



PUBLIC COMMENT SESSION SIGN IN SHEET

OCONEE COUNTY COUNCIL MEETING

Tuesday, August 18, 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
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PUBLIC COMMENT SESSION SIGN IN SHEET RACETRACK ISSUE ONLY

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slated for action at the meeting.**

PLEASE PRINT

	FULL NAME	AGENDA ITEM FOR DISCUSSION
1 x	Debbie Massey	Noise
2 x	Don Massey	noise
3 x	Dat Halluka	noise
4 x	Fate Vackey	Track
5 x	Abby Hyde Jimmy Franklin	Westminster Speedway
6 x	Kim O Kelley - passed	Track Speedway
7 x	Travis Watkins - passed	Track
8 x	Stacy Holtbrooks	Westminster Speedway
9 x	Frankie Pearson	Westminster Speedway
10 x	Sperry Wynn	Westminster Speedway
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Starting off with a clean slate



Jessica Nelms/Staff

Custodial staff member Haywood Wright, left, Thomas Johnson, middle, and Michael Wilson sweep and mop the floor at the new Blue Ridge Elementary School in Seneca, on Tuesday afternoon. Crews are working to complete the school before school starts on Aug. 17.

Oconee attorney among 'best'

Staff Reports

Oconee County Attorney Thomas L. Martin has been named one of 43 attorneys from McNAIR LAW FIRM, P.A. listed in the 2010 edition of Best Lawyers, the oldest and most respected peer-review publication in the legal profession.

Martin was recognized for his abilities in the area of



Martin

First published in 1983, Best Lawyers is based on an

municipal law. He has been the Oconee County Attorney since January of this year.

annual peer-review survey. For the new U.S. edition, more than 24,000 leading attorneys cast almost 3 million votes on the legal abilities of other lawyers in the same and related specialties. Because of the rigorous and transparent methodology used and because lawyers are not required or allowed to pay a fee to be listed, inclusion in Best Lawyers is considered a singular honor.

Two arrested and charged with setting mill fire

ROCK HILL (AP) — Authorities in Rock Hill say they have arrested two men who set two separate fires at an abandoned mill this sum-

mer. Christopher Anderson and Christopher Anderson are each charged with two counts of second-degree arson.

Investigators say fires were set at the Rock Hill mill for-

put out the flames.

Authorities say the men also were ticketed for trespassing a day before the second fire. It wasn't immediately clear if they had attorneys.

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Beth Hulse

From: Cornelius [corneliussb@yahoo.com]
Sent: Friday, August 14, 2009 9:09 AM
To: Reg Dexter; jthrift@nuvox.net; Kendra Brown; Beth Hulse
Subject: Public Hearing - Duke Energy

Good morning,

Regarding the scheduled public hearing next Tuesday for the modification agreement on the Duke bonds from 1993, I wish to alert you to further questions I may have which are pertinent to the acceptance of the agreement.

New information posted with the agenda for the meeting leaves me with only a limited amount of time to research and state my questions which will come as soon as I can manage, perhaps by Monday.

In the meantime, please be advised of the July 27, 2009 notice of low bond ratings for Duke Energy and Progress Energy which clearly states that the utilities' bonds are near junk status and that a bond sale by Duke earlier this year failed until it was repackaged.

<http://www.ncwarn.org/docs/alert%207-27-09%20ltr%20to%20Cowell%20re%20bond%20ratings.pdf>

Above is the link for the press release on Duke and Progress and I'm asking that Beth download and furnish Council with a copy.

I believe that it is possible that the county may have more than just a "limited" liability on these bonds due the highly irregular status of the financial markets and that county officials should be very careful about financial commitments.

Also, the rumor mill has been churning on Progress Energy and any negative publicity will directly affect the viability of Duke's already declining fortunes.

We need to be very careful about financial obligations and I sincerely hope that council is receiving competent advice. From the public perspective, legal advice does not appear competent.

Susie

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<http://mail.yahoo.com>

NEWS RELEASE
July 27, 2009

Low Bond Ratings of Duke Energy and Progress Energy May Force NC Treasurer to Divest

Utilities' bond ratings near junk status due to "bet the farm" risks of planned nuclear plants; the low rating also supports calls for halting Duke's Cliffside coal plant due to financing risks

DURHAM, NC – Citing a North Carolina law prohibiting the state from holding devalued investments, a watchdog group today called on Treasurer Janet Cowell to ensure that various state funds exclude bonds issued by both Duke Energy and Progress Energy. NC WARN also said Duke's downgraded status bolsters the group's pending motion for the NC Utilities Commission to revoke Duke's permission to build the Cliffside coal-fired plant.

In a letter to Treasurer Cowell, attorney John Runkle cited a new report by Moody's Investors Services, showing downgraded status of the two NC-based utilities and others contemplating new nuclear plants. He also urged her to guard against stock investments that could become devalued based on similar risks, to inform the Local Government Commission about the prohibition, and report her findings to the public.

Moody's June report shows both Duke Energy and Progress Energy rated at "Baa2," one step up from speculative grade or junk bond status, due to plans by both utilities for what Moody's calls a "bet-the-farm risk" of building new nuclear plants.

The credit rating agency warned it is considering an even more negative view for bond "issuers seeking to build new nuclear plants," and said that proposed Federal Loan Guarantees would "only modestly mitigate increasing risks." Projects abandoned after being started cannot be ruled out, according to Moody's, which also warned of potential "future rate shock and/or disallowances of cost recovery" from electricity customers.

Duke has indicated that it will not go forward with its Lee nuclear project without more risk being shifted to ratepayers. And last month, the power giant filed for an 18% rate increase, in part for up-front payment of construction for the ongoing Cliffside coal-fired plant. Although Duke has stated that it is financing Cliffside "from its balance sheet," utilities regularly borrow and roll various forms of debt; early this year, a bond sale attempted by Duke was "panned by investors," and the company had to repackage the offering, apparently with higher interest rates.

NC WARN's motion for the Utilities Commission to halt construction at Cliffside cites risks of financing and possible cancellation of the controversial project. Although the current Moody's report focuses on nuclear, lenders have warned about increasing risks as coal plant projects tumble across the nation amid rapid changes in energy markets. This month, two dozen public interest groups joined the call for revocation and/or for the Commission to conduct evidentiary hearings in the Cliffside case. The Commission sought comments but has not yet ruled on the motion.

The state treasurer handles over a dozen pots of money on behalf of taxpayers, state employees and others. As attorney Runkle pointed out, General Statute 147-69.2(b) requires all debt holdings to be in top-rated securities. In years past, electric utilities have often been seen as stable investments. But two years ago, ratings agencies lowered Duke Energy's ratings due to its ambitious plans for billions of dollars worth of new coal and nuclear plants.

A key concern for nuclear investors cited by Moody's is the dynamic change occurring across the U.S. energy sector, and the potential that new technologies could cause nuclear projects to be outdated before they could come on-line. Among other reasons, it cited "daunting" price tags, the "sheer size and complexity" of nuclear projects, and a history that "gives us reason to be concerned ...". Apparently, Moody's was unaware of reactor design problems that have already caused delays and consternation with many U.S. projects, including those involving Duke and Progress.

"We really need Treasurer Cowell and the Utilities Commission to protect North Carolinians from the power companies' dreams of expansion," said Jim Warren of NC WARN today. *"Both Progress and Duke should be turning away from huge, risky – and unnecessary – power plants, but state officials must ensure the public doesn't get burned by the utilities' actions."*

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Beth Hulse

From: Cornelius [corneliusb@yahoo.com]
Sent: Tuesday, August 18, 2009 1:20 AM
To: Beth Hulse
Subject: RE: Public Hearing - Duke Energy

Beth,

My Yahoo mail is on the frize so I am replying to your mail and asking you to forward a copy of this message to:

Reg Dexter
Joel Thrift
Kendra Brown

Thanks, Susie

Council members Dexter and Thrift and Ms. Brown:

I have not yet read enough material to structure my comments for the public hearing on the modification agreement for the Duke bonds. My observation regarding changes to the bond agreement between Duke and the County in 2003 and 2006 is that this action is the source of tumultuous events in the Duke assessment for tax purposes with great consequences for taxpayers. That may not be true, but appears that way through feedback.

In general terms, these are my major concerns:

1. Other governmental taxing areas get assessment value added to their tax base for the upgrades to the Duke Oconee plant financed by the bonds in question. Are these other areas sharing in the "limited liability" Oconee has agreed to under the terms of modification agreements with Duke on the bonds?

Duke made improvements to the Oconee plant of about \$1 billion this decade. The improvements appear to be financed by '92 bonds of \$77,000,000 and '97-'99(?) bonds of \$35,000,000.

Several years back, in response to my specific question about "where is this value in the \$1 billion in assessed value for the Oconee County tax base?" I was told by state EOR officials that Oconee did not get assessment credit for the full project, but that it had been distributed between NC and SC and across a number of counties in SC throughout the grid, primarily to Oconee and part to York County. At that time, York County officials refused a response to my FOIA for the amount of their portion of the Duke assessment for the upgrades project at the Oconee plant.

2. What happened to the \$35,000,000 bonds and why is there no modification agreement required when there had been agreements on both sets of bonds in earlier modifications?

3. What is the extent of the "limited liability" to Oconee County?

4. An 2006 modification agreement to the two sets of bond agreements appears to be illegal and I ask whether there are consequences of that for the proposed action for a new modification agreement.

Reviewing this matter, it has been called to my attention that there was a modification agreement for both sets of bonds in 2006. This was done at a Special Meeting in March 2006, and was illegal for lack of proper notice. The bond vote was not on the agenda and even though there is stated notice of the meeting, no one recalls that notice.

5. What is the fixed interest rate on the bonds which will be set by the modification agreement? It is blank in the paperwork.

6. In what way does the proposed modification agreement have a potential to affect the

amount of the Oconee County share of the Duke assessment?

Susie

--- On Mon, 8/17/09, Beth Hulse <bhulse@occoneecc.com> wrote:

> From: Beth Hulse <bhulse@occoneecc.com>
> Subject: RE: Public Hearing - Duke Energy
> To: "'Cornelius'" <corneliusb@yahoo.com>
> Date: Monday, August 17, 2009, 8:59 AM

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around <http://mail.yahoo.com>

Public Comments on Ordinance 2006-03,
The 2005-06 Amended Appropriations Ordinance for 2006-03 for Oconee County

March 21, 2006

Oconee County Council
Walhalla SC 29691

This is notice that I have been over-charged ad valorem taxes due from me for the 2005 tax year and that my request has been denied for an adjustment to the ad valorem taxes payable by me for that period.



Susie Cornelius
170 Old Mill Lane
Mountain Rest SC 29664

AGENDA ITEM SUMMARY
OCONEE COUNTY, SC

COUNCIL MEETING DATE: August 18, 2009
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

Reduce the price for a scoop of mulch from \$15.00 back to \$10.60.

(RESOLUTION 2009-14)

BACKGROUND OR HISTORY:

Oconee County started selling mulch in the 1990's. Currently, one scoop is approximately two cubic yards. The price per scoop of mulch was increased July 1, 2008 due in part to high fuel costs at that time. The price had been \$10.60 for approximately four years with no price increase. Due to the huge downturn in the economy last year, mulch sales decreased and have resulted in an overabundance of mulch. Summer thunderstorms have caused an increase in the amount of brush that has been stockpiled and winter storms usually double the amount of incoming debris.

SPECIAL CONSIDERATIONS OR CONCERNS:

Due to the increase in mulch and brush stockpiles, there is a much greater potential to have a fire.

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? N/A

STAFF RECOMMENDATION:

Staff recommends that the price of mulch be reduced back to \$10.60 per scoop until stockpiles decrease and the economy revives.

FINANCIAL IMPACT:

For FY 2009-10, the reduction would result in approximately \$12,000 less than budgeted. However, if volumes increase because of the lower price, the loss may be much less.

ATTACHMENTS

Reviewed By/ Initials:

_____ County Attorney

_____ Finance

_____ Grants

_____ Procurement

Submitted or Prepared By:

_____ Swain T. Still, Solid Waste Director

Approved for Submittal to Council:

_____ Kendra Brown, Asst. 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
OCONEE COUNTY
RESOLUTION 2009-14**

A RESOLUTION OF THE OCONEE COUNTY COUNCIL AUTHORIZING A SPECIAL PRICE ON CERTAIN PRODUCT OF THE OCONEE COUNTY SOLID WASTE.

WHEREAS, Oconee County, South Carolina (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, operates a solid waste department (the "SOLID WASTE") as a function of County government, for the convenience of its citizens; and,

WHEREAS, from time to time, and because of fluctuating demand, Solid Waste will have an excess of mulch products; and,

WHEREAS, the Oconee County Council (the "County Council"), to keep Solid Waste prices competitive and to free up space at the landfill, may, from time to time, offer special pricing on mulch that is in excess supply; and,

WHEREAS, the Solid Waste currently has an oversupply of mulch and Oconee County Council desires to reduce that supply by offering special pricing on mulch from Solid Waste for the time being.

NOW THEREFORE, it is hereby resolved, by Oconee County Council, in meeting duly assembled, on behalf of all Oconee citizens, that:

1. Mulch produced by the Oconee County Solid Waste Department will be sold for \$10.60 per scoop (as opposed to the usual \$15.00 per scoop), until such time as the Solid Waste Director signifies to the County Administrator that mulch is no longer in long supply at the Solid Waste Complex. At such time the price of mulch at the Solid Waste Complex will revert to the normal price of \$15.00 per scoop, automatically, without further action by County Council.
2. Should any portion of this Resolution be deemed unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such determination should not affect the remaining terms and provisions of this Resolution, all of which are hereby deemed separable.
3. All orders and resolutions in conflict herewith are, to the extent of such conflict only, repealed and rescinded.

THIS RESOLUTION WILL TAKE EFFECT immediately upon enactment.

APPROVED AND ADOPTED this 18th day of August, 2009.

OCONEE COUNTY, SOUTH CAROLINA

By:

Reginald T. Dexter, Chairman of County Council,
Oconee County, South Carolina

ATTEST:

By:

Elizabeth G. Hulse, Clerk to County Council
Oconee County, South Carolina



Oconee County Planning Department

415 S. Pine Street, Walhalla, SC 29691

Telephone: 864-638-4218

Fax: 864-638-4168

August 13, 2009

To: Beth Hulse
From: Art Holbrooks

Re: Revised Draft Flood Damage Prevention Ordinance

Enclosed is a copy of the revised draft Flood Damage Prevention Ordinance to be considered for 2nd Reading at the August 18th County Council meeting.

I should point out that this document is the result of a detailed review by the County Attorney, who made a number of changes from the state's model ordinance that was first presented. Please note that the County Attorney has created a separate 'enacting ordinance' to simplify codification of the changes.

You will notice that this draft is much simpler than both the state's model ordinance that was originally presented for consideration, and our currently adopted ordinance (it also being the state model).

Still, it meets the minimum FEMA requirements for remaining in the National Flood Insurance Program, and will not change our current floodplain review operation.

It contains the required changes identified by FEMA, including the effective date of our new maps, **which has to be adopted prior to September 11, 2009 for Oconee County to remain in the program.**

A copy of the document has been provided to FEMA for review and approval.

AGENDA ITEM SUMMARY
OCONEE COUNTY, SC

COUNCIL MEETING DATE: ¹⁸ August 18, 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

ORDINANCE + EXHIBIT DRAFTED BY OCONEE COUNTY ATTORNEY

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

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

**STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
ORDINANCE 2008-21**

**AN ORDINANCE REENACTING CERTAIN SECTIONS OF
ORDINANCE 87-4 AND 2005-06, THE FLOOD DAMAGE
PREVENTION ORDINANCES.**

WHEREAS, Oconee County, South Carolina (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through the Oconee County Council (the "Council"), has previously adopted certain ordinances and regulations regarding flood damage prevention, all of which are codified in Chapter 16, Article II of the Code of Ordinances, Oconee County, South Carolina (the "Code of Ordinances"); and,

WHEREAS, the South Carolina General Assembly has delegated the responsibility to the County to enact ordinances and promulgate regulations designed to promote the public health, safety, and general welfare of its citizenry, including the authority and responsibility to enact ordinances and promulgate regulations to mitigate the damaging effects of floods in the unincorporated areas of the County; and,

WHEREAS, the Council recognizes that the special flood hazard areas of in the County are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which may adversely affect the public health, safety, and general welfare; and,

WHEREAS, the Council further recognizes that losses due to floods are caused, in part, by the cumulative effect of obstructions in special flood hazard areas causing increases in flood heights and velocities, and by the occupancy in special flood hazard areas by uses that are vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages; and,

WHEREAS, the Council further recognizes that floodplains are an important asset to the community, that floodplains perform vital natural functions such as temporary storage of floodwaters, moderation of peak flood flows, maintenance of water quality, groundwater recharge, prevention of erosion, habitat for diverse natural wildlife populations, recreational opportunities, and aesthetic quality and that these functions are best served if floodplains are kept in their natural state, and

WHEREAS, the Council further recognizes that wherever possible, the natural characteristics of floodplains and their associated wetlands and water bodies should be preserved and enhanced, and that whenever possible, decisions to alter special flood hazard areas, especially floodways and stream channels, should be the result of careful planning processes that evaluate resource conditions and human needs; and,

WHEREAS, the Council desires to amend the flood damage prevention ordinance for the purpose of protecting human life and health, minimizing property damage, and encouraging appropriate construction practices to minimize public and private losses due to flood conditions by requiring that uses vulnerable to floods, including facilities serving such uses, be protected against flood damage at the time of initial construction; and,

WHEREAS, the Council further desires to amend the flood damage prevention ordinance to prohibit or otherwise restrict uses of special flood hazard areas which are dangerous to health, safety, and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion, and Council further intends to attempt to control the alteration of special flood hazard areas, stream channels, and natural protective barriers involved in the accommodation of flood waters, to control filling, grading, dredging and other development that may increase flood damage or erosion, and to prevent or regulate the construction of flood barriers which may unnaturally divert floodwaters or increase flood hazards to other lands; and,

WHEREAS, it is the Council's objective 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 damage from flooding, and to insure that potential home buyers are notified that property is in a special flood hazard area, and Council further intends 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 special flood hazard area, as well as prolonged business interruptions; and,

WHEREAS, the Council further recognizes that, an important floodplain management objective of this article is to minimize expenditure of public money for costly flood control projects and rescue and relief efforts associated with flooding; and,

WHEREAS, the Council therefore intends to amend all sections in Chapter 16, Article II of the Code of Ordinances:

NOW, THEREFORE, be it ordained by County Council, in meeting duly assembled that:

1. Chapter 16, Article II of the Code of Ordinances, Oconee County, South Carolina, entitled *Flood Damage Prevention*, is hereby amended to read as set forth in Exhibit A, which is attached hereto and hereby incorporated by reference as fully as if set forth verbatim herein.
2. All sections of Chapter 16, Article II of the Code of Ordinances that are not specifically revised or amended by and through Exhibit A are hereby repealed, revoked, and rescinded.
3. The remaining terms and provisions of the Code of Ordinances not revised or affected hereby remain in full force and effect.
4. Should any word, phrase clause or provision of this Ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, such determination shall not effect this Ordinance as a whole, or any part hereof, except that specific provision declared by such court to be invalid or unconstitutional. If any part of this Ordinance is declared invalid, the remainder of the Ordinance shall not be affected and shall remain in force.

