and created with the Trustee the Bond Purchase Fund and, while a Credit Facility is in effect, within such fund a special account designated the "Current Purchase Account." There shall be deposited in the Bond Purchase Fund all moneys required to be paid by the Company to provide for the payment of the Purchase Price of Bonds pursuant to this Indenture, together with any other moneys received by the Trustee pursuant to this Indenture, the Loan Agreement or otherwise (including draws under the Credit Facility pursuant to **Section 3.8(a)(ii)**) that are required or directed to be paid into the Bond Purchase Fund. The Trustee shall establish with the Remarketing Agent a separate subaccount of the Bond Purchase Fund into which the proceeds of the remarketing of Bonds to purchasers (other than the Issuer, the Company, any other Person obligated (as guarantor or otherwise) to make payments on the Bonds or under the Loan Agreement or under the Credit Agreement or any "affiliate" of the Company as defined in Bankruptcy Code § 101(2)) will be deposited and a separate subaccount of the Bond Purchase Fund into which all amounts drawn under the Credit Facility pursuant to **Section 3.8(a)(ii)** will be deposited. Neither the Trustee nor the Remarketing Agent shall commingle amounts in either of such subaccounts with any other funds.

While a Credit Facility is in effect, each deposit into the Bond Purchase Fund not constituting Eligible Funds shall be placed in the Current Purchase Account within the Bond Purchase Fund and shall not be commingled with other moneys in the Bond Purchase Fund.

Moneys in the Bond Purchase Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the payment of the Purchase Price of the Bonds required to be purchased as set forth in **Section 2.6(g)**.

The Trustee is hereby authorized and directed, and the Trustee hereby agrees, to withdraw and to transfer to the Remarketing Agent funds from the Bond Purchase Fund as contemplated by **Section 2.6(g)** by 1:30 p.m., Local Time, on each date that Bonds are to be purchased pursuant to **Section 2.6** from the Bond Purchase Fund to pay the Purchase Price of Bonds tendered (or deemed tendered) for purchase pursuant to **Section 2.6**.

After payment in full of the Bonds, or provision having been made for payment of the Bonds pursuant to **Section 5.2**, and payment of all other amounts required to be paid under this Indenture, any amounts remaining in the Bond Purchase Fund shall be paid first to the Credit Issuer, if any, if there is any amount then owing by the Company to the Credit Issuer and, second to the Company.

Section 4.4 Records. The Trustee shall cause to be kept and maintained records pertaining to the Bond Fund and the Bond Purchase Fund and all disbursements therefrom and shall periodically deliver to the Company statements of activity and statements indicating the investments made with moneys in all such funds during the applicable period. Upon written request, the Trustee shall provide the Company, within a reasonable period of time, with a report stating the principal amount of Bonds outstanding and a list of the registered owners of the Bonds as of the date specified by the Company in its request.

The Trustee shall provide the Company with a written report, on a monthly basis through the calendar month in which the last obligation of the Bonds is retired, identifying the Permitted Investments in which the moneys held as part of the Bond Fund and the Bond Purchase Fund were invested during the preceding period and the dates of such investments, together with such other information as the Trustee ordinarily provides to Persons such as the Company in its regular monthly investment reports.

Section 4.5 Investment of Bond Fund and Bond Purchase Fund Moneys. Moneys held as part of the Bond Fund and the Bond Purchase Fund shall be invested and reinvested in Permitted Investments as instructed by a Company Representative; provided, however, that (i) any moneys from a drawing under a Credit Facility and any moneys held by the Trustee to pay the principal or Purchase Price of, premium, if any, or interest that has become payable with respect to the Bonds shall not be invested and (ii) the Paying Agent and the Remarketing Agent shall not invest any moneys they receive under this Indenture. All Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the fund and account which was used to purchase the same. All interest accruing thereon and any profit realized from Permitted Investments shall be credited to the respective fund or account and any loss resulting from Permitted Investments shall be similarly charged. The Trustee is authorized to cause to be sold and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any fund or account hereunder is or will be insufficient to make a requested or required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale, so long as the Trustee performs its obligations hereunder in accordance with the provisions of **Section 7.1(e)**.

Absent specific instructions from the Company to invest cash balances in Permitted Investments hereunder, the Trustee shall invest in Permitted Investments constituting obligations of the U.S. Treasury or its agencies having a term to maturity of not more than 30 days or any money market fund or similar investment fund that purchases and holds exclusively obligations of the United States of America or its agencies that have a term to maturity of not more than 30 days. Notwithstanding anything to the contrary herein provided, moneys constituting Eligible Funds shall only be invested in Government Obligations maturing on or before the date such Eligible Funds will be required for disbursement.

Section 4.6 **Non-presentment of Bonds.** In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, if funds sufficient to pay the principal of, premium (if any) and interest on such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, payment of such Bond or portion thereof as the case may be, shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee, subject to any applicable escheat laws, to hold such fund or funds uninvested in the Bond Fund, without liability to the Holder of such Bond for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his/her part on, or with respect to, said Bond, or portion thereof, or premium, if any.

ARTICLE V

DISCHARGE OF LIEN

Section 5.1 **Discharge of Lien and Security Interest.** Upon payment in full of all of the Bonds, these presents and the Security Interests shall cease, determine and be discharged, and thereupon the Trustee, upon receipt by the Trustee of an opinion of Counsel stating that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with shall (a) cancel and discharge this Indenture and the Security Interests; (b) execute and deliver to the Issuer and the Company, at the Company's expense, such instruments in writing as shall be required to cancel and discharge this Indenture and the Security Interests and reconvey to the Issuer and the Company the Security, and assign and deliver to the Issuer and the Company so much of the Security as may be in its possession or subject to its control, except for moneys and Government Obligations held in the Bond Fund for the purpose of paying Bonds and except for moneys held in the Bond Purchase Fund for the purpose of paying the Purchase Price of the Bonds which have been purchased pursuant to **Section 2.6(g)**; and (c) return any Credit Facility to the Credit Issuer; provided, however, that the cancellation and discharge of this Indenture pursuant to **Section 5.2** shall not terminate the powers and rights granted to the Trustee, the Registrar, the Remarketing Agent and the Paying Agent with respect to the payment, registration of transfer and exchange of the Bonds; provided, further, that the rights of the Issuer, the Trustee, the Registrar, the Remarketing Agent and the Paying Agent to indemnify, non-liability and payment of all reasonable fees and expenses shall survive the cancellation and discharge of this Indenture pursuant to this Section or **Section 5.2**. If the Bonds are rated by a Rating Agency, notice of payment in full of the Bonds shall be furnished to such Rating Agency.

Section 5.2 **Provision for Payment of Bonds.** Bonds shall be deemed to have been paid within the meaning of Section 5.1 if:

- (a) there shall have been irrevocably deposited in the Bond Fund:
 - (i) if the Bonds do not bear interest at the Fixed Rate, sufficient Eligible Funds, or
 - (ii) if the Bonds bear interest at the Fixed Rate, either (1) sufficient Eligible Funds, or (2) Government Obligations purchased with Eligible Funds of such maturities and interest payment dates and bearing such interest as will, in the opinion of a nationally recognized firm of certified public accountants, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon (said earnings also to be held in trust), be sufficient together with any moneys referred to in **subsection (a)(ii)(1)** above,

for the payment at their respective maturities or redemption or tender dates prior to maturity of the principal thereof and the redemption premium, if any, and interest to accrue thereon at such maturity or redemption or tender dates, as the case may be (assuming that the Bonds bear interest at the Ceiling Rate during any period during which the interest rate on the Bonds may change);

(b) there shall have been paid or provision duly made for the payment of all fees and expenses of the Issuer, the Trustee, the Registrar, the Paying Agent and the Remarketing Agent due or to become due; and

(c) if any Bonds are to be redeemed on any date prior to their maturity, the Trustee shall have received in form satisfactory to it irrevocable instructions from a Company Representative to redeem such Bonds on such date and either evidence satisfactory to the Trustee that all redemption notices required by this Indenture have been given or irrevocable power authorizing the Trustee to give such redemption notices has been granted to the Trustee.

Limitations set forth elsewhere herein regarding the investment of moneys held by the Trustee in the Bond Fund shall not be construed to prevent the depositing and holding in the Bond Fund of the obligations described in **paragraph (a)(ii)** of this Section for the purpose of defeasing the lien of this Indenture as to Bonds which have not yet become due and payable. Notwithstanding any other provision of this Indenture to the contrary, all Eligible Funds deposited with the Trustee as provided in this Section may be invested and reinvested, at the direction of the Company, in Government Obligations (or, in the case of a deposit under **paragraph (a)(i)** of this section, in a money market fund that invests solely in Government Obligations and is rated in the highest category by one of Fitch, Moody's or S&P and, if more than one of such rating agencies then rates such money market fund, is rated no less than the highest rating category by each of such rating agencies then rating such money market fund) maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations (or money market fund) in the hands of the Trustee pursuant to this Section which is not required for the payment of the Bonds and interest and redemption premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in

the Bond Fund. Notwithstanding the foregoing provisions of this paragraph, if the Bonds are rated by S&P at the time a deposit is made under **paragraph (a)(i)** of this section, such Eligible Funds may be invested solely in Government Obligations maturing or to be available to be withdrawn at par no later than the earlier of the maturity date, a mandatory tender date, redemption date or the next possible Optional Tender Date.

Notwithstanding any other provision of this Indenture to the contrary, if a Bond has been deemed to be paid under this section and the Holder or Beneficial Owner of such Bond delivers a tender notice with respect to such Bond that would result in the occurrence of an Optional Tender Date for such Bond prior to its maturity or redemption date: (1) the Remarketing Agent shall not remarket such Bond; (2) the Remarketing Agent shall notify the Trustee by the third Business Day prior to such Tender Date for such Bond that it has received a tender notice with respect to such Bond; (3) the Trustee shall transfer to the Remarketing Agent, not later than 9:30 a.m., Local Time, on such Optional Tender Date for such Bond, Eligible Funds from the deposit made into the Bond Fund under **paragraph (a)(i)** of this section sufficient to pay the Purchase Price of such Bond; (4) the Remarketing Agent shall purchase such Bond on such Optional Tender Date applicable to such Bond; and (5) such Bond shall be delivered to the Trustee for cancellation and shall be cancelled.

Notwithstanding any other provision of this Indenture to the contrary, if all Bonds have been deemed to be paid because a deposit has been made under **paragraph (a)(i)** of this section, and the Bonds are rated by S&P at the time such deposit is made, then (i) if such deposit is made with proceeds of one or more drawings under the Credit Facility, then any excess funds remaining in the Bond Fund after payment of all of the Bonds at their respective maturities or redemption or tender dates shall be returned to the Credit Issuer, or (ii) if such deposit is made with Eligible Funds as described in clause (i) of that definition, then there shall be delivered a written opinion of Counsel experienced in bankruptcy law matters, in form satisfactory to S&P, that the portion of such deposit needed to pay principal of, interest on and Purchase Price of the Bonds when due will not be subject to the automatic stay under Section 362 of the Bankruptcy Code in the event of an Act of Bankruptcy.

Notwithstanding any other provision of this Indenture to the contrary, if all Bonds have been deemed to be paid because a deposit has been made under **paragraph (a)(i)** of this section, the Interest Rate Determination Method may not thereafter be changed by the Company.

Notwithstanding any other provision of this Indenture to the contrary, if all Bonds have been deemed to be paid because a deposit has been made under **paragraphs (a)(i) or (a)(ii)** of this section with proceeds of one or more drawings under the Credit Facility, then the surrender by the Trustee of the Credit Facility to the Credit Issuer for cancellation prior to the maturity or redemption date of the Bonds shall not constitute a Credit Modification Date.

If the Bonds bear interest at the Fixed Rate and are to be rated by a Rating Agency at or prior to the time provision for payment shall be made there shall be delivered to the Rating Agency the opinion of nationally recognized certified public accountants referred to in **paragraph (a)(ii)** above and a written opinion of counsel experienced in bankruptcy law matters and in form satisfactory to the Rating Agency that the deposit and use of such moneys will not constitute an avoidable preferential payment pursuant to Section 547 of the Bankruptcy Code, or

an avoidable post-petition transfer pursuant to Section 549 of the Bankruptcy Code, recoverable from Holders of the Bonds pursuant to Section 550 of the Bankruptcy Code in the event of an Act of Bankruptcy.

Section 5.3 **Discharge of this Indenture.** Notwithstanding the fact that the lien of this Indenture upon the Security may have been discharged and cancelled in accordance with Section 5.1, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with the fact that the lien upon the Security may have been discharged and cancelled, shall nevertheless continue and subsist after payment in full of the Bonds or the deemed payment in full of the Bonds in accordance with Section 5.2 until the Trustee shall have returned to the Company or the Credit Issuer, as the case may be, all funds held by the Trustee which the Company or the Credit Issuer, as the case may be, is entitled to receive pursuant to this Indenture after all Bonds have been paid at maturity or redeemed.

ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES

Section 6.1 **Events of Default.** Any one of the following shall constitute an Event of Default hereunder:

- (a) Failure to pay interest on any Bond when and as the same shall have become due;
- (b) Failure to pay the principal of or any premium on any Bond when and as the same shall become due, whether at the stated maturity or redemption date thereof or by acceleration;
- (c) Failure to pay the Purchase Price of any Bond required to be purchased hereunder when and as the same shall become due;
- (d) Failure to observe or perform any other of the covenants, agreements or conditions on the part of the Issuer included in this Indenture or in the Bonds and the continuance thereof for a period of thirty (30) days after written notice to the Issuer, the Credit Issuer, if a Credit Facility is then in effect, and the Company has been given by the Trustee, provided that the Credit Issuer shall have consented to the same constituting an Event of Default;
- (e) The occurrence of an Event of Default under the Loan Agreement;
- (f) If a Credit Facility is in effect, the Trustee shall have received, on or before the close of business on the ninth day following the payment of a drawing under a Credit Facility to pay interest on the Bonds, a written notice from the Credit Issuer that the amount of such drawing will not be reinstated as provided in the Credit Facility; or
- (g) If a Credit Facility is in effect, the Trustee shall have received a written notice from the Credit Issuer that an event of default under the Credit Agreement has occurred and is continuing and a written request from the Credit Issuer that the Bonds be accelerated.

Section 6.2 **Acceleration.** Subject to the requirement that the consent of the Credit Issuer, if any, to any acceleration must be obtained in the case of an Event of Default described in **Section 6.1(d)** or **(e)**, upon the occurrence of any Event of Default hereunder the Trustee may and upon (i) the written request of the Holders of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding or (ii) the occurrence of an Event of Default under **Section 6.1(a), (b), (c), (f)** or **(g)**, the Trustee immediately shall, by notice in writing sent to the Issuer, the Company, the Paying Agent, the Remarketing Agent, and the Credit Issuer, if any, declare the principal of all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement to declare all payments thereunder to be immediately due and payable and, if a Credit Facility is in effect, the Trustee shall immediately draw upon the Credit Facility as provided in **Section 3.8(a)(iii)**. If the Credit Issuer honors the drawing under the Credit Facility upon a declaration of acceleration of the Bonds, interest on the Bonds shall accrue only to the date of such declaration and the Trustee shall pay the principal of and interest on the Bonds to the Holders immediately following the receipt of funds from such drawing. If no Credit Facility is in effect or the Credit Issuer fails to honor the drawing under the Credit Facility upon acceleration of the Bonds, interest on the Bonds shall cease to accrue as provided in **Section 6.7**.

Immediately following any such declaration of acceleration, the Trustee shall cause to be mailed notice of such declaration by first-class mail, postage prepaid, to each Holder of a Bond at his/her last address appearing on the Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

Section 6.3 **Other Remedies; Rights of Holders.** Upon the happening and continuance of an Event of Default hereunder the Trustee may, only with the prior written consent of the Credit Issuer, if any, in the case of an Event of Default described in **Section 6.1(d)** or **(e)**, with or without taking action under **Section 6.2**, pursue any available remedy to enforce the performance of or compliance with any other obligation or requirement of this Indenture or the Loan Agreement.

Subject to the requirement that the consent of the Credit Issuer, if any, to the exercise by the Trustee of any such available remedy must be obtained in the case of an Event of Default described in **Section 6.1(d)** or **(e)**, upon the happening and continuance of an Event of Default, and if requested to do so by the Holders of at least twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding and if the Trustee is indemnified as provided in **Section 7.1**, the Trustee shall exercise such of the rights and powers conferred by this Section and by **Section 6.2** and by the Mortgage Bond as the Trustee, being advised by Counsel, shall deem most effective to enforce and protect the interests of the Holders and, except to the extent inconsistent with the interests of the Holders, the Credit Issuer, if any.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Holders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Holders hereunder or now or hereafter existing.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

The Trustee, as the assignee of substantially all right, title and interest of the Issuer in and to the Loan Agreement, shall be empowered to enforce each and every right granted to the Issuer under the Loan Agreement other than Reserved Rights.

Section 6.4 **Right of Holders and Credit Issuer to Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, and subject, if a Credit Facility is then in effect, to the rights of the Credit Issuer as provided in Sections 6.2 and 6.3, the Holders of a majority in aggregate principal amount of Bonds then Outstanding shall have the right at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, and provided that the Trustee shall be indemnified to its satisfaction and the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. No Holder shall individually have the right to present a draft to, or otherwise make a demand on, the Credit Issuer to collect amounts available under the Credit Facility.

No Holder shall have the right to institute any proceeding for the enforcement of this Indenture unless such Holder has given the Trustee and the Company written notice of an Event of Default, the Holders of a majority in aggregate principal amount of the Bonds then Outstanding shall have requested the Trustee in writing to institute such proceeding, the Trustee shall have been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, there shall have been offered to the Trustee indemnity satisfactory to it against the cost, expense and liability to be incurred in connection with such request and the Trustee shall have thereafter failed or refused to exercise such powers or to institute such proceeding within sixty (60) days after receipt of notice with no inconsistent direction given during such sixty (60) days by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding. Nothing in this Indenture shall affect or impair any right of enforcement conferred on any Holder by the Act to enforce (i) the payment of the principal of and premium, if any, and interest on Bonds at and after the maturity thereof, or (ii) the obligation of the Issuer to pay the principal of, premium, if any, and interest on Bonds to such Holder at the time, place, from the sources and in the manner as provided in this Indenture.

Section 6.5 **Discontinuance of Default Proceedings.** Prior to the drawing on a Credit Facility, if any, pursuant to Section 3.8(a)(iii), in case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Credit Issuer, if any, and the

Trustee shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the Issuer, the Trustee and the Credit Issuer shall continue as if no such proceedings had been taken subject to the limits of any adverse determination.

Section 6.6 **Waiver.** Except where an Event of Default results from the failure of the Company to make payments on any outstanding Mortgage Bonds under the Loan Agreement and except in the event of an acceleration of all Mortgage Bonds under the Mortgage, an Event of Default and any resulting acceleration of the Outstanding Bonds are automatically waived and rescinded if, prior to (i) the entry of a court judgment for enforcement of this Indenture, (ii) the appointment of a receiver, or (iii) notice by the Mortgage Trustee to the Trustee of the redemption of all the outstanding Mortgage Bonds, all sums payable under the Loan Agreement and this Indenture (except principal of and interest on Bonds not due except for such acceleration) shall have been paid or provided for by deposit, all defaults have been made good, and all fees, charges and expenses of the Trustee, its counsel and of any owners of the Bonds which requested such acceleration, have been paid. However, if at or prior to the time the automatic waiver and rescission would otherwise take effect, all Mortgage Bonds have been declared to be due and payable by reason of an event of default under the Mortgage, the waiver and automatic rescission will not occur or take effect unless such declaration is rescinded under the Mortgage.

At any time prior to the Mortgage Trustee giving notice to the Trustee of the redemption of all the outstanding Mortgage Bonds, the Trustee may in its discretion waive any Event of Default under this Indenture and its consequences and rescind any declaration of acceleration of maturity of principal, and will do so upon the written request of the owners of (i) at least 50% in aggregate principal amount of all the Bonds then outstanding in respect in which an Event of Default in the payment of principal of and premium, if any, or interest exists, or (ii) at least 25% in aggregate principal amount of all Bonds then Outstanding in the case of any other Event of Default; provided, however, that there may not be waived (1) any Event of Default in payment of the principal or purchase price of or premium, if any, on any Outstanding Bonds when payable, (2) any Event of Default in the purchase of Bonds tendered for purchase or (3) any default in the payment when due of the interest on any such Bonds or any declaration in connection therewith rescinded, unless at the same time of such waiver or rescission, payments of the amounts described in the preceding paragraph to effect a waiver and automatic rescission have been made or provided for. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default is discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Holders of the Bonds will be restored to their former positions and rights under this Indenture, but no such waiver or rescission will extend to any subsequent or other default, or impair any right consequent thereon.

If a Credit Facility is in effect, then the Trustee, with the consent of the Credit Issuer, may waive any default or Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity of principal, and shall do so upon the written request of the Credit Issuer; provided, however, that there shall be no such waiver or rescission unless the Purchase Price and all principal, premium, if any, and interest on the Bonds in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Bonds and all fees and expenses of the Trustee and the Issuer shall have been paid or provided for. The Trustee may not waive any default or Event of Default until the Trustee has

received notice in writing from the Credit Issuer that the amount available to be drawn under the Credit Facility then in effect in respect of the principal and Purchase Price of and interest on the Bonds has been reinstated in full.

Section 6.7 Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be deposited in the Bond Fund and, after payment (out of moneys derived from a source other than the Credit Facility, moneys held for the purchase of Untendered Bonds, moneys held for the redemption of Bonds and proceeds from the remarketing of Bonds) of (i) the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, including reasonable attorneys' fees, and all other outstanding fees and expenses of the Trustee, and thereafter any fees, expenses, liabilities and advances due to, or incurred or made by, the Paying Agent, the Remarketing Agent and the Registrar and (ii) any sums due to the Issuer under the Loan Agreement (other than Repayments), such moneys shall be applied in the order set forth below:

(a) Unless the principal of all Bonds shall have become or been declared due and payable, all such moneys shall be applied:

First: To the payment of all installments of interest then due on the Bonds in order of priority first to installments past due for the greatest period and, if the amount available shall not be sufficient to pay in full any particular installment, then to the ratable payment of the amounts due on such installment; and

Second: To the payment of the unpaid principal of and premium, if any, of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), with interest on such Bonds from the respective dates upon which they became due (at the rate borne by the Bonds, to the extent permitted by law) and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such premium, then to the ratable payment of the amounts due on such date.

(b) If the principal of all the Bonds shall have become or been declared due and payable, all such moneys shall be applied to the payment of the principal, premium, if any, and interest then due and unpaid upon the Bonds, without preference or priority as between principal, premium, interest, installments of interest or Bonds, ratably according to the amounts due respectively for principal, premium and interest to the persons entitled thereto.

(c) If the principal on all Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded under this Article then, subject to **subsection (b)** of this Section in the event that the principal of all the Bonds shall again become or be declared due and payable, the moneys shall be applied in accordance with **subsection (a)** of this Section.

Notwithstanding the foregoing, unless the Credit Facility permits drawings to pay premium with respect to Bonds, the Trustee shall be obligated to apply moneys received under a Credit Facility then in effect only to principal and Purchase Price of, and interest on the Bonds (except Bonds that are not entitled to any benefit of the Credit Facility as provided in **Section**

3.8). Whenever moneys (other than moneys received under a Credit Facility) are to be applied pursuant to this Section, the Trustee shall fix the date which shall be not more than seven calendar days after such acceleration upon which such application is to be made and upon such date interest on the principal amount of Bonds to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date. As provided in **Section 6.2**, moneys received under a Credit Facility upon declaration of acceleration are to be applied as soon as is practicable following receipt to pay the principal of and interest on the Bonds to the Holders.

Section 6.8 Rights of a Credit Issuer. All rights of any Credit Issuer under this Indenture to consent to certain extensions, remedies, waivers, actions and amendments hereunder shall be suspended (i) for so long as the Credit Issuer wrongfully dishonors any draft (or other appropriate form of demand) presented in strict conformity with the requirements of the Credit Facility and has not honored a subsequent draft (or other appropriate form of demand), if any, thereunder or (ii) if no Credit Facility is in effect or any Credit Facility terminates in accordance with its terms.

ARTICLE VII

THE TRUSTEE; THE PAYING AGENT; THE REGISTRAR; THE REMARKETING AGENT

Section 7.1 Appointment of Trustee. The Trustee is hereby appointed and does hereby agree to act in such capacity, and to perform the duties of the Trustee under this Indenture, but only upon and subject to the following express terms and conditions (and no implied covenants or other obligations shall be read into this Indenture against the Trustee):

(a) The Trustee may execute any of its trusts or powers hereunder and perform any of its duties by or through attorneys, agents, receivers or employees and shall not be held liable for their actions if such agents are selected with reasonable care. The Trustee shall be entitled to advice of Counsel concerning all matters hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees. The Trustee may act upon the opinion or advice of Counsel, accountants, engineers or surveyors selected by it in the exercise of reasonable care or, if the same are selected by the Issuer, approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein or in the Bonds, or for the recording, re-recording, filing or re-filing of this Indenture, of any financing statements or continuation statements, or for insuring the Security or the Project or collecting any insurance moneys, or for the validity of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds delivered hereunder or intended to be secured hereby, or for the value of or title to the Project or otherwise as to the maintenance of the Security. The Trustee shall have no obligation to perform any of the duties of the Issuer under the Loan Agreement. The Trustee shall not be liable to the Company, any Holder, any Beneficial Owner or any other Person for any loss suffered in connection with any

investment of funds made by it in accordance with **Section 4.5**. The Trustee shall not be liable to the Company for any loss suffered as a result of or in connection with any investment of funds made by the Trustee in good faith as instructed by or approved by a Company Representative. The Trustee shall have no duty or responsibility to examine or review and shall have no liability for the contents of any documents submitted to or delivered to any Holder in the nature of a preliminary or final placement memorandum, official statement, offering circular or similar disclosure document.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder after such Bonds shall have been delivered in accordance with instructions of the Issuer or for the use by the Company of the proceeds of the Bonds advanced to the Company as provided in the Loan Agreement or for the use or application of any moneys received by the Paying Agent. The Trustee may become the owner of Bonds secured hereby with the same rights as any other Holder.

(d) The Trustee shall be protected in acting upon opinions of Counsel and upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Holder of any Bond shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor or in place thereof. The Trustee may conclusively rely upon a certificate furnished by a Credit Issuer as to amounts owing under the Credit Agreement.

(e) The permissive right of the Trustee to do things enumerated in this Indenture or the Loan Agreement shall not be construed as duties. The Trustee shall only be responsible for the performance of the duties expressly set forth herein and shall not be answerable for other than its gross negligence or bad faith in the performance of those express duties.

(f) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts, relating to the Project.

(g) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trust and powers or otherwise in respect of this Indenture.

(h) Before taking any action requested hereunder by the Holders (except for acceleration of the Bonds as required by **Section 6.2**, for drawing on the Credit Facility as required by **Section 3.8(a)** and with respect to the payment of principal, interest and Purchase Price to Holders), the Trustee may require satisfactory security or indemnity bond for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its own gross negligence or bad faith by reason of any action so taken.

(i) All moneys received by the Trustee or the Paying Agent, until used or applied or invested as herein provided, shall be held as special trust funds for the purposes specified in this

Indenture and for the benefit and security of the Holders of the Bonds and the Credit Issuer as herein provided. Such moneys need not be segregated from other funds except to the extent required by law or herein provided, and neither the Trustee nor the Paying Agent shall otherwise be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(j) The Trustee shall not be bound to ascertain or inquire as to the performance of the obligations of the Company or the Issuer under the Loan Agreement or this Indenture, and shall not be deemed to have, or be required to take, notice of default under this Indenture (other than under **Section 6.1(a), (b) or (c)** if notice thereof has been received from the Paying Agent or the Remarketing Agent or under **Section 6.1(g)**), except (i) if no Credit Facility is in effect, in the event the Company fails to pay any Repayment when due, (ii) in the event of an insufficient amount in the Bond Fund (or any account therein) to make a principal or interest payment on the Bonds, (iii) written notification of such default by two or more Holders with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, or (iv) written notification from the Credit Issuer pursuant to **Section 6.1**, and in the absence of such notice the Trustee may conclusively presume there is no default except as aforesaid. The Trustee may nevertheless require the Issuer and the Company to furnish information regarding performance of their obligations under the Loan Agreement and this Indenture, but is not obligated to do so.

(k) The Trustee shall, prior to any Event of Default and after the curing of all Events of Default which may have occurred, perform such duties and only such duties of the Trustee as are specifically set forth in this Indenture. The Trustee shall, during the existence of any Event of Default which has not been cured, exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his/her own affairs. The foregoing shall not limit the Trustee's obligations under **Section 3.8(a)** or **Section 6.2**.

(l) The Paying Agent, the Remarketing Agent and the Registrar shall each be entitled to the same rights and immunities with respect to their respective duties under this Indenture as the Trustee is under this **Section 7.1** with respect to its duties hereunder.

(m) In addition to the Trustee's other duties hereunder, the Trustee shall authenticate and cancel Bonds as provided herein, keep such books and records relating to such duties as shall be consistent with prudent industry practice and make such books and records available for inspection by the Issuer and the Company at all reasonable times. All Bonds shall be made available for authentication, exchange and registration of transfer at the principal office of the Trustee.

(n) The Trustee shall have no duty to inspect or oversee the construction or completion of the Project or to verify the truthfulness or accuracy of the certifications made by the Company with respect to the Trustee's disbursements for costs of the Project in accordance with the Loan Agreement and this Indenture.

(o) Without limiting the duties of the Trustee expressly set forth herein, the Trustee shall have no obligation or responsibility whatsoever in connection with (i) any federal or state

tax-exempt status of the Bonds or the interest thereon; (ii) the consequences of the investment or non-investment of any funds or accounts relating to the Bonds or the Credit Facility under Section 148 of the Code, or (iii) the calculation of any amount required to be rebated to the United States under Section 148 of the Code.

(p) No provision of this Indenture, the Loan Agreement or the Bonds shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(q) Whenever in the administration of this Indenture the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee may, in the absence of bad faith on its part, rely upon a written certificate of a Company Representative or an Issuer Representative.

(r) Except as provided in **Section 7.9**, in the event that the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders of the Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Indenture, then the Trustee, in its sole discretion, may determine what action or actions, if any, shall be taken or not taken.

(s) The Trustee's immunities and protections from liability and its rights to indemnification in connection with the performance of its duties under this Indenture shall likewise extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and rights to indemnification, together with the Trustee's rights to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture and the final payment of the Bonds.

(t) The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold or deal in any of the Bonds and may join in any action that any Holder may be entitled to take with like effect as if it were not the Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Company and may act as depository, trustee or agent for any committee of Holders secured hereby or other obligations of the Company, as freely as if it were not the Trustee hereunder. The provisions of this paragraph shall extend to the affiliates of the Trustee.

(u) Neither **Section 2.4(g)** nor any other provision of this Indenture shall require the Trustee to enter into any continuing disclosure agreement or other undertaking or to take any other action as may be required to cause compliance with Rule 15c2-12 under the Securities Exchange Act of 1934, as amended.

(v) The Trustee shall have no responsibility or obligation to Participants, to Indirect Participants, or to the Persons for whom they act as nominees with respect to the Bonds, or to any Beneficial Owner of Bonds in respect of the accuracy of any records maintained by the Securities Depository, the Securities Depository Nominee or any Participant or Indirect Participant, the payment by the Securities Depository, the Securities Depository Nominee or any Participant or Indirect Participant of any amount in respect of the principal or Purchase Price of or interest on the Bonds, any notice which is permitted or required to be given under this

Indenture, the selection by the Securities Depository, the Securities Depository Nominee or any Participant or Indirect Participant of any Person to receive payment in the event of a partial redemption of the Bonds, or any consent given or other action taken by the Securities Depository or the Securities Depository Nominee as Holder.

(w) Whether or not expressly so provided, each and every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Section 7.1.

Section 7.2 **Compensation and Indemnification of Trustee and Paying Agent; Trustee's Prior Claim.** The Loan Agreement provides that the Company will pay any and all costs of the Issuer, and the reasonable fees and expenses of the Trustee and the Paying Agent under this Indenture and all other amounts which may be payable to the Trustee or Paying Agent under this Section, and the reasonable fees and expenses of the Remarketing Agent and all other amounts which may be payable to the Remarketing Agent under the Remarketing Agreement, such fees and expenses to be paid when due and payable by the Company directly to the Trustee and Paying Agent or the Remarketing Agent, respectively, for their own account.

The Company shall (a) pay the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), (b) pay the Paying Agent and the Registrar and any other agent of the Issuer or the Company acting hereunder or under the Loan Agreement (the Paying Agent and the Registrar and any other agent of the Issuer being herein referred to as a "Company Agent") reasonable compensation, (c) pay or reimburse each of the Trustee and any Company Agent upon request for all reasonable expenses, disbursements and advances, including without limitation counsel fees, incurred or made, in accordance with any of the provisions of this Indenture and the Loan Agreement (including the reasonable compensation and the reasonable expenses and disbursements of its Counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its own gross negligence or bad faith, and (d) indemnify each of the Trustee and any Company Agent for, and to hold it harmless against, any loss, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of its duties hereunder or under the Loan Agreement, including the reasonable costs and expenses of defending itself against or investigating any claim of liability in the premises, except to the extent that any such loss, liability or expense was due to its own gross negligence or bad faith. The obligations of the Company under the Loan Agreement referred to in this Section shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture. Such additional indebtedness shall be a senior claim to that of the Bonds upon all property and funds held or collected by the Trustee as such, except funds held with respect to Untendered Bonds and unredeemed Bonds for which notice of redemption has been given, and except for any arbitrage rebate fund or account established pursuant hereto or pursuant to any arbitrage regulatory agreement. Notwithstanding the foregoing, neither the Trustee nor any Company Agent shall have any claim upon or shall be paid, prior to any Holder, from any Credit Facility or proceeds from the remarketing of Bonds, or the proceeds thereof, with respect to any such compensation, payment, reimbursement or indemnity. "Trustee", "Company Agent", "Paying Agent" and "Registrar" for purposes of this Section shall include any predecessor Trustee, Company Agent, Paying Agent and Registrar but

the gross negligence or bad faith of any Trustee, Company Agent, Paying Agent or Registrar shall not affect the indemnification of any other Person. The obligations of the Company under this Section shall survive the termination of this Indenture.

Section 7.3 **Intervention in Litigation.** In any judicial proceedings to which the Issuer is a party, the Trustee may intervene on behalf of Holders, and shall intervene if requested in writing by the Holders of at least twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding.

Section 7.4 **Resignation; Successor Trustees.** The Trustee and any successor Trustee may resign only upon giving thirty (30) days prior written notice to the Issuer, the Credit Issuer, if any, the Company and each Holder of Bonds then Outstanding as shown on the Register. Such resignation shall take effect only upon the appointment of a successor Trustee by the Issuer with the written consent of the Company and the Credit Issuer, if any, and the acceptance of such appointment by the successor Trustee. If no successor is appointed within thirty (30) days after the notice of resignation, the resigning party may appoint a successor or petition any court of competent jurisdiction to appoint a successor. Upon appointment of a successor Trustee, the resigning Trustee shall assign all of its right, title and interest in this Indenture and the Security (including any Credit Facility then in effect) to the successor Trustee. The successor Trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000. Any successor Trustee shall accept in writing its duties and responsibilities hereunder and such writing shall be filed with the Issuer, the Credit Issuer, if any, and the Company.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or any material part of the corporate trust business of the Trustee that includes this Indenture, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any Person, anything herein to the contrary notwithstanding, provided that such successor Trustee shall be eligible to serve as Trustee under the provisions of this Indenture. If the Trustee is not the successor corporation in any such merger or consolidation, the Trustee shall give notice of such event to the Company and shall take such action as may be required to effect a transfer of the trust included in this Indenture to such successor corporation.

Section 7.5 **Removal of Trustee.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee, the Credit Issuer, if any, the Issuer and the Company and signed by the Holders of a majority in aggregate principal amount of Bonds then Outstanding. During such time that no Event of Default has occurred and is continuing under this Indenture, the Trustee may also be removed by an instrument in writing delivered to the Trustee, the Credit Issuer, if any, and the Issuer and signed by a Company Representative. Such removal shall take effect only upon the appointment of a successor Trustee by the Issuer with the written consent of the Company and the Credit Issuer, if any, and the acceptance of such appointment by the successor Trustee. Upon such removal, the Trustee shall assign to the successor Trustee all of its right, title and interest in this Indenture and the Security (including any Credit Facility then in effect) in the same manner as provided in Section 7.4. If

the Bonds are rated by a Rating Agency, notice concerning any change in the Trustee shall be furnished to such Rating Agency.

Section 7.6 Paying Agent. The Bank of New York Mellon Trust Company, N.A. is hereby appointed by the Issuer as the initial Paying Agent. The Issuer, at the direction of the Company and with the approval of the Remarketing Agent and the Credit Issuer, if any, shall appoint any successor Paying Agent for the Bonds, subject to the conditions set forth in **Section 7.7**. The Paying Agent shall designate to the Issuer and the Trustee its principal office for all purposes hereof and signify its acceptance of the duties imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer and the Trustee under which the Paying Agent shall agree, particularly:

- (i) to hold all sums held by it for the payment of the principal of, premium, if any, or interest on the Bonds in trust for the benefit of the Holders of the Bonds until such sums shall be paid to such Holders of the Bonds or otherwise disposed of as herein provided;
- (ii) to perform its obligations under this Indenture; and
- (iii) to keep such books and records relating to its duties as Paying Agent as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Issuer, the Trustee and the Company at all reasonable times.

The Issuer shall cooperate with the Trustee, the Paying Agent and the Company to cause the necessary arrangements to be made and to be thereafter continued whereby:

- (a) funds derived from the sources specified in this Indenture will be made available at the principal office of the Paying Agent for the timely payment of principal, premium, if any, and interest on the Bonds; and
- (b) the Paying Agent shall be furnished such records and other information, at such times, as shall be required to enable the Paying Agent to perform the duties and obligations imposed upon it hereunder.

In carrying out its responsibilities hereunder the Paying Agent will act for the benefit of the Holders. Notwithstanding anything to the contrary in this Indenture, the Paying Agent shall not invest any moneys it receives from a draw on the Credit Facility, if any.

No purchase of Bonds by the Paying Agent shall constitute a redemption of Bonds or any extinguishment of the debt represented thereby or constitute the Paying Agent the owner of such Bonds for any purpose whatsoever.

Section 7.7 Qualifications of Paying Agent. The Paying Agent shall be a bank or trust company with trust powers duly organized under the laws of the United States of America or any state or territory thereof, having a combined capital stock, surplus and undivided profits of at least \$15,000,000 and authorized by law to perform all the duties imposed upon it by this Indenture. The principal office of the Paying Agent for all purposes hereof shall be the office of

the Paying Agent at which all deliveries to it hereunder shall be made and any and all notices and other communications in connection herewith shall be delivered. The Paying Agent may at any time resign and be discharged of its duties and obligations created by this Indenture by giving at least sixty (60) days' notice to the Issuer, the Company and the Trustee. The Paying Agent may be removed at any time, at the direction of the Company, by an instrument, signed by the Issuer, filed with such Paying Agent and with the Trustee.

Section 7.8 Resignation of Paying Agent; Removal; Successors.

(a) In the event of the resignation or removal of the Paying Agent, the Paying Agent shall deliver any moneys and any related books and records held by it in such capacity to its successor or, if there be no successor, to the Trustee.

(b) In the event that the Paying Agent shall resign or be removed, or be dissolved, or if the property or affairs of the Paying Agent shall be taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the Issuer shall not have appointed a successor Paying Agent (any appointment by the Issuer shall be with the prior written consent of the Company), the Trustee shall ipso facto be deemed to be the Paying Agent for all purposes of this Indenture until the appointment by the Issuer of a successor Paying Agent.

Section 7.9 Instruments of Holders. Any instrument required by this Indenture to be executed by Holders may be in any number of writings of similar tenor and may be executed by Holders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds given in any of the following forms shall be sufficient for any of the purposes of this Indenture:

(i) A certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him/her the execution thereof;

(ii) A certificate executed by any trust company or bank stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank, as the property of such party, the Bonds therein mentioned.

The Trustee may rely on such an instrument of Holders unless and until the Trustee receives notice in the form specified in (i) or (ii) above that the original such instrument is no longer reliable. In the event that the Trustee shall receive conflicting directions from two or more groups of Holders, each with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, the directions given by the group of Holders which holds the largest percentage of Bonds shall be controlling and the Trustee shall follow such directions to the extent required herein.

Section 7.10 Power to Appoint Co-Trustees. At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Project may at the time be located, the Issuer and the Trustee shall have power to appoint and, upon the request of the Trustee or of the Holders of a majority of the aggregate principal amount of the Bonds then Outstanding, the Issuer shall for such purpose join with the Trustee in the execution, delivery and

performance of all instruments and agreements necessary or proper to appoint, one or more persons approved by the Trustee and the Company either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the Project, or to act as separate trustee or separate co-trustees of all or any part of the Project, and to vest in such person or persons, in such capacity, such title to the Project or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section.

Any co-trustee or separate trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000.

The Trustee and co-trustee, if any, may by written instrument between them designate and assign either the Trustee or the co-trustee or both of them to perform all or any part of the responsibilities and duties of the Trustee under this Indenture.

If the Issuer shall not have joined in such appointment within thirty (30) days after the receipt by it of a written request to do so, or in case an Event of Default shall have occurred and be continuing, the Trustee and the Company shall have the power to make such appointment.

The Issuer shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

Every co-trustee or separate trustee appointed pursuant to this Section, to the extent permitted by law or any applicable contract, shall be subject to the following terms, namely:

(a) This Indenture shall become effective at the time the Bonds shall be authenticated and delivered, and thereupon such co-trustee or separate trustee shall have all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of moneys, papers, securities and other personal property.

(b) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees, or separate trustee or separate trustees, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(c) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee.

(d) Any co-trustee or separate trustee, to the extent permitted by law, may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(e) The Trustee at any time, by an instrument in writing, with the concurrence of the Company and the Issuer evidenced by a resolution, may accept the resignation of any co-trustee or separate trustee appointed under this Section, and, in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Issuer and the Company. Upon the request of the Trustee, the Issuer and the Company shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section.

(f) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(g) Any moneys, paper, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with the security interest in the Security and with such rights, powers, duties, trusts or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as applicable law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee.

In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the security interest in the Security and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the same manner as provided for with respect to the appointment of a successor Trustee pursuant to **Section 7.4** hereof.