5. All Ordinances, Orders, Resolutions, and actions of County Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and rescinded.
6. This Ordinance shall take effect and be in full force and effect from and after third reading and enactment by County Council.

ORDAINED in meeting, duly assembled, this ____ day of September, 2009.

**OCONEE COUNTY,
SOUTH CAROLINA**

By: _____
Reginald T. Dexter
Chairman of County Council
Oconee County, South Carolina

ATTEST:

Elizabeth G. Hulse
Clerk to County Council
Oconee County, South Carolina

First Reading: December 16, 2008
Second Reading: August 18, 2009
Public Hearing:
Third Reading:

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
ORDINANCE 2008-21

EXHIBIT A

ARTICLE II – FLOOD DAMAGE PREVENTION

DIVISION 1 GENERALLY

Section 16-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory structure : A structure 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.

Addition (to an existing building or structure): 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.

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 article.

Appeal: A request for a review of the Flood Plains/Stormwater Manager's interpretation of any provision of this article.

Area of shallow flooding: A designated AO Zone on a 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.

Base flood: The flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE): The height of the base flood, usually in feet, in relation to the specified geodetic vertical datum.

Basement: Any enclosed area of a building that is below grade on all sides.

Building: any structure built for support, shelter, or enclosure for any occupancy or storage.

CLOMR: Conditional Letter of Map Revision

CLOMA: Conditional Letter of Map Amendment

Critical facility: Those functions, structures or buildings used for essential services for the public good, health and welfare of the essential daily operations and delivery of services to the citizens of the county, such as, but not limited to, waste water treatment facilities, potable water distribution facilities, power generation facilities, telecommunication centers, schools, hospitals, fire departments, law enforcement facilities, emergency medical service facilities, governmental offices, care centers, disaster shelter facilities and the like.

DIIS-FEMA: Department of Homeland Security –Federal Emergency Management Agency

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.

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

Existing construction: 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.

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) was completed before September 1, 1987.

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).

Flood: A general and temporary condition of partial or complete inundation of normally dry land areas from (a) The overflow of inland or tidal waters; or (b) The unusual and rapid accumulation of runoff or surface waters from any source.

Flood Hazard Boundary Map (FHBM): An official map issued by DHS-FEMA, NFIP on which the boundaries of the special flood hazard areas have been defined.

Flood Insurance Rate Map (FIRM): An official map of the County on which DHS-FEMA, NFIP has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study: The official report containing the examination, evaluation and determination of flood hazard areas provided by the DHS-FEMA, NFIP. The report contains flood profiles, as well as the Flood Hazard Boundary Map and flood risk data for various areas of the county and the water surface elevation of the base flood.

Floodproofing: 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

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 lumber 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. Class 4 and 5 materials, referenced in the 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 are acceptable flood-resistant materials.

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.

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.

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

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.

Increased cost of compliance: Those expenses a property owner must incur, above and beyond the cost to repair the physical damage the structure actually sustained from a flooding event, to comply with mitigation requirements of state or local floodplain management ordinances, laws or regulations. Acceptable mitigation measures are elevation, floodproofing, relocation, demolition, or any combination thereof.

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.

LOMR: Letter of Map Revision

LOMA: Letter of Map Amendment

Lowest Adjacent Grade (LAG): An elevation of the lowest ground surface that touches any of the exterior walls of a building or proposed building walls.

Lowest Floor: The lowest floor of the lowest enclosed area. An 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 the applicable non-elevation design requirements of this article.

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.

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

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 special flood hazard area.

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

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.

New construction: Structure for which the start of construction commenced after September 1, 1987. The term also includes any subsequent improvements to such structure.

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 after September 1, 1987.

NFIP: National Flood Insurance Program.

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 car or light duty truck; and, (d) designed primarily not for use as a permanent dwelling, but as a temporary living quarters for recreational, camping, travel, or seasonal use.

Repetitive Loss Structure: A structure covered by a contract of flood insurance that has incurred flood-related damages on two occasions during a ten year period ending on the date of the event for which a second claim is made, in which the cost to repair the flood damage, on average, equaled or exceeded twenty five percent of the market value of the building at the time of such flood event.

Start of construction: 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.

Structure: A man-made facility or infrastructure that is principally above ground and affixed to a permanent site, including, without limitation, a building, a manufactured home, or a gas or liquid storage tank.

Special Flood Hazard Area: An area delineated on a Flood Insurance Rate Map as being subject to inundation by the base flood and designated as Zone A, AE, A1-30, AR, AO, and AH.

Subdivision: The division of a tract, lot or parcel of land into two or more lots, plats, sites or other divisions of land.

Substantial damage: Damage of any origin, sustained by a structure after September 1, 1987, whereby the cost of restoring the structure to its before-damaged condition would be equal to or exceed fifty 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".

Substantial improvement: Any repair, reconstruction, rehabilitation, addition, or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure before the start of the 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. 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.

Substantially improved existing manufactured home park or subdivision: Where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds fifty percent of the value of the streets, utilities and pads before the repair, reconstruction, or improvement commenced.

Variance: The grant of relief from a term or terms of this article.

Violation: The failure of a structure or other development to be fully compliant with this article.

Section 16-32. Lands to Which this Article Applies.

This article shall apply to all parcels of land that lie either wholly or partially within, or immediately adjacent to, special flood hazard areas that are within the jurisdiction of the unincorporated areas of the county. These special flood hazard areas are identified by the Department of Homeland Security-FEMA, National Flood Insurance Program (DHS-FEMA, NFIP), in its Flood Insurance Study, dated September 1, 1987 and officially amended on September 11, 2009, with accompanying maps and other supporting data, which are hereby adopted by reference and declared to be a part of this article. Further, this article shall apply to any special flood hazard areas established and accepted by the county that utilize DHS-FEMA, NFIP detailed flood study standards, or better.

Section 16-33. Adoption of Letters of Map Revisions and Letters of Map Amendments.

All LOMRs and LOMAs issued by DHS-FEMA for the unincorporated areas of the county are hereby adopted by this reference.

Section 16-34. Establishment of Development Permit.

Prior to the commencement of any development activities in the special flood hazard areas, a development permit shall be required in accordance with the provisions of this article.

Section 16-35. Compliance.

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

Section 16-36. Interpretation.

In the interpretation and application of this article, 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 article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section 16-37. Penalties for Violation.

In addition to any specific penalties as set forth herein, violation of the provisions of this article 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, firm, corporation or agent who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined within the jurisdictional limits of magistrate's court or imprisoned for not more than thirty days, or both. Each such person, firm, corporation or agent shall be deemed guilty of a separate offense for each and every day, or portion thereof, during which any violation of any of the provisions of this article is committed or continued. Nothing herein contained shall prevent the County from taking such other lawful action, including an action for injunctive relief, as is necessary to prevent or remedy any violation.

Section 16-38. 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 county before the time of the enactment of this article.

Section 16-39. Warning and Disclaimer of Liability.

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

Section 16-40. Effect on Rights and Liabilities under the Existing Flood Damage Prevention Ordinance.

This article in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted August 18, 1987, as amended. It is not the intention to repeal but rather to re-enact and continue to enforce without interruption such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this article shall not affect any action, suit or proceeding instituted or pending that has been brought by the County. 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.

Sections 16-41--16-80. Reserved.

DIVISION 2. ADMINISTRATION

Section 16-81. Designation of Flood Plains/Stormwater Manager.

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

Section 16-82. Development Permit and Certification Requirements.

Development permits shall be required for all development, including the placement of manufactured homes, so that the County may determine whether or not such construction or other development is proposed in the special flood hazard area. Prior to any development activities, application for a development permit shall be made to the Flood Plains/Stormwater Manager on forms furnished by the local Flood Plains/Stormwater Manager. 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. Specifically, the following information is required:

- (a) A plot plan that shows the special flood hazard area contour, or a statement that the entire lot is within the special flood hazard area, must be provided by the development permit applicant when the lot is within, or appears to be within the special flood hazard area as mapped by DHS-FEMA or the special flood hazard area identified pursuant to either the duties and responsibilities of the Flood

Plains/Stormwater Manager of §16-83(h) or the standards for subdivision proposals of §16-124 and the standards for streams without estimated base flood elevations and/or floodways of §16-123. The plot plan must be prepared by or under the direct supervision of a South Carolina registered land surveyor or professional engineer and certified by the same.

- (b) The plot plan required herein must show the floodway, if any, as identified by the DHS-FEMA, NFIP, or as identified pursuant to either the duties or responsibilities of the Flood Plains/Stormwater Manager of §16-83(h) or the standards for subdivision proposals of §16-124 and the standards for streams without estimated base flood elevations and/or floodways of §16-123.
- (c) Where base flood elevation data is provided as set forth in §16-32 or the duties and responsibilities of the Flood Plains/Stormwater Managers of §16-83(h) 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 floodproofed in accordance with the non-residential construction requirements of §16-122(b) the elevation (in relation to mean sea level) to which the structure will be floodproofed.
- (d) **Where Base Flood Elevation Data Is Not Provided.** In the absence of other available data from another source, and where no BFE data is provided as set forth in § 16-32 , the application for a development permit plan must show construction of the lowest floor at least a minimum of three feet above the highest adjacent grade. A higher lowest floor elevation will be required if BFE data from adjacent areas indicate that the three feet minimum may be inadequate to protect the structure and service facilities from flooding. The requirements of §16-123 must also be met, if applicable. When BFE data is not available from a federal, state or other source, one of the following methods may be used to determine a BFE, subject to approval by the Flood Plains/Stormwater Manager. For further information regarding the methods for determining BFEs listed below, refer to DHS-FEMA's manual *Managing Floodplain Development in Approximate Zone A Areas*.
 - (1) Contour interpolation.
 - i. Superimpose approximate Zone A boundaries onto a topographic map and estimate a preliminary BFE.
 - ii. Add one half of the contour interval of the topographic map to determine the final BFE.
 - (2) Data extrapolation. A BFE can be determined if a site is located within 500 feet upstream of a stream reach for which a 100-year profile has been computed by detailed methods, and the special flood hazard area and channel bottom slope characteristics are relatively similar to the downstream reaches.
 - (3) Hydrologic and hydraulic calculations. Perform hydrologic and hydraulic calculations to determine BFEs using DHS-FEMA-approved methods and software.
- (e) **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; a map showing the location of the proposed watercourse alteration or relocation; and notification of the proposal to the appropriate governmental agencies. A copy of the notification shall be maintained in the permit records and submitted to the DHS-FEMA. Prior to the commencement of any work on the alteration of a watercourse, the applicant must procure and submit to the Flood Plains/Stormwater Manager any applicable federal or state approvals or permits, including a CLOMR. Within 60 days of completion of an alteration of a watercourse, the applicant shall submit as-built certification, by a South Carolina-registered professional engineer, to the Flood Plains/Stormwater

Manager, DHS-FEMA, as a LOMR, and the State of South Carolina, Department of Natural Resources, Flood Mitigation Program.

- (f) When a structure is constructed or substantially improved in the special flood hazard area or, in the opinion of the Flood Plains/Stormwater Manager, a flood elevation certificate is required as soon as possible after completion of the lowest floor and before any further inspections are accepted and vertical construction commences. The as built measurement shall be made in relation to mean sea level and shall be a minimum of four feet above the BFE. The certification shall be prepared, signed and sealed by a South Carolina registered land surveyor or a South Carolina professional engineer. 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. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the certification or failure to make the required corrections shall be cause to issue a stop-work order for the project.
- (g) If the proposed development will impact the configuration of a watercourse, floodway, or BFE for which a detailed Flood Insurance Study has been developed, the applicant shall apply and must receive approval for a CLOMR with the DHS-FEMA, NFIP. The development permit will not be issued until DHS-FEMA has issued the CLOMR. When a CLOMR has been issued for a development the following shall apply. Within thirty calendar days of completion of construction activities, the applicant shall apply to DHS-FEMA for a LOMR. The applicant is responsible for all technical submissions and fees required to obtain the CLOMR/LOMR.
- (h) **As-built Certification.** Upon completion of the development a South Carolina registered professional engineer, land surveyor or architect shall certify that the development is built in accordance with the submitted plans and previous pre-development certifications.

Section 16-83. Duties and Responsibilities of the Flood Plains/Stormwater Manager.

The duties and responsibilities of the Flood Plains/Stormwater Manager shall include, but are not limited to, the following:

- (a) **Permit Application Review.** It is the duty and responsibility of the Flood Plains/Stormwater Manager to review all development permit applications to assure that the requirements of this article have been satisfied, and the Flood Plains/Stormwater Manager is authorized to determine whether sites will be reasonably safe from flooding.
- (a) **Requirement of federal and/or state permits.** It is the responsibility of the Flood Plains/Stormwater Manager to advise applicant(s) or permittee(s) 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. It is the responsibility of the Flood Plains/Stormwater Manager to review 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 Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (b) **Watercourse alterations.**
 - (1) Prior to the issuance of the development permit to alter a watercourse, it is the responsibility of the Flood Plains/Stormwater Manager to notify adjacent communities, the South Carolina Department of Natural Resources, Land Resources and Conservation Division, State Coordinator for the NFIP, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to DHS-FEMA, NFIP.
 - (2) In addition to the notifications required watercourse alterations per §16-83(c)(1), it is the responsibility of the Flood Plains/Stormwater Manager to maintain written reports of maintenance records 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 person responsible for maintenance performance. Records shall be kept on file for DHS-FEMA inspection.

- (c) **Floodway encroachments.** It is the responsibility of the Flood Plains/Stormwater Manager to minimize and manage encroachments within the floodway.
- (d) **Documentation Review.** It is the responsibility of the Flood Plains/Stormwater Manager to accept and review documentation for all structures located in the special flood hazard areas in accordance with this article.
- (e) **Floodproofing Certifications.** When floodproofing is utilized for a particular structure, the Flood Plains/Stormwater Manager is authorized to require the property owner or other responsible party provide certifications from a South Carolina registered professional engineer or architect in accordance with the non-residential construction requirements outlined in §16-122(b).
- (f) **Map Interpretation.** Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), it is the responsibility of the Flood Plains/Stormwater Manager to make the necessary interpretation. The person contesting the location of the special flood hazard area boundary may obtain an approved LOMA from DHS-FEMA, or he or she may appeal the interpretation as provided for in this article.
- (g) **Use Of Best Available Data.**
 - (1) When base flood elevation data or floodway data has not been provided in accordance with §16-32 for a project of less than 5 acres in size or less than 50 lots, the Flood Plains/Stormwater Manager is authorized to allow the applicant to submit for 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 §16-124, in order to administer the provisions of this article. 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.
 - (2) For a project greater than 5 acres or more than 50 lots, a detailed study is required, using detailed methods as are acceptable by the Department of Homeland Security-FEMA, utilizing floodplain geometry, hydrology and hydraulics to analyze the pre- and post-development conditions. All studies shall take into consideration a "full build out" condition for the studied watershed area. Such analysis shall be undertaken by a South Carolina-licensed professional engineer, who shall certify that the technical methods used reflect currently accepted engineering practices. Studies, analysis and computations shall be submitted in sufficient detail to allow review and approval by the Flood Plains/Stormwater Manager, and in a digital format compatible with the requirements and standards of Oconee County GIS. The accuracy of the data submitted for such determination shall be the sole responsibility of the applicant.
 - (3) After review of the detailed study by the Flood Plains/Stormwater Manager, the applicant shall submit to DHS-FEMA an application for a LOMR, based upon existing site conditions. Applications for encroachments and/or modifications to the special flood hazard area will be evaluated and processed as described in §16-82(g) and §16-122(j)(6). The applicant shall be responsible for all technical submissions and fees to DHS-FEMA in order to obtain the map change. The development permit will not be issued until DHS-FEMA has issued the LOMR or CLOMR, as applicable.

- (h) **Special Flood Hazard Area Conflicts with Topographic Boundaries.** When the exact location of boundaries of the special flood hazard areas conflict with the current, natural topographical information at the site, the property owner may apply and be approved for a LOMA by DHS-FEMA, NFIP. The Flood Plains/Stormwater Manager will file a copy of the LOMA issued by DHS-FEMA, NFIP in the permit file.
- (i) **On-Site Inspections.** It is the responsibility of the Flood Plains/Stormwater Manager to make on-site inspections of projects in accordance with the administrative procedures outlined in §16-85(d).
- (j) **Administrative Notices.** The Flood Plains/Stormwater Manager is authorized to serve notices of violations, issue stop-work orders, revoke permits and direct corrective actions in accordance with administrative procedures outlined in §16-85.
- (k) **Records Maintenance.** It is the responsibility of the Flood Plains/Stormwater Manager to maintain all records pertaining to the administration of this article and make these records available for public inspection.
- (l) **Annexation and Detachments.** It is the responsibility of the Flood Plains/Stormwater Manager to notify the South Carolina Department of Natural Resources Land, Water and Conservation Division, within six months, of any annexations or detachments that include special flood hazard areas.
- (m) **Substantial Damage Determination.** It is the responsibility of the Flood Plains/Stormwater Manager to determine damage to structures located in the special flood hazard areas, regardless of the source of the damage, and to further determine if the damage is considered substantial damage and/or a repetitive loss due to flooding, and notify the owner of the property of such finding. If the damage to the structure is caused by flooding, and is determined to be substantial damage or a repetitive loss, and the structure is covered by the NFIP, the structure may be eligible for the increased cost coverage provision under NFIP.
- (n) **Biennial Report.** It is the responsibility of the Flood Plains/Stormwater Manager to submit the Biennial Report to DHS-FEMA.
- (o) **Substantial Improvement Determinations.** It is the responsibility of the Flood Plains/Stormwater Manager to perform an assessment of permit applications for improvements or repairs to be made to a building or structure equals or exceeds fifty 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.
 - (1) **Methods of Market Value Determination.** The market values shall be determined by one of the following methods:
 - i. 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,
 - ii. One or more certified appraisals from a South Carolina registered professional licensed appraiser. 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.
 - iii. Real estate purchase contract within twelve months prior to the date of the application for a permit.

Section 16-84. Map Maintenance Activities. The National Flood Insurance Program requires flood data to be reviewed and approved by DHS-FEMA. This ensures that flood maps, studies and other data identified in §16-32 accurately represent flooding conditions so appropriate special flood hazard area 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 BFEs, the Flood Plains/Stormwater Manager shall ensure that technical data reflecting such changes is submitted to DHS-FEMA within six months of the date such information becomes available. These development proposals include:
 - i. Floodway encroachments that increase or decrease BFEs or alter floodway boundaries;
 - ii. 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;
 - iii. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and
 - iv. Subdivision or large scale development proposals requiring the establishment of base flood elevations in accordance with §16-124
- (2) It is the responsibility of the applicant to have technical data, required in accordance with §16-84, prepared in a format required for a CLOMR or LOMR, and submitted to DHS-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 CLOMR prior to the issuance of a floodplain development permit for:
 - i. Proposed floodway encroachments that increase the base flood elevation; and
 - ii. Proposed development which increases the base flood elevation by more than one foot in areas where DHS-FEMA has provided base flood elevations but no floodway.
- (4) Development permits issued by the Floodplain Flood Plains/Stormwater Manager shall be conditioned upon the applicant obtaining a LOMR from DHS-FEMA for any development proposal subject to §16-84.
- (5) CLOMRs and/or LOMRs must go through the variance process outlined in this article.

Section 16-85. Administrative Procedures.

- (a) **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 this article and the terms of the permit. In exercising this responsibility, the Flood Plains/Stormwater Manager, and each member of the Flood Plains/Stormwater Manager's inspections department, has the authority, 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.
- (b) **Stop-Work Orders:** Whenever a building, or part thereof, or development is being constructed, reconstructed, altered, or repaired in violation of this article, 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.

- (c) **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 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 issued in error in violation of an applicable State or local law may also be revoked.
- (d) **Periodic Inspections:** The Flood Plains/Stormwater Manager, and each member of the Flood Plains/Stormwater Manager's inspections department, has the authority, 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.
- (e) **Initial Notice of Violation:** When the Flood Plains/Stormwater Manager finds violations of applicable laws, the Flood Plains/Stormwater Manager has the authority to notify the owner of the property of the violation. The owner shall take necessary actions to immediately correct each of the violations in accordance with this article.
- (f) **Actions in Event of Failure to Take Corrective Action:** If prompt action is not taken to correct the violation, the Flood Plains/Stormwater Manager shall give the owner(s) of the property written notice, by certified or registered mail, to the last known address of the owner(s), or by personal service, that:
- (1) the building or property is in violation of this article, and
 - (2) a hearing will be held before the Flood Plains/Stormwater Manager at a designated place and time, not later than ten days after the date of the notice, at which time the owner(s) shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter.
- (g) **Order to Take Corrective Action:** If, upon a hearing held pursuant to the notice prescribed above, the Flood Plains/Stormwater Manager finds that the property is in violation of this article, the Flood Plains/Stormwater Manager shall make an order in writing to the owner(s), requiring that the owner(s) remedy the violation within such period the Flood Plains/Stormwater Manager may prescribe, not less than sixty days. If the Flood Plains/Stormwater Manager finds that there is imminent danger to life or other property, the Flood Plains/Stormwater Manager may order that corrective action be taken in such lesser period as may be feasible.
- (h) **Appeal:** Any owner who has received an order to take corrective action may appeal from the order to the Board of Zoning Appeals by giving notice of appeal in writing to the Flood Plains/Stormwater Manager within ten days following issuance of the final order. In the absence of an appeal, the order of the Flood Plains/Stormwater Manager shall be final. The Board of Zoning Appeals shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (i) **Failure to Comply with Order:** If the owner(s) fail to comply with an order to take corrective action from which no appeal has been taken, or if the owner(s) fail to comply with an order of the Board of Zoning Appeals following an appeal, the owner(s) shall be guilty of a misdemeanor and shall be punished in the discretion of the court. Each such person, firm, corporation or agent shall be deemed guilty of a separate offense for each and every day, or portion thereof, during which any violation of any of the provisions of this article is committed, or continued.
- (j) **Denial of Flood Insurance under the NFIP:** If a property is declared in violation of this article and the violation is not remedied, the Flood Plains/Stormwater Manager shall notify DHS-FEMA to initiate an action against property under Section 1316 of the National Flood Insurance Act of 1968. Once a violation has been remedied the Flood Plains/Stormwater Manager shall notify DHS-FEMA of the remedy and ask that the action under Section 1316 be rescinded.

DIVISION 3. FLOOD HAZARD REDUCTION

Section 16-121. General Standards.

Where alternative locations exist, development may not occur in the special flood hazard areas 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 special flood hazard areas and that encroachments onto the special flood hazard areas are minimized. In all special flood hazard areas the following provisions are required:

- (a) **Anchoring.** All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (b) **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.
- (c) **Minimize Flood Damage.** All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (d) **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 flooding, and at a minimum of 3 feet above BFE. This requirement does not preclude the installation of outdoor faucets for shower heads, sinks, hoses, and similar equipment, as long as cut-off and back-flow devices are installed to prevent contamination to the service components and thereby minimize any flood damages to the building.
- (e) **Water Supply Systems.** All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (f) **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.
- (g) **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.
- (h) **Alteration, Repair, Reconstruction, or Improvements.** Any alteration, repair, reconstruction, or improvement to a structure must be in compliance with the provisions of this article, and shall meet the requirements of new construction as contained in this article. 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.
- (i) **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 article. Provided, however, nothing in this article shall prevent the repair, reconstruction, or replacement of an existing building or structure located totally or partially within the special flood hazard area, provided that the bulk of the building or structure below BFE is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this article.

- (j) **Accessibility.** A building must meet the specific standards for construction outlined in §16-122, as well as any applicable accessibility requirements promulgated by the South Carolina Building Codes Council. The accessibility requirements are not justification for issuing a variance or otherwise waiving these requirements. The cost of improvements required to meet the accessibility provisions shall also be included in the costs of the improvements for calculating substantial improvement.

Section 16-122. Specific Standards.

In all special flood hazard areas that are designated as Zones A, AE, AH, AO, and A1-30, where base flood elevation data has been provided, as set forth in §16-32 or outlined in the Duties and Responsibilities of the Flood Plains/Stormwater Manager §16-83, the following provisions are required:

- (a) **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 §16-122(e).
- (b) **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 three 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 §16-122(e). No basements are permitted. Structures located in special flood hazard areas that are designated as Zone A 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 capable of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A South Carolina registered, professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certifications shall be provided to the Flood Plains/Stormwater Manager as set forth in the floodproofing certification requirements in §16-82. A variance may be considered for wet-floodproofing agricultural structures in accordance with the criteria outlined in §16-165 of this article. Agricultural structures not meeting the criteria of §16-165 must meet the non-residential construction standards and all other applicable provisions of this article. Structures that are floodproofed are required to have an approved maintenance plan with an annual exercise. The maintenance plan must be approved by the Flood Plains/Stormwater Manager, and notification of the annual exercise shall be provided to the same.
- (c) **Critical facilities.**
- (1) Existing critical facilities in the special flood hazard area that are substantially damaged or substantially improved shall be elevated or floodproofed in accordance with this article.
 - (2) New critical facilities shall not be permitted in the special flood hazard area.
- (d) **Manufactured Homes.**
- (1) **Conditions requiring placement of manufactured home on permanent foundation.** 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 three feet above the base flood elevation and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- (2) **Conditions permitting placement of manufactured home on permanent foundation.** 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 §16-122(a) of this article must be elevated so that the lowest floor of the manufactured home is elevated no lower than three feet above the base flood elevation, and securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement.
- (3) **Anchoring.** 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 19-425.42 of the *South Carolina Manufactured Housing Board Regulations*, as amended. Additionally, when the elevation requirement would be met by an elevation of the chassis at least thirty six inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above thirty six inches in height, an engineering certification is required.
- (4) **Evacuation Plan.** 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 Oconee County Emergency Services Department.
- (e) **Elevated Buildings.** New construction or substantial improvements of elevated buildings that include fully enclosed areas 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 to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
- (1) **Certification or Minimum Criteria.** Designs for complying with this requirement must either be certified by a South Carolina professional engineer or architect or meet the following minimum criteria:
- i. 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.
 - ii. The bottom of all openings shall be no higher than one foot above grade,
 - iii. 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,
 - iv. 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.
- (2) **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.
- (3) **Enclosures below BFE**
- i. **Access to the enclosed area.** Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator).
 - ii. **Requirements for the interior portion of the enclosed area.** 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. 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 §16-122(a), (b) and (d).

iii. **Flood-resistant construction materials.** All construction materials below the required lowest floor elevation specified in the specific standards outlined in §16-122(a), (b) and (d) should be of flood resistant materials.

(f) **Accessory Structures.**

- (1) A detached accessory structure or garage, greater than 400 square feet must comply with the elevated structure requirements of §16-122(c) or floodproofed in accordance with §16-122(b).
- (2) When an accessory structure less than 400 square feet is to be placed in the special flood hazard area, the following additional criteria shall be met:
 - i. Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas),
 - ii. Accessory structures shall be designed to have low flood damage potential,
 - iii. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters,
 - iv. Accessory structures shall be firmly anchored to prevent flotation, collapse or lateral movement of the structure,
 - v. Service facilities such as electrical and heating equipment shall be installed in accordance with §16-121; and
 - vi. Openings to relieve hydrostatic pressure during a flood shall be provided below BFE in conformance with §16-122(e)(1).

(g) **Floodways.** Floodways have erosion potential and are extremely hazardous areas due to the velocity of floodwaters carrying debris and potential projectiles. The following provisions shall apply to floodways:

- (1) No encroachments, including fill, new construction, substantial improvements, additions, and other developments, shall be permitted in a floodway 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.
- (2) If §16-122(g)(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Division 3.
- (3) Stream crossings for any temporary purpose (i.e. timber harvesting operations) shall be permitted in accordance with floodway requirements of §16-122(g) and the temporary structure provisions of §16-122(k). Otherwise, the development shall comply with all applicable flood hazard reduction provisions of Division 3.
- (4) 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 §16-122(d) are met.
- (5) Permissible uses within a floodway may include: general farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife, and related uses. 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. A use listed in this division is permissible only if the use causes no adverse effect on the floodway, any increase in the BFE, or any change to the floodway configuration.

(h) **Recreational Vehicles**

(1) A recreational vehicle is ready for highway use if it:

- i. is on wheels or a jacking system;
- ii. is attached to the site only by quick-disconnect type utilities and security devices; and,
- iii. has no permanently attached additions.

(2) Recreational vehicles placed on sites shall either:

- i. be on site for fewer than 180 consecutive days and fully licensed and ready for highway use, or
- ii. meet the development permit and certification requirements of §16-82, general standards outlined in §16-121, and manufacture homes standards in §16-122(d).

(i) **Swimming Pool Utility and/or Equipment Structures.** If a swimming pool utility and/or equipment structure cannot be built at or above the BFE because of functionality of the equipment, then such structure may be built below the BFE with the following provisions:

(1) The structure must meet the requirements for accessory structures in §16-122(f), the utilities and/or equipment must be anchored to prevent flotation, and the structure shall be designed to prevent water from entering or accumulating within the components during a flood.

(2) A variance may be granted to allow wet floodproofing of the structure.

(j) **Elevators.** A float switch system, or other similar system that provides the same level of safety, shall be installed for all elevators where there is a potential for the elevator cab to descend below the BFE during a flood per DHS-FEMA's Technical Bulletin 4-93 *Elevator Installation for Buildings Located in Special Flood Hazard Areas*. 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 DHS-FEMA's Technical Bulletin 4-93 *Elevator Installation for Buildings Located in Special Flood Hazard Areas*.

(k) **Temporary Structures.** Certain types of structures (e.g. fruit stands, construction site offices, portable toilets) may be situated temporarily on special flood hazard areas without having to comply with the elevation or floodproofing criteria of §§16-122(a) and (b), respectively, provided that:

(1) An applicant 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 Flood Plains/Stormwater Manager shall review the plan, the Flood Plains/Stormwater Manager must approve the plan in writing. The proposed plan must include the following information:

- i. a specified time period for which the temporary use will be permitted,
- ii. the name, address and phone number of the individual responsible for the removal of temporary structures or development;
- iii. 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);
- iv. a copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed,
- v. designation, accompanied by documentation, of a location outside the special flood hazard

area to which any temporary structure will be moved; and

vi. a plan to restore the area to its natural condition once the temporary permit expires or the temporary use is terminated, whichever is first.

- (2) 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; and
 - (3) The structure will not remain on the property for more than 180 days.
- (l) **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 §§16-122(a) and (b), 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:
- (1) Fill may not be placed in the floodway unless it is in accordance with the requirements in §16-122(g)(1).
 - (2) Fill may not be placed in wetlands without the required State and federal permits.
 - (3) Fill must consist of soil and rock materials only. Dredged material may be used as fill only upon certification of suitability by a South Carolina registered professional geotechnical engineer. Landfills, rubble fills, dumps, and sanitary fills are not permitted in the special flood hazard area.
 - (4) Fill used to support structures must comply with ASTM Standard D-698, as amended, and its suitability to support structures certified by a South Carolina registered, professional engineer.
 - (5) Fill slopes shall be no greater than two horizontal to one vertical. Flatter slopes may be required where velocities may result in erosion; and,
 - (6) No encroachment, including fill, shall be permitted within an special flood hazard area, unless certification with supporting technical data, prepared by a South Carolina-registered engineer, is provided to demonstrate that the encroachment will not result in adverse impact to the special flood hazard area. Adverse impact includes, but is not limited to, an increase in BFE, floodway elevation and floodway width. The demonstration shall include hydrologic and hydraulic analyses performed in accordance with standard engineering practice that meets the requirements of the NFIP. Compensatory storage at hydraulically equivalent sites within the proposed project area may be used as part of the required demonstration, with prior approval of the Flood Plains/Stormwater Manager. If the encroachment results in adverse impact to the special flood hazard area, the applicant shall submit to DHS-FEMA a CLOMR or other appropriate map change application. Within thirty calendar days of completion of construction activities, the applicant shall apply to DHS-FEMA for a LOMR. The development permit will not be issued until DHS-FEMA has issued the CLOMR. The applicant is responsible for all technical submissions and fees required to obtain the CLOMR/LOMR.
- (m) **Drainage Paths in Zones AH and AO.** In all special flood hazard areas that are designated as Zones AH and AO, drainage paths shall be constructed around structures on slopes to guide floodwaters around and away from proposed structures.

Section 16-123. Standards for Streams without Established Base Flood Elevations and/or Floodways.

Located within the special flood hazard areas that are designated as Zone A, 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:

- (a) 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 South Carolina 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.

- (b) If §16-123(a) 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 provisions of Division 3 and shall be elevated or floodproofed in accordance with elevations established in accordance with §16-83(h).

Section 16-124. 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 this article.
- (b) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood infiltration damage.
- (c) All subdivision proposals shall provide for adequate drainage provided to reduce exposure to flood damage.
- (d) Base flood elevation data shall be provided for subdivision proposals and other proposed development.
 - (1) The base flood elevation data shall be obtained in accordance with §16-32; or
 - (2) In all special flood hazard areas 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. If a lot in a special flood hazard area is identified as an area of open space and is deeded as such, then a hydrologic and hydraulic engineering analysis that generates base flood elevations for the subdivision proposal will not be required.
- (e) All building lots containing special flood hazard areas or immediately adjacent to these areas shall have the proposed lowest floor elevation for each structure, in accordance with §16-122(a), noted on the preliminary and final plat drawings.

Section 16-125. Standards for Areas of Shallow Flooding (AO Zones).

Located within the special flood hazard areas established in §16-32 are areas designated as shallow flooding. The following provisions shall apply within such areas:

- (a) 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 feet above the highest adjacent grade.
- (b) All new construction and substantial improvements of non-residential structures shall:
 - (1) have the lowest floor elevated to the depth number specified on the FIRM, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor shall be elevated at least three feet above the highest adjacent grade; or,
 - (2) be completely floodproofed together with attendant utilities or sanitary sewage systems 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.

Sections 16-126-16-160. Reserved.

DIVISION 4. VARIANCE PROCEDURES

Section 16-161. Appeal Board.

The Board of Zoning Appeals of Oconee County, as established by Oconee County in Article Six of Chapter 38 of the Oconee County Code of Ordinances, shall hear and decide requests for variances from the requirements of this article. The application for a variance shall be filed on a form obtained from the Flood Plains/Stormwater Manager.

Section 16-162. Limitation on Authority.

An application for variance shall be based on a claim that the true intent of this article, or the rules legally adopted thereunder, have been incorrectly interpreted; the provisions of this article do not fully apply; or an equally good or better form of construction is proposed.

Section 16-163. Right to Appeal.

Any person aggrieved by the decision of the appeal board or any taxpayer may appeal such decision to the Circuit Court within thirty days.

Section 16-164. 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.

Section 16-165. Agricultural Structures.

Variances may be issued to wet floodproof 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 DHS-FEMA. 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 §16-169, this section, and the following standards:

- (a) Use of the structure must be limited to agricultural purposes as listed below:
 - (1) pole frame buildings with open or closed sides used exclusively for the storage of farm machinery and equipment,
 - (2) steel grain bins and steel frame corncribs,
 - (3) general-purpose barns for the temporary feeding of livestock that are open on at least one side;
 - (4) for livestock confinement buildings, poultry houses, dairy operations, and similar livestock operations, variances may not be issued for substantially damaged structures. New construction or substantial improvement of such structures must meet the elevation requirements of §16-122(b) of this article; and,
 - (5) 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.
- (b) In the case of a substantially damaged existing structure, the agricultural structure must be built or rebuilt with flood-resistant materials for the exterior and interior building components and elements below the base flood elevation.

- (c) 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 buoyancy, hydrostatic, hydrodynamic, and debris impact forces. Where flood velocities exceed five feet per second, fast-flowing floodwaters can exert considerable pressure on the building's enclosure walls or foundation walls.
- (d) The agricultural structure must meet the venting requirement of §16-122(e) of this article.
- (e) 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 §16-121 of this article.
- (f) The agricultural structure must comply with the floodway encroachment provisions of §16-122(g).
- (g) 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 special flood hazard area in accordance with the temporary structure provisions of §16-122(k).
- (h) The agricultural structure must be located in wide, expansive special flood hazard 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, is in the special flood hazard area and no other alternative locations for the structure are available.