Section 7.11 Filing of Financing Statements. The Company shall file or record or cause to be filed or recorded all Financing Statements that are required in order fully to protect and preserve the security interests and the priority thereof and the rights and powers of the Trustee in connection therewith, including without limitation all continuation statements for the purpose of continuing without lapse the effectiveness of (i) those Financing Statements which shall have been filed at or prior to the delivery of the Bonds in connection with the security for the Bonds pursuant to the authority of the U.C.C., and (ii) any previously filed continuation statements that shall have been filed as required herein. The Issuer and the Trustee shall sign, if necessary, and the Trustee shall deliver to the Company or its designee, all such Financing Statements as may be required for the purposes specified in the preceding sentence. Upon the filing of any such Financing Statement the Company shall immediately notify the Issuer and the Trustee that the same has been accomplished.

Section 7.12 Remarketing Agent. At the request of the Company, Wachovia Bank, National Association is hereby appointed as the initial Remarketing Agent. The Issuer, at the direction of the Company, and with the consent of the Credit Issuer, which consent shall not be

unreasonably withheld, shall appoint any successor Remarketing Agent for the Bonds (except for assignees permitted under the following sentence), subject to the conditions set forth in **Section 7.13**. To the extent permitted by any Remarketing Agreement then in effect, the Remarketing Agent may at any time transfer all of its duties and obligations as Remarketing Agent hereunder to an affiliate of such Remarketing Agent that satisfies the conditions set forth in **Section 7.13** and, upon such transfer, such affiliate shall automatically become the Remarketing Agent hereunder without any further action.

Any Remarketing Agent shall designate to the Issuer and the Trustee its principal office for purposes hereof, which shall be the office of such Remarketing Agent at which all notices and other communications in connection herewith may be delivered to it, and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Company, the Trustee and the Credit Issuer under which such Remarketing Agent shall agree particularly (i) to hold all Bonds delivered to it hereunder in trust for the benefit of the respective Holders of Bonds that delivered such Bonds until moneys representing the Purchase Price of such Bonds are delivered to or for the account of or to the order of such Holders of Bonds; (ii) to hold all moneys delivered to it hereunder for the purchase of Bonds in trust for the benefit of the person or entity that has delivered such moneys until the Bonds purchased with such moneys are delivered to or for the account of such person or entity; and (iii) to keep books and records with respect to its activities hereunder available for inspection by the Issuer, the Trustee, the Company and the Credit Issuer, if any, at all reasonable times.

Section 7.13 Qualifications of Remarketing Agent; Resignation; Removal. The Remarketing Agent shall be a financial institution or registered broker/dealer authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent may at any time resign and be discharged of its duties and obligations created by this Indenture by giving at least thirty (30) days' notice to the Issuer, the Company, the Paying Agent, the Trustee and the Credit Issuer, if any; provided, however, that if no successor Remarketing Agent has been appointed in accordance with **Section 7.12** and this Section on or prior to the effective date of such resignation, (i) the resigning Remarketing Agent shall give written notice to Holders on the effective date of such resignation that all optional tender notices under **Section 2.6(a)** should be delivered to the Trustee until a successor Remarketing Agent has been appointed and (ii) until a successor Remarketing Agent has been appointed, the Trustee shall have no duty to remarket the Bonds, but shall use funds described in clauses (ii), (iii) and (iv) of **Section 2.6(g)** in that order on each Optional Tender Date specified in such notices to pay the Purchase Price of all Bonds tendered. The Remarketing Agent may be removed at any time, upon not less than thirty (30) days' notice, at the direction of the Company, by an instrument signed by the Issuer and the Company and filed with the Remarketing Agent, the Trustee, the Paying Agent and the Credit Issuer, if any; provided that no such removal shall be effective until a successor Remarketing Agent has been appointed in accordance with **Section 7.12** and this Section and such successor Remarketing Agent has accepted such appointment.

No delivery of Bonds to the Remarketing Agent shall constitute a redemption of Bonds or any extinguishment of the debt represented thereby or, except as provided in **Section 8.6**, constitute the Remarketing Agent the owner of such Bonds for any purpose whatsoever unless the Remarketing Agent has purchased such Bonds for its own account.

Section 7.14 **Several Capacities.** Anything in this Indenture to the contrary notwithstanding, the same entity may serve hereunder as the Trustee, the Credit Issuer, the Paying Agent, the Registrar and the Remarketing Agent and in any other combination of such capacities, to the extent permitted by law.

Section 7.15 **Trustee Not Responsible for Duties of Remarketing Agent, Registrar and Paying Agent.** Notwithstanding anything to the contrary in this Indenture, the Trustee shall not be liable or responsible for any of the duties or obligations of the Remarketing Agent, the Registrar or the Paying Agent under this Indenture (or be liable or responsible for the acts or omissions of the Paying Agent, the Registrar or the Remarketing Agent or any action taken by the Trustee or failure to act in reasonable reliance upon any action or failure to act by the Paying Agent, the Registrar or the Remarketing Agent) except for the duties imposed upon, or the acts and omissions of, (i) the Trustee while deemed to be the Paying Agent pursuant to **Section 7.8(b)** because a successor Paying Agent has not been appointed by the Issuer and (ii) the Trustee as recipient of optional tender notices and payor of Purchase Price after the written notice provided for in **Section 7.13** has been given by the resigning Remarketing Agent to Holders to the effect that no successor Remarketing Agent has been appointed. The Trustee shall not be bound to ascertain or inquire as to the truth or accuracy of any information provided to it by the Paying Agent, the Registrar or the Remarketing Agent but may for any purpose conclusively rely upon any information given to the Trustee by the Paying Agent, the Registrar or the Remarketing Agent.

Section 7.16 **Cooperation of the Issuer.** The Issuer shall cooperate with the Trustee, the Paying Agent, the Registrar, the Remarketing Agent and the Company, if requested to do so by the Trustee or the Company and to the extent it may lawfully do so, to cause the necessary arrangements to be made and to be thereafter continued whereby funds from the sources specified in **Section 4.3** will be made available to pay the Purchase Price of Bonds presented to the Remarketing Agent.

Section 7.17 **Cooperation of the Trustee, the Remarketing Agent, the Registrar and the Paying Agent.** The Trustee, the Remarketing Agent, the Registrar and the Paying Agent shall cooperate in all respects and shall provide to the other in a timely fashion the information and knowledge each possesses so that the Trustee and each of such parties may faithfully exercise their respective obligations hereunder.

Section 7.18 **No Transfer of Mortgage Bonds held by the Trustee.** Except as required to effect an assignment to a successor trustee, the Trustee shall not sell, assign, pledge or transfer Mortgage Bonds held by it, and the Trustee is authorized to enter into an agreement with the Company to such effect, including a consent to the issuance of stop transfer instructions to the Mortgage Trustee or the agency of the Company in the Borough of Manhattan, the City of New York.

ARTICLE VIII

AMENDMENTS, SUPPLEMENTAL INDENTURES

Section 8.1 **Supplemental Indentures.** The Issuer and the Trustee, with the consent of the Credit Issuer, if any, but without the consent of or notice to any Holders (except in the case of supplemental indentures described in (j) below, in which case prior notice shall be given to Holders by the Trustee), may enter into an indenture or indentures supplemental to this Indenture that do not materially adversely affect the interest of the Holders for one or more of the following purposes:

(a) to grant to or confer upon the Trustee for the benefit of the Holders and such Credit Issuer, if any, any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders or the Trustee;

(b) to grant or pledge to the Trustee for the benefit of Holders and such Credit Issuer, if any, any additional security other than that granted or pledged under this Indenture; provided that no additional security shall be granted or pledged to the Trustee for the benefit of such Credit Issuer unless such Credit Issuer agrees that the Trustee shall hold such security in trust for the equal or ratable benefit of such Credit Issuer, on the one hand, and the Holders, on the other hand;

(c) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939 or any similar federal statute then in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States;

(d) to appoint a successor Trustee, separate trustees or co-trustees in the manner provided in **Article VII** hereof;

(e) to modify, amend or supplement this Indenture for the purpose of obtaining or retaining a rating on the Bonds from a Rating Agency;

(f) to modify, amend or supplement this Indenture to permit a transfer of Bonds from one Securities Depository to another or the discontinuance of the Book-Entry System and issuance of replacement Bonds to the Beneficial Owners;

(g) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture that may be defective or inconsistent with any provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which shall not materially adversely affect the interest of the Holders or such Credit Issuer, if any;

(h) to modify, amend or supplement this Indenture to permit the Paying Agent or the Registrar to assume any administrative duties of the Trustee hereunder (except any duties of the Trustee with respect to the acceptance, modification, reduction or release of or drawing on, any Credit Facility) or for the Trustee to assume any administrative duties of the Paying Agent or the Registrar hereunder;

(i) to make any change herein necessary, in the opinion of Bond Counsel, to maintain the exclusion of the interest on any Outstanding Bonds from gross income of the Holders thereof for federal income tax purposes;

(j) to make any change to the administrative provisions hereof, to accommodate the provisions of an Alternate Credit Facility, bond insurance, liquidity facility or collateral securing payment of the Bonds; and

(k) to provide for any Interest Rate Determination Method in addition to those provided in **Section 2.3**, and the procedures for conversion to or from such added Interest Rate Determination Method; provided that the proposed Conversion Date for conversion to or from any such added Interest Rate Determination Method shall be a Mandatory Purchase Date.

When requested by the Issuer, and if all conditions precedent under this Indenture have been met, the Trustee shall join the Issuer in the execution of any such supplemental indenture unless it imposes additional obligations on the Trustee or adversely affects the Trustee's rights and immunities under this Indenture or otherwise. A copy of all such supplemental indentures shall be promptly furnished to the Credit Issuer and the Paying Agent, and the Registrar shall be promptly advised of any modifications of its rights, duties and obligations hereunder.

The Trustee shall file copies of all such supplemental indentures with the Company and, if the Bonds are rated by a Rating Agency, shall forward copies of all such supplemental indentures to such Rating Agency.

Section 8.2 Amendments to Indenture; Consent of Holders, the Credit Issuer and the Company. Exclusive of supplemental indentures covered by **Section 8.1** and subject to the terms and provisions contained in this Section, and not otherwise, the Holders of a majority in aggregate principal amount of the Bonds then Outstanding and affected by such indenture or indentures supplemental hereto, with the consent of the Credit Issuer, if any, shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and direct the execution by the Trustee of such other indenture or indentures supplemental hereto as shall be consented to by the Issuer in its sole discretion for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing contained in this Section shall permit, or be construed as permitting, without the consent of the Holders of all Outstanding Bonds, (a) an extension of the maturity of the principal of, or the mandatory redemption date of, or interest on, any Bond, (b) a reduction in the principal amount of, or the premium or the rate of interest on, any Bond, (c) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (d) the creation of a lien on the Security prior to the lien of this Indenture, or (e) a reduction in the aggregate principal amount of the Bonds required for any consent to any supplemental indenture; provided further, however, that without the written consent of the Trustee, the Trustee shall not be required to join in the execution of any supplemental indenture that affects the rights, duties, obligations or immunities of the Trustee or that imposes additional obligations on the Trustee. The giving of notice to and consent of the Holders to any such proposed supplemental indenture shall be obtained pursuant to **Section 8.6**.

Anything herein to the contrary notwithstanding, a supplemental indenture, amendment or other document described under this Article that affects any rights or obligations of the Company shall not become effective unless and until the Company shall have consented to the execution of such supplemental indenture, amendment or other document.

The Trustee shall file copies of all such supplemental indentures with the Company and, if the Bonds are rated by a Rating Agency, shall furnish copies of all such supplemental indentures to such Rating Agency.

Section 8.3 Amendments to the Loan Agreement Not Requiring Consent of Holders. The Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement without the prior written consent of the Trustee. The Issuer may, with the consent of the Credit Issuer, if any, but without the consent of or notice to any of the Holders, enter into or permit (and the Trustee shall consent to) any amendment of the Loan Agreement acceptable to the Company as may be required (i) for the purpose of curing any ambiguity or formal defect or omission that shall not adversely affect the interest of the Holders, (ii) to grant or pledge to the Issuer or Trustee, for the benefit of the Holders or the Credit Issuer, if any, any additional security, (iii) to modify, amend or supplement the Loan Agreement for the purpose of obtaining or retaining a rating on the Bonds from a Rating Agency, (iv) to make any change therein necessary, in the opinion of Bond Counsel, to maintain the exclusion of interest on any Outstanding Bonds from gross income of the Holders thereof for federal income tax purposes or (v) in connection with any other change therein which, in the judgment of the Trustee acting in reliance upon an opinion of Counsel, is not materially prejudicial to the interests of the Trustee and the Holders of the Bonds; provided, however, that without the written consent of the Trustee, the Trustee shall not be required to join in the execution of any such amendment that affects the rights, duties, obligations or immunities of the Trustee or that imposes additional obligations on the Trustee.

The Issuer and the Company shall file copies of any such amendments to the Loan Agreement with the Trustee and, if the Bonds are rated by a Rating Agency, the Trustee shall furnish copies of such amendments to such Rating Agency.

Section 8.4 Amendments to the Loan Agreement Requiring Consent of Holders and the Credit Issuer. Except as provided in **Section 8.3** hereof, the Issuer shall not enter into, and the Trustee shall not consent to, any other modification or amendment of the Loan Agreement, nor shall any such modification or amendment become effective, without the consent of the Credit Issuer, if any, and the consent of the Holders of a majority in aggregate principal amount of the Bonds at the time Outstanding, such consent to be obtained in accordance with **Section 8.6**. No such amendment may, without the consent of the Holders of all the Outstanding Bonds, reduce the amounts or delay the times of payment of Repayments under the Loan Agreement.

The Issuer and the Company shall file copies of all such amendments to the Loan Agreement with the Trustee and, if the Bonds are rated by a Rating Agency, the Trustee shall furnish copies of such amendments to such Rating Agency.

Section 8.5 **Amendments, Changes and Modifications to the Credit Facility.** Except as otherwise provided in the Loan Agreement or in this Indenture, subsequent to the Effective Date and prior to payment of the Bonds in full (or provision for the payment thereof having been made in accordance with the provisions of this Indenture), no Credit Facility may be effectively amended, changed or modified without the prior written consent of the Trustee and the Paying Agent. The Trustee may, without the consent of the Holders of the Bonds, consent to any amendment of the Credit Facility as may be required to extend the term thereof or for purposes of curing any ambiguity, formal defect or omission or obtaining or retaining a rating on the Bonds from a Rating Agency that, in the Trustee's and the Paying Agent's judgment, does not prejudice in any material respect the interests of the Holders. Except for such amendments, and as otherwise provided herein, the Credit Facility may be amended only with the consent of the Issuer, the Trustee and the Holders of a majority in aggregate principal amount of Outstanding Bonds, except that no such amendment may be made that would reduce the amounts required to be paid thereunder, change the time for payment of such amounts or accelerate the expiration date of the Credit Facility without the written consent of the Holders of all Outstanding Bonds. The foregoing shall not limit the Trustee's obligation to send notice to the Credit Issuer to reduce amounts available to be drawn under a currently effective Credit Facility under the circumstances set forth therein.

The Trustee shall file copies of all such amendments, changes or modifications with the Rating Agency, if any, rating the Bonds.

Section 8.6 **Notice to and Consent of Holders.** If consent of the Holders is required under the terms of this Indenture for the amendment of this Indenture, the Loan Agreement or the Credit Facility or for any other similar purpose, the Trustee shall cause notice of the proposed execution of the amendment or supplemental indenture to be given by first-class mail, postage prepaid, to the Holders of the Outstanding Bonds then shown on the Register. Such notice shall briefly set forth the nature of the proposed amendment, supplemental indenture or other action and shall state that copies of any such amendment, supplemental indenture or other document are on file at the principal office of the Trustee for inspection by all Holders. If, within sixty (60) days or such longer period as shall be prescribed by the Trustee following the mailing of such notice, the Holders of a majority or all, as the case may be, of the principal amount of the Bonds Outstanding by instruments filed with the Trustee shall have consented to the amendment, supplemental indenture or other proposed action, then the Trustee may execute such amendment, supplemental indenture or other document or take such proposed action and the consent of the Holders shall thereby be conclusively presumed. Notwithstanding the foregoing provisions of this Section, the Remarketing Agent shall be deemed to be the Holder of the Outstanding Bonds on any Mandatory Purchase Date for the purpose of giving any consent required under the terms of this Indenture for the amendment of this Indenture, the Loan Agreement or the Credit Facility, if notice of such amendment has been given to the Persons to whom the Bonds are proposed to be remarketed.

Section 8.7 **Mortgage Bonds Held by the Trustee.** The Trustee, as holder of the Mortgage Bonds, shall attend any meeting of bondholders under the Mortgage as to which it receives due notice. Either at such meeting, or otherwise where consent of holders of Mortgage Bonds is sought without a meeting, the Trustee shall vote the Mortgage Bonds held by it, or shall consent with respect thereto, in a manner that in the judgment of the Trustee would best serve the

interests of the owners of the Bonds. The Trustee may, without the consent of, or notice to, any of the owners of the Bonds, consent to any amendment, change, or modification of the Mortgage Bonds as shall not be inconsistent with the terms and provisions hereof in order to cure any ambiguity, inconsistency or formal defect or omission in this Indenture, the Loan Agreement or the Mortgage Bonds and otherwise to carry out any of the purposes set forth in **Section 8.1** hereof. The Trustee shall not vote any of the Mortgage Bonds held by it in favor of, or give its consent to, any action which in the Trustee's opinion would adversely affect the interests of the owners of the Bonds, without publication or mailing of notice and the written approval or consent thereto of the holders of at least 51% in aggregate principal amount of the Bonds then outstanding and, if such action would so affect the holders of some but less than all of the Bonds then outstanding, the written consent thereto of the holders of at least 51% in aggregate principal amount of the Bonds so affected; provided, however, that the Trustee shall not, except upon publication or mailing of notice and the unanimous written approval or consent of the holders of all Bonds then outstanding, vote in favor of or consent to any action which would require the consent, pursuant to the applicable provisions of the Mortgage, of the holders of each Mortgage Bond or all Mortgage Bonds then outstanding affected by such action.

ARTICLE IX

MISCELLANEOUS

Section 9.1 **Right of Trustee to Pay Taxes and Other Charges.** If the Project is part of the Security and any tax, assessment or governmental or other charge upon any part of the Project is not paid as required, the Trustee may, subject to any indemnity required pursuant to **Section 7.1(h)** of this Indenture, pay such tax, assessment or governmental or other charge, without prejudice, however, to any rights of the Trustee hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment until paid at the greater of the rate of interest borne by the Bonds or the per annum rate of interest announced from time to time by the bank serving as Trustee as its "prime rate" shall become so much additional indebtedness secured by this Indenture, shall be given a preference in payment over the Bonds, and shall be paid out of the Security (other than from funds obtained from the Credit Facility).

Section 9.2 **Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Holders, the Credit Issuer, the Paying Agent, the Remarketing Agent and the Company any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions herein being intended to be and being for the sole and exclusive benefit of the parties hereto, the Holders, the Credit Issuer, the Paying Agent, the Remarketing Agent and the Company as herein provided.

Section 9.3 **Severability.** If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason

whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever.

The invalidity of any one or more phrases, sentences, clauses or sections of this Indenture, shall not affect the remaining portions of this Indenture or any part thereof.

Section 9.4 **Notices.** Except as otherwise provided herein, all notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered if given or delivered by hand, overnight delivery service or facsimile transmitter (with confirmed receipt) to the address or facsimile number set forth below and shall be deemed to have been given on the date deposited in the mail, if mailed, by first-class, registered or certified mail, postage prepaid, addressed as set forth below. Where required herein, notice shall be given by telephone, and promptly confirmed in writing, and shall be deemed given when given by telephone to the telephone numbers set forth below. The Issuer, the Company, any Credit Issuer, the Trustee, the Remarketing Agent and the Paying Agent may, by written notice given hereunder, designate any different addresses, phone numbers and facsimile numbers to which subsequent notices, certificates, approvals, consents, requests or other communications shall be sent.

To the Issuer:	Oconee County, South Carolina 415 South Pine Street Walhalla, South Carolina Attention: Kendra Brown, Assistant County Administrator for Administrative and Finance Telephone: (864) 638-4235 Facsimile: (864) 638-4241
To the Trustee:	The Bank of New York Mellon Trust Company, N.A. 10161 Centurion Parkway Jacksonville, Florida 32256 Attention: Janet Ricardo Telephone: (904) 645-1955 Facsimile: (904) 645-1972
To the Company:	Duke Energy Carolinas, LLC 526 South Church Street Charlotte, North Carolina Attention: General Manager/Assistant Treasurer Telephone: (704) 382-5963 Facsimile: (704) 382-1452
With a copy to:	Duke Energy Carolinas, LLC 422 South Church Street Charlotte, North Carolina 28202 Attention: Robert T. Lucas, Associate General Counsel Telephone: (704) 382-8152 Facsimile: (704) 382-8137

To the Remarketing Agent: Wachovia Bank, National Association
301 South College Street
One Wachovia Center, 4th Floor
Charlotte, North Carolina 28288
Telephone: (704) 383-9486
Facsimile: (704) 715-1961

To the Paying Agent: The Bank of New York Mellon Trust Company, N.A.
10161 Centurion Parkway
Jacksonville, Florida 32256
Attention: Janet Ricardo
Telephone: (904) 645-1955
Facsimile: (904) 645-1972

To the Rating Agencies (if the Bonds are rated by Moody's or S&P): Moody's Investors Service, Inc.
Fully Supported Team
99 Church Street
New York, New York 10007

Standard & Poor's Ratings Services
Structured Finance/LOC 40th Floor
55 Water Street
New York, New York 10041-0003

Section 9.5 **Payments Due on Non-Business Days.** In any case where the date of maturity of interest on or premium, if any, or principal of the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and, in the case of such payment, no interest shall accrue for the period from and after such date.