Section 16-166. Considerations.

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

- (a) the danger that materials may be swept onto other lands to the injury of others;
- (b) 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;
- (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) the importance of the services provided by the proposed facility to the community;
- (e) the necessity to the facility of a waterfront location, where applicable;
- (f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (g) 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;
- (h) 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,
- (i) 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.

Section 16-167. Findings.

Findings listed above shall be submitted to the appeal board, 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.

Section 16-168. Variances in 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.

Section 16-169. Conditions.

Upon consideration of the factors listed above and the purposes of this article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article. The following conditions shall apply to all variances:

- (a) Variances may not be issued when the variance will make the structure in violation of other federal, State, or local laws, regulations, or ordinances.
- (b) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (c) 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.
- (d) The appeal board may consider the possible impacts on flood insurance premiums and the size of the lot in question.
- (e) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the BFE 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.
- (f) Upon request, the Flood Plains/Stormwater Manager shall maintain the records of all appeal actions and report any variances to DHS-FEMA.
- (g) Variances shall not be issued for unpermitted development or other development that is not in compliance with the provisions of this article. Violations must be corrected in accordance with §16-85.

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

COUNCIL MEETING DATE: August 18, 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 3rd 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 Reoffering Circular (to be attached as Exhibit C to the Ordinance)
4. Tri-Party Agreement (to document the trustee succession)

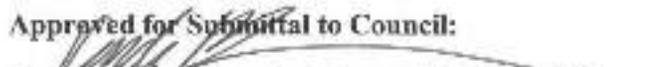
Reviewed By/ Initials:

Via Email County Attorney _____ Finance _____ Grants _____ Procurement _____

Submitted or Prepared By:

Approved for Submittal to Council:

Department Head/Elected Official


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;

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;

4. The form of a Bond Reoffering Agreement by and among the County, the Corporation and Wachovia Bank, National Association (the "Reoffering Agreement") in connection with the offering and sale of the Amended and Restated Bonds attached hereto as Exhibit D; and

5. The form of an Agreement of Resignation, Appointment and Acceptance by and among the County, The Bank of New York Mellon, and The Bank of New York Mellon Trust Company, National Association (the "Tri-Party Agreement") in connection with the appointment of The Bank of New York Mellon Trust Company, National Association as successor Trustee, Paying Agent and Registrar under the Indenture.

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 is 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 forms, terms and provisions of the Reoffering Agreement attached hereto as Exhibit D 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 Agreement were set out in this ordinance in their entirety. The Chairman of County Council is hereby authorized, empowered and directed to execute, acknowledge and deliver the Reoffering Agreement in the name and on behalf of the County, and thereupon to cause the Reoffering Agreement to be delivered to the Corporation. The Reoffering 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, their delivery thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Reoffering Agreement now before this meeting.

Section 10. The forms, terms and provisions of the Tri-Party Agreement attached hereto as Exhibit E be and they are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Tri-Party Agreement were set out in this ordinance in their entirety. The Chairman of County Council is hereby authorized, empowered and directed to execute, acknowledge and deliver the Tri-Party Agreement in the name and on behalf of the County, and thereupon to cause the Tri-Party Agreement to be delivered to the Corporation. The Tri-Party 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, their delivery thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Tri-Party Agreement now before this meeting.

Section 11. 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, the Reoffering Circular, the Reoffering Agreement, the Tri-Party Agreement 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 12. 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 13. 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 14. 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: _____
Reginald T. Dexter
Chairman of County Council
Oconee County, South Carolina

ATTEST:

Elizabeth G. Hulse
Clerk to County Council
Oconee County, South Carolina

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

Exhibit A
Form of Indenture

Exhibit B
Form of Loan Agreement

Exhibit C
Form of Reoffering Circular

Exhibit D

Form of Reoffering Agreement

Exhibit E
Form of Tri-Party Agreement

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 Mellon Trust
Company, N.A. (as successor to The Bank of New York Mellon (formally known as The
Bank of New York) 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(c)**.

“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)(I)**.

"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**.

"Determination of Taxability" means written notice from the Company of the occurrence of a final decision, ruling or technical advice by any federal judicial or administrative authority to the effect that, as a result of a failure by the Company to observe or perform any covenant, agreement or obligation on its part to be observed or performed under the Loan Agreement or the inaccuracy of any representation made by the Company in the Loan Agreement, interest on any Bond is or was includable in the gross income of the owner of that Bond for federal income tax purposes, other than an owner who is a "substantial user" of the Project or a "related person" as those terms are used in Section 147(a) of the Code; provided that, no decision by any court or decision, ruling or technical advice by any administrative authority will be considered final (a) unless the beneficial owner involved in the proceeding or action giving rise to such decision, ruling or technical advice (i) gives the Company and the Trustee prompt notice of the commencement thereof, together with evidence satisfactory to the Company and the Trustee that such party is the beneficial owner and (ii) offers the Company the opportunity to control the contest thereof, provided that the Company has agreed to bear all expenses in connection therewith and to indemnify the beneficial owner against all liabilities in connection therewith, and (b) until the expiration of all periods for judicial review or appeal. A Determination of Taxability will not result from the inclusion of interest on any Bond in the computation of the alternative minimum tax imposed by Section 55 of the Code, the branch profits tax on foreign corporations imposed by Section 884 of the Code or the tax imposed on net excess passive income of certain S corporations under Section 1375 of the Code.

"Effective Date" means September 1, 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 September 1, 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.

(e) **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.

(i) **No Conversion Upon Determination of Taxability.** Upon a Determination of Taxability, no change in the method of determining interest on the Bonds may be made.

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.

(c) **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 of the County Council of the Issuer and attested by the manual or facsimile signature of the Clerk to the County Council of the Issuer 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 ordinances 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(e) 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) **Mandatory Redemption.** Upon the occurrence of a Determination of Taxability as to which the Trustee has been notified by the Company in writing pursuant to Section 5.10 of the Loan Agreement, the Bonds are subject to mandatory redemption by the Issuer at a redemption price equal to 100% of the outstanding principal amount thereof, plus interest accrued to the redemption date, at the earliest practicable date selected by the Trustee, after consultation with the Company, but in no event later than 180 days following the receipt by the Trustee of said written notice of the occurrence of a Determination of Taxability.

The Bonds will be redeemed either in whole or in part in such principal amount as is necessary in order that the interest payable on the Bonds remaining outstanding after such redemption, if any, would not, in the Opinion of Bond Counsel, be includable in the gross

income of any Holder thereof, other than a Holder of a Bond who is a "substantial user" of the Project or a "related person", as those terms are used in Section 147(a) of the Code.

If this Indenture has been released in accordance with **ARTICLE V** of this Indenture prior to the occurrence of a Determination of Taxability, the Bonds will not be subject to redemption pursuant to this **Section 2.18(c)**.

(d) **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.

In the case of a mandatory redemption pursuant to **Section 2.18(c)**, the Trustee shall give notice of such redemption as soon as practicable 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.

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; provided, for purposes of this representation and warranty, the Issuer has been advised by Robinson, Bradshaw & Hinson, P.A. (Bond Counsel in connection with the conversion and remarketing of the Bonds)

that no further approval of the South Carolina Budget and Control Board is required by the Act in connection with the conversion and remarketing of the Bonds.

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.

(c) **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, terminate 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 Bonds 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 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 assignments 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: County Administrator Telephone: (864) 638-4244 Facsimile: (864) 638-4246
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, 4 th 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 40 th 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.

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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, County Council
Oconee County, South Carolina

ATTEST:

Clerk to County Council
Oconee County, South Carolina

**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:

THIS BOND AND THE INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER, OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

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 never constitute an indebtedness of the Issuer within the meaning of any State constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the Issuer, or a charge against its general credit or taxing powers.

The Mortgage Bonds shall provide for payments of interest to be made by the Company to the Trustee in amounts equal to the payments of interest due on the corresponding Bonds and shall require the Company to make payments of principal equal to the payments of principal (whether at maturity, upon acceleration or by call for redemption) 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. **Mandatory Redemption.** The Bonds are subject to redemption by the Issuer 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, at the earliest practicable date selected by the Trustee, after consultation with the Company, but in no event later than 180 days following receipt by the Trustee of notification of a Determination of Taxability (as defined in the Indenture). Such redemption will be either in whole or, if in the Opinion of Bond Counsel (as defined in the Indenture) the Determination of Taxability will not apply to Bonds remaining outstanding after such redemption, in part. If the Indenture has been released in accordance with its terms prior to the occurrence of a Determination of Taxability, the Bonds will not be subject to mandatory redemption.

4. **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; provided, however, in the case of a mandatory redemption, the Trustee shall give notice of such redemption as soon as practicable. 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.

5. **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 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 to Oconee County Council, all as of the Issue Date referenced above.

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

By: _____

Chairman, County Council
Oconee County, South Carolina

ATTEST:

Clerk to County Council
Oconee County, South Carolina

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 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 September 1, 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 December 31, 2008, 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(e) 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 (c) 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) Unless there has been a Determination of Taxability, 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.

(c) If there occurs a Determination of Taxability, the Company shall be obligated to prepay immediately the Loan Payments by paying to the Trustee for deposit in the Bond Fund, the amount required to redeem the Bonds in accordance with Section 2.18(c) of the Indenture.

The Company shall give prompt written notice to the Issuer and the Trustee of its receipt of any written advice from the Internal Revenue Service or court that an event constituting a Determination of Taxability has occurred.

Upon the redemption date contemplated by this **Section 5.10(c)**, provided there has been deposited with the Trustee the total amount as required, such amount shall constitute the total compensation due the Issuer and the holders of the Bonds as a result of an occurrence of such Determination of Taxability and the Company shall not be deemed to be in default hereunder by reason of the occurrence of such Determination of Taxability.

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) **[To be provided (10-K)];**

(b) 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

(c) 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 Register of Deeds 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 Register of Deeds 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 :
Oconee County, South Carolina
415 South Pine Street
Walhalla, South Carolina 29691
Attention: County Administrator

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 to 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 of County Council
Oconee County, South Carolina

ATTEST:

Clerk to County Council
Oconee County, South Carolina

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: September 1, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

ASSIGNMENT OF LOAN AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that OCONEE COUNTY, SOUTH CAROLINA, a body politic and corporate and political subdivision of the State of South Carolina, acting by and through the Oconee County Council, in consideration of the sum of ONE and no/100 (\$1.00) DOLLAR to it in hand paid at and before the sealing of these presents, the receipt of which is hereby acknowledged, does hereby assign, transfer, and set over unto The Bank of New York Mellon Trust Company, N.A., its successors and assigns, as trustee for the holders of the \$77,000,000 Oconee County, South Carolina, Pollution Control Facilities Revenue Bonds, Series 1993 (Duke Energy Carolinas, LLC Project) (the Bonds), as security for (i) the payment of the principal of and interest on the Bonds, dated the date of their delivery, issued pursuant to the Loan Agreement (hereinafter defined), and (ii) the due performance and observance of the covenants and agreements in the Bonds and the foregoing Loan Agreement, the following:

All of the right, title, and interest of Oconee County in and to the foregoing Amended and Restated Loan Agreement, dated as of August 1, 2009, between Oconee County and Duke Energy Carolinas, LLC, excepting only the rights of Oconee County to be indemnified pursuant to Section 7.5 thereof and to receive attorneys' fees and expenses pursuant to Section 9.4 and Section 5.3 thereof.

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 to Oconee County Council, all being done as of the 1st day of September, A.D. 2009.

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

ATTEST:

Clerk to County Council
Oconee County, South Carolina

REMARKETING – NOT A NEW ISSUE**BOOK-ENTRY ONLY**

In the opinion of Robinson, Bradshaw & Hinson, P.A., Charlotte, North Carolina, Bond Counsel, under existing law and subject to compliance with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), as described herein, interest on the Bonds is excludable from gross income for federal income tax purposes, except for interest on any Bond for any period during which such Bond is held by a "substantial user" of the facilities refinanced by the Bonds or a "related person" within the meaning of Section 147(a) of the Code. Interest on the Bonds is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, such interest is taken into account in determining adjusted current earnings for the purposes of computing the alternative minimum tax on certain corporations. In the opinion of Bond Counsel, under existing law, interest on the Bonds is exempt from State of South Carolina income taxes. See "TAX EXEMPTION" herein.

\$77,000,000
Oconee County, South Carolina
Pollution Control Facilities Revenue Refunding Bonds,
Series 1993
(Duke Energy Carolinas Project)

Dated: As described herein**Interest Rate:** __%**Due:** February 1, 2017

The Bonds identified above (the "Bonds") which are limited obligations of Oconee County, South Carolina (the "County") are being remarketed on behalf of Duke Energy Carolinas, LLC (the "Company") at a price of par plus accrued interest from August 1, 2009 to the settlement date (as described herein). The Bonds are payable only from amounts paid by the Company pursuant to the Amended and Restated Loan Agreement with the Company, dated as of August 1, 2009 (the "Loan Agreement") and other amounts held in certain funds and accounts established under an Second Amended and Restated Trust Indenture, dated as of August 1, 2009 (the "Indenture"), between the County and The Bank of New York Mellon Trust Company, N.A., Jacksonville, Florida, as trustee thereunder (the "Trustee") and pledged therefor. Pursuant to the Loan Agreement, the Company is obligated to make payments in amounts sufficient to pay the principal of and interest and premium on the Bonds and certain other fees and expenses, as described in the Loan Agreement. The Company's obligations to make payments under the Loan Agreement will be evidenced and secured by First and Refunding Mortgage Bonds issued by the Company.

The Bonds will be remarketed bearing interest in the Fixed Rate as more fully described herein. Following the settlement date, the Bonds will bear interest at a Fixed Rate from the settlement date until their maturity on February 1, 2017. Interest on the Bonds will be payable each February 1 and August 1, commencing February 1, 2010 (each, an "Interest Payment Date").

The Bonds were issued as fully registered bonds and are registered to Cede & Co. as nominee of The Depository Trust Company, New York, New York, which will continue to act as securities depository for the Bonds. Individual purchases of the Bonds may be made in book-entry form only, in denominations of \$5,000 and integral multiples thereof. See "THE BONDS—Book-Entry System."

The Bonds will be subject to extraordinary optional redemption prior to maturity in the manner and at the times described herein.

THE BONDS ARE LIMITED OBLIGATIONS OF THE COUNTY. THE BONDS AND THE INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT CONSTITUTE AN INDEBTEDNESS OR AN OBLIGATION OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION OR STATUTORY PROVISION AND SHALL NOT GIVE RISE TO A CHARGE AGAINST THE GENERAL CREDIT OR THE TAXING POWERS OF THE COUNTY, THE STATE OF SOUTH CAROLINA OR ANY POLITICAL SUBDIVISION THEREOF. THE BONDS AND THE INTEREST THEREON ARE PAYABLE SOLELY FROM AND SECURED BY THE REVENUES AND OTHER FUNDS PLEDGED THEREFOR.

THE BONDS HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, BY VIRTUE OF THE EXEMPTION FROM REGISTRATION PROVIDED IN SECTION 3(a)(2) THEREOF.

The anticipated change in the method of determining the interest rate on, and remarketing of, the Bonds to the Fixed Rate is subject to, among other conditions, delivery of an opinion with respect to certain matters by Robinson, Bradshaw & Hinson, P.A., Charlotte, North Carolina, Bond Counsel. Certain legal matters will be passed upon for the Company by Robert T. Lucas III, Esq., Associate General Counsel and Assistant Secretary; for the County by McNair Law Firm, Greenville, South Carolina; and for the Placement Agent by Sidley Austin LLP, New York, New York. It is expected that the Bonds will be available for delivery through the facilities of The Depository Trust Company in New York, New York, on or about September 1, 2009.

Wells Fargo Securities
 (as Placement Agent)

August __, 2009

* Preliminary, subject to change.

This Preliminary Offering Circular and the information contained herein are subject to correction or amendment. Under no circumstances shall this Preliminary Offering Circular constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds, in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction. This Preliminary Official Statement is "deemed final" by the County and the Company for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended, except for information permitted by such Rule to be omitted.

No dealer, broker, salesman or other person has been authorized to give any information or to make any representation other than those contained in this Reoffering Circular, in connection with the Bonds or the matters described herein, and, if given or made, such other information or representation must not be relied upon as having been authorized by the County, the Company or the Placement Agent. This Reoffering Circular does not constitute an offer to sell or the solicitation of any offer to buy, nor shall there be any offer or solicitation of such offer or sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. Neither the delivery of this Reoffering Circular nor the sale of any of the Bonds implies that the information herein is correct as of any time subsequent to the date hereof. The information contained herein is subject to change after the date of this Reoffering Circular, and this Reoffering Circular speaks only as of its date. The information contained herein has been obtained from the County, the Company and other sources believed to be reliable. The Placement Agent has provided the following sentence for inclusion in this Reoffering Circular: The Placement Agent has reviewed the information in this Reoffering Circular in accordance with, and as part of, its respective responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Placement Agent does not guarantee the accuracy or completeness of such information.

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IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE CREDIT ISSUER AND THE TERMS OF THE REMARKETING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT PASSED UPON THE ACCURACY OR ADEQUACY OF THIS REOFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

REOFFERING CIRCULAR

\$77,000,000

OCONEE COUNTY, SOUTH CAROLINA POLLUTION CONTROL FACILITIES REVENUE REFUNDING BONDS, SERIES 1993 (DUKE ENERGY CAROLINAS PROJECT)

INTRODUCTORY STATEMENT

This Reoffering Circular, including the cover page and the appendices hereto, provides certain information regarding the \$77,000,000 aggregate principal amount of Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Energy Carolinas Project) (the "Bonds") of Oconee County, South Carolina (the "County") being remarketed on behalf of Duke Energy Carolinas, LLC (the "Company"). The Bonds were originally issued 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, as amended and restated by an Amended and Restated Trust Indenture, dated as of November 1, 2003 (the "2003 Indenture"), as amended by a Second Amended and Restated Trust Indenture, dated as of August 1, 2009 (the 2003 Indenture as so amended and restated, the "Indenture"), each between the County and The Bank of New York Mellon Trust Company, N.A., New York, New York, as trustee (as successor to The Bank of New York Mellon (formerly known as The Bank of New York), the "Trustee") to refund the County's Pollution Control Revenue Bonds, Series A (Duke Power Company Project), which were issued to pay the costs of certain pollution control and solid waste disposal facilities at the Company's Oconee Nuclear Station located in the County (the "Project").