Section 9.6 **Binding Effect.** This instrument shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Indenture.

Section 9.7 **Captions.** The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

Section 9.8 **Governing Law.** This Indenture shall be governed by and interpreted in accordance with the laws of the State.

Section 9.9 **Limited Liability of Issuer.** Notwithstanding anything to the contrary, any liability for payment of money and any other liability or obligation which the Issuer may incur under the Bonds, this Indenture or the Loan Agreement shall not constitute a general

obligation of the Issuer but shall constitute limited obligations of the Issuer payable solely from and enforced only against the Security.

Section 9.10 **Notices to Rating Agency.** If the Bonds are rated by a Rating Agency, the Trustee shall provide written notice to such Rating Agency with respect to (i) the appointment of any successor Trustee, Remarketing Agent or Paying Agent, (ii) the appointment of any agent by the Trustee to perform any material duties of the Trustee under this Indenture, (iii) the expiration, termination, extension (other than an automatic extension) or substitution of any Credit Facility, (iv) any Fixed Rate Conversion Date or any conversion to a Flexible Term Rate or a Long-Term Rate, (v) any Mandatory Purchase Date (except Conversion Dates), (vi) any material amendment or supplement to this Indenture, any Credit Facility, any Credit Agreement or the Remarketing Agreement, and (vii) the payment in full of all of the Bonds (whether at stated maturity or upon redemption, acceleration or defeasance). Failure of the Trustee to provide any such notice shall not have any effect on the occurrence of such event.

Section 9.11 **Execution in Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, OCONEE COUNTY, SOUTH CAROLINA has executed this Indenture by causing its name to be hereunto subscribed by the Chairman of the Oconee County Council and the Official Seal of Oconee County to be impressed hereon and attested by the Clerk of the Oconee County Council; and The Bank of New York Mellon Trust Company, N.A. has executed this Indenture by its duly authorized representative, all as of the day and year first above written.

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Chairman

ATTEST:

Secretary

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., AS TRUSTEE**

(SEAL)

By: _____
Name: _____
Title: _____

ATTEST:

Agent

EXHIBIT "A"

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC") to issuer or its agent for registration of transfer, exchange, or payment and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

United States of America
Oconee County, South Carolina
Pollution Control Facilities
Revenue Refunding Bond, Series 1993
(Duke Power Company Project)

No. R-__

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Issue Date</u>	<u>CUSIP</u>
__%	February 1, 2017	April 1, 1993	_____

REGISTERED OWNER:

PRINCIPAL AMOUNT:

FOR VALUE RECEIVED, Oconee County, South Carolina, a political subdivision duly organized and existing under the Constitution and laws of the State of South Carolina (the "Issuer"), hereby promises to pay to the Registered Owner specified above, or registered assigns, upon surrender hereof, at the designated corporate trust office of the Paying Agent named below, on the Maturity Date specified above, unless redeemed prior thereto, the Principal Amount specified above, together with interest thereon at the rate as set forth above from _____, but only from the sources and in the manner hereinafter provided on each February 1 and August 1 (an "Interest Payment Date") until the principal hereof is paid or duly provided for upon redemption or maturity. Payment of the principal and redemption premium, if any, and interest on this Bond shall be made in lawful money of the United States of America which on the respective dates of payment thereof shall be legal tender for the payment of public and private debts. Unless other arrangements are made pursuant to the Indenture (hereinafter defined), interest is payable by check or draft drawn upon The Bank of New York Mellon Trust Company, N.A., as Paying Agent (the "Paying Agent"), mailed on the Interest Payment Date (or,

if such day is not a Business Day, the next succeeding Business Day) to the Holder hereof at the close of business on the Record Date immediately preceding each Interest Payment Date at the address of such Holder as it appears on the Register. Interest on this Bond shall be computed on the basis of a 360-day year consisting of twelve months of thirty days each. In any case where the date of maturity of interest on or premium, if any, or principal of this Bond or the date fixed for redemption of this Bond shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and, in the case of such payment, no interest shall accrue for the period from and after such date.

This Bond shall be a limited obligation of the Issuer, the principal, interest and premium (if any) of which are payable solely from and secured by the Security described in the Indenture, including mortgage bonds issued by the Company (described below) in an aggregate principal amount equal to the aggregate principal amount of the Bonds (the "Mortgage Bonds"), all as described in and subject to limitations set forth in the Indenture, for the equal and ratable benefit of the Holders, from time to time of this Bond. This Bond and the interest thereon and redemption premium, if any, shall not be deemed to constitute or create an indebtedness, liability or obligation of the Issuer, the State of South Carolina or any political subdivision or agency thereof within the meaning of any state constitutional provision or statutory limitation or a pledge of the faith and credit or the taxing power of the State of South Carolina or any such political subdivision or agency.

The Mortgage Bonds shall provide for payments of interest to be made by the Company to the Issuer in amounts equal to the payments of interest due on the corresponding Bonds and shall require the Company to make payments of principal and premium or purchase price equal to the payments of principal (whether at maturity, upon acceleration or by call for mandatory or optional redemption) and premium or purchase price on the corresponding Bonds. All payments made by the Company on such Mortgage Bonds shall be made on or prior to the due date for payments to be made by the Issuer on the corresponding Bonds.

This Bond is one of the Bonds of a duly authorized issue of Pollution Control Facilities Revenue Refunding Bonds of the Issuer in the aggregate principal amount of \$77,000,000 known as Oconee County, South Carolina Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Power Company Project) (herein called the "Bonds"), dated as of the Issue Date referenced above. All of the Bonds are issued under and pursuant to Chapter 3, Title 48 of the Code of Laws of South Carolina 1976, as amended (the "Act"), and an Indenture of Trust (as amended, restated or supplemented from time to time, including the second amendment and restatement dated as of August 1, 2009, the "Indenture"), dated as of April 1, 1993, by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as Trustee (as successor to Wachovia Bank, National Association) (the "Trustee"). Reference is hereby made to the Indenture for the provisions, among others, with respect to the custody and application of the proceeds of the Bonds, the collection and disposition of revenues, a description of the funds charged with and pledged to the payment of the principal of and redemption premium, if any, and interest on the Bonds, the nature and extent of the security for the Bonds, a description of the Mortgage Bonds, the terms and conditions under which the Bonds are or may be issued, the rights, duties and obligations of the Issuer and of the Trustee and the rights of the Holders of the

Bonds, and, by the acceptance of this Bond, the Holder hereof assents to all of the provisions of the Indenture. Capitalized terms used herein and not defined shall have the meaning ascribed to them in the Indenture.

The Bonds have been issued for the purpose of financing a portion of the cost of refunding the Issuer's outstanding Pollution Control Revenue Bonds, Series A (Duke Power Company Project) (the "Prior Bonds"). The Issuer and Duke Energy Carolinas, LLC, formerly known as Duke Energy Corporation and Duke Power Company (the "Company"), have entered into a Loan Agreement, dated as of April 1, 1993 (as amended or supplemented from time to time, including the amended and restatement dated as of August 1, 2009, the "Loan Agreement"), pursuant to which the Issuer has agreed to lend the proceeds of the sale of the Bonds to the Company, and the Company has agreed to make payments in an amount, corresponding to the principal amount of, interest rate on, Purchase Price of and due dates of the Bonds. The Loan Agreement also provides for the payment by the Company of certain fees and expenses.

Pursuant to the Indenture the Issuer has, for the benefit of the Holders of the Bonds, assigned, without recourse, representation or warranty, to the Trustee in trust the Security, which includes:

- (i) all Repayments received by the Issuer under the Loan Agreement, which Repayments are to be paid directly by the Company to the Trustee and deposited in the Bond Fund or the Bond Purchase Fund established under the Indenture in accordance with the Indenture;
- (ii) all moneys in the Bond Fund and the Bond Purchase Fund established under the Indenture, including the proceeds of the Bonds pending disbursement thereof;
- (iii) all of the Issuer's rights, title and interest in the Loan Agreement except Reserved Rights, as defined in the Indenture;
- (iv) all other rights and interests granted to the Issuer in connection with the Loan Agreement (except Reserved Rights) as set forth in the Indenture or granted directly to the Trustee as provided in the Indenture; and
- (v) all of the proceeds of the foregoing (except the amounts payable to or on behalf of the Issuer on account of its Reserved Rights, as defined in the Indenture), including without limitation investments thereof.

[Additionally, the Issuer has caused the Company to issue the Series 1993 Mortgage Bonds and deliver them to the Trustee as further Security.]

The Bonds are issuable as fully registered Bonds in denominations of \$5,000 or integral multiples thereof ("Authorized Denomination"). This Bond, upon surrender hereof at the designated corporate trust office of the Registrar with a written instrument of transfer satisfactory to the Registrar executed by the Holder hereof or his/her attorney duly authorized in writing, may, at the option of the Holder hereof, be exchanged for an equal aggregate principal amount of Bonds of the same aggregate principal amount and tenor as the Bonds being exchanged and of

any Authorized Denomination. This Bond may be registered as transferred as provided in the Indenture, subject to certain limitations therein contained, only upon the Register, and only upon surrender of this Bond for registration of transfer to the Registrar accompanied by a written instrument of transfer (in substantially the form of the assignment attached hereto) duly executed by the Holder hereof or his/her duly authorized attorney. Thereupon, one or more new Bonds of any Authorized Denomination and in the same aggregate principal amount and tenor as the Bond surrendered (or for which registration of transfer has been effected) will be issued to the designated transferee or transferees.

1. **Interest Rates on Bonds.** This Bond shall bear interest as provided in the Indenture from the Issue Date to the date of payment in full hereof. Interest accrued on this Bond shall be paid on each Interest Payment Date (or, if such day is not a Business Day, the next succeeding Business Day) commencing on February 1, 2010. The Bonds shall bear interest at the Fixed Rate shown above from the Effective Date until the date of payment in full hereof.

2. **Extraordinary Optional Redemption.** The Bonds are subject to redemption in whole, at the direction of the Company, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus accrued interest thereon to, but not including, the redemption date, on any date for which the requisite notice of redemption can be given, within one hundred eighty (180) days of the occurrence of certain events specified in the Indenture relating to damage or destruction of the Project or portions thereof, the taking by eminent domain of the Project or portions thereof, changes in law or other events that render continued operation of the Project uneconomical, legal curtailment of the use of the Project or the termination of the Loan Agreement other than because of an event of default thereunder.

3. **Notice of Redemption.** Notice of redemption shall be mailed by the Trustee by first-class mail, postage prepaid, at least thirty (30) days before the redemption date to each Holder of the Bonds to be redeemed in whole or in part at his/her last address appearing on the Register, but no defect in or failure to give such notice of redemption shall affect the validity of the redemption. A notice of optional redemption may state that redemption of the Bonds is conditioned upon the deposit with the Trustee of sufficient Eligible Funds on or prior to the date selected for redemption to redeem the Bonds or to pay any redemption premium, and that if sufficient Eligible Funds are not so available on the date selected for redemption, such call for redemption shall be revoked. All Bonds properly called for redemption will cease to bear interest on the date fixed for redemption, provided Eligible Funds for their redemption have been duly deposited with the Trustee pursuant to the Indenture and, thereafter, the Holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Trustee and a new Bond for any portion not redeemed. Notice thereof shall also be given by the Trustee to the Mortgage Trustee.

4. **Miscellaneous.** Under certain circumstances as described in the Indenture, the principal of all the Bonds may be declared due and payable in the manner and with the effect provided in the Indenture.

Modifications or alterations to the Indenture or the Loan Agreement may be made only to the extent and in the circumstances permitted by the Indenture and the Loan Agreement.

The Holder of this Bond shall have no right to enforce the provisions of the Indenture or the Loan Agreement, or to institute action to enforce the covenants therein, or to take any action with respect to a default under the Indenture or the Loan Agreement, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided under certain limited circumstances described in the Indenture; provided, however, that nothing contained in the Indenture shall affect or impair any right of enforcement conferred on the Holder hereof by the Act to enforce (i) the payment of the principal of and premium, if any, and interest on this Bond at and after the maturity hereof, or (ii) the obligation of the Issuer to pay the principal of and premium, if any, and interest on this Bond to the Holder hereof at the time, place, from the source and in the manner as provided in the Indenture.

It is hereby certified that all acts, conditions and things required to happen, exist and be performed under the laws of the State of South Carolina and under the Indenture precedent to and in the issuance of this Bond have happened, exist and have been performed as so required and that the issuance, authentication and delivery of this Bond have been duly authorized by the Issuer.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature of one of its authorized signers, this Bond shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, Oconee County, South Carolina has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of the Chairman-Supervisor of the Oconee County Council and its official seal to be impressed or imprinted hereon and attested by manual or facsimile signature of the Clerk of the Oconee County Council, all as of the Issue Date referenced above.

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

By:

Interim Chairman-Supervisor, County
Council

ATTEST:

Clerk, County Council

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds issued under the provisions of the within-mentioned Indenture.

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.**

By: _____
Authorized Representative

Dated: _____

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ (Please print or typewrite the Name and Address, including the Zip Code of the Transferee, and the federal taxpayer identification or social security number) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration and transfer thereof, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature on this Assignment must correspond with the name as it appears upon the face of the within-mentioned Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed

By: _____

NOTICE: Signature(s) must be guaranteed by a member firm of the STAMP, SEMP or MSP signature guaranty medallion program.

EXHIBIT "B"

CONVERSION NOTICE

[Name and Address of Holder]

This Conversion Notice is delivered pursuant to that certain Indenture of Trust dated as of August 1, 2009 (the "Indenture"), between The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), and the Oconee County, South Carolina (the "Issuer"), relating to the Issuer's \$77,000,000 principal amount Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Energy Carolinas, LLC Project) (the "Bonds"). You are hereby notified that:

1. Duke Energy Carolinas, LLC (the "Company"), has elected to change the Interest Rate Determination Method pertaining to the Bonds to a new Interest Rate Determination Method (or the interest rate applicable during a Medium-Term Rate Period to a new interest rate during a new Medium-Term Rate Period).

2. The proposed Conversion Date shall be _____.

3. As a result of the proposed conversion, a Mandatory Purchase Date, as defined in the Indenture, shall occur and the Bonds shall be subject to mandatory tender for purchase at the Purchase Price thereof, as defined in the Indenture.

4. If certain conditions set forth in the Indenture are not satisfied or if the conversion is revoked, the Interest Rate Determination Method shall not be changed.

5. All Bonds should be presented to the Remarketing Agent at Wachovia Bank, National Association, Attention: Brian Hill at 301 South College Street, One Wachovia Center, 4th Floor, Charlotte, NC 28288.

6. Holders have no right to retain Bonds subject to mandatory tender. The Bonds will be remarketed by Wachovia Bank, National Association as Remarketing Agent. Holders interested in repurchasing Bonds on the Conversion Date may contact the Remarketing Agent at (704) 383-9486.

7. All capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Indenture.

Very truly yours,

[Trustee]

EXHIBIT "C"

NOTICE OF CREDIT FACILITY

[Name and Address of Holder]

This Notice of Credit Facility is being sent to you as a Holder of Oconee County, South Carolina Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Energy Carolinas, LLC Project) (the "Bonds"), issued pursuant to that certain Indenture of Trust dated as of August 1, 2009 (the "Indenture"), between The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), and Oconee County, South Carolina (the "Issuer"). You are hereby notified that:

1. The undersigned is the Trustee under the Indenture.
2. Duke Energy Carolinas, LLC (the "Company") has delivered pursuant to the Indenture a Credit Issuance Notice stating that the Company has, with the consent of the Remarketing Agent, arranged for the issuance of a Credit Facility, as permitted by the Indenture, and specifying the proposed Credit Issuance Date to be _____.
3. Under the terms of the Indenture, the Bonds shall be subject to mandatory tender for purchase on the proposed Credit Issuance Date at the Purchase Price thereof, as specified in the Indenture.
4. Upon acceptance by the Trustee of the Credit Facility, [the ratings on the Bonds from _____ are anticipated to be _____/the Bonds will not be rated].
5. If certain conditions set forth in the Indenture are not satisfied, the Trustee shall not accept the Credit Facility.
6. All Bonds should be presented to the Remarketing Agent at Wachovia Bank, National Association, Attention: Brian Hill at 301 South College Street, One Wachovia Center, 4th Floor, Charlotte, NC 28288.
7. Holders have no right to retain Bonds subject to mandatory tender. The Bonds will be remarketed by Wachovia Bank, National Association, as Remarketing Agent. Holders interested in repurchasing Bonds on the Credit Issuance Date may contact the Remarketing Agent at (704) 383-9486.
8. All capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Indenture.

Very truly yours,

[Trustee]

EXHIBIT "D"

NOTICE OF CREDIT MODIFICATION DATE

[Name and Address of Holder]

This Notice of Credit Modification Date is delivered pursuant to that certain Indenture of Trust dated as of August 1, 2009 (the "Indenture"), between The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), and Oconee County, South Carolina (the "Issuer"), relating to the Issuer's \$77,000,000 principal amount Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Energy Carolinas, LLC Project) (the "Bonds"). You are hereby notified that:

1. The undersigned Trustee is Trustee under the Indenture.
2. A Credit Modification Date, as defined in the Indenture, shall occur on _____ and Bonds shall be subject to mandatory tender for purchase at the Purchase Price thereof, as defined in the Indenture.
3. [The Company intends to deliver an Alternate Credit Facility issued by _____ on the Credit Modification Date. Upon acceptance by the Trustee of the Alternate Credit Facility, [the ratings on the Bonds from _____ are anticipated to be _____/the Bonds are not expected to be rated]. If certain conditions set forth in the Indenture are not satisfied, the Trustee shall not accept the Alternate Credit Facility.]
4. All Bonds should be presented to the Remarketing Agent at Wachovia Bank, National Association, Attention: Brian Hill at 301 South College Street, One Wachovia Center, 4th Floor, Charlotte, NC 28288.
5. Holders have no right to retain Bonds subject to mandatory tender. The Bonds will be remarketed by Wachovia Bank, National Association, as Remarketing Agent. Holders interested in repurchasing Bonds on the Credit Modification Date may contact the Remarketing Agent at (704) 383-9486.
6. All capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Indenture.

Very truly yours,

[Trustee]

EXHIBIT "E"

NOTICE OF MANDATORY PURCHASE DATE

[Name and Address of Holder]

This Notice of Mandatory Purchase Date is delivered pursuant to that certain Indenture of Trust dated as of August 1, 2009 (the "Indenture"), between The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), and Oconee County, South Carolina (the "Issuer"), relating to the Issuer's \$77,000,000 principal amount Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Energy Carolinas, LLC Project) (the "Bonds"). You are hereby notified that:

1. The undersigned Trustee is Trustee under the Indenture.
2. [The Company, with the consent of the Remarketing Agent and the Credit Issuer, if any, has designated _____ as a Mandatory Purchase Date.] [The Credit Issuer has notified the Trustee that an event of default under the Credit Agreement has occurred and is continuing and has requested that the Bonds be required to be tendered for purchase. Under the terms of the Indenture, _____ has been designated as a Mandatory Purchase Date.] The Bonds are subject to mandatory tender for purchase at the Purchase Price thereof, as defined in the Indenture, on such date.
3. All Bonds should be presented to the Remarketing Agent at Wachovia Bank, National Association, Attention: Brian Hill at 301 South College Street, One Wachovia Center, 4th Floor, Charlotte, NC 28288.
4. Holders have no right to retain Bonds subject to mandatory tender. The Bonds will be remarketed by Wachovia Bank, National Association, as Remarketing Agent. Holders interested in repurchasing Bonds on the Mandatory Purchase Date may contact the Remarketing Agent at (704) 383-9486.
5. All capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Indenture.

Very truly yours,

[Trustee]

AMENDED AND RESTATED LOAN AGREEMENT

between

OCONEE COUNTY, SOUTH CAROLINA

and

DUKE ENERGY CAROLINAS, LLC

Dated as of August 1, 2009

**Amending and Restating:
the Loan Agreement dated as of April 1, 1993
between Oconee County, South Carolina and Duke Power Company
(now known as Duke Energy Carolinas, LLC)**

All of the right, title and interest of Oconee County, South Carolina in and to this Amended and Restated Loan Agreement, excepting the amounts payable to Oconee County pursuant to Section 5.3, Section 7.5 and Section 9.4 hereof, are being assigned to The Bank of New York Mellon Trust Company, N.A., as Trustee, as security for the \$77,000,000 Oconee County, South Carolina, Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Energy Carolinas, LLC Project), pursuant to the Second Amended and Restated Trust Indenture, dated as of August 1, 2009.

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THIS AMENDED AND RESTATED LOAN AGREEMENT, dated as of August 1, 2009, between OCONEE COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the state of South Carolina (the "Issuer"), acting by and through the Oconee County Council (the "Board"), which is the governing body of the Issuer, and DUKE ENERGY CAROLINAS, LLC, a limited liability company organized and existing under the Laws of the state of North Carolina (the "Company").