The County made a loan to the Company to finance such refunding (the "Loan") pursuant to a Loan Agreement dated as of April 1, 1993, as amended by a First Amendment to Loan Agreement, dated as of November 1, 2003 (as amended, the "1993 Loan Agreement"), and as amended and restated an Amended and Restated Loan Agreement, dated as of August 1, 2009 (the 1993 Loan Agreement, as so amended and restated, the "Loan Agreement"). Under the Loan Agreement, the Company is obligated to make payments ("Loan Payments") at such times and in such amounts sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds, as and when due.

To evidence and secure its obligation to make certain Loan Payments in respect of the Bonds, the Company will issue a series of its First and Refunding Mortgage Bonds (the "Collateral Bonds") to the County registered in the name of the Trustee for the account of the County. The Collateral Bonds will correspond to the Bonds in respect of principal amount, interest rate, redemption and purchase provision, and maturity. Payments on the Collateral Bonds will be required to be made to the Trustee in such amounts as, together with other funds available for such purpose, are required to pay, when due, the principal of, and interest on, the Bonds. Pursuant to the Indenture, the County assigned and pledged the Agreement and the Collateral Bonds to the Trustee to secure the payment of the principal of, and interest on, the Bonds.

The Collateral Bonds will be issued under and secured by the First and Refunding Mortgage, dated as of December 1, 1927 from the Company to Guaranty Trust Company of New York, as trustee (The Bank of New York Mellon Trust Company, N.A. (formerly known as The Bank of New York Trust Company, N.A.), acting in its capacity as successor trustee under the First and Refunding Mortgage, the "Mortgage Trustee"), as amended and supplemented, including as supplemented by a supplemental indenture dated as of August 1, 2009, providing for the issuance of the Collateral Bonds (the "Supplemental Mortgage Indenture"). The First and Refunding Mortgage, as amended and supplemented, including as supplemented by the Supplemental Mortgage Indenture, is herein called the

"Mortgage." The Collateral Bonds will be secured by the lien of the Mortgage equally and ratably with all bonds of all other series issued and to be issued under the Mortgage (collectively, the "First Mortgage Bonds"). The Mortgage creates a continuing lien on substantially all property and franchises of the Company now owned or hereinafter acquired including the Project. See "THE FIRST MORTGAGE BONDS AND THE MORTGAGE – Security."

The Company is a North Carolina limited liability company, maintaining its principal place of business in Charlotte, North Carolina. Certain information relating to the Company is included by specific reference to the Company's filings with the Securities and Exchange Commission (the "SEC") in Appendix A.

The Bonds are limited obligations of the County, payable solely from the revenues or other receipts, funds or moneys pledged therefore including those derived under the Loan Agreement and Collateral Bonds, all of which are pledged and assigned to the Trustee for the Benefit of the Holders of the Bonds. **The Bonds and the interest thereon and redemption premium, if any, do not constitute an indebtedness or an obligation of the County within the meaning of any constitutional limitation or statutory provision and shall not give rise to a charge against the general credit or the taxing powers of the County, the State of South Carolina or any political subdivision thereof.**

Simultaneously with the delivery of the Bonds, the 2003 Indenture will be amended and restated in its entirety by the Indenture. This Reoffering Circular, including Appendix B, describes the 2003 Indenture as amended and restated. The 2003 Indenture provides that the Holders of the Bonds then Outstanding must consent to the approval of such amendments. BY PURCHASING THE BONDS, THE HOLDERS THEREOF (1) CONSENT TO THE AMENDMENT AND RESTATEMENT OF THE 2003 INDENTURE BY THE INDENTURE AND TO THE AMENDMENT AND RESTATEMENT OF THE 1993 LOAN AGREEMENT (2) APPOINT WACHOVIA BANK, NATIONAL ASSOCIATION AS THEIR ATTORNEY-IN-FACT FOR THE PURPOSE OF EXECUTING AN INSTRUMENT OF CONSENT TO SUCH AMENDMENT AND RESTATEMENT. Upon the delivery of the Bonds, the Holders of the Bonds then Outstanding will have consented to such amendment and restatement of the 2003 Indenture, and the Indenture will take effect and be binding on all Holders of Bonds from and after the delivery of the Bonds.

The Bonds will be dated the Issue Date, and will mature, subject to prior redemption, on February 1, 2017, on which date all unpaid principal and interest on the Bonds will be due and payable. The Bonds will be remarketed bearing interest at the Fixed Rate (as described herein) and will bear interest at a Fixed Rate until the Bonds from the settlement date until their final maturity on February 1, 2017. Upon the conversion of the Bonds to bear interest at the Fixed Rate, the Interest Rate Determination Method may not be subsequently changed. During the Fixed Rate Period, interest on the Bonds will be payable on each February 1 and August 1, commencing February 1, 2010 (each, an "Interest Payment Date").

The Bonds will be subject to extraordinary optional redemption prior to maturity in the manner and at the times described herein. See "REDEMPTION OF BONDS" herein.

The Bonds have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended, by virtue of the exemption from registration provided in Section 3(a)(2) thereof.

Unless otherwise defined herein, capitalized terms used in this Reoffering Circular have the meanings ascribed to them in Appendix B hereto or in the Indenture or the Loan Agreement. This Reoffering Circular contains brief descriptions of, among other things, the County, the Indenture, the Loan Agreement, the First Mortgage Bonds, the Collateral Bonds and the Mortgage. Such descriptions do not purport to be comprehensive or definitive. All references in this Reoffering Circular to documents

are qualified in their entirety by reference to such documents, and references to the Bonds are qualified in their entirety by reference to the form of Bond included in the Indenture. Until the delivery of the Bonds, copies of the Indenture, the Loan Agreement, the Supplemental Mortgage indenture and the other documents described in this Reoffering Circular may be obtained at the principal office of the Placement Agent. Copies of these documents will be available for inspection at the principal corporate trust office of the Trustee after delivery of the Bonds.

THE COUNTY

Oconee County, South Carolina is a body politic and corporate and a political subdivision of the State of South Carolina empowered, acting by and through the County Council of Oconee County, by Title 48, Chapter 3, Code of Laws of South Carolina, 1976, as amended, to issue bonds to provide funds to meet the cost of pollution control facilities, including facilities for the disposal of solid waste, and to loan the proceeds of the sale of such bonds for such purposes. Neither the faith and credit nor the taxing power of the County is pledged to secure the Bonds.

THE PROJECT

The proceeds of the Bonds were applied to refund the County's Pollution Control Revenue Bonds, Series A (Duke Power Company Project), which were issued to pay the costs of certain pollution control and solid waste disposal facilities at the Company's Oconee Nuclear Station located in the County. The operating licenses held by the Company for the Oconee Nuclear Station expire in 2033 and 2034, respectively.

THE BONDS

General

The Bonds were issued as fully registered bonds and are registered in the name of Cede & Co. as nominee of The Depository Trust Company ("DTC"), New York, New York, which will continue to act as securities depository for the Bonds. Individual purchases of the Bonds will be made in book-entry form only, in the principal amount of \$5,000 and integral multiples thereof. The Bonds will be dated the Issue Date and will mature, subject to prior redemption, on February 1, 2017, on which date all unpaid principal and interest on the Bonds will be due and payable. Commencing on the Effective Date, the Bonds will bear interest at the Fixed Rate, computed on the basis of a 360-day year of twelve 30-day months. The Fixed Rate will be the rate determined by the Placement Agent (as defined herein) which, if borne by the Bonds would, in the judgment of the Placement 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 Placement Agent to place the Bonds at a price of par (plus accrued interest, if any) on the Fixed Rate Conversion Date.

Interest on the Bonds will 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 is prior to the first Interest Payment Date after the Effective Date, in which case interest will be computed from the Effective Date or (b) such date of authentication is an Interest Payment Date to which interest on the Bonds has been paid in full or duly provided for, in which case interest will be

computed from such date of authentication; provided, however, that if interest on the Bonds is in default, Bonds issued in exchange for Bonds surrendered for registration of transfer or exchange will bear interest from the last date to which interest has been paid or duly provided for on the Bonds.

Security for the Bonds

The Bonds are limited obligations of the County payable solely from the pledge of (i) certain payments made by the Company pursuant to the Loan Agreement, including any payments made on the Collateral Bonds, (ii) all other moneys received by the County, or the Trustee, for the account of the County, in respect of the repayment of the Loan, except moneys held for the benefit of the Holders of particular Bonds and (iii) the income from the investment of such payments and moneys (the "Security"). **The Bonds do not constitute indebtedness of the County within the meaning of any constitutional provision (other than that constitutional provision authorizing county obligations payable solely from sources not involving revenues from any tax or license) or statutory limitation of the State of South Carolina and do not constitute or give rise to any pecuniary obligation of the County, or a charge against its general credit or taxing powers.** The Loan agreement provides that Loan Payments sufficient for the prompt payment when due of the principal of and premium, if any, and interest on the Bonds will be paid to the Trustee by the Company for the account of the County.

The Project does not constitute any part of the Security for the Bonds. The Project, as property of the Company, is subject to the lien of the Mortgage and, as a consequence, does, together with substantially all of the other property of the Company, secure the Collateral Bonds ratably with all other First Mortgage Bonds. For a description of the Collateral Bonds and the security underlying them, see "THE FIRST MORTGAGE BONDS AND THE MORTGAGE" herein.

Book-Entry System

DTC will initially act as securities depository for the Bonds. DTC and any successor or substitute securities depository are sometimes referred to herein as the "Securities Depository." Upon issuance of the Bonds, one fully registered Bond will be registered in the name of Cede & Co., as nominee for DTC, in the aggregate principal amount of the Bonds. Cede & Co. and any future nominee of a Securities Depository are sometimes herein referred to as the "Securities Depository Nominee." So long as Cede & Co., as nominee of DTC, is the registered owner of the Bonds references herein to the Holders of the Bonds or registered owners of the Bonds shall mean Cede & Co. and shall not mean the Beneficial Owners of the Bonds.

The information under this caption concerning DTC and DTC's book-entry system has been obtained from sources believed to be reliable, but the County, the Company and the Placement Agent take no responsibility for the accuracy or completeness thereof.

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing

corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com and www.dtc.org.

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond (the "Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the County as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, premium, if any, and interest payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Authority on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and

customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, premium, if any, and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

THE COUNTY, THE COMPANY AND THE TRUSTEE WILL HAVE NO RESPONSIBILITY OR OBLIGATION TO DIRECT 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 DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT, THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT IN RESPECT OF THE PRINCIPAL OR PREMIUM OR INTEREST ON THE BONDS, ANY NOTICE WHICH IS PERMITTED OR REQUIRED TO BE GIVEN UNDER THE INDENTURE, THE SELECTION BY DTC OR ANY DIRECT 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 DTC AS HOLDER.

The County, the Company and the Trustee cannot and do not give any assurances that DTC, Direct Participants or Indirect Participants will distribute to the Beneficial Owners of the Bonds (i) payments of principal of, premium, if any, and interest on, the Bonds, (ii) confirmation of ownership interests in Bonds, (iii) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, or that they will do so on a timely basis or that DTC, Direct Participants or Indirect Participants will serve and act in the manner described in this Reoffering Circular.

Any provision of the Indenture or of the Bonds requiring physical delivery of the Bonds will, 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.

If the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds, 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. The Beneficial Owners of the Bonds, upon registration of certificates held in the Beneficial Owners' names, will become the registered owners of the Bonds.

REDEMPTION OF BONDS

Optional Redemption

The Bonds will not be subject to optional redemption prior to maturity.

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 180 days of the occurrence of any of the following events:

(i) the Project has 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 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 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 has 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 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 has 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 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 the Indenture that, in the judgment of the Company, render the continued operation of the Project uneconomical;

(v) changes that 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 have occurred or technological changes that the Company cannot reasonably overcome 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 described in (ii) above, which curtailment, in the judgment of the Company, prevents the Company from carrying on its normal operations at the Project for a period of three 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.

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 the Trustee and the Paying Agent, not less than 45 days prior to the date selected for redemption. In addition, the Company must also deliver a certificate of a Company Representative certifying that the conditions precedent to the Company's right to call the Bonds pursuant to the Extraordinary Optional Redemption provision have been met. Notice of redemption will be mailed by the Trustee by first-class mail, postage prepaid, at least 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 will affect the validity of the redemption. 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 will 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.

THE LOAN AGREEMENT

Term of Agreement

The term of the Loan Agreement will continue until such time as all of the outstanding Bonds are fully paid (or provision has been made for such payment) pursuant to the Indenture and all other sums payable under the Loan Agreement have been paid.

Loan Payments

Under the Loan Agreement the Company is required to make Loan Payments on or before each payment date for any outstanding Bonds in an amount which, together with other moneys available in the Bond Fund, will equal the amount payable as principal of, redemption premium, if any, and interest on, the Bonds when due and payable. The Collateral Bonds issued to the Trustee secure certain of the Company's obligations under the Loan Agreement to repay the Loan. The Collateral Bonds provide that payments thereunder will be deemed paid to the extent that the related Loan Payments are made by the Company or payments are otherwise made in respect of the Bonds. In any event, however, the Loan Payments to be made under the Loan Agreement by the Company are required to be sufficient to pay the total amount due with respect to the principal of, redemption premium, if any, and interest on the outstanding Bonds when due. All Loan Payments are pledged and assigned to the Trustee, and the Loan Agreement provides that the Company will make Loan Payments directly to the Trustee for the account of the County and for deposit in the Bond Fund created under the Indenture.

Absolute Obligation to Make Payments

The obligation of the Company to make the Loan Payments required by the Loan Agreement and to perform and observe the other agreements on its part contained in the Loan Agreement are absolute and unconditional and will not be subject to diminution by set-off, counterclaim, abatement, or otherwise. Until payment in full of the Bonds has been made, the Company (i) will not suspend or discontinue any payments required to be made under the Loan Agreement, except to the extent they have been prepaid, (ii) will perform and observe all its other agreements contained in the Loan Agreement, and (iii) will not terminate the Loan Agreement for any cause including, without limitation, any acts or circumstances that may constitute failure of the 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 County to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or in connection with the Loan Agreement.

Prepayments

The Company may prepay all or any part of Loan Payments, or any Additional Payments, and the County has agreed that the Trustee may accept prepayments when tendered by the Company. All Loan Payments or Additional Payments so prepaid will be credited against Loan Payments or Additional Payments, as the case may be, as specified by the Company.

The Company may, 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, when and if permitted thereby. Any moneys so delivered to the Trustee will be held in a separate account in the Bond Fund for application by the Trustee to such purchase or redemption.

Other Covenants of the Company

The Loan Agreement sets forth certain agreements of the Company with respect to various matters. The Company has agreed to keep and maintain the Project or cause the Project to be kept and maintained in good repair and operating condition so that the Project will continue to constitute a pollution control facility for purposes of the operation thereof. The Company also covenants in the Loan Agreement that it will not take, or permit to be taken on its behalf, or omit to take any action which would cause the interest on the Bonds to be includable in the gross income of the Holders 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 Issue Date to the purchasers thereof to continue to exclude from gross income for federal income tax purposes the interest on the Bonds.

Defaults and Remedies

Events of Default are defined in the Loan Agreement to mean any one or more of the following events:

(a) The failure on the part of the Company to make any Loan Payment that causes the occurrence of an Event of Default under the Indenture (see "THE INDENTURE – Defaults and Remedies"); and

(b) The failure by the Company to observe and perform any of its covenants or agreements under the Loan Agreement, other than its agreement to make Loan Payments when due, which failure continues for a period of 90 days after written notice by the County or the Trustee, unless the County and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, that such time shall be extended to such period as may be required if the Company is proceeding with due diligence to cure such default; and

(c) The occurrence of an "event of default" as defined in the Mortgage (see "THE FIRST MORTGAGE BONDS AND THE MORTGAGE – Default").

A failure by the Company described in paragraph (b) above shall not be a default if it occurs by reason of certain events specified in the Loan Agreement not reasonably within the control of the Company.

Whenever any Event of Default under the Loan Agreement shall have happened and be subsisting, any one or more of the following remedial steps may be taken by the County or the Trustee (except that the County may only pursue the remedies set forth in (a) or (c) below at the written request or consent of the Trustee):

(a) Declare all Loan Payments under the Loan Agreement and any other payments due thereunder to be immediately due and payable if the Bonds have been accelerated pursuant to the Indenture (see "THE INDENTURE – Defaults and Remedies");

(b) Have access to and the rights 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; and

(c) Take whatever action at law or in equity may appear necessary or desirable to collect the Loan Payments and other payments then due and thereafter to become due under the Loan Agreement or to enforce performance and observance of any covenant, agreement or obligation of the Company under the Loan Agreement.

Any amounts collected pursuant to action taken upon the happening of an Event of Default under the Loan Agreement will, after payment of the costs and expenses of the proceedings resulting in the collection of such money and the fees and expenses incurred by the Trustee, be paid into the Bond Fund.

The foregoing remedies 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 will also constitute a rescission or annulment of any corresponding declaration made pursuant to paragraph (a) above and a waiver and rescission of the consequences of such declaration and of the Event of Default with respect to which such declaration had been made; provided that no such waiver or rescission will extend to or affect any subsequent or other default or impair any right consequent thereon.

Amendments, Changes and Modifications

No amendment, change, or modification of the Loan Agreement is permissible without the prior written consent of the Trustee. Except as described below, pursuant to the provisions of the Indenture, the consent of the Holders of a majority in aggregate principal amount of Bonds then outstanding is also required for any such amendment, change or modification of the Loan Agreement; provided, however, that the consent of the Holders of all the Bonds then outstanding is required for any such amendment, change or modification of the Loan Agreement which would change the payments to be made by the Company pursuant to the Loan Agreement. Amendments, changes or modifications may be made without the consent of or notice to any Holder of the Bonds if required (i) by the provisions of the Loan Agreement or the Indenture, (ii) for the purpose of curing any ambiguity, inconsistency or formal defect or omission or (iii) in connection with any other changes which, in the judgment of the Trustee, do not prejudice the Trustee or the Holders of the Bonds.

Immunity of Officers and Employees of the County

No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the County contained in the Loan Agreement or the Bonds, against any officer or employee of the County, in his or her individual capacity, past, present or future, either directly or through the County, 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 will attach to, or be incurred by, any officer or employee of the County, past, present or future, either directly or by reason of any of the obligations, covenants, promises or agreements entered into between the County and the Trustee or the Company or to be implied therefrom as being supplemental to the Loan Agreement; and that all personal liability of that character against every such officer and employee is, by the execution of the Loan Agreement and the Bonds, and as a condition of, and as a part of the consideration for, the execution of the Loan Agreement and the Bonds, expressly waived and released. The immunity of officers and employees of the County under the provisions contained in the Loan Agreement will survive the completion of the Project and the termination of the Loan Agreement.

THE INDENTURE

Issuer Assignment of Certain Rights

By the terms of the Indenture, the County has conveyed, assigned and pledged, without recourse, representation or warranty, all of the County's right, title and interest in the Security to the Trustee for the benefit of the Holders.

Collateral Bonds Held by the Trustee

The Trustee, as holder of the Collateral Bonds pursuant to the Indenture, will attend any meeting of the holders of the First Mortgage Bonds under the Mortgage to which it receives notice. Either at such meeting, or otherwise where consent of holders of the Collateral Bonds is sought, the Trustee will vote the Collateral Bonds, or will consent with respect thereto, in a manner that in the judgment of the Trustee would best serve the interests of the Holders of the Bonds. The Trustee may, without the consent of, or notice to, any of the Holders of the Bonds, consent to any amendment, change or modification of the Collateral Bonds that would not be inconsistent with the terms and provisions of the Indenture in order to cure any ambiguity, inconsistency or formal defect or omission in the Indenture, the Loan Agreement or the Collateral Bonds and otherwise to carry out certain purposes set forth in the Indenture. The Trustee may not vote any of the Collateral Bonds in favor of, or give its consent to, any action which in the Trustee's opinion would adversely affect the interests of the Holders of the Bonds, without notice and the written approval of holders of at least 51% of aggregate principal amount of the Bonds then outstanding; provided, however that the Trustee shall not, except upon notice to the Holders of the Bonds and unanimous written approval or consent of all of the 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 holder of each of the Collateral Bonds or all of the Collateral Bonds then outstanding affected by such action.

Bond Fund

The Indenture provides for the deposit in the Bond Fund of (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 and payments derived under the Collateral Bonds and (b) all other moneys received by the Trustee under the Loan Agreement for deposit by it in the Bond Fund.

Moneys in the Bond Fund are required to be held in trust for the Holders and, except as otherwise expressly provided in the Indenture, will 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 Trustee is required under the Indenture 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.

Investment of Bond Fund Moneys

Moneys held as part of the Bond Fund will be invested and reinvested in Permitted Investments as instructed by a Company Representative. All Permitted Investments will be held by or under the control of the Trustee and will 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 will be credited to the Bond Fund and any loss resulting from Permitted Investments will 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 under the Indenture is or will be insufficient to make a requested or required disbursement. The Trustee will 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 under the Indenture in accordance with the provisions of the Indenture. Absent specific instructions from the Company to invest cash balances in Permitted Investments under the Indenture, the Trustee will 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 provided in the Indenture, moneys constituting Eligible Funds will only be invested in Government Obligations maturing on or before the date such Eligible Funds will be required for disbursement.

Defeasance

The Indenture provides that Bonds will be deemed to have been paid within the meaning of the Indenture upon deposit with the Trustee of sufficient Eligible Funds or Government Obligations purchased with Eligible Funds, as specified in the Indenture, for the payment of the Bonds at their respective maturities or redemption prior to maturity of the principal thereof and the redemption premium, if any, and interest to accrue thereon at such maturity or redemption, as the case may be, and provision has been made for the payment of fees and expenses of the County, the Trustee, the Registrar and the Paying Agent.

Events of Default

Each of the following events is an Event of Default under the Indenture:

- (a) Failure to pay interest on any Bond when and as the same has become due;
- (b) Failure to pay the principal of or any premium on any Bond when and as the same has become due, whether at the stated maturity or redemption date thereof or by acceleration;
- (c) Failure to observe or perform any other of the covenants, agreements or conditions on the part of the County included in the Indenture or in the Bonds and the continuance thereof for a period of 30 days after written notice to the County and the Company has been given by the Trustee; and
- (d) The occurrence of a [nonmonetary] Event of Default under the Loan Agreement.

Remedies

Upon the occurrence of any Event of Default under the Indenture 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 (a) and (b) above, the Trustee will immediately, by notice in writing sent to the County, the Company and the Paying Agent, 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 will become and be immediately due and payable and exercise such rights as it may have as a holder of First Mortgage Bonds for the benefit of the Holder of the Bonds. Upon any declaration of acceleration under the Indenture, the Trustee will immediately exercise such rights as it may have under the Loan Agreement

to declare all payments thereunder to be immediately due and payable. Interest on the Bonds will cease to accrue as provided in the Indenture.

Upon the happening and continuance of an Event of Default under the Indenture, the Trustee may in the case of an Event of Default described in (c) or (d) above, with or without declaring an acceleration under the Indenture, pursue any available remedy to enforce the performance of or compliance with any other obligation or requirement of the Indenture or the Loan Agreement.

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 the Trustee is indemnified as provided in the Indenture, the Trustee will exercise such of the rights and powers conferred by the Indenture as the Trustee, being advised by Counsel, deems most effective to enforce and protect the interests of the Holders and, except to the extent inconsistent with the interests of the Holders.

No remedy by the terms of the 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 will be cumulative and will be in addition to any other remedy given to the Trustee or to the Holders under the Indenture or existing on the date of the Indenture or thereafter.

No delay or omission to exercise any right or power accruing upon any default or Event of Default will impair any such right or power or will 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 under the Indenture, whether by the Trustee or by the Holders, will extend to or affect any subsequent default or Event of Default or impair any rights or remedies consequent thereon.

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

Notice to Holders

Immediately following any declaration of acceleration, the Trustee will 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 will not affect the validity of such declaration.

Right of Holders to Direct Proceedings

Anything in the Indenture to the contrary notwithstanding, the Holders of a majority in aggregate principal amount of Bonds then Outstanding will 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 the Indenture, or any other proceedings under the Indenture; provided that such direction will not be otherwise than in accordance with the provisions of law and of the Indenture, and provided that the Trustee will be indemnified to its satisfaction and the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

No Holder will have the right to institute any proceeding for the enforcement of the 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 have requested the Trustee in writing to institute such proceeding, the Trustee has been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, and there has 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 has thereafter failed or refused to exercise such powers or to institute such proceeding within 60 days after receipt of notice with no inconsistent direction given during such 60 days by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding. Nothing in the Indenture will 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 County to pay the principal of and premium, if any, and interest on Bonds to such Holder at the time, place, from the sources and in the manner as provided in the Indenture.

Discontinuance of Default Proceedings

If the Trustee has proceeded to enforce any right under the Indenture by the appointment of a receiver or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the County and the Trustee will be restored to their former positions and rights under the Indenture and all rights, remedies and powers of the County, the Trustee will continue as if no such proceedings had been taken subject to the limits of any adverse determination.

Waiver

Except where an event of default results from the failure of the Company to make payments on any outstanding First Mortgage Bonds or under the Agreement and except in the event of an acceleration of all First Mortgage Bonds under the Mortgage, the Trustee may waive any default or Event of Default under the Indenture and its consequences and rescind any declaration of acceleration of maturity of principal; provided, however, that there will be no such waiver or rescission unless 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 County have been paid or provided for.

Removal and Resignation of Trustee

The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee, the County 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 the Indenture, the Trustee may also be removed by an instrument in writing delivered to the Trustee and the County and signed by a Company Representative. The Trustee may resign only upon giving 30 days' prior written notice to the County, the Company and each Holder of Bonds then Outstanding as shown on the Register. Removal or resignation of the Trustee will take effect only upon the appointment of a successor Trustee by the County with the written consent of the Company and the acceptance of such appointment by the successor Trustee.

Amendments and Supplemental Indentures

The County and the Trustee 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 will be given to Holders by the

Trustee), may enter into an indenture or indentures supplemental to the Indenture which 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, 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, if any, any additional security other than that granted or pledged under the Indenture;

(c) to modify, amend or supplement the Indenture or any indenture supplemental thereto 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 the Indenture;

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

(f) to modify, amend or supplement the 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 in the Indenture or in any supplemental indenture which may be defective or inconsistent with any provision contained in the Indenture or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under the Indenture which will not materially adversely affect the interest of the Holders;

(h) to modify, amend or supplement the Indenture to permit the Paying Agent or the Registrar to assume any administrative duties of the Trustee under the Indenture or for the Trustee to assume any administrative duties of the Paying Agent or the Registrar under the Indenture; and

(i) to make any change therein 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.

Exclusive of supplemental indentures permitted as described above, the Holders of a majority in aggregate principal amount of the Bonds then Outstanding and affected by such indenture or indentures supplemental to the Indenture, will have the right, from time to time, anything contained in the Indenture to the contrary notwithstanding, to consent to and direct the execution by the Trustee of such other indenture or indentures supplemental to the Indenture as shall be consented to by the County 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 the Indenture or in any supplemental indenture; provided, however, that nothing described under this caption will 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 interest on, any Bond, or (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 the 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 will 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.

Amendments to the Loan Agreement

The County will 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 County may 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 which will not adversely affect the interest of the Holders, (ii) to grant or pledge to the County or Trustee, for the benefit of the Holders 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 will 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.

Except as described in the preceding paragraph, the County may not enter into, and the Trustee may not consent to, any other modification or amendment of the Loan Agreement, nor will any such modification or amendment become effective, without the consent of the Holders of a majority in aggregate principal amount of the Bonds at the time Outstanding. 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.

Payments Due on Non-Business Days

In any case when the date on which interest on, premium, if any, or principal of the Bonds is due or the date fixed for redemption of any Bonds is not a Business Day, then payment of such interest, premium or principal need not be made on such date but will 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 will accrue for the period from and after such date.

THE FIRST MORTGAGE BONDS AND THE MORTGAGE

The following description of the First Mortgage Bonds and the Mortgage are summaries which make use of terms defined in the Mortgage. The descriptions contained herein are subject to the detailed provisions of the Mortgage.

General

The Collateral Bonds will correspond to the Bonds in respect of principal amount, interest rate, redemption and purchase provisions and maturity date.

Form, Denomination and Transferability

The Collateral Bonds will be issued in fully registered form, without coupons, in denominations authorized by the Supplemental Mortgage Indenture. The Collateral Bonds will be transferable only to effect a transfer to the Trustee or a successor trustee.

Redemption

The Collateral Bonds will be redeemable in whole upon the redemption in whole of the Bonds, including the application of moneys arising from a taking of any of the mortgaged property by eminent domain or similar action. The Collateral Bonds will not be subject to redemption from the Replacement Fund referred to below.

Replacement Fund

The Mortgage requires the Company to deposit with the Mortgage Trustee annually, for the Replacement Fund established under the Mortgage, the sum of the "replacement requirements" for all years beginning with 1949 and ending with the last calendar year preceding the deposit date, less certain deductions. Those deductions are (1) the aggregate original cost of all fixed property (electric) retired during that time period, not exceeding the aggregate of the gross amounts of additional property (electric) that the Company acquired or constructed during the same period, and (2) the aggregate amount of cash that the Company deposited with the Mortgage Trustee up to that time, or that the Company would have been required to deposit except for permitted reductions, under the Replacement Fund.

The "replacement requirement" for any year is 2 1/2 % of the average "amount of depreciable fixed property" (electric) owned by the Company at the beginning and end of that year, not exceeding, however, the amount the Company is permitted to charge as an operating expense for depreciation or retirement by any governmental authority, or the amount deductible as depreciation or similar expense for federal income tax purposes. The "amount of depreciable fixed property" (electric) is the amount by which the sum of \$192,913,385 plus the aggregate gross amount of all depreciable additional property (electric) that the Company acquired or constructed from January 1, 1949 to the date as of which such amount is determined exceeds the original cost of all of the Company's depreciable fixed property (electric) retired during that period or released from the lien of the Mortgage.

The Company may reduce the amount of cash at any time required to be deposited in the Replacement Fund and may withdraw any cash that it previously deposited that is held in the Replacement Fund: (1) in an amount equal to 150% of the principal amount of First Mortgage Bonds previously authenticated and delivered under the Mortgage, or refundable prior lien bonds, deposited with the Mortgage Trustee and on the basis of which the Company would otherwise have been entitled to have additional First Mortgage Bonds authenticated and delivered; and (2) in an amount equal to 150% of the principal amount of First Mortgage Bonds which the Company would otherwise be entitled to have authenticated and delivered on the basis of additional property (electric).

Upon application of the Company, the Mortgage Trustee will apply cash that the Company deposited in the Replacement Fund and has not previously withdrawn to the payment, purchase or redemption of First Mortgage Bonds issued under the Mortgage or to the purchase of refundable prior lien bonds.

The Company has never deposited any cash with the Mortgage Trustee for the Replacement Fund. If the Company deposits any cash in the future, it has agreed not to apply that cash to the

redemption of the First Mortgage Bonds as long as any First Mortgage Bonds then outstanding remain outstanding.

Security

The Mortgage creates a continuing lien to secure the payment of principal and interest on the First Mortgage Bonds. All First Mortgage Bonds are equally and ratably secured without preference, priority or distinction. With some exceptions, the lien of the Mortgage covers substantially all of the Company's properties, real, personal and mixed, and the Company's franchises, including properties acquired after the date of the Mortgage and the date hereof. Those exceptions include cash, accounts receivable, inventories of materials and supplies, merchandise held for sale, securities that the Company holds, after-acquired property not useful in the Company's electric business, after-acquired franchises and after-acquired non-electric properties.

The Company has not made any appraisal of the value of the properties subject to the lien. The value of the properties in the event of liquidation will depend on market and economic conditions, the availability of buyers and other factors. In the event of liquidation, if the proceeds were not sufficient to repay amounts under all of the First Mortgage Bonds then outstanding, then holders of the First Mortgage Bonds, to the extent not repaid from the proceeds of the sale of the collateral, would only have an unsecured claim against the Company's remaining assets. As of June 30, 2009, the Company had total senior secured indebtedness of approximately \$__ billion and total senior unsecured indebtedness of approximately \$__ billion.

The lien of the Mortgage is subject to certain permitted liens and to liens that exist upon properties that the Company acquired after it entered into the Mortgage to the extent of the amounts of prior lien bonds secured by those properties (not, however, exceeding 75% of the cost or value of those properties) and additions to those properties. "Prior lien bonds" are bonds or other indebtedness that are secured at the time of acquisition by a lien upon property that the Company acquires after the date of the Mortgage that becomes subject to the lien of the Mortgage.

Issuance of Additional First Mortgage Bonds

If the Company satisfies the conditions in the Mortgage, the Mortgage Trustee may authenticate and deliver additional First Mortgage Bonds in an aggregate principal amount not exceeding: (1) the amount of cash that the Company has deposited with the Mortgage Trustee for that purpose; (2) the amount of previously authenticated and delivered First Mortgage Bonds or refundable prior lien bonds that have been or are to be retired which, with some exceptions, the Company has deposited with the Mortgage Trustee for that purpose; or (3) 66 2/3% of the aggregate of the net amounts of additional property (electric) certified to the Mortgage Trustee after February 18, 1949.

The Bond Trustee may not authenticate and deliver any additional First Mortgage Bonds under the Mortgage, other than some types of refunding First Mortgage Bonds, unless the Company's available net earnings for twelve consecutive calendar months within the immediately preceding fifteen calendar months have been at least twice the amount of the annual interest charges on all First Mortgage Bonds outstanding under the First Mortgage Bonds, including the First Mortgage Bonds proposed to be issued, and on all outstanding prior lien bonds that the Mortgage Trustee does not hold under the Mortgage.

The Company may not apply to the Mortgage Trustee to authenticate and deliver any Bonds (1) in an aggregate principal amount exceeding \$26,000,000 on the basis of additional property (electric) that the Company acquired or constructed prior to January 1, 1949 or (2) on the basis of First Mortgage Bonds or prior lien bonds paid, purchased or redeemed prior to February 1, 1949. The Company may not certify

any additional property (electric) which is subject to the lien of any prior lien bonds for the purpose of establishing those prior lien bonds as refundable if the aggregate principal amount of those prior lien bonds exceeds 66 2/3% of the net amount of the additional property that is subject to the lien of such prior lien bonds.

Release Provisions

The Mortgage permits the Company to dispose of certain property and to take other actions without the Mortgage Trustee releasing that property. The Mortgage also permits the release of mortgaged property if the Company deposits cash or other consideration equal to the value of the mortgaged property to be released. In certain events and within certain limitations, the Mortgage Trustee is required to pay out cash that the Mortgage Trustee receives—other than for the Replacement Fund or as the basis for issuing Bonds—upon the Company' application.

The Company may withdraw cash that it deposited with the Mortgage Trustee as the basis for issuing Bonds in an amount equal to the principal amount of any Bonds that it is entitled to have authenticated and delivered on the basis of additional property (electric), on the basis of First Mortgage Bonds previously authenticated and delivered or on the basis of refundable prior lien bonds.

Amendments of Mortgage

The Company may amend the Mortgage with the consent of the holders of 66 2/3% in principal amount of the First Mortgage Bonds, except that no such amendment may: (1) affect the terms of payment of principal at maturity or of interest or premium on any First Mortgage Bond; (2) affect the rights of First Mortgage Bondholders to sue to enforce any such payment at maturity; or (3) reduce the percentage of First Mortgage Bonds required to consent to an amendment.

No amendment may affect the rights under the Mortgage of the holders of less than all of the series of Bonds outstanding unless the holders of 66 2/3% in principal amount of the First Mortgage Bonds of each series affected consent to the amendment.

The covenants included in the supplemental indenture for any series of First Mortgage Bonds to be issued will be solely for the benefit of the holders of those First Mortgage Bonds. The Company may modify any such covenant only with the consent of the holders of 66 2/3% in principal amount of those First Mortgage Bonds outstanding, without the consent of First Mortgage Bondholders of any other series.

Default

The Mortgage Trustee may, and at the written request of the holders of a majority in principal amount of the outstanding First Mortgage Bonds will, declare the principal of all outstanding First Mortgage Bonds due when any event of default under the Mortgage occurs. The holders of a majority in principal amount of the outstanding First Mortgage Bonds may, however, waive the default and rescind the declaration if the Company cures the default.

Events of default under the Mortgage include: (1) default in the payment of principal; (2) default for 60 days in the payment of interest; (3) default in the performance of any other covenant in the Mortgage continuing for 60 days after the Bond Trustee or the holders of not less than 10% in principal amount of the First Mortgage Bonds then outstanding give notice of the default; (4) the Company is adjudicated insolvent or bankrupt by decree of a court or a receiver is appointed of all or any substantial part of the mortgaged property in an insolvency or bankruptcy proceeding and the order or decree remains

unstayed and in effect for 60 days; and (5) the Company files a petition in voluntary bankruptcy, makes an assignment for the benefit of creditors or consents to the appointment of a receiver of all or any substantial part of the mortgaged property or to any adjudication of insolvency or bankruptcy. The Company provides a statement by its officers each year to the Mortgage Trustee stating whether it has complied with the covenants of the Mortgage.