WITNESSETH:

WHEREAS, the Issuer and the Company entered into a Loan Agreement dated as of April 1, 1993 (the "Original Loan Agreement") in connection with the issuance of the Issuer's \$77,000,000 Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Power Company Project) pursuant to a Trust Indenture dated as of April 1, 1993, between the Issuer and Wachovia Bank of North Carolina, N.A. (now succeeded by The Bank of New York as trustee) (the "Original Indenture"); and

WHEREAS, the Issuer and the Trustee entered into an Amended and Restated Trust Indenture dated as of November 1, 2003 (the "First Amended and Restated Indenture") for the purpose of (i) extending the maturity of the Bonds, (ii) providing for the securing of the payment of interest, purchase price and redemption of the Bonds by a letter of credit and (iii) making other technical changes in connection with the foregoing; and

WHEREAS, concurrently with the First Amended and Restated Trust Indenture, the Issuer and Duke Energy Corporation (formerly known as Duke Power Company and now known as Duke Energy Carolinas, LLC) entered into a First Amendment to Loan Agreement dated as of November 1, 2003 (the "First Amendment to Original Loan Agreement"); and

WHEREAS, the Bonds currently bear interest at a weekly rate and the Company has given notice of its intent, in accordance with the terms of the First Amended and Restated Indenture, to convert the interest rate computation method on the Bonds to a fixed rate and, in connection therewith, the Issuer and the Trustee will amend and restate the terms of the First Amended and Restated Indenture and the Bonds to provide for (i) the delivery by the Company of mortgage bonds to support the payment of principal, interest and redemption price of the Bonds, in substitution for the letter of credit delivered as collateral security under the First Amended and Restated Indenture and (ii) other modifications as reflected therein; and

WHEREAS, the Issuer has agreed to amend and restate the Original Loan Agreement, as amended by the First Amendment to Original Loan Agreement, as provided herein.

In consideration of the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur shall not create a pecuniary liability or a charge upon its general credit or against its taxing powers but shall be payable solely out of the proceeds derived from this Loan Agreement, the sale of the Bonds, as hereinafter defined, the insurance proceeds, and proceeds from condemnation awards as herein provided):

ARTICLE I
DEFINITIONS

Section 1.1

Certain terms used in this Loan Agreement are defined herein. When used herein, those terms shall have the meanings given to them by the language employed in this Article I defining them, unless the context clearly indicates otherwise. Those terms not specifically defined herein and used as defined terms in this Loan Agreement, including Article I hereof, shall have the meaning set forth in the Indenture.

Section 1.2

The following terms are defined term under this Loan Agreement:

“**Act**” means Chapter 3, Title 48 of the Code of Laws of South Carolina 1976, as amended.

“**Additional Payments**” means the amounts required to be paid by the provisions of **Section 5.3** hereof.

“**Additions**” or “**Alterations**” means improvements, replacements, alterations, additions, enlargements, or expansions in, on, or to the Project.

“**Agreement**” or “**Loan Agreement**” means the within Loan Agreement between the Issuer and the Company as it may be amended from time to time in accordance with the provisions hereof.

“**Bond Fund**” means the fund by that name created in Section 4.1 of the Indenture.

“**Bondholder**” or “**Holder**” means the registered owner or owners of any Bonds.

“**Bond Payment Date**” means each interest payment date and any other date upon which a payment of principal or purchase price of or premium on the Bonds is due and payable, whether at maturity or upon acceleration, redemption or purchase pursuant to the terms of the Indenture.

“**Bonds**” means the Oconee County, South Carolina, Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Energy Carolinas, LLC Project), in the aggregate principal amount of \$77,000,000.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Company**” means Duke Energy Carolinas, LLC, formerly known as Duke Energy Corporation and Duke Power Company, a North Carolina limited liability company, its successors and assigns.

"Event of Default" or **"Default"** means with respect to this Loan Agreement each of those events set forth in **Section 9.1** of this Loan Agreement.

"First Amended and Restated Indenture" means the Amended and Restated Trust Indenture between the Issuer and the Trustee dated as of November 1, 2003.

"Indenture" or **"Trust Indenture"** means the Second Amended and Restated Trust Indenture between the Issuer and the Trustee, of even date herewith, and any amendments or supplements hereto.

"Issuer" means Oconee County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, and its successors and assigns.

"Loan" means the loan by the County to the Company of the proceeds from the sale of the Bonds to the original purchasers thereof.

"Loan Payments" means the amounts required to be paid by the provisions of **Section 5.2** hereof.

"Mortgage" means the First and Refunding Mortgage dated as of December 1, 1927 from the Company to the Mortgage Trustee, as amended and supplemented by various indentures supplemental thereto, including the Supplemental Mortgage Indenture.

"Mortgage Bonds" means First and Refunding Mortgage Bonds of any series issued under the Mortgage for the purpose of securing Bonds.

"Mortgage Trustee" means **The Bank of New York Mellon Trust Company, N.A.**, as trustee under the Mortgage, or its successor as trustee.

"Paying Agent" means the paying agent appointed in accordance with Section 7.6 of the Indenture.

"Prior Bonds" means the Oconee County, South Carolina, Pollution Control Revenue Bonds, Series A (Duke Power Company Project) issued in the original aggregate principal amount of \$102,000,000.

"Project" means the air and water pollution control facilities and facilities for the treatment and disposal of solid waste heretofore constructed at the Company's Oconee Nuclear Station located in Oconee County.

"Regulations" means the regulations of the United States Department of the Treasury promulgated under the Code or any successor provisions thereof, including proposed and temporary regulations.

"Series 1993 Mortgage Bonds" means the \$77,000,000 aggregate principal amount of First and Refunding Mortgage Bonds, Pollution Control Facilities Revenue Refunding Series Due 2017 of the Company.

“**Supplemental Mortgage Indenture**” means the Eighty-Ninth Supplemental Indenture, dated as of August __, 2009, creating the Series 1993 Mortgage Bonds,

“**Trustee**” means The Bank of New York Mellon Trust Company, N.A., a national banking association organized under the laws of the United States, and any successor trustee pursuant to Section 7.4 (or co-trustee pursuant to Section 7.10) of the Indenture at the time serving as successor trustee (or co-trustee) thereunder.

Section 1.3

The words “hereof”, “herein” “hereunder”, and other words of similar import refer to this Loan Agreement as a whole.

Section 1.4

References to Articles, Sections, and other subdivisions of this Loan Agreement are to the designated Articles, Sections, and other subdivisions of this Loan Agreement.

Section 1.5

The headings of this Loan Agreement are for convenience only and shall not define, limit or describe the provisions hereof.

ARTICLE II

REPRESENTATIONS AND UNDERTAKINGS

Section 2.1 Representations by the Issuer. The Issuer makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Issuer is a political subdivision of the State of South Carolina. The Issuer is authorized by the provisions of the Act to issue and sell the Bonds, to loan the proceeds from the sale of the Bonds to the Company in order to refinance the acquisition, construction and installation of the Project pursuant to this Agreement and to assign and pledge its rights and interest in this Agreement (including without limiting the generality of the foregoing its interest in the Series 1993 Mortgage Bonds to be delivered to the Issuer by the Company pursuant to **Section 5.4** of this Agreement) to the Trustee as security for the payment of the principal of and premium, if any, and interest on the Bonds.

(b) The Issuer has complied with Chapter 9, Title 4 of the Code of Laws of South Carolina 1976, as amended, and all procedural rules of the Issuer with respect to all transactions contemplated by the Bonds, the Indenture, this Agreement and any and all agreements and documents relating hereto and thereto entered into or accepted by the Issuer.

Section 2.2 Representations by the Company. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized and in good standing under the laws of the State of North Carolina, is duly qualified to do business in the State of South Carolina, and has corporate power and authority to own its own properties and assets and to carry on its business as now being conducted and as contemplated by this Agreement, and has power to enter into this Agreement.

(b) By proper action, the Company has duly authorized the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and this Agreement has been duly executed and delivered by, and constitutes a legal, valid and binding agreement of, the Company, enforceable in accordance its terms, except as enforcement thereof may be limited by bankruptcy, reorganization, insolvency or other laws affecting the enforcement of creditors' rights or by limitations on the availability of equitable remedies.

(c) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflict with or result in a breach of the Company's articles of organization or any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement except as contemplated by this Agreement, the Trust Indenture or the Mortgage.

(d) The Project is designed for the elimination, mitigation or prevention of air and water pollution and the proper disposal of solid waste.

(e) Except as disclosed in the annual report of the Company on Form 10-K for the year ending _____, and its subsequent quarterly and current reports on Forms 10-Q and Form 8-K filed with the Securities and Exchange Commission, there is no action, suit or proceeding pending against, or to the knowledge of the Company threatened against or affecting, the Company or any of its subsidiaries before any court or arbitrator or any governmental body, agency or official which would be likely to be decided adversely to Company or such subsidiary and, as a result, have a material adverse effect upon the business, consolidated financial position or results of operations of the Company and its consolidated subsidiaries, considered as a whole, or which in any manner draws into question the validity of this Agreement or any Bonds.

Section 2.3 Additional Covenants of Issuer and Company. The Company covenants and agrees to take or cause to be taken any action required of the Company necessary or proper to assure compliance with SEC Rule 15c2-12, the information reporting and rebate requirements set forth in sections 149(c) and 148(f), respectively, of the Code and any other statutory or regulatory requirements applicable to this Agreement, the Trust Indenture, the Bonds, the Mortgage or the Mortgage Bonds. The Company further covenants and agrees to take any action required of it under this Agreement or the Indenture, including without limitation any action required of it in connection with the redemption or purchase of Bonds.

The Issuer shall have no obligation or responsibility, financial or otherwise, with respect to the matters set forth in the preceding paragraph, except that the Issuer shall comply with any

direction to it by the Company made in accordance with this Agreement and the Trust Indenture, including without limitation direction by the Company to take action specified therein as may be necessary to preserve the tax-exempt status of the Bonds or with respect to the use of a book-entry system. The Company covenants and agrees to assume all costs incurred by the Issuer in complying with any directions by the Company.

ARTICLE III

TITLE TO THE PROJECT

Section 3.1 Title to Project. The Issuer agrees that it shall not be vested with any interest in the Project as a result of issuing the Bonds and that title to the Project shall be vested in the Company.

ARTICLE IV

[RESERVED]

ARTICLE V

EFFECTIVE DATE OF THIS AGREEMENT; DURATION OF TERM; REPAYMENT OF LOAN; AND UNCONDITIONAL OBLIGATIONS OF COMPANY

Section 5.1 Effective Date of this Agreement; Duration of Term. This Agreement shall become effective upon its delivery and, subject to the provisions of this Agreement, shall expire upon full payment of the Bonds (whether at maturity or by prepayment or otherwise, as provided in the Bonds) and amounts then due to the Issuer and the Trustee under this Agreement.

Section 5.2 Repayment of Loan and Other Amounts Payable.

The Company hereby agrees to repay the Loan made pursuant to this Agreement by making the following payments:

(a) The Company shall pay or cause to be paid to the Trustee in immediately available funds for the account of the Issuer for deposit into the Bond Fund on or before any Interest Payment Date for the Bonds or any other date that any payment of interest, premium, if any, or principal is required to be made in respect of the Bonds pursuant to the Indenture, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, a sum which, together with any Eligible Funds available for such payment in the Bond Fund, will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or upon redemption or acceleration or otherwise), premium, if any, and interest on the Bonds as provided in the Indenture; provided, however, that the obligation of the Company to make any payment hereunder shall be deemed satisfied and discharged to the extent of the corresponding payment made by a Credit Issuer under any Credit Facility then in effect.

It is understood and agreed that all payments payable by the Company under this subsection are assigned by the Issuer to the Trustee for the benefit of the Holders. The Company assents to such assignment. The Issuer hereby directs the Company and the Company hereby agrees to pay to the Trustee at the designated corporate trust office of the Trustee all payments payable by the Company pursuant to this subsection.

As further evidence of, and to secure certain of its obligations hereunder to repay the Loan, the Company agrees to execute and deliver Mortgage Bonds to the Trustee, in the manner provided in **Section 5.4** hereof. The Company shall be entitled to full credit on the Loan Payments for payments on the Mortgage Bonds to the extent the payments are received by the Trustee for the account of the Issuer in the manner and at the times required by the provisions of this **Section 5.2**.

(b) The Company covenants, for the benefit of the Holders, to pay or cause to be paid when due, to the Remarketing Agent, such amounts as shall be necessary to enable the Remarketing Agent to pay the Purchase Price of Bonds delivered to it for purchase on the date such Bonds are to be purchased, all as more particularly described in Section 2.6 of the Indenture; provided, however, that the obligation of the Company to make any such payment under this **Section 5.2(b)** shall be reduced by the amount of moneys available for such payment described in Section 2.6(g)(i) of the Indenture; and provided, further, that the obligation of the Company to make any payment under this **Section 5.2(b)** shall be deemed to be satisfied and discharged to the extent of the corresponding payment made by a Credit Issuer under any Credit Facility then in effect.

(c) In the event the Company shall fail to make any of the payments required in this **Section 5.2(c)**, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid, whether by the Company, any Credit Issuer or otherwise.

Section 5.3 Additional Payments. The Company agrees to make Additional Payments as follows:

(a) To the Issuer, as reimbursement for any and all costs, expenses and liabilities paid by the Issuer in connection with the authorization, issuance and delivery of this Agreement, the Trust Indenture, the Bonds and any related documents, and the performance by the Issuer of its obligations hereunder and thereunder (including without limitation those set forth in the first and second paragraphs of **Section 2.3** of this Agreement and attorney fees and expenses), in satisfaction of any obligations of the Company hereunder not as performed in accordance with the terms hereof by the Company, and as reimbursement for or prepayment of expenses paid or to be paid by the Issuer and requested by the Company or required by this Agreement or the Indenture and not otherwise required to be paid by the Company under this Agreement.

(b) To the Trustee, the reasonable fees, charges and expenses of the Trustee, including without limitation attorney fees and expenses, as trustee, bond registrar and paying agent, all as provided in the Indenture, as and when the same become due; provided that the Company may, without creating a default hereunder, contest in good faith the necessity for any

Extraordinary Services and Extraordinary Expenses, as those terms are defined in the Indenture, and the reasonableness of any such fees, charges or expenses.

(c) To the Paying Agent, the reasonable fees, charges and expenses of same for acting as such under the Indenture and in respect of the Bonds.

Notwithstanding any provision herein, the Issuer shall not pay any cost, expense or liability of the Company under this Agreement or the Indenture unless it shall have first afforded the Company an opportunity to make any such payment; provided that the Company may, without creating a default hereunder, contest in good faith the necessity or the reasonableness of any such cost, expense or liability (other than any amount which represents principal or purchase price of or premium or interest on any Bonds.)

Section 5.4 Mortgage Bonds. As security for, and to further evidence certain of the obligations of the Company to repay the Loan, the Company will, concurrently with the issuance of the Bonds, execute and deliver Mortgage Bonds to the Trustee in an aggregate principal amount equal to the aggregate principal amount of the Bonds then executed and delivered by the Issuer. The Company agrees that Series 1993 Mortgage Bonds authorized pursuant to the Mortgage will be issued with respect to the Bonds containing the terms and conditions and in substantially the form set forth in the Supplemental Mortgage Indenture. All Mortgage Bonds shall:

- (a) provide for payments of interest equal to the payments of interest on the Bonds;
- (b) require payments of principal equal to the payments of principal (whether at maturity, upon acceleration, or redemption) on the corresponding Bonds;
- (c) require all payments on such Mortgage Bonds to be made on or prior to the due date for the corresponding payments to be made on the Bonds;
- (d) contain redemption provisions corresponding with redemption provisions of the Bonds, subject to subparagraph (e) below; and
- (e) be subject to mandatory redemption at any time at a price equal to 100% of the principal amount thereof plus accrued interest to the date of redemption if (i) an event of default shall occur and be continuing hereunder and (ii) the Trustee shall declare the principal of and interest accrued on all Bonds to be immediately due and payable pursuant to the provisions of the Indenture.

Upon payment of the principal and interest on the Bonds, whether at maturity, upon acceleration, by redemption or otherwise, and the surrender thereof to, and cancellation thereof by, the Trustee, or upon provision for the payment thereof having been made in accordance with the provisions of the Indenture, Mortgage Bonds issued concurrently with such Bonds pursuant to this **Section 5.4**, of the same maturity, bearing the same interest rates and in an amount equal to the aggregate principal amount of such Bonds so paid or for the payment of which provision has been made shall be deemed fully paid and the obligations of the Company thereunder terminated and such Mortgage Bonds shall be surrendered by the Trustee to the Mortgage Trustee, and shall be cancelled by the Mortgage Trustee. Unless the Company is entitled to a

credit under this Agreement or the Indenture, all payments on the Mortgage Bonds shall be in the full amount required thereunder. The Mortgage Bonds shall be registered in the name of the Trustee and shall not be assigned, pledged or transferred by the Trustee, except to effect an assignment to any successor trustee under the Indenture.

Section 5.5 Payments Assigned. The Company consents to the assignment made by the Trust Indenture of the rights of the Issuer under this Loan Agreement and the Mortgage Bonds to the Trustee and agrees to pay to the Trustee all amounts payable by the Company pursuant to this Loan Agreement, except for payments pursuant to **Section 5.3**, **Section 7.5** and **Section 9.4** hereof which shall be paid directly to the person or entity to whom or to which they are due.

Section 5.6 Obligations of Company Hereunder Unconditional.

(a) The obligations of the Company to make the payments required to be made under **Section 5.2** and **Section 5.3** hereof and on the Mortgage Bonds, subject to the satisfaction and discharge of the payment obligations of the Company provided in **Section 5.2**, and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional and shall not be subject to diminution by set-off, counterclaim, abatement, or otherwise. Until payment in full of the Bonds shall have been made, the Company (i) will not suspend or discontinue any payments required to be made herein, except to the extent they have been prepaid, (ii) will perform and observe all its other agreements contained in this Agreement, and (iii) will not terminate this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, sale, loss, destruction, or condemnation of or damage to the Project, any change in the tax or other laws of the United States of America or of the State of South Carolina or any political subdivision of either, or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or in connection with this Agreement. Nothing contained in this Section shall be construed to release the Issuer from the performance of any of the agreements on its part contained herein; and, in the event the Issuer should fail to perform any agreement on its part, the Company may institute an action against the Issuer for specific performance of such agreement or agreements.

(b) Nothing contained herein shall be construed to be a waiver of any rights which the Company may have against persons other than the Issuer under this Agreement, or under any provision of law.

Section 5.7 Place of Payments. The payments provided for in **Section 5.2** and **Section 5.3** hereof and on the Mortgage Bonds shall be paid directly to the Trustee at its designated corporate trust office, currently in Jacksonville, Florida, for the account of the Issuer.

Section 5.8 Company's Obligation Unaffected by Losses on Investments. Any losses resulting from the investment by the Trustee of any moneys held as part of any fund created under the Trust Indenture shall not affect the Company's obligations to make Loan Payments as required hereunder.

Section 5.9 Redemption of Bonds. The Issuer, at the written request at any time of the Company, shall forthwith take all steps (other than the payment of the money required for the redemption) that may be necessary under the applicable redemption provisions of the Indenture and the Bonds to effect redemption of all or part of the then outstanding Bonds, as may be specified by the Company, on the earliest date on which redemption may be made under the applicable provisions.

Section 5.10 Prepayment of Loan Payments and Additional Payments; Moneys for Purchase or optional Redemption.

(a) There is expressly reserved to the Company the right, and the Company is authorized and permitted, at any time it may choose and from time to time, to prepay all or any part of the Loan Payments, or any Additional Payments, and the Issuer agrees that the Trustee may accept prepayments when tendered by the Company. All Loan Payments or Additional Payments so prepaid shall be credited against the Loan Payments or Additional payments, as the case may be, as specified by the Company.

(b) There is further expressly reserved to the Company the right (provided there does not exist an Event of Default under this Agreement), at any time it may choose, to deliver to the Trustee moneys in addition to the Loan Payments payable on the next Bond Payment Date and in addition to any other moneys then payable to the Bond Fund with instructions to the Trustee to use such moneys for the purpose of purchasing any of the Bonds or of calling for redemption any of the Bonds in accordance with the provisions of the Indenture for optional redemption of the Bonds. Any moneys so delivered to the Trustee shall be held in a separate account in the Bond Fund for application by the Trustee to such purchase or redemption.

Section 5.11 Credits Against Payments. To the extent that principal of, Purchase Price, premium, if any, or interest on the Bonds shall be paid with moneys available under any Credit Facility then in effect, from remarketing proceeds (with respect to Purchase Price) or other sources available under the Indenture, the obligation of the Company to make payments required by **Section 5.2** shall be satisfied and discharged to the extent of the principal of, Purchase Price, premium, if any, or interest on the Bonds so paid. If the principal of, premium, if any, and interest on the Bonds shall have been paid sufficiently that payment of the Bonds shall have occurred in accordance with Article V of the Indenture, then the obligations of the Company pursuant to **Section 5.2**, *ipso facto*, shall be deemed to have been paid in full, and the Company's obligations under **Section 5.2** and this Agreement shall be discharged.

ARTICLE VI

MAINTENANCE, OPERATION AND INSURANCE

Section 6.1 Maintenance.

(a) The Company shall cause the Project, including all appurtenances thereto and any personal property therein and thereon, to be kept and maintained in good repair and good

operating condition so that the Project will continue to constitute a pollution control facility for the purposes of the operation thereof as required by **Section 6.3** hereof.

(b) So long as it shall not be in violation of the Act or impair the character of the Project as a pollution control facility, and provided there is continued compliance with applicable laws and regulations of governmental entities having jurisdiction thereof, the Company shall have the right to remodel the Project or make additions, modifications and improvements thereto, from time to time as it, in its discretion, may deem to be desirable for its uses and purposes, the cost of which remodeling, additions, modifications and improvements shall be paid by the Company and the same shall, when made, become a part of the Project.

Section 6.2 Removal of Portions of the Project. The Company shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary portions of the Project, except to the extent, if any, necessary to ensure the continued character of the Project as a pollution control facility. The Company shall have the right from time to time to substitute personal property or fixtures for any portions of the Project, provided that the personal property or fixtures so substituted shall not impair the character of the Project as a pollution control facility. Any such substituted property or fixtures shall, when so substituted, become a part of the Project. The Company shall also have the right to remove any portions of the project without substitution therefor; provided, that the Company shall deliver to the Trustee a certificate signed by an engineer describing the portions of the Project and stating that the removal of the property or fixtures will not impair the character of the project as a pollution control facility.

Section 6.3 Operation of Project. The Company shall cause the Project to continue to be operated as a pollution control facility and will, subject to its obligations and rights to maintain, repair and remove portions of the Project, as provided in **Section 6.1** and **Section 6.2** hereof, use its best efforts to cause the operation of the Project to continue so long as and to the extent operation is required to comply with the laws or regulations of governmental entities having jurisdiction thereof.

Section 6.4 Insurance. The Company agrees to insure the Project in the amount and with the coverage required by the Mortgage.

Section 6.5 Workers' Compensation Coverage. Throughout the term of this Agreement, the Company shall comply, or cause compliance, with applicable workers' compensation laws of the State of South Carolina.

Section 6.6 Provisions Responsive to Section 48-3-70 of the Act. Responsive to the provisions of Section 48-3-70 of the Act, and in addition to its covenants and agreements contained elsewhere in this Agreement, the Company represents that the Project and the pollution control facilities of which the Project is a part are complete and covenants and agrees to pay or cause to be paid the costs of maintaining the pollution control facilities in good repair and the cost of keeping the pollution control facilities insured.

ARTICLE VII

SPECIAL COVENANTS

Section 7.1 No Warranty of Condition or Suitability by the Issuer. The Issuer makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs.

Section 7.2 Issuer's and Trustee's Right of Access to the Project and to Company Records. The Company agrees that the Issuer, the Trustee and the duly authorized agents of each of them shall have the right at all reasonable times during normal business hours to enter upon and to examine and inspect the Project and all records with respect thereto, including all rights of access to the Project as may be reasonably necessary for the proper maintenance of the Project (including all rights of access as may be reasonably necessary in the event of failure by the Company to perform its obligations under **Section 6.1** hereof).

Section 7.3 Company to Maintain its Existence; Conditions Under Which Exceptions Permitted.

(a) The Company agrees that during the term of this Agreement it will maintain its existence and, except to the extent permitted under the provisions of the Mortgage, will not sell its properties as an entirety or substantially as an entirety or consolidate with or merge into another organization or permit one or more other organizations to consolidate with or merge into it, unless the successor organization resulting from any such sale, consolidation or merger shall assume all obligations of the Company arising under or contemplated by the provisions of this Agreement.

(b) If consolidation, merger or sale or other transfer is made as provided in this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section.

Section 7.4 Qualifications in South Carolina. The Company warrants that it is, and throughout the term of this Agreement it will continue to be, duly qualified to do business in South Carolina.

Section 7.5 Indemnification Covenants.

(a) The Company agrees to indemnify, save the Issuer, the Trustee and the Paying Agent harmless and defend them against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the Project during the term of this Agreement, and the Company further shall indemnify and save the Issuer, the Trustee and the Paying Agent harmless against and from all claims arising at any time from (i) any condition of the Project, the plant facilities to which the Project is appurtenant, or the land on which such plant facilities are located, including without limitation any toxic waste or other hazardous substance located at any time therein or thereon, (ii) any breach or default on the part of the Company in the performance of any of its obligations under this Agreement, (iii) any act of negligence of the Company or of any of its agents, contractors,

servants, employees or licensees, or (iv) any act of negligence of any assignee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee of the Company. The Company shall indemnify and save the Issuer, the Trustee and the Paying Agent harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the Issuer, the Trustee or the Paying Agent, the Company shall defend them or either of them in any such action or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the Issuer shall not incur pecuniary liability by reason of the terms of this Agreement or the undertakings required of the Issuer hereunder by reason of the issuance of the Bonds or by release or the assignment of this Loan Agreement, by reason of the performance of any act requested of it by the Company, or by the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the Issuer should incur any pecuniary liability arising by reason of the issuance of the Bonds or by reason of the assignment of this Loan Agreement, by reason of the performance of any act requested of it by the Company, or by the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, this Agreement, the Trust Indenture or the Bonds, or in connection with the Project, the plant facilities to which the Project is appurtenant, or the land on which such plant facilities are located, including without limitation any toxic waste or other hazardous substance located at any time therein or thereon, then in that event the Company shall indemnify and hold harmless the Issuer against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the Issuer, the Company shall defend the Issuer in any such action or proceeding.

Section 7.6 Company Not to Affect Adversely Tax Exempt Status of Interest on the Bonds. The Company, for the benefit of the Issuer, the Trustee and the Holders of the Bonds, hereby represents that it has not taken, or permitted to be taken on its behalf or omitted to take, and agrees that it will not take, or permit to be taken on its behalf, or omit to take any action which, if taken or omitted to be taken, would cause the interest on the Bonds to be includable in the gross income of the owners of the Bonds for purposes of federal income taxation, and that it will take, or require to be taken, such actions as may from time to time be required by the Company under applicable laws, regulations, rulings and judicial decisions as existing and in effect on the date of the original delivery of the Bonds to the purchasers thereof to continue to exclude from gross income for federal income tax purposes the interest on the Bonds.

Section 7.7 Continuing Disclosure. The Company hereby undertakes, for the benefit of the beneficial owners of the Bonds, to provide:

(a) by not later than seven months from the end of each Fiscal Year, to the Municipal Securities Rulemaking Board ("MSRB"), audited financial statements of the Company for such Fiscal Year, if available, or, if such audited financial statements of the Company are not available by seven months from the end of such Fiscal Year, unaudited financial statements of the Company for such Fiscal Year to be replaced subsequently by audited financial statements of

the Company to be delivered within fifteen (15) days after such audited financial statements become available for distribution;

(b) by not later than seven months from the end of each Fiscal Year, to the MSRB, (i) the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under captions _____ in the Official Statement relating to the Bonds to the extent such items are not included in the financial statements referred to in (a) above;

(c) in a timely manner to the MSRB, notice of any of the following events with respect to the Bonds, if material:

- (i) principal and interest payment delinquencies;
 - (ii) non-payment related defaults;
 - (iii) unscheduled draws on credit enhancements reflecting financial difficulties;
 - (iv) substitution of credit or liquidity providers, or their failure to perform;
 - (v) adverse tax opinions or events affecting the tax-exempt status of the Bonds;
 - (vi) modification to the rights of the beneficial owners of the Bonds;
 - (vii) defeasance of any of the Bonds;
 - (viii) unscheduled draws on debt service reserves reflecting financial difficulties;
 - (ix) release, substitution or sale of property securing repayment of the Bonds;
- and
- (x) rating changes; and

(d) in a timely manner, to the MSRB, notice of a failure of the Company to provide required annual financial information described in (a) or (b) above on or before the date specified.

The Company shall provide the documents referred to above to the MSRB in an electronic format as prescribed by the MSRB and accompanied by identifying information as prescribed by the MSRB.

The Company may discharge its undertaking described above by transmitting the documents referred to above to any entity and by any method authorized by the U.S. Securities and Exchange Commission.

If the Company fails to comply with the undertaking described above, any beneficial owner of the Bonds then Outstanding may take action to protect and enforce the rights of beneficial owners with respect to such undertaking, including an action for specific performance; provided, however, that failure by the Company to comply with such undertaking shall not be an event of default and shall not result in any acceleration of payment of the Bonds. All actions shall be instituted, had and maintained in the manner provided in this paragraph for the benefit of all beneficial owners of the Bonds.

The Company reserves the right to modify from time to time the information to be provided to the extent necessary or appropriate in the judgment of the Company, provided that:

(a) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the Company;

(b) the information to be provided, as modified, would have complied with the requirements of Rule 15c2-12 issued under the Securities Exchange Act of 1934 ("Rule 15c2-12") as of the date of the Official Statement relating to the Bonds, after taking into account any amendments or interpretations of Rule 15c2-12, as well as any changes in circumstances; and

(c) any such modification does not materially impair the interests of the beneficial owners, as determined either by parties unaffiliated with the Company (such as the Trustee or nationally recognized bond counsel) or by approving vote of the registered owners of a majority in principal amount of the Bonds then Outstanding pursuant to the terms of the Trust Indenture, as it may be amended from time to time, at the time of the amendment.

The Company agrees that the annual financial information containing modified operating data or financial information will explain, in narrative form, the reasons for the modification and the impact of the change in the type of operating data or financial information being provided.

The provisions of this Section shall terminate upon payment, or provision having been made for payment in a manner consistent with Rule 15c2-12, in full of the Bonds.

Section 7.8 Filing. All security interests created by the Indenture shall be perfected by doing all filings and recordings of financing statements in the appropriate office of the Clerk of Court for Oconee County, South Carolina, and in the office of the Secretary of State of South Carolina, in the City of Columbia, South Carolina, or in any other appropriate places of filings which fully comply with the South Carolina Uniform Commercial Code, Secured Transactions and by doing all filings and recordings of any other appropriate documents or instruments which fully comply with the South Carolina Uniform Commercial Code. The financing or continuation statements shall be filed and recordings made from time to time by the Company in such offices of the Clerk of Court for Oconee County, and the Secretary of State of South Carolina or in any other appropriate places as in the opinion of any of the Bondholders or the Trustee, are necessary to preserve the lien of the Indenture and maintain the priority of the security interests intended to be created by the Indenture.

ARTICLE VIII

ASSIGNMENT

Section 8.1 Assignment by Company. This Agreement may be assigned in whole or in part by the Company without the necessity of obtaining the consent of either the Issuer or the Trustee, subject, however, to each of the following conditions:

(a) No assignment (other than pursuant to **Section 7.3** hereof) shall relieve the Company from primary liability for any of its obligations hereunder, and in the event of any assignment the Company shall continue to remain primarily liable for the payment of the Loan Payments and Additional Payments and for performance and observance of the agreements on its part herein provided to be performed and observed by it.

(b) Any assignment by the Company must retain for the Company those rights and interests as will permit it to perform its obligations under this Agreement, and any assignee from the Company shall assume the obligations of the Company hereunder to the extent of the interest assigned.

(c) The Company shall, within 30 days after execution thereof, furnish or cause to be furnished to the Issuer and the Trustee a true and complete copy of each assignment together with any instrument of assumption.

(d) Any assignment from the Company shall not materially impair the operation of the Project as herein provided.

Section 8.2 Assignment by Issuer. Except for any pledge and assignment provided for in **Section 5.5** hereof or as may be necessary to enforce the obligations of the Company hereunder, the Issuer shall not make any assignment or pledge of this Agreement.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Events of Default Defined. The following events shall be "Events of Default" under this Agreement and the terms "Event of Default" or "Default", whenever such terms are used herein, shall mean:

(a) Failure of the Company to make any Loan Payment which causes an "Event of Default" as defined in the Indenture.

(b) Failure by the Company to observe and perform any covenant or agreement in this Agreement on the part of the Company to be observed or performed, other than as referred to in subsection (a) of this Section, for a period of ninety (90) days after written notice specifying the failure and requesting that it be remedied shall have been given to the Company by the Issuer or the Trustee, unless the Issuer and the Trustee shall agree in writing to an extension of the time prior to its expiration; provided, however, that if the Company is proceeding with due diligence

to cure the default, the period shall be extended to whatever period is required to permit the Company's proceeding with due diligence to cure the default.

- (c) The occurrence of an "event of default" as defined in the Mortgage.

The provisions of subsection (b) of this Section are subject to the following limitations: if, by reason of force majeure, the Company is unable in whole or in part to carry out the agreements of the Company on its part herein contained (other than the obligations on the part of the Company contained in **ARTICLE V** and **Section 6.3**, **Section 6.6**, **Section 7.5** and **Section 9.4** hereof, to which this paragraph shall have no application), the Company shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States or of South Carolina or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricane; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes, or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company, in each case which has the effect of making it impossible (as distinguished from impracticable) for the Company to perform, it being agreed that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the Company, and the Company shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when that course is, in the judgment of the Company, unfavorable to the Company.

Section 9.2 Remedies on Default. Whenever any Event of Default referred to in **Section 9.1** hereof shall have happened and be subsisting, the Issuer or the Trustee may take any one or more of the following remedial steps (provided that, notwithstanding any other provision of this **Section 9.2**, the Issuer may, without the necessity of obtaining the Trustee's consent, take any remedial steps under this **Section 9.2** to enforce the payment of amounts due it under **Section 5.3**, **Section 7.5** or **Section 9.4** of this Agreement):

(a) The Trustee, or the Issuer with the prior written consent of the Trustee, may, at its option, by notice to the Company, declare all amounts due under **Section 5.2** and **Section 5.3** hereof to be immediately due and payable if the Bonds have been accelerated pursuant to the Indenture, whereupon the same shall become immediately due and payable, and which amounts the Company hereby agrees to pay, and the Company hereby waives any further demand, notice, presentment or notice of dishonor.

(b) The Trustee, or the Issuer with the prior written consent of the Trustee, may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Agreement.

(c) The Issuer and the Trustee shall also have access to and the right to inspect, examine and make copies of the books, records, accounts, data and tax returns of the Company; only, however, insofar as they pertain to the Project or any portion thereof.

Any amounts collected pursuant to action taken under this Section shall be applied pursuant to Section 6.7 of the Indenture, except amounts due under **Section 5.3**, **Section 7.5** or **Section 9.4** of this Agreement shall be paid directly to the person or entity to whom or to which they are due.

No action taken pursuant to this Section shall relieve the Company's from the Company's obligations pursuant to **Section 5.2**, **Section 5.3** and **Section 9.2(a)** hereof, all of which shall survive any such action.

The provisions of this **Section 9.2** are subject to the further limitation that the rescission or annulment of a declaration that all the Bonds outstanding under the Indenture are immediately due and payable shall also constitute a rescission or annulment of any corresponding declaration made pursuant to paragraph (a) of this **Section 9.2** and a waiver and rescission of the consequences of the declaration and of the event of default with respect to which the declaration had been made provided that no waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

Section 9.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any right or power or shall be construed to be a waiver thereof, but any right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee or the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice as may be herein expressly required. Such rights and remedies given the Issuer hereunder shall also extend to the Trustee, and the Trustee and the Bondholders shall be deemed third party beneficiaries of all covenants and agreements herein contained.

Section 9.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Agreement and the Trustee or the Issuer should employ attorneys or incur other expenses for the collection of amounts due hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Issuer or the Trustee the reasonable fees of such attorneys and all other expenses so incurred by the Issuer or the Trustee.

Section 9.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement other be breached by either party and thereafter waived by the other party, the waiver shall be limited to the particular breach so waived, and such party shall not be deemed to waive any other breach hereunder. No waiver shall be effective unless in writing.

ARTICLE X

MISCELLANEOUS

Section 10.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, or given when dispatched by telegram or telecopy addressed as follows:

if to the Issuer, to the:
Oconee County Council
415 South Pine Street
Walhalla, South Carolina 29691
Attention: Chairman

if to the Company, to:
Duke Energy Carolinas, LLC
526 South Church Street
Charlotte, North Carolina 28202
Attention: General Manager/Assistant Treasurer

if to the Trustee, to:
The Bank of New York Mellon Trust Company, N.A.
10161 Centurion Parkway
Jacksonville, Florida 32256
Attention: Janet Ricardo
Telephone: (904) 645-1955
Facsimile: (904) 645-1972

The Issuer, the Company and the Trustee may, by notice given to all parties to this Agreement and the Trust Indenture, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 10.2 Binding Effect; Parties in Interest. This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company, and their respective successors and assigns, subject, however, to the provisions of **Section 7.5**, **Section 8.1** and **Section 8.2** hereof.

Section 10.3 Immunity of Officers and Employees of the Issuer. No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the Issuer contained in this Agreement or the Bonds, against any officer or employee of the Issuer, in his or her individual capacity, past, present or future, either directly or through the Issuer, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that this Agreement and the Bonds are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any officer or employee of the Issuer, past, present or future, either directly or by reason of any of the obligations, covenants, promises or agreements entered into between the Issuer and the Trustee or the Company or to be implied therefrom as being

supplemental hereto or thereto; and that all personal liability of that character against every such officer and employee is, by the execution of this Agreement and the Bonds, and as a condition of, and as a part of the consideration for, the execution of this Agreement and the Bonds, expressly waived and released. The immunity of officers and employees of the Issuer under the provisions contained in this Section shall survive the completion of the Project and the termination of this Agreement.

Section 10.4 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that holding shall not invalidate or render unenforceable any other provision hereof, which other provisions shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 10.5 Amounts Held by the Trustee. It is agreed by the parties hereto that any amounts held by the Trustee remaining unclaimed by the owners of the Bonds for five years after the due date (whether at maturity or by prepayment or otherwise, as provided in the Bonds) thereof, and after the payment of the fees, charges, and expenses of the Trustee and those due the Issuer, in accordance with this Agreement, shall belong to and be paid to the Company by the Trustee as overpayment of amounts due hereunder.

Section 10.6 Amendments, Changes, and Modifications. This Agreement may not be amended, changed, modified, or altered, except as provided in Article VIII of the Trust Indenture.

Section 10.7 Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; except that to the extent, if any, that this Loan Agreement shall constitute personal property under the Uniform Commercial Code of South Carolina, no security interest in this Loan Agreement may be created or perfected through the transfer or possession of any counterpart of this Loan Agreement other than the original counterpart, which shall be the counterpart containing the receipt therefor executed by the Trustee following the signatures to this Loan Agreement.

Section 10.8 Law Govering Construction of Agreement. This Agreement is prepared and entered into with the intention that the Laws of the State of South Carolina shall govern its construction.

IN WITNESS WHEREOF, OCONEE COUNTY, SOUTH CAROLINA, has executed this Loan Agreement by causing its name to be hereunto subscribed by the Chairman of the Oconee County Council and the Official Seal of Oconee County to be impressed hereon and attested by the Clerk of the Oconee County Council; and Duke Energy Carolinas, LLC, has executed this Loan Agreement by its Treasurer and Secretary, all being done as of the day and year first above written.

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Chairman
Oconee County Council

ATTEST:

Clerk
Oconee County Council

DUKE ENERGY CAROLINAS, LLC

By: _____

Its: _____

By: _____

Its: _____

Receipt of the foregoing original counterpart of the Amended and Restated Loan Agreement, between Oconee County, South Carolina, and Duke Energy Carolinas, LLC, dated as of August 1, 2009, is hereby acknowledged by the undersigned.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.

By: _____

Its: _____

Dated: August __, 2009

IN WITNESS WHEREOF, OCONEE COUNTY, SOUTH CAROLINA, has executed this Assignment by causing its name to be subscribed by the Chairman of Oconee County Council and the Official Seal of Oconee County, South Carolina, to be impressed hereon and attested by the Clerk of the Oconee County Council, all being done as of the __ day of August, A.D. 2009.

By: _____
Chairman
Oconee County Council

ATTEST:

Clerk
Oconee County Council

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

COUNCIL MEETING DATE: August 4, 2009
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

First reading (in title only) : ORDINANCE 2009-17 – “AN ORDINANCE TO AMEND THE FISCAL YEAR 2009-2010 BUDGET APPROPRIATIONS ORDINANCE FOR OCONEE COUNTY IN CERTAIN LIMITED REGARDS AND PARTICULARS, ONLY; AND OTHER MATTERS RELATED THERETO”

BACKGROUND OR HISTORY:

The 2009-2010 budget includes a capital lease for the purchase of two fire engines. The expenditure for these trucks was removed from the budget as part of several changes to Emergency Services. Due to error, the trucks were not added back to the budget. Appropriations need to be increased \$750,000. The use of fund balance needs to be increased \$750,000, since the capital lease was not removed from the budget.

SPECIAL CONSIDERATIONS OR CONCERNS:

Ordinance to amend the budget will need three readings and a public hearing.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No [review #2001-15 on Procurement's website]
If no, explain briefly:

STAFF RECOMMENDATION:

Staff recommends that Ordinance 2009-17 be approved for first reading, in title only.

FINANCIAL IMPACT:

A decrease of \$750,000 in fund balance.

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

Are Matching Funds Available: Yes / No
If yes, who is matching and how much:

ATTACHMENTS

Caption

Reviewed By/ Initials:

____ County Attorney JB Finance _____ Grants _____ Procurement

Submitted or Prepared By:

Kendra Brown
Department Head/Elected Official

Approved for Submittal to Council:

Kendra Brown
Kendra Brown, Interim County Administrator

Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.

A calendar with due dates marked may be obtained from the Clerk to Council.

**OCONEE COUNTY COUNCIL
ORDINANCE 2009-17**

**AN ORDINANCE TO AMEND THE FISCAL YEAR 2009-2010 BUDGET
APPROPRIATIONS ORDINANCE FOR OCONEE COUNTY IN CERTAIN
LIMITED REGARDS AND PARTICULARS, ONLY; AND OTHER MATTERS
RELATED THERETO**

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

**COUNCIL MEETING DATE: Aug. 4, 2009
COUNCIL MEETING TIME: 7:00 PM**

ITEM TITLE OR DESCRIPTION:

Request by VetFest Committee to use Courthouse grounds for Veterans Weekend Charity event.