LITIGATION

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 County, threatened against or affecting the County wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, the Indenture or the Loan Agreement or (ii) the tax-exempt status of interest on the Bonds.

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 Company, threatened against or affecting the Company wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bond Documents or (ii) the tax-exempt status of interest on the Bonds.

LEGAL MATTERS

An opinion with respect to certain legal matters incident to the conversion of the Bonds to the Weekly Rate and the remarketing of the Bonds will be delivered by Robinson, Bradshaw & Hinson, P.A., Charlotte, North Carolina, Bond Counsel. Bond Counsel's opinion will be substantially in the form included herein as Appendix C.

Certain other legal matters will be passed upon for the County by McNair Law Firm., Greenville, South Carolina, in the form of opinion included herein as Appendix D. Certain other legal matters will be passed upon for the Company by Robert T. Lucas III, Esq., Associate General Counsel and Assistant Secretary, and for the Placement Agent by Sidley Austin LLP, New York, New York, none of which will address the validity of the Bonds.

TAX EXEMPTION

The opinion of Bond Counsel will state that under existing law (a) interest on the Bonds is excludable from gross income for federal income tax purposes, except for interest on any Bond for any period during which such Bond is held by a "substantial user" of the facilities refinanced by the Bonds or a "related person" within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended (the "Code"), (b) interest on the Bonds is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, however, such interest is taken into account in determining adjusted current earnings for the purposes of computing the alternative minimum tax on certain corporations, and (c) interest on the Bonds is exempt from State of South Carolina income taxes.

The Code and the regulations promulgated thereunder contain a number of requirements that must be satisfied subsequent to the issuance of the Bonds in order for interest on the Bonds to be and remain excludable from gross income for purposes of federal income taxation. Examples include: the

requirement that certain excess earnings on proceeds and amounts treated as proceeds of the Bonds be rebated to the United States Treasury; restrictions on investment of such proceeds and other amounts; and restrictions on the ownership and use of the facilities financed with proceeds of the Bonds. The foregoing is not intended to be an exhaustive listing of the post-issuance tax compliance requirements of the Code, but is illustrative of the requirements that must be satisfied by the Company subsequent to the issuance of the Bonds to maintain the exclusion of interest on the Bonds from income for federal income taxation purposes. Failure to comply with certain of such requirements may cause interest on the Bonds to be included in gross income retroactively to the date of issuance of the Bonds. The Company has covenanted to comply with these requirements. The opinion of Bond Counsel delivered on the date of issuance of the Bonds will be conditioned on the compliance by the Company with such requirements, and Bond Counsel has not been retained to monitor compliance with requirements such as described above subsequent to the issuance of the Bonds.

Prospective purchasers of the Bonds should be aware that ownership of the Bonds may result in collateral federal, state or local tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations with "excess net passive income," foreign corporations subject to the branch profits tax, life insurance companies and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry or have paid or incurred certain expenses allocable to the Bonds. Bond Counsel expresses no opinion regarding any such collateral tax consequences. Prospective purchasers of the Bonds should consult their tax advisors regarding collateral tax consequences.

Bond Counsel's opinions are based on existing law, which is subject to change. Such opinions are further based on factual representations made to Bond Counsel as of the date thereof. Bond Counsel assumes no duty to revise or supplement its opinions to reflect any facts or circumstances that may thereafter come to Bond Counsel's attention, or to reflect any changes in law that may thereafter occur or become effective. Moreover, Bond Counsel's opinions are not a guarantee of a particular result, and are not binding on the Internal Revenue Service or the courts; rather, such opinions represent Bond Counsel's professional judgment based on its review of existing law, and in reliance on the representations and covenants that it deems relevant to such opinions.

CONTINUING DISCLOSURE

In the Loan Agreement, the Company will undertake, 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, beginning with the Fiscal Year ending December 31, 2009, to the Municipal Securities Rulemaking Board ("MSRB") the audited financial statements of the Company for such Fiscal Year, if available, or, if such audited financial statements are not available by seven months from the end of such Fiscal Year, the unaudited financial statements for such Fiscal Year to be replaced subsequently by the audited financial statements to be delivered within 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, beginning with the Fiscal Year ending December 31, 2009, to the MSRB 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 in Appendix A to this Official Statement, to the extent such items are not included in the audited 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:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (5) substitution of any credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or events affecting the tax-exempt status of the Bonds;
- (7) modification of the rights of the Beneficial Owners of the Bonds;
- (8) Bond calls;
- (9) defeasances;
- (10) release, substitution or sale of any property securing repayment of the Bonds; and
- (11) 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 pursuant to the Rule, as amended.

The Loan Agreement will also provide that 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 all Beneficial Owners with respect to such undertaking, including an action for specific performance; provided, however, that failure to comply with such undertaking shall not be an event of default under the Loan Agreement 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.

Pursuant to the Loan Agreement, the Company will reserve 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, composition, nature, or status of the Company;

(b) the information to be provided, as modified, would have complied with the requirements of the Rule as of the date of the Reoffering Circular, after taking into account any amendments or interpretations of the Rule, 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 not less than a majority in principal amount of the Bonds then Outstanding pursuant to the terms of the Indenture, as it may be amended from time to time.

The Company is required to explain, any financial information containing modified operating data or financial information, in narrative form, the reasons for the amendments and the impact of the change in the type of operating data or financial information being provided.

The undertaking described above shall terminate upon payment, or provision having been made for payment in a manner consistent with the Rule, in full of the principal of and interest on the Bonds.

PLAN OF DISTRIBUTION

Pursuant to the Bond Reoffering Agreement, the Company has agreed to pay Wachovia Bank, National Association (the "Placement Agent") a fee for reoffering the Bonds of \$_____. The Placement Agent may, if it determines to do so in its sole discretion, buy as principal any Bonds, but it will not in any event be obligated to do so. The Placement Agent will act as an agent and not as a principal in reoffering the Bonds. The Company will reimburse the Placement Agent for certain out-of-pocket expenses incurred in connection with the reoffering of the Bonds.

The Company has agreed to indemnify the Placement Agent against certain liabilities or to contribute to any payments required to be made by the Placement Agent relating to such liabilities, including liabilities under the federal securities laws.

After the reoffering, the reoffering price and other selling terms may from time to time be varied by the Placement Agent and such Bonds may be reoffered and sold to certain dealers (including dealers depositing such Bonds into investment accounts) and others at prices lower than the public reoffering price set forth on the cover page hereof.

In connection with this reoffering and in compliance with applicable law and industry practice, the Placement Agent may overallocate or effect transactions which stabilize, maintain or otherwise affect the market price of the Bonds at levels above those which might otherwise prevail in the open market, including entering stabilizing bids. A stabilizing bid means the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing or maintaining the price of a security. In general, purchases of a security for the purpose of a stabilization could cause the price of the security to be higher than it might be in the absence of such purchases.

Wells Fargo Securities is the trade name for certain capital markets and investment banking services of Wells Fargo & Company and its subsidiaries, including Wachovia Bank, National Association.

OTHER MATTERS

The Company has furnished all information herein relating to the Company.

Any statements herein involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact, and no representation is made that any of such statements will be realized. Neither this Reoffering Circular nor any statement that may have been made orally or in writing is to be construed as a contract with the Holder of any Bonds.

The County has furnished all information that relates to the County under the captions of this Reoffering Circular entitled "THE COUNTY" and "LITIGATION."

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The County has duly authorized the execution and delivery of this Reoffering Circular.

OCONEE COUNTY, SOUTH CAROLINA

By _____

Appendix A

DUKE ENERGY CAROLINAS, LLC

The information contained herein as Appendix A to the Official Statement has been obtained from Duke Energy Carolinas, LLC. The County and the Placement Agent make no representations as to the accuracy or completeness of such information.

Duke Energy Carolinas, LLC ("Duke Energy Carolinas") is a limited liability company organized under the laws of the State of North Carolina. Duke Energy Carolinas' principal executive offices are located at 526 South Church Street, Charlotte, North Carolina 28202. (telephone number: 704-594-6200).

Duke Energy Carolinas generates, transmits, distributes and sells electricity. Its service area covers about 22,000 square miles with an estimated population of 6 million in central and western North Carolina and western South Carolina. Duke Energy Carolinas supplies electric service to more than 2.4 million residential, commercial and industrial customers over 100,000 miles of distribution lines and a 13,000 mile transmission system. In addition, municipal and cooperative customers who purchased portions of the Catawba Nuclear Station may also buy power from a variety of suppliers including Duke Energy Carolinas, through contractual agreements. These electric operations are subject to the rules and regulations of the Federal Energy Regulatory Commission, the North Carolina Utilities Commission and the Public Service Commission of South Carolina.

WHERE YOU CAN FIND MORE INFORMATION

Duke Energy Carolinas electronically files reports with the Securities and Exchange Commission ("SEC"), including annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to such reports. The public may read and copy any materials that Duke Energy Carolinas files with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an internet site that contains reports and other information regarding issuers that file electronically with the SEC at <http://www.sec.gov>. Additionally, information about Duke Energy Carolinas, including its reports filed with the SEC, is available through Duke Energy Corporation's web site at <http://www.duke-energy.com>. Such reports are accessible at no charge through Duke Energy Corporation's web site and are made available as soon as reasonably practicable after such material is filed with or furnished to the SEC. The information on Duke Energy Corporation's website is not part of this Official Statement.

The SEC allows Duke Energy Carolinas to "incorporate by reference" the information Duke Energy Carolinas files with it, which means that Duke Energy Carolinas can disclose important information by referring you to those documents. The information incorporated by reference is an important part of this Official Statement and should be read with the same care. Information that Duke Energy Carolinas files later with the SEC will automatically update and supersede that information.

The following documents filed by Duke Energy Carolinas with the SEC are incorporated in and made a part of this Official Statement by specific reference:

- Annual report on Form 10-K for the year ended December 31, 2008;

- Quarterly reports on Form 10-Q for the quarters ended March 31, 2009 and [June 30, 2008]; and
- Current report[s] on Form 8-K filed June 16, 2009.

Any documents that Duke Energy Carolinas files with the SEC in the future under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 will also be incorporated by reference into this Official Statement until the offering of the Bonds is terminated. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Official Statement to the extent that a statement contained in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute part of this Official Statement.

You may request a copy of filings (excluding exhibits) made by Duke Energy Carolinas at no cost by writing or calling Duke Energy Carolinas at the following address or one of the following numbers:

Duke Energy
Investor Relations
P.O. Box 1005
Charlotte, NC 28201-1005
(Toll-free) 1-800-488-3853
704-382-3853

APPENDIX B

DEFINITIONS OF CERTAIN TERMS

"Additional Payments" means the amounts required to be paid by the Company for certain costs, fees, charges and expenses and other amounts payable pursuant to the provisions of the Loan Agreement.

"Authorized Denomination" means, during the Fixed Rate Period, \$5,000 and integral multiples thereof.

"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 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, the Indenture and this Reoffering Circular prepared and used in connection with the remarketing of the Bonds on the Effective Date.

"Bond Fund" means the fund of such name created by the Indenture.

"Book-Entry System" means a book-entry system established and operated for the recordation of Beneficial Owners of the Bonds pursuant to the Indenture.

"Business Day" means any day on which the offices of the Trustee, the Paying Agent and the Registrar are each open for business and on which The New York Stock Exchange is not closed.

"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.

"Collateral 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.

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

"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 County 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.

"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.

"Effective Date" means September 1, 2009.

"Eligible Funds" means any moneys held by the Trustee or the Paying Agent under the Indenture shall constitute "Eligible Funds."

"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, by notice to the County and the Trustee.

"Fixed Rate" means the Fixed Rate established as such in accordance with the Indenture.

"Fixed Rate Period" means the period from and including the Effective Date to and including the date of payment in full of the Bonds.

"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.

"Interest Payment Date" means, during the Fixed Rate Period, each Semiannual Interest Payment Date.

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

"Loan Payments" means the amounts required to be paid by the Company for the repayment of the Loan and other amounts payable pursuant to the provisions of the Loan Agreement.

"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, by notice to the County 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 Indenture.

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

"Opinion of Bond Counsel" means any opinion of Bond Counsel delivered pursuant to the 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 Company, the County and the Paying Agent. No such opinion delivered pursuant to the Indenture shall be deemed unsatisfactory when required as a condition to any provision under the Indenture 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.

"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 which have been authenticated and delivered by the Trustee under the Indenture, except:

- (i) Bonds cancelled or delivered for cancellation at or prior to such date;
- (ii) Bonds deemed to be paid in accordance with the Indenture;
- (iii) Bonds in lieu of which others have been authenticated under the Indenture; and
- (iv) 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 under the Indenture, all Bonds held by or for the account of the County, 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 (iv).

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

"Project" means the air and water pollution control facilities and facilities for the treatment and disposal of solid waste constructed at the Company's Oconee Nuclear Station located in Oconee County.

"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, during the Fixed 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.

"Repayments" means all amounts required to be paid by the Company to the County (and the Trustee, as the assignee of the County) pursuant to the Loan Agreement.

"Reserved Rights" means the rights of the County relating to the indemnification and the payment of administration expenses required under the Loan Agreement and the rights of the County pursuant to sections of the Loan Agreement providing that notices, reports and other statements be given to the County and that specified consents be obtained from the County.

"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, by notice to the County and the Trustee.

"Security" means the revenues (including Repayments), funds, rights and interests specified in the Indenture, [including the Collateral Bonds].

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

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

"State" means the State of South Carolina.

"Supplemental Mortgage Indenture" means the Eighty-Ninth Supplemental Indenture, dated as of August 2, 2009, creating the Collateral Bonds.

"U.C.C." means the Uniform Commercial Code of the State as in effect on the date of the Indenture or thereafter amended.

APPENDIX C

FORM OF OPINION OF BOND COUNSEL TO BE DELIVERED ON
CONVERSION DATE FOR THE BONDS

APPENDIX D

FORM OF OPINION OF COUNSEL TO THE ISSUER RELATING TO THE BONDS

AGREEMENT OF RESIGNATION, APPOINTMENT AND ACCEPTANCE, dated as of August 1, 2009, by and among **Oconee County, South Carolina**, a political subdivision duly organized and existing under the laws of the state of South Carolina (the "Issuer"), **The Bank of New York Mellon**, formerly known as The Bank of New York (the "Prior Trustee"), a banking corporation duly organized and existing under the laws of the State of New York and having its principal corporate trust office in New York, New York, with a corporate trust office in Jacksonville, Florida, and **The Bank of New York Mellon Trust Company, National Association**, a national banking association duly organized and existing under the laws of the United States of America and having its principal corporate trust office in Los Angeles, California, with a corporate trust office in Jacksonville, Florida (the "Successor Trustee").

RECITALS:

WHEREAS, the Issuer and a predecessor in interest to Prior Trustee entered into a Trust Indenture dated as of April 1, 1993, and amended and restated as of November 1, 2003, by and between the Issuer and the Prior Trustee (the "Indenture");

WHEREAS, the \$77,000,000 Pollution Control Facilities Revenue Refunding Bonds, Series 1993 (Duke Power Company Project) were authorized and issued under the Indenture for the benefit of Duke Energy Carolinas, LLC, a North Carolina limited liability company, formerly known as Duke Energy Corporation and Duke Power Company (the "Company");

WHEREAS, the Issuer desires to appoint Successor Trustee as Trustee, Paying Agent and Registrar to succeed Prior Trustee in such capacities under the Indenture; and

WHEREAS, Successor Trustee is willing to accept such appointment as Successor Trustee, Paying Agent and Registrar under the Indenture;

NOW, THEREFORE, the Issuer, Prior Trustee and Successor Trustee, for and in consideration of the premises of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby consent and agree as follows:

ARTICLE I

THE PRIOR TRUSTEE

SECTION 1.01 Prior Trustee hereby resigns as Trustee under the Indenture.

SECTION 1.02 Prior Trustee hereby assigns, transfers, delivers and confirms to Successor Trustee all right, title and interest of Prior Trustee in and to the trusts of the Trustee under the Indenture and all the rights, powers and trusts of the Trustee under the Indenture. Prior Trustee shall execute and deliver such further instruments and shall do such other things as Successor Trustee may reasonably require so as to more fully and certainly vest and confirm in Successor Trustee all the rights, powers and trust hereby assigned, transferred, delivered and confirmed to Successor Trustee as Trustee, Paying Agent and Registrar.

ARTICLE II

THE ISSUER

SECTION 2.01 At the request of the Company, the Issuer hereby accepts the resignation of Prior Trustee as Trustee, Paying Agent and Registrar under the Indenture.

SECTION 2.02 All conditions relating to the appointment of The Bank of New York Mellon Trust Company, National Association, as Successor Trustee, Paying Agent and Registrar under the Indenture have been met by the Issuer, and at the request of the Company the Issuer hereby appoints Successor Trustee as Trustee, Paying Agent and Registrar under the Indenture with like effect as if originally named as Trustee, Paying Agent and Registrar in the Indenture.

ARTICLE III

THE SUCCESSOR TRUSTEE

SECTION 3.01 Successor Trustee hereby represents and warrants to Prior Trustee and to the Issuer that Successor Trustee is not disqualified to act as Trustee under the Indenture.

SECTION 3.02 Successor Trustee hereby accepts its appointment as Successor Trustee, Paying Agent and Registrar under the Indenture and accepts the rights, powers, duties and obligations of Prior Trustee as Trustee, Paying Agent and Registrar under the Indenture, upon the terms and conditions set forth therein, with like effect as if originally named as Trustee, Paying Agent and Registrar under the Indenture.

ARTICLE IV

MISCELLANEOUS

SECTION 4.01 This Agreement and the resignation, appointment and acceptance effected hereby shall be effective as of the opening of business on August 1, 2009.

SECTION 4.02 This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

SECTION 4.03 This Agreement may be executed in any number of counterparts each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Resignation Appointment and Acceptance to be duly executed and acknowledged all as of the day and year first above written.