BACKGROUND OR HISTORY:

See attached form

SPECIAL CONSIDERATIONS OR CONCERNS:

The VetFest Committee is requesting the use of Short Street and the Courthouse grounds for Friday evening and Saturday, November 13-14. We will ask for vendors to bring generators but also request the use of power if we need it for the Stage area.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No [review #2001-15 on Procurement's website]
If no, explain briefly: Yes

STAFF RECOMMENDATION:

Approval of request

FINANCIAL IMPACT:

Use of electricity to run Stage events for the VetFest

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

Are Matching Funds Available: Yes / No
If yes, who is matching and how much:

ATTACHMENTS

Vet Fest flyer

Reviewed By/ Initials:

_____ County Attorney



_____ Finance

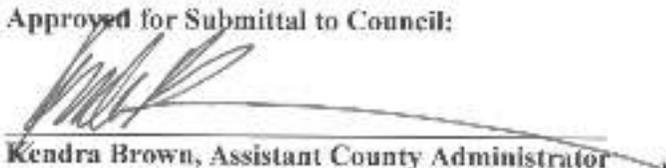
_____ Grants

_____ Procurement

Submitted or Prepared By:

Phil Shirley, PRT Director
Department Head/Elected Official

Approved for Submittal to Council:



Kendra Brown, Assistant County Administrator

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www.vet-fest.com

Walhalla, SC
Benefiting

Patriots Hall Veterans Museum
Sponsored by Blue Ridge Electric Co-op



Mark your calendars now for the inaugural *Vet-Fest* to be held in beautiful Walhalla, Oconee County, S.C. to the benefit of and hosted by *Patriot's Hall Veterans Museum*.



Vet-Fest will be held **November 13-14, 2009**, beginning with a classic car and bike **Cruise-In** on Friday night including live entertainment from **The Flashbacks** and refreshments on the grounds.

Kicking off the **Ride of Honor** at 8AM Saturday morning will be a continental style breakfast served at Patriots Hall. Officially starting at 9AM with last rider out at 11AM, the **Ride of Honor** will take the participants on beautiful ride into rural Oconee County, through the gorgeous Sumter National Forest, onto roads seldom recognized as having public access. Beautiful vistas of our mountains and stunning Fall foliage highlight the morning route and three stops have been added to enhance the experience.

Stage shows, honored guests, live music, great food and **Ride of Honor** prizes await the participants when they return to Patriots Hall as the Ceremony to honor all our Vets continues from 11-3:30PM

Patriot's Hall Veterans Museum will receive all proceeds of the weekend's event; used to enhance a WWII and Korean War exhibit on the second floor through the purchase of a genuine WWII Harley Davidson Motorcycle. Educational tours of the museum and special exhibits will be provided through out the day Saturday.

In Honor of All Veterans for Their Service to Our Country.

For Sponsorship and Application Information

Lyndon Ashworth lyashwrth@hotmail.com 864-238-3354



MOUNTAIN LAKES
COMMUNITY & RECREATION SERVICES
OCONEE COUNTY, SC

AGENDA ITEM SUMMARY
OCONEE COUNTY, SC

COUNCIL MEETING DATE: August 4, 2009
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

Award the purchase of seven MSA Thermal Imaging Cameras for Emergency Services to Safe Industries of Greenville, SC, in the amount of \$68,635.00 as per State Contract #4400000050.

BACKGROUND OR HISTORY:

Thermal Imaging Cameras give firefighters and first responders the ability to quickly locate fires in smoke filled rooms with no visibility, locate fires hidden in walls and ceilings, determine the direction in which the fire is moving and detect conditions which would produce flashover and back draft situations. Any of these conditions can put firefighters in dangerous situations which could result in death. These cameras will provide heat images and temperatures in the area of the fire which will result in a safer and more effective fire attack.

The purchase of seven Thermal Imaging Cameras will allow all fire trucks to be equipped with a unit. Oconee County Emergency Services has this same unit already in operation in nine departments. The seven new units will be disbursed to Station 2-Salem, Station 4-Mtn Rest, Station 8-Fair Play, Station 14-Pickett Post, Station 16-West Union, Station 21-Emergency Services, and Hazmat. Purchasing the same units will keep the equipment uniform throughout the County and personnel will only have to be trained on one type of Thermal Imaging Camera.

SPECIAL CONSIDERATIONS OR CONCERNS:

MSA has only two Authorized Dealers that are allowed to sell thermal imaging equipment for the Oconee County area: Safe Industries of Greenville, SC, and Newton's Fire and Safety of Swepsonville, NC. Safe Industries is the only MSA dealer on State Contract.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes

STAFF RECOMMENDATION:

Award the purchase of seven Thermal Imaging Cameras for Emergency Services to Safe Industries of Greenville, SC, in the amount of \$68,635.00 as per State Contract #4400000050.

FINANCIAL IMPACT:

A lease purchase contract was entered into on May 29, 2008 for the purchase of self-contained breathing apparatus (SCBA), radio and communications equipment, and related equipment for equipping the fire trucks for the unincorporated fire districts. This purchase will be processed from lease purchase funds using line item 020-107-64004-00000. After receipt and payment of the related invoices, reimbursement will be requested from BB&T, holder of the lease purchase funds.

ATTACHMENTS

Reviewed By/ Initials:

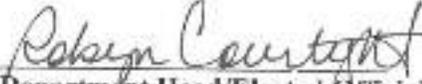
_____ County Attorney

 Finance

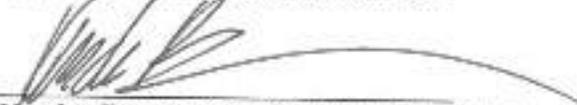
_____ Grants

RC Procurement

Submitted or Prepared By:


Department Head/Elected Official

Approved for Submittal to Council:


Kendra Brown, Asst. County Administrator

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A calendar with due dates marked may be obtained from the Clerk to Council.

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

COUNCIL MEETING DATE: August 4, 2009
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

Award of contract for professional engineering services to B. P. Barber of Columbia, SC, in the amount of \$134,310 for groundwater monitoring, the installation of new groundwater and methane monitoring wells, a groundwater assessment, and various reports for the Solid Waste department.

BACKGROUND OR HISTORY:

The County has used B. P. Barber & Associates since 2007 for a variety of engineering projects for the Solid Waste department including the landfill gas system assessment, well sampling, ground water monitoring system design, sampling and analysis, updating the solid waste management plan and all services associated with required permitting for the C & D landfill. They have the required experience and expertise to continue with this project for the Solid Waste department.

This contract for groundwater monitoring and installation of wells will specifically include the following:

1. Class Two Landfill 1201 – New Groundwater Monitoring Wells Install, Sampling, and Analysis – \$28,850
2. Class Two Landfill 1202 – New Groundwater Monitoring Wells Install, Sampling, and Analysis ~ \$26,350
3. MSWLF Groundwater Assessment – Install, sample, and analyze wells ~ \$55,400
4. Revised Methane Monitoring Plan – Install new probes ~ \$11,500

SPECIAL CONSIDERATIONS OR CONCERNS:

Under the Request for Qualifications # 06-17 for Professional Services, B. P. Barber & Associates was selected as qualified to provide Environmental and Engineering services. County Council approved a contract and fee schedule Feb 20, 2007 and this contract is in its second renewal period.

Groundwater wells and testing must be installed by August 19, 2009 per DHEC mandate. New regulations were put in place in 2009 for groundwater monitoring at C&D landfills. Previously, no testing was necessary. Also, the methane monitoring wells at the Seneca Landfill are being moved to bring the landfill back into compliance.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes

STAFF RECOMMENDATION:

Staff requests that Council approve B. P. Barber & Associates to perform necessary engineering services for required groundwater monitoring, the installation of new groundwater and methane monitoring wells, a groundwater assessment, and various reports for the Solid Waste department.

FINANCIAL IMPACT:

For FY 2009-10, County Council approved a total of \$188,000 (budget code 10-718-60005-00000) for testing wells. The \$134,310 includes a 10 percent contingency.

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ATTACHMENTS

1. Proposed Costs for 1201 and 1202 Groundwater Monitoring
2. Proposed Costs for Groundwater Assessment and Methane Monitoring Plan
3. DHEC 2009 Groundwater Assessment Plan letter
4. DHEC 2009 Methane Monitoring Plan letter

Reviewed By/ Initials:

_____ County Attorney _____ Finance _____ Grants PC Procurement

Submitted or Prepared By:

Swain T. Still
Swain T. Still, Solid Waste Director

Approved for Submittal to Council:

Kendra Brown, Asst. County Administrator

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CLASS TWO LF - 1201 GROUNDWATER MONITORING

Test Borings, Piezometers, and MW Installation (Driller*)	4	4	\$3,000	\$12,000
Survey Locations and Elevation of Piezometers/MWs (BPB)	1	day	\$1,500	\$1,500
Coordination and onsite observation of Drilling (BPB)	3.5	day	\$1,100	\$3,850
Aquifer Permeability Tests (BPB)	4	tests	\$500	\$2,000
Groundwater Monitoring System Design Report (BPB)	1	report	\$3,500	\$3,500
Groundwater Detection Monitoring Plan (BPB)	1	plan	\$3,500	\$3,500
Sampling and Analysis Plan (BPB)	1	plan	\$1,500	\$1,500
Meeting to discuss Results (BPB)	1	meeting	\$1,000	\$1,000
SUBTOTAL				\$28,850

CLASS TWO LF - 1202 GROUNDWATER MONITORING

Test Borings, Piezometers, and MW Installation (Driller*)	4	4	\$3,000	\$12,000
Survey Locations and Elevation of Piezometers/MWs (BPB)	1	day	Included	Included
Coordination and onsite observation of Drilling (BPB)	3.5	day	\$1,100	\$3,850
Aquifer Permeability Tests (BPB)	4	tests	\$500	\$2,000
Groundwater Monitoring System Design Report (BPB)	1	report	\$3,500	\$3,500
Groundwater Detection Monitoring Plan (BPB)	1	plan	\$3,500	\$3,500
Sampling and Analysis Plan (BPB)	1	plan	\$1,500	\$1,500
Meeting to discuss Results (BPB)	1	meeting	Included	Included
SUBTOTAL				\$26,350

DRILLING COSTS ARE OUR BEST ESTIMATES ONLY.
THE DEPTH OF DRILLING IS ONLY DETERMINED AFTER DRILLING COMMENCES
DEPT OF DRILLING DETERMINES COST OF DRILLING

MSWLF GROUNDWATER ASSESSMENT

	Quantity	Event	Unit	Total
Groundwater Assessment Plan (BPB)	1	plan	\$4,500	Done
Groundwater Assessment Report (BPB)	1	report	\$5,500	\$5,500
Well Installation as approved in GW Assessment Plan (Driller*)	10	deep well	\$3,570	\$35,700
Collection of GW samples for VOCs (BPB)	20	well	\$125	\$2,500
Analysis of Groundwater Samples (Pace)	20	analyses	\$75	\$1,500
Well Installation coordination and observation (BPB)	5	day	\$1,500	\$7,500
Surveying (BPB)	1	day	\$1,700	\$1,700
Meeting to discuss Results (BPB)	1.0	meeting	\$1,000	\$1,000
SUBTOTAL				\$55,400
REVISE METHANE MONITORING PLAN for MSWLF				
Revised Methane Monitoring Plan (BPB)	1	plan	\$4,000	Done
Gas Monitoring Probe Installation (Driller*)	10	GMPs	\$600	\$6,000
GMP coordination and observation (BPB)	3	day	\$1,500	\$4,500
Meeting to discuss Results (BPB)	1	meeting	\$1,000	\$1,000
SUBTOTAL				\$11,500

DRILLING COSTS ARE OUR BEST ESTIMATES ONLY.
 THE DEPTH OF DRILLING IS ONLY DETERMINED AFTER DRILLING COMMENCES
 DEPT OF DRILLING DETERMINES COST OF DRILLING



C. Earl Hunter, Commissioner

Protecting and promoting the health of the public and the environment.

RECEIVED
JUL 16 2009

BY:.....

July 15, 2009

MS KENDRA BROWN
INTERIM OCONEE COUNTY ADMINISTRATOR
415 SOUTH PINE ST
WALHALLA SOUTH CAROLINA 29691

RE: 2009 Groundwater Assessment Plan
Dated April 26, 2009
Oconee County Class 3 Landfill (Seneca)
Permit # 371001-1101
Oconee County

Dear Mr. Hendricks:

The above referenced document has been reviewed with regard to the requirements of R.61-107.19 Part V, Subpart E of the South Carolina Solid Waste Management Regulations and Solid Waste Permit #371001-1101. The following comment was generated as a result of this review:

- 1) All proposed additional groundwater-monitoring wells are approved. Please submit a proposed date of installation. At that time, the Department will issue a groundwater-monitoring well installation approval.

If you require more information or have any questions, please feel free to contact me at (803) 896-4042.

Sincerely,

David Oberly II, Hydrogeologist
Solid Waste Groundwater Section
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

cc: Swain Still, Oconee County Solid Waste
Juli Blalock, Solid Waste Permitting Section
Tyler Smith, Region 1 EQC (Anderson)
Michael Glowacz, P.G., B P Barber
Bureau file #20402

5w003565.afp



D. Earl Hunter, Commissioner

RECEIVED
JUL 16 2009

July 15, 2009

MS KENDRA BROWN *Protecting and promoting the health of the public and the environment*
INTERIM OCONEE COUNTY ADMINISTRATOR
415 SOUTH PINE ST
WALLULA SOUTH CAROLINA 29691

BY: _____

RE: Methane Monitoring Plan
Dated April 22, 2009
Oconee County Class 3 Landfill (Seneca)
Permit # 371001-1101
Oconee County

Dear Mr. Hendricks:

The above referenced document has been reviewed with regard to the requirements of R.61-107.19 Part V, Subpart E of the South Carolina Solid Waste Management Regulations and Solid Waste Permit #371001-1101. The following comments were generated as a result of this review:

- 1) Due to the levels of methane detected at Methane Monitoring Well GMW-10 and its location, this well should remain a part of the methane-monitoring system.
- 2) All proposed additional methane monitoring wells are approved. Please submit a proposed date of installation. Then, the Department can issue a methane-monitoring well installation approval.
- 3) All methane-monitoring wells should be retrofitted with the quick connect port as proposed in the construction details of the new wells, if not done so at this time. Please update the methane sampling and analysis plan to reflect the new wells.

If you require more information or have any questions, please feel free to contact me at (803) 896-4042.

Sincerely,

David Oberly II, Hydrogeologist
Solid Waste Groundwater Section
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

cc: Swant Still, Oconee County Solid Waste
Michael Glowatz, P.G., B P Barber
Juli Blalock, Solid Waste Permitting Section
Tyler Smith, Region 1 EQC (Anderson)
Bureau file #20402

0390361.3ja

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

COUNCIL MEETING DATE: August 4, 2009
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

Bid 08-32 Runway 25 and Parallel Taxiway Extension

Award Bid 08-32 to Plateau Excavation of Austell, GA, in the amount of \$3,451,481.50 for the Runway 25 and Parallel Taxiway Extension at the Oconee County Regional Airport.

BACKGROUND OR HISTORY:

The 600 foot extension of Runway 25 and the parallel taxiway will increase the runway length to a total of 5000 feet. This additional footage will allow the airport to accommodate larger jet planes, allow safer landings in adverse weather conditions and increase sales of Jet A fuel. The work to be performed under this contract includes pavement removal, excavation and embankment, grading, drainage, paving, marking, seeding and mulching, and airfield lighting modifications.

On July 7, 2009, formal sealed bids were opened for this project. There were 32 plan holders. Ten companies submitted bids, with Plateau Excavation of Austell, GA, submitting the lowest bid of \$3,451,481.50.

SPECIAL CONSIDERATIONS OR CONCERNS:

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes

STAFF RECOMMENDATION:

Pending FAA issuing and Oconee County accepting FAA Grant AIP 19, staff recommends awarding Bid 08-32 to Plateau Excavation of Austell, GA, in the amount of \$3,451,481.50 for the Runway 25 and Parallel Taxiway Extension for the Oconee County Regional Airport. The contractor is aware that no actual work will be started on this bid until the FAA has issued and Oconee County has received and accepted AIP 19.

FINANCIAL IMPACT:

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

Are Matching Funds Available: YES

If yes, who is matching and how much: See table below.

Bid 08-32 Runway 25 & Parallel Taxiway Extension will be funded by the following:

<u>Grant</u>	<u>FAA Share</u>	<u>SC State Share</u>	<u>Oconee Share</u>
AIP 17	\$1,315,749	\$34,625	\$34,625
AIP 18	\$98,129	\$2,582	\$2,582
AIP 19 (<i>PENDING</i>)	\$2,614,822	\$68,811	\$68,811

There is currently \$95,890 available for the County's grant match for AIP 19 (012-703-60244-00000). The matches for AIP 17 & 18 were previously set aside. The County only needs to provide a match to AIP 19 (\$68,811).

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A calendar with due dates marked may be obtained from the Clerk to Council.

ATTACHMENTS

1. Bid Tabulation

Reviewed By/ Initials:

_____ County Attorney

Finance

Grants

Procurement

Submitted or Prepared By:

Department Head/Elected Official

Approved for Submittal to Council:

Kendra Brown, Asst. County Administrator

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Boards & Commissions

	Meeting Date to Appoint	OPEN SEAT		Wayne McCall		Mario Suarez		Joel Thrift		Reg Dexter		Delegation Office	
		District I	District II	District III	District IV	District I	District II	District III	District IV	District V	District V	Office	Other
Aeronautics Commission	February 2012	Paul Mack	Dan Suddeth	Thomas Luke	Wayna Rholetter	Fred Golden	Robert Edwards						
Anderson-Ocoee Behavioral Health Services Commission	May 2011	2011: Harold Alley, Wanda Long, Joan Black, Jere DuBois, Fred Hamilton, Billie Welsh, Robert Blessingame											
Arts & Historical Commission	March 2011	Rick Bethea	Luther Lyle	Al Robinson	Barbara Waters	Henry Richardson							
Assessment Appeals, Board of		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
ATAx Committee	June 2010	Not by District, by Industry	Billie J. Grimes	Geri McSwain	Gerald Foster, Glen Abbot								At Large: 2011 - Joanne Blake, Barbara Laughter, Doyle Burton
Building Codes Appeal Board	January 2011	Roger Mize	Neal Workman	Sam Shaw	Vinson Smith	Forrest Fuller							
Disabilities & Special Needs, Board of		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Economic Development Commission	November 2010	Kim Alexander	Harold Gibson	Hank Field	Sam Dickson	Buddy G Herring							
Emergency Services Commission	February 2010	Tom Stultz	Jess Novell	Nate Carter	Nick Williams	Ronnie Williams							
Firemen's Insurance & Inspection Fund Board	August 2009	2009: Larry Harden, Dewitt Mize, Chris Smith, Richard Timms, Charles Bobby Williams											
Infrastructure Advisory Commission **	January 2010	County Council Chairman + Council Appoints: Economic Development Director/Jim Alexander, Planning Director/Art Holbrooks and Administrator/Dale Surrent [FY1 county attorney attended in an advisory role]											
Keowee Fire Tax District Commission		All Members elected to 4-yr term in November General Election / 2 in 2008, 3 in 2010, etc.											
Library Board	March 2013	2013: R. Daniel Day, John Adams, Frank Montague, Jody Gaulin, Biff Kennedy, Vicki Miller, Paul Johanson, Carol Baumgarner, P. Ellis Hughes											
Parks, Recreation & Tourism Commission	October 2010	Erin Mckergow	Dwight Addis	Wayne Frady	Mikred Spearman	John Carter							2010: Hedina George
Planning Commission	February 2011	Andrea Heller	Howard Moore	Bill Ewart	Tommy Abbott	Ryan Honea							2010: Rox Ramsey 2012: Randy Abbott
SC ACOG Board	January 2012	2012: Bob Winchester / Citizen Representative & Reg Dexter / Council Representative defined.											
Scenic Highway Committee		Council will no longer appoint - Oconee Joint Regional Sewer Authority [OJRSA]											
Sewer Commission		Inactive Board w/o members - may appoint in future if needed.											
Water Board	N/A												
Zoning Board of Appeals	January 2012	Gary Winters	Sammy Lee	Gary Littlefield	Mike Williamson	Eric Molin							At Large: 2012 Bery Nickols & Paul Reckert
** Infrastructure Advisory Commission members serve until replaced		SEATS APPOINTED BY INDUSTRY NOT DISTRICT SEATS CO-TERMINUS W/ COUNCIL SEATS PAST DUE APPOINTMENT OPEN SEAT for this current year.											

Firemen's Insurance & Inspection Fund Board

Name	Address	Phone	Cell	Eff. Date
Gregory Nowell	Oconee County Treasurer			
Larry Harden	PO Box 175, West Union, SC 29696	638-5280		6/27/2005
Dewitt Mize	9511 Pine Grove Road, Seneca, SC 29678	982-3989	888-6784	3/10/2005
Chris Smith	c/o City of Westminster, PO Box 399, Westminster, SC 29693	647-3206		3/10/2005
Richard Timms	202 Mountain View Drive, Seneca, SC 29678	885-2738		3/10/2005
Charles "Bobby" Williams, Jr.	PO Box 21, Westminster, SC 29693	647-1516		3/10/2005

Appoint./reappoint Summer 2009

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
ORDINANCE 2004-21
AN ORDINANCE CREATING A BOARD OF TRUSTEES OF THE FIREMEN'S
INSURANCE AND INSPECTION FUND

WHEREAS, as Oconee County receives funds pursuant to South Carolina Code Section 23-9-310, Et Seq; and

WHEREAS, South Carolina law requires the establishment of a Board of Trustees of Firemen's Insurance and Inspection Fund for the distribution of funds under South Carolina Code Section 23-9-310, Et Seq.

NOW THEREFORE, BE IT ORDAINED as follows by Council in session duly assembled:

SECTION I:

The Board of Trustees of Firemen's Insurance and Inspection Fund for the Oconee County Rural Fire Department is hereby established.

The Board of Trustees shall consist of six (6) members. The Treasurer of Oconee shall be a member of the Board of Trustees. **The five (5) remaining members shall be appointed by the Oconee County Treasurer upon recommendation of County Council. Each County Council member shall recommend a person to the Treasurer to serve on the Board of Trustees.** Each member of the Board of Trustees shall serve a term of four (4) years and they shall serve until their successors are appointed and qualify for office. The Treasurer shall act as the Treasurer of the Board of Trustees and shall be the custodian of all funds received pursuant to South Carolina Section 23-9-310, Et. Seq.

SECTION II:

The Board of Trustees of Firemen's Insurance and Inspection Fund shall perform the duties set out in a South Carolina Code, Section 23-9-310, Et. Seq.

H. Frank Ables, Jr., Chair
Oconee County Council

Attest:

Opal O. Green, Clerk

1st Reading: 9/7/04
2nd Reading: 9/21/04
3rd Reading: 10/5/04

NOTES
LAW ENFORCEMENT, PUBLIC SAFETY, HEALTH & WELFARE COMMITTEE
July 22, 2009

Discussion of Distribution of County Funds to Volunteer Departments:

Mr. Burdette reviewed new distribution guidelines – noting that each station has to be accountable for the public money spent and that timely reporting of distributions is also important. A copy of this document will be filed with the minutes as reference.

IT IS THE RECOMMENDATION OF THE COMMITTEE THAT THE DISTRIBUTION GUIDELINES OF COUNTY FUNDS TO VOLUNTEER DEPARTMENTS BE APPROVED BY FULL COUNCIL.

Discussion of Part-time Fire / Rescue Personnel:

Mr. Burdette reviewed a proposal to add seven [7] part time staff who would work eight [8] hours per day for three [3] days per week for a maximum of 24 hours per week. He noted that they would be funded from the Emergency Services 2.9 mil taxes. A copy of this document will be filed with the minutes as reference.

IT IS THE RECOMMENDATION OF THE COMMITTEE THAT APPROVAL BE GIVEN TO ADD SEVEN PART TIME STAFF WHO WOULD EACH WORK EIGHT HOURS PER DAY FOR THREE DAYS PER WEEK TO BE FUNDED FROM THE EMERGENCY SERVICES 2.9 MIL TAXES.

Discussion of ISO Report from Walhalla & Westminster Fire Chiefs regarding rural areas:

Chief Ekaitis [Walhalla Fire Chief] was present to discuss the ISO letter received [filed with these minutes and provided for all Council members] that stated that the Walhalla/Westminster substation located at 254 Camp Road will improve the ISO rating for two areas bringing them down from an ISO of 10 to and ISO of either 4 or 5. It was noted that this was accomplished by a cooperative effort by all parties involved. A copy of the letter will be filed with the minutes as reference.

Next Meeting:

The next meeting will be held on Tuesday, August 25, 2009 at 7:00 p.m. in the Conference Room, Oconee Administrative Offices, 415 South Pine Street, Walhalla, SC.

DISPERSING & REQUIREMENTS FOR VOLUNTEER DEPARTMENTS TO RECEIVE COUNTY FUNDS

To reduce some of the work load in the Fire Secretary's office and to allow more accountability and freedom to the Volunteer Departments I recommend the following:

These monies will be divided in quarterly amounts and given to the departments. They will have to meet the requirements below which includes a financial statement.

1. Ensure that Oconee County Emergency Services has access to the buildings (key or code) in order to assist Motor Pool in servicing the vehicles and equipment and for access for Emergency Services personnel to check County Equipment. (The County has an investment of over \$750,000.00 at each station.)
2. Financial statement form for that quarter
 - Grants and Station Expenses
3. Copy of run reports
4. To be able to spend budgeted equipment money Station has to be compliant to listed requirements.
5. Access to report computer so that a back-up disk of documentation for volunteers can be recorded. This will protect from loss of information in case a computer crashes.
6. Each quarter the current person handling the stations finances contact information must also be listed. The finance department will have a contact for questions or audit. The department will provide the Oconee County Administrator or the Administrator's designee, with access to all accounting records, reports and documents (including, but not limited to, invoices, cancelled checks, and bank statements) related to the expenditure of funds provided by Oconee County upon request.

I also recommend a time limit to turn in all required forms, documentation and to be compliant to all requirements or they forfeit that quarters funding.

- A grace period of 30 days after the deadline for the financial statement forms to be turned in should be the maximum deadline.

The following would be the Due Date and End of Grace Period for being compliant to receive County Funding.

All requirements must be met by the 10th of each month after the quarter ends:

<u>Due Date</u>	<u>Grace Period</u>
October 10 th	November 10 th
January 10 th	February 10 th
April 10 th	May 10 th
July 10 th	August 10 th

Any department not compliant with all requirements will forfeit county funds for that quarter.

- ❖ Any Station forfeiting County Funding for a quarter would have to have the documentation for that quarter as part of being complaint for the next quarter. All documentation has to be current.

The funds that are being recommended to be distributed in this manner are as follows:

From the 2.9 mils (20 Fund):

- Basic Station Expenses - 020-107-64002

From the General Fund:

- Grants to Independent Agencies - 010-107-60083

The following account would only be affected if the station is not compliant to the Quarterly requirements. They would not lose these funds but would not be allowed to spend them until they became compliant to the requirements.

- Small Capital - 010-107-40031

The breakdown of Quarterly funding for the departments is as follows:

	<u>Fire</u>	<u>Haz-Mat</u>	<u>Rescue</u>
Station Expenses	2,000	0	1,000
Grants	2,500	2,500	3,750
Totals	4,500	2,500	4,750

The breakdown of Yearly funding for the departments is as follows:

	<u>Fire</u>	<u>Haz-Mat</u>	<u>Rescue</u>
Station Expenses	8,000	0	4,000
Grants	10,000	10,000	15,000
Small Capital	10,000	10,000	0
Totals	28,000	20,000	19,000

- All of the money will not have to be spent each quarter. The financial statement will show how much was spent, to whom, and on what. The form will also show the beginning balance and ending balance. It will also reflect the amount added from the quarterly funds received.
- It is recommended to each group to keep their 1% if they receive them in a separate account.
- It is also recommended they keep any donated funds in a separate account.

FY 2009-2010

OCONEE COUNTY
 BUDGET REPORT BY ACCOUNT
 CURRENT PERIOD: 06/01/2010 TO 06/30/2010

IDEAL REMAINING PERCENT: 0%

ACCOUNT	BUDGETED EXPENDITURE	CURRENT EXPENDITURE	YEAR TO DATE		REMAINING	
			EXPENDITURE	ENCUMBRANCE	BALANCE	PCI
010-107-40031-00000 SMALL CAPITAL	15,000.00	0.00	0.00	0.00	15,000.00	100
010-107-40031-00501 OAKWAY FIRE DEPART	13,379.57	0.00	0.00	0.00	13,379.57	100
010-107-40031-00502 SALEM FIRE DEPART	19,170.68	0.00	0.00	0.00	19,170.68	100
010-107-40031-00503 CORNELL-SHILOH FIRE DEPARTMENT	21,922.14	0.00	0.00	0.00	21,922.14	100
010-107-40031-00604 MOUNTAIN BEST FIRE DEPART	10,000.00	0.00	0.00	0.00	10,000.00	100
010-107-40031-00608 FAIR PLAY FIRE DEPART	21,146.58	0.00	0.00	0.00	21,146.58	100
010-107-40031-00609 LONG CREEK FIRE DEPART	27,905.58	0.00	0.00	0.00	27,905.58	100
010-107-40031-00610 CLEVELAND FIRE DEPART	41,943.69	0.00	0.00	0.00	41,943.69	100
010-107-40031-00611 KEOWEE EBENEZER FIRE DEPT	15,970.20	0.00	0.00	0.00	15,970.20	100
010-107-40031-00612 FRIENDSHIP FIRE DEPT	21,627.49	0.00	0.00	0.00	21,627.49	100
010-107-40031-00613 CROSS ROADS FIRE DEPT	10,406.31	0.00	0.00	0.00	10,406.31	100
010-107-40031-00614 PICKETT POST FIRE DEPT	18,637.85	0.00	0.00	0.00	18,637.85	100
010-107-40031-00615 SOUTH UNION FIRE DEPT	12,385.69	0.00	0.00	0.00	12,385.69	100
010-107-40031-00616 WEST UNION FIRE DEPT	25,098.25	0.00	0.00	0.00	25,098.25	100
010-107-40031-00617 KEOWEE KEY FIRE DEPT	12,291.94	0.00	0.00	0.00	12,291.94	100
010-107-40031-00620 HAZMAT	17,145.96	0.00	0.00	0.00	17,145.96	100
	<u>307,031.93</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>307,031.93</u>	<u>100</u>
	<u>307,031.93</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>307,031.93</u>	<u>100</u>
	<u>307,031.93</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>307,031.93</u>	<u>100</u>
	<u>307,031.93</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>307,031.93</u>	<u>100</u>
	<u>307,031.93</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>307,031.93</u>	<u>100</u>

010



OCONEE COUNTY EMERGENCY SERVICES
FIRE, RESCUE
EMERGENCY MANAGEMENT
HAZMAT

RODNEY BURDETTE, DIRECTOR
PH: 864-638-4200
FAX: 864-638-7046

415 S. PINE STREET
WALHALLA, SC 29691

TO: County Council
From: Rodney Burdette, OCES Director
Subject: Part Time Fire & Rescue Personnel
Date: 7-16-2009

I would like to present the following for your consideration. The volunteers have over the years requested some 8 hour a day personnel to help with duties and work that more than they are able to get done. This proposal will give an opportunity to fund this for 1 year and evaluate the benefit of its value and effectiveness. This schedule of part time personnel would also minimize the cost for these personnel. The County would not have to pay any benefits on part time personnel.

This would be funded from the Emergency Services 2.9 mil tax. This is a 20 fund under the budget for this fund there is a line item for Contingency (20-107-64008) There is a current balance in this fund of \$150,340.00. The actual costs that were run by the Finance Dept. for this project would be \$121,112.48. It would be my proposal to fund this project from August 2009 to August 2010. This would give the opportunity to evaluate its effectiveness and give opportunity for council to decide whether to fund it for a 2nd year.

7 part time personnel would be hired to work 8 hours per day for 3 days per week for a maximum of 24 hours per week. A breakdown of how this project will work is as follows:

- There are 14 Volunteer Fire Stations (This includes the Keowee-Special Tax District)
- There is 1 Volunteer HAZMAT Station.
- There are 6 Rescue (Medical) Stations.
- This gives a total of 21 Stations.
- There are 2 County wide units that do not have a station (Rescue 7-Dive and Rescue 8 Special Rescue) The 24 hour staff would take care of keeping their equipment checked.

- The 7 part time personnel would have 3 stations assigned to each.
- Each station would have a person in their station for 8 hours 1 day every week.
- They would work a maximum of 24 hours per week to keep a part time status so that no benefits would have to be paid.
- For the station to receive this part time person they will have to be compliant to the requirements for the County funding.
- They would be paid an hourly rate of \$11.00 per hour. This would allow for this project to be done for the \$121,112.48 previously mentioned.
- Funding would come from the Emergency Services Special Tax fund (2.9 mils) This is a 20 fund and the funds are under Contingency Line item 20-107-64008. It has a current balance of \$150,340.00.
- We have requested a list from all volunteer chiefs of what duties they need the most help with and duties they would like to receive assistance with. We will evaluate these lists and put together a list of duties that are productive and efficient.
- The only drawback at this time is that the Federal Fair Labor Act Standards does not allow a paid employee full time or part time to be a volunteer doing the same job function under the same organization. By the county paying the workers compensation insurance on these volunteers they are (under law) considered all under the county. **The short version is (By Law) a paid employee for Emergency Services cannot be a county fire or rescue volunteer.**



INSURANCE SERVICES OFFICE, INC.

43 Eves Drive, Suite 200, Marlton, New Jersey 08053 (856) 985-5600 FAX (856) 989-7269

May 12, 2009

Chief John G. Ekaitis
Walhalla Fire Department
207 E. N. Broad Street
Walhalla, SC 29691

Dear Chief Ekaitis:

This is to advise that your Walhalla/Westminster substation located at 254 Camp Rd has been recognized and will become **effective 8/1/09**. All properties within 5 road miles of the substation in the Walhalla FD boundary will be Class 4 and all properties within 5 road miles of the substation in the Westminster FD boundary will be Class 5.

Should you have any further questions or need any additional information, please feel free to contact me at 800-444-4554, option 2.

Sincerely,

Portia E. Stewart
Community Mitigation Analyst
ISO-ERPC- Marlton
800-444-4554, option 2
www.isomitigation.com

STATE OF SOUTH CAROLINA
SOUTH CAROLINA AERONAUTICS COMMISSION



PAUL G. WERTS
EXECUTIVE DIRECTOR

MARK SANFORD
GOVERNOR

July 27, 2009

Ms. Kendra Brown, Assistant Administrator
Oconee County
415 S. Pine Street
Walhalla, South Carolina 29691-2145

**AERONAUTICS
COMMISSION**

Re: South Carolina Aeronautics Commission Project No. 09-019
Oconee County Regional Airport

Chairman
At-Large
Gregg A.
Malphrus

Dear Ms. Brown:

District 1 &
Vice-Chairman
William M.
McKewn

I am pleased to inform you that the South Carolina Aeronautics Commission has approved your project application and awarded up to \$2,582 to the Oconee County Regional Airport for professional services to include engineering, construction administration, resident project representation and quality control testing. This grant was approved based on your representation of local funding availability and your ability to proceed promptly with the project.

District 2 &
Secretary
Raymond E.
McKay, Jr.,
JD, CPA

Please execute the enclosed grant agreements and return one original to Aeronautics at your earliest convenience.

District 3
Ira E. "Bud"
Coward II

This project qualifies for the Federal Aviation Administration grant program where 95 percent of the cost is funded by a federal grant and five percent by state and local government. Project cost and funding are as indicated below:

Total project cost	\$103,294
Federal grant	\$ 98,130
State grant	\$ 2,582
Local government	\$ 2,592

District 4
Joshua D.
Houston

We are pleased to provide this assistance. If we can be of further assistance, please do not hesitate to call.

District 5
Barry G.
Avent

Sincerely,

Paul G. Werts
Executive Director

District 6
Dennis L.
Dunney, CPA

PGW/r

Enclosures: Grant

cc: Governor Mark Sanford
Chairman Gregg A. Malphrus
Representative William R. Whitnire, Leg. Chairman, Oconee County Delegation
Ira E. "Bud" Coward II, District 3
Jay Talbert, Talbert & Bright, Inc.

Post Office Box 280068
Columbia, South Carolina 29228-0068
2553 Airport Blvd., West Columbia, South Carolina 29170
Phone: 803-896-6260
Fax: 803-896-6266
Toll Free: 800-922-0574

GRANT AGREEMENT
Part 1 - OFFER

Date of Offer: **July 23, 2009**

Project No. 09-019

TO: **Oconee County**
(herein referred to as the "Sponsor")

FROM: The State of South Carolina (acting through the South Carolina Aeronautics Commission, herein referred to as "Aeronautics").

WHEREAS, The Sponsor has submitted to Aeronautics a Project Application dated **June 8, 2009**, a grant of State Funds for a project for development of the **Oconee County Regional Airport** together with plans and specifications for such a project, with Project Applications, as approved by Aeronautics is hereby incorporated herein and made a part hereof:

and

WHEREAS, Aeronautics has approved a project for development of the Airport ("herein called the "Project") consisting of the following described airport development:

**Professional Services – Engineering, Construction Administration,
Resident Project Representation, and Quality Control Testing**

All as more particularly described in the property map and plans and specifications incorporated in the said Project Application:

NOW THEREFORE, pursuant to and for the purposes of carrying out the provisions of this grant and in consideration of (a) the Sponsor's adoption and ratification of the acceptance of this offer and agreement, as hereinafter provided, and (b) the benefits to accrue to the State of South Carolina and the public from the accomplishment of the project and the operation and maintenance of the Airport, as herein provided.

THE STATE OF SOUTH CAROLINA ACTING THROUGH THE SOUTH CAROLINA AERONAUTICS COMMISSION, HEREBY OFFERS AND AGREES to pay, as South Carolina's matching share of the allowable cost incurred in accomplishing the project as per the following schedule:

<u>Funding Source</u>	<u>Amount</u>
State	\$ 2,582
Federal	\$98,130
Sponsor	\$ 2,582
Other	\$ 0

for a total cost of **\$103,294** subject to the following:

1. The maximum obligation of the State of South Carolina payable under this Offer and Agreement shall be: \$2,582, which all parties to this Agreement understand may be subject to the prior and continuing approval of the South Carolina Budget and Control Board and the General Assembly and its component review committees.
2. Aeronautics reserves the right to amend or withdraw this Offer at any time prior to its binding acceptance by the Sponsor.
3. This Offer shall expire and the State of South Carolina shall not be obligated to pay any of the allowable cost of the Project unless this Offer has been accepted by the Sponsor within 60 days from the above date of Offer or such longer time as may be prescribed by Aeronautics in writing.
4. The funds allocated by this Agreement shall be held in escrow for a period of one (1) year after the date of offer. If progress on the described project has not begun at that time, the funds will revert to Aeronautics for reallocation to other worthwhile projects.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application shall be evidenced by execution of Part II of this Agreement by the Sponsor. The respective obligations under this Grant Agreement shall become effective upon the Sponsor's acceptance of the Offer and shall remain in full force and effect throughout the useful life of the facilities developed under the project but in any event not to exceed twenty years from the date of said acceptance.

STATE OF SOUTH CAROLINA
SOUTH CAROLINA AERONAUTICS COMMISSION

Signature By:


Executive Director



Sponsor's Signature

8/4/09

Date

Interim Administrator

Title



PART II - SPONSOR ASSURANCES

1. The Sponsor shall:
 - a. begin accomplishment of the Project within a reasonable time after acceptance of this Offer, but no later than one year from award of this Offer;
 - b. carryout and complete the project in accordance with the terms of this agreement, applicable policies of Aeronautics, and applicable statutes, regulations and fiscal policies of the State of South Carolina, and any applicable local ordinances;
 - c. carryout and complete the project in accordance with the plans and specifications and property map incorporated herein, including any revisions or modifications approved in writing by Aeronautics. Sponsor further agrees to copy Aeronautics as to all construction progress reports, payment applications, and completion documents and related correspondence within ten (10) days of document development or receipt.
 - d. submit all planning documents to Aeronautics for review and approval; and
 - e. notify Aeronautics, in writing, of any improvements to the airport so that same may be incorporated into the South Carolina Airport System Plan.
2. The Sponsor shall operate and maintain the Airport as provided in the Project Application.
3. Any misrepresentations or omission of a material fact by the Sponsor concerning the Project or the Sponsor's authority or ability to carry out the obligations assumed by the Sponsor in accepting this Offer shall terminate the obligation of the State of South Carolina and it is understood and agreed by the Sponsor in accepting this Offer that if a material fact has been misrepresented or omitted by the Sponsor, Aeronautics of Aeronautics, on behalf of the State of South Carolina, may demand and recover from Sponsor all grant payments made, plus interest at the legal rate prevailing at date of demand.
4. The Sponsor shall maintain the approaches to the airport in compliance with appropriate guidelines set forth in FAA Part 77 or other guidelines approved in writing by Aeronautics. Failure on the part of the Sponsor to take appropriate action to remove any and all obstructions in the approaches may result in withholding of any payment of the funds established by this agreement for the herein described project until such time as the necessary actions are taken.
5. The Sponsor shall maintain property insurance on the project to cover any and all losses. The amount of the coverage shall, at a minimum, be equal to the total cost of the project.
6. The Sponsor's Request for Final Reimbursement must have been received within ninety (90) calendar days after the Final Inspection has been accomplished in order to close out the project in a timely manner.

PART III - ACCEPTANCE

Oconee County (Sponsor) does hereby ratify and adopt all statements, representations, warranties, covenants, sponsor assurances and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby unconditionally accept said Offer and by such acceptance agrees to all of the terms and conditions thereof.

Executed this 4th day of August, 2009

Oconee County
(Name of Sponsor)

[Signature]
(Signature By)

Interim Administrator
(Title)

(Seal) [Signature]
Attest [Signature]
Title Clerk to Council

CERTIFICATE OF SPONSOR'S ATTORNEY

I, Thomas L. Martin, acting as attorney for Oconee County, S.C. do hereby certify: That I have examined the foregoing Grant Agreement and the proceedings taken by said Oconee County, S.C. relating thereto, and find the Acceptance by Sponsor has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of South Carolina, and further that, in my opinion, said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated this 4th day of August, 2009

Signature By Thomas L. Martin

Title Oconee County Attorney