Oconee County, South Carolina,
as Issuer

By: _____

Name: _____

Title: _____

The Bank of New York Mellon,
as Prior Trustee

By: _____

Name: _____

Title: _____

**The Bank of New York Mellon Trust
Company, National Association,**
as Successor Trustee

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND AGREED:

Duke Energy Carolinas, LLC,
as Company

By: _____

Name: _____

Title: _____

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

**COUNCIL MEETING DATE: August 18, 2009
COUNCIL MEETING TIME: 7:00 PM**

ITEM TITLE OR DESCRIPTION:

Consideration of Second Reading of Ordinance 2009-16, and Ordinance Amending Chapter 32 of the Oconee County Code of Ordinances to Establish Article IX, the "Building Height Regulation Ordinance"

BACKGROUND OR HISTORY:

On consideration of a recommendation submitted by the Planning Commission that stemmed from a review of development on ridgelines, County Council took First Reading in Caption Only on Ordinance 2009-16 on July 7, 2009, an Ordinance that requires that all structures 65' and taller be approved as a Special Exception by the Board of Zoning Appeals. The Commission's recommendation noted their support of the standard either as an amendment of zoning regulations, or as a new performance standard. Council took First Reading as a Performance Standard, which the Commission subsequently endorsed at their July meeting. The attached draft has been reviewed by the County Attorney.

SPECIAL CONSIDERATIONS OR CONCERNS:

None

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:

Take Second Reading on Ordinance 2009-16, and schedule a public hearing.

FINANCIAL IMPACT:

None known.

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

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

ATTACHMENTS

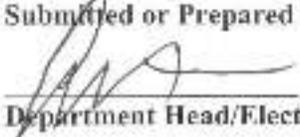
A copy of the draft Ordinance

Reviewed By/ Initials:

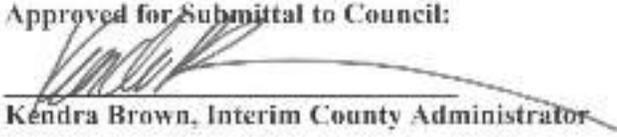
_____ County Attorney _____ Finance _____ Grants _____ Procurement

Submitted or Prepared By:

Approved for Submittal to Council:



Department Head/Elected Official



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
ORDINANCE # 2009-16**

AN ORDINANCE TO AMEND CHAPTER 32 OF THE OCONEE COUNTY CODE OF ORDINANCES IN CERTAIN LIMITED REGARDS AND PARTICULARS, ONLY, AS TO THE ESTABLISHMENT OF UNIFIED PERFORMANCE STANDARDS REGULATING CERTAIN BUILDINGS AND STRUCTURES GREATER THAN SIXTY-FIVE FEET (65') IN HEIGHT PROPOSED FOR ANY LOCATION IN THE UNINCORPORATED AREAS OF OCONEE COUNTY, AND OTHER MATTERS RELATING THERETO

WHEREAS, Oconee County, South Carolina (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the "County Council"), is authorized by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the "Act"), codified in Title 6, Chapter 29 of the South Carolina Code of Laws, 1976, as amended (the "Code") to adopt standards and regulations governing land use and structures located throughout its jurisdiction; and,

WHEREAS, Oconee County Council has heretofore, by and through its Unified Performance Standards Ordinance, 1999-14, codified at Chapter 32 ("Chapter 32") of the Oconee County Code of Ordinances (the "Oconee County Code"), adopted such standards and regulations in accordance with and consistent with the Oconee County comprehensive land use plan; and,

WHEREAS, Oconee County Council deems it necessary and proper to amend certain sections of the Unified Performance Standards from time to time to limit potential negative impacts of current and anticipated development of lands and growth of population; and,

WHEREAS, in accordance with the Act and Chapter 32, Oconee County Council has referred the matter of high-rise development on and around ridgelines and other parts of the County to the Oconee County Planning Commission for their review, comment, and recommendation. The Oconee County Planning Commission has, in fact, reviewed the matter and offered its comments and recommendations as to the matter to the Oconee County Council. The Oconee County Council has considered the comments and recommendations of the Oconee County Planning Commission as to height restrictions and regulations related to such potential high-rise development, held a public hearing, duly noticed and advertised, as required by law, to receive the comments of the public, hereby finds that such comments and recommendations are correct and necessary, and desires to amend the Unified Performance Standards Ordinance, as codified at Chapter 32 of the Oconee County Code of Ordinances, in certain limited particulars only, based on the review, comments, and recommendations of the Oconee County Planning Commission and the public, and to otherwise ratify and reaffirm the Unified Performance Standards Ordinance and other provisions of Chapter 32 of the Oconee County Code of Ordinances not specifically or by implication amended hereby.

NOW, THEREFORE, it is hereby ordained by the Oconee County Council, in meeting duly assembled, that:

1. The foregoing findings of fact, recommendations, and conclusions are hereby adopted, as findings of fact, supporting this ordinance, in their entirety,
2. Article IX of Chapter 32 of the Oconee County Code of Ordinances is hereby established, and shall read as follows, and in the following details, only:

Section 1. Title

This Article shall be known as the "Building Height Regulation Ordinance."

Section 2. Authority

The provisions of this Article are adopted under authority of the South Carolina Local Government Comprehensive Planning Act of 1994, S.C. Code Title 6, Chapter 29.

Section 3. Jurisdiction

The regulations set forth in this Article shall be applicable within the unincorporated areas of Oconee County, South Carolina.

Section 4. Terms and Definitions

Except where specifically defined herein, all words in this Article shall carry their customary meanings. Words used in the present tense include the future tense; the singular number includes the plural. The word shall is mandatory.

1) Structure: any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry, or other public or private purposes, or accessory thereto, and including tents, lunch wagons, dining cars, trailers, mobile homes, and attached or unattached carports consisting of roof and supporting members, and similar structures whether stationary or movable.

2) Structure Height: the vertical distance measured from the average elevation of the finished grade at the front of the Structure to the highest point of the Structure; all methods relating to the establishment of elevations, grades, and distances shall conform to those set forth in codes adopted by Oconee County. Spires, cupolas, chimneys, antennae attached to a Structure, and/or projections from Structures, radios, TV, communications, telecommunication, and water towers are not to be included in the calculations of Structure height.

Section 5. Requirements

All proposed Structures not specifically exempted by this Article that are greater than sixty-five (65) feet in height shall be subject to review and approval by the Oconee County Board of Zoning Appeals only as a Special Exception. In addition to the requirements for Special Exceptions established in Chapter 32 Article I of this Code, as amended, the Board shall issue findings on each of the following criteria:

- a. projected traffic and ability of existing roadways to accommodate the increase caused by the proposed Structure
- b. anticipated cost of any specialized emergency response equipment and training required to serve the proposed Structure
- c. potential noise, light, fumes, shadows, obstruction of air flow, and other negative secondary effects caused by the proposed Structure that may impact existing uses and/or adjacent properties
- d. the aesthetic and cultural character of the environs, specifically regarding any potential degradation by the proposed Structure of scenic views, historic sites, significant landmarks, and other sensitive areas
- e. appropriateness of proposed Structure in relation to the character of the community

Section 6. Exemptions

The following Structures shall be exempt from the standards governing height established by this Article:

- a. Belfries
- b. Chimneys
- c. Church spires
- d. Communication Towers (to include Amateur Radio Antennas)
- e. Conveyors
- f. Cooling towers
- g. Cupolas
- h. Domes
- i. Elevator bulkheads
- j. Fire Towers
- k. Flag Poles
- l. Ornamental towers and spires
- m. Public monuments
- n. Public utility poles
- o. Silos
- p. Skylights
- q. Smoke stacks
- r. Stage towers or scenery lofts

Such features shall be erected only to such height as is necessary to accomplish the purpose they are intended to serve and no height extension shall serve as a place for human habitation.

This section shall in no way exempt any Structure from the application of standards or regulations contained in other Chapters of this Code or other Articles of this Chapter.

Section 7. Penalties

Any violation of this Article shall be considered a violation of the Oconee County Code of Ordinances and a misdemeanor, and shall be punishable as prescribed herein for each offense. Each day such violation continues shall constitute a separate offense of these regulations. Nothing herein contained shall prevent the county from taking such other lawful action as is necessary to prevent or remedy any violation.

3. All other parts and provisions of the Oconee County Code of Ordinances not amended hereby, either explicitly or by implication, remain in full force and effect. The Unified Performance Standards Ordinance, Ordinance 1999-14, and Chapter 32 of the Oconee County Code of Ordinances as amended hereby, are hereby ratified and affirmed, *ab initio*.
4. Should any part or provision of this Ordinance be deemed unconstitutional or unenforceable by any court of competent jurisdiction, such determination shall not affect the rest and remainder of this Ordinance, all of which is hereby deemed separable.
5. All ordinances, orders, resolutions, and actions of Oconee County Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and rescinded.
6. This Ordinance shall take effect and be in full force and effect from and after third reading and enactment by Oconee County Council.

ORDAINED in meeting, duly assembled, this ____ day of _____, 2009.

OCONEE COUNTY, SOUTH CAROLINA

Reginald T. Dexter
Chairman, Oconee County Council

ATTEST

Elizabeth G. Hulse
Clerk to County Council

First Reading: July 7, 2009 [title only]
Second Reading: August 18, 2009
Third Reading: _____
Public Hearing: _____

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

**COUNCIL MEETING DATE: August 18, 2009
COUNCIL MEETING TIME: 7:00 PM**

ITEM TITLE OR DESCRIPTION:

Second Reading : 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 second reading.

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

Ordinance

Reviewed By/ Initials:

_____ County Attorney  _____ Finance _____ Grants _____ Procurement

Submitted or Prepared By:

Kendra Brown

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.

**STATE OF SOUTH CAROLINA
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**

BE IT ORDAINED, by the County Council for Oconee County, South Carolina, in meeting duly assembled, that:

SECTION I:

"AN ORDINANCE TO ESTABLISH THE BUDGET FOR OCONEE COUNTY AND TO PROVIDE FOR THE LEVY OF TAXES FOR ORDINARY COUNTY PURPOSES IN OCONEE COUNTY FOR THE FISCAL YEAR BEGINNING JULY 1, 2009 AND ENDING JUNE 30, 2010", Ordinance 2009-06, is hereby amended and modified to provide for the expenditure of up to \$750,000 for two fire engines.

SECTION II:

The 2009-2010 Oconee County budget is hereby amended by adding the following, for the aforesated purposes:

General Fund Revenues and Funding Sources

Fund Balance	\$750,000
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General Fund Appropriations

Expenditure	\$750,000
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SECTION III:

In the aggregate, the adopted fiscal year 2009-2010 budget, prior to these amendments stands at:

General Fund	\$ 42,658,420
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As so amended, herein, the new amended budget will be:

General Fund	\$ 43,408,420
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SECTION IV:

Except as specifically modified, amended or deleted herein, all appropriations of funds created by the "AN ORDINANCE TO ESTABLISH THE BUDGET FOR OCONEE COUNTY AND TO PROVIDE FOR THE LEVY OF TAXES FOR ORDINARY COUNTY PURPOSES IN OCONEE COUNTY FOR THE FISCAL YEAR BEGINNING JULY 1, 2009 AND ENDING JUNE 30, 2010", Ordinance 2009-06, are hereby ratified and shall remain in full force and effect as originally adopted. All other sections of Ordinance 2009-06 not modified, directly or by implication shall likewise remain in full force and effect. This ordinance shall take effect immediately on approval on third reading. All ordinances and resolutions inconsistent herewith are, to the extent of such inconsistency only, hereby revoked, repealed, and rescinded.

Adopted in meeting duly assembled this ___ day of September, 2009.

FOR OCONEE COUNTY:

Reginald T. Dexter, Chairman

ATTEST:

Elizabeth G. Hulse
Oconee County Clerk to Council

First Reading:	August 4, 2009
Second Reading:	August 18, 2009
Public Hearing:	
Third Reading:	

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

COUNCIL MEETING DATE: August 18 , 2009
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

Transmission Line Easement for Blue Ridge Electric at the Ebenezer Convenience Center - First Reading in Title Only of Ordinance 2009-18: "AN ORDINANCE AUTHORIZING THE TRANSFER OF AN EASEMENT FOR INGRESS, EGRESS, AND UTILITIES ACROSS CERTAIN OCONEE COUNTY REAL PROPERTY AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT RELATED TO THE SAME; AND OTHER MATTERS RELATED THERETO."

BACKGROUND OR HISTORY:

Blue Ridge Electric wishes to upgrade the power lines that cross the Ebenezer Convenience Center to transmission lines and is requesting an easement from Oconee County,

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:

STAFF RECOMMENDATION:

Staff recommends that Council approve Ordinance 2009-18 in title only for first reading.

FINANCIAL IMPACT:

Blue Ridge will pay \$9,800 to the County for the easement.

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

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

ATTACHMENTS

None

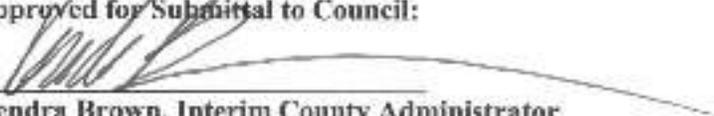
Reviewed By/ Initials:

_____ 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.

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

COUNCIL MEETING DATE: Aug 18th, 2009
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

Emergency Siren Tower Easement Agreement with Duke Energy - First Reading of County Ordinance 2009-19 (in title only): "AN ORDINANCE AUTHORIZING THE TRANSFER OF INTEREST IN CERTAIN OCONEE COUNTY REAL PROPERTY AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN ACCESS EASEMENT AGREEMENT RELATED TO THE SAME; AND OTHER MATTERS RELATED THERETO."

BACKGROUND OR HISTORY:

For over 10 years Duke Energy, LLC has had a nuclear emergency Siren Tower located near the old CAP house on the Oconee County Airport. The current tower location prohibits future hangar development of the old CAP house site. After agreeing the tower should be relocated to a new site on the airport, a new easement agreement was drafted as the legal means to allow the tower to remain on and operate on County owned property. The easement agreement will allow Duke Energy and other nuclear regulatory agencies to periodically inspect and/or service the Emergency Siren tower. The county attorney has reviewed and updated the easement agreement wording to protect Oconee County's interests.

SPECIAL CONSIDERATIONS OR CONCERNS:

This siren tower is one of several located in the vicinity of the Oconee Nuclear Station and is part of Duke Energy's NRC emergency communications plan with the surrounding community. In the event of a Nuclear emergency at the Oconee Station, the Siren will be activated to alert the community to take precautionary measures.

STAFF RECOMMENDATION:

Recommend Council approve Ordinance 2009-19 in title only for first reading.

FINANCIAL IMPACT:

None. Duke Energy will relocate the tower at no cost to Oconee County.

COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:

Are Matching Funds Available: NA

If yes, who is matching and how much: NA

ATTACHMENTS

None

Submitted or Prepared By:

Kevin D. Short, Airport Director

Department Head/Elected Official

Approved for Submittal to Council:



Kendra Brown, Interim County Administrator

Reviewed By/ Initials:

via email County Attorney

Finance

Grants

C: Clerk to Council

Agenda Items Summary to be submitted to Administrator for review / approval no later than close of business on Wednesday prior to a Council meeting.

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

COUNCIL MEETING DATE: August 18, 2009
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

Consideration of Agreement with Georgia Power Corporation Regarding Enforcement of Building Codes for Permitted Structures Located on Lake Yonah

BACKGROUND OR HISTORY:

Lake Yonah is a small lake located on the Tugalo River above Lake Hartwell, with a portion of its shoreline situated within Oconee County. The lake was built by Georgia Power in the 1920's as one of a series of small hydro-power stations on the Tugalo and Tullulah Rivers. Due to the mountainous terrain of the area, existing development within Oconee's jurisdiction is limited to the immediate shoreline area, with almost all lots, which are held by lease only, accessed only by boat from Stephens County, Georgia. Additionally, electrical power is provided from the Georgia side by the property owner, Georgia Power. Over the years, only a small number of building permits have been issued by Oconee County for new construction on the lake, although there is evidence of significant construction activity. Recently, however, spurred on in part by changes in the way Oconee County deals with the taxation of structures, the county has received a number of inquiries related to proposed building projects. In preparing to move ahead with the permitting activity mandated by adopted codes, it is necessary to insure that the County has the ability to regulate access to the utilities required by the new structures. As the electrical providers serving the vast majority of Oconee County are located in South Carolina, state mandated building codes provide the necessary mechanism to grant and deny access; for Lake Yonah, however, there is the potential for confusion in dealing with an out-of-state utility. Given that granting access to utilities, particular electrical service, involves life and safety issues, the ability to get an immediate response from the provider is vital. Therefore, to avoid any confusion and potential life-threatening situations associated with permits issued on Lake Yonah, an agreement by Georgia Power to honor Oconee County's requests is necessary.

SPECIAL CONSIDERATIONS OR CONCERNS:

Initial contacts with Georgia Power officials indicate they would support such an agreement.

STAFF RECOMMENDATION:

Authorize the County Attorney to negotiate the necessary agreement with Georgia Power

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: N/A

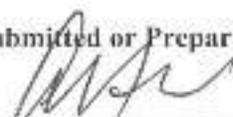
ATTACHMENTS

Copy of Applicable Sections of Adopted Codes

Reviewed By/ Initials:

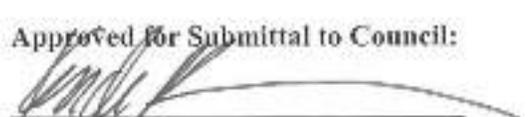
_____ County Attorney _____ Finance _____ Grants _____ Procurement

Submitted or Prepared By:



Department Head/Elected Official

Approved for Submittal to Council:



Kendra Brown, Interim County Administrator

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Utility Requirements from ICC

SECTION 111

SERVICE UTILITIES

111.1 Connection of service utilities. No person shall make connections from a utility, source of energy, fuel or power to any building or system that is regulated by this code for which a permit is required, until released by the building official.

111.2 Temporary connection. The building official shall have the authority to authorize the temporary connection of the building or system to the utility source of energy, fuel or power.

111.3 Authority to disconnect service utilities. The building official shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this code and the codes referenced in case of emergency where necessary to eliminate an immediate hazard to life or property.

The building official shall notify the serving utility, and wherever possible the owner and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure or service system shall be notified in writing, as soon as practical thereafter.

**AGENDA ITEM SUMMARY
OCONEE COUNTY, SC**

COUNCIL MEETING DATE: August 18, 2009
COUNCIL MEETING TIME: 7:00 PM

ITEM TITLE OR DESCRIPTION:

Award the purchase of one Bandit model 1490XP drum style brush chipper for the Road Department in the amount of \$42,557.41, to Ditch Witch of the Carolinas, of Ladson, SC, per State Contract number 08-S7683-A13727.

BACKGROUND OR HISTORY:

This brush chipper will be used for routine right-of-way clearing, to dispose of tree limbs on site, so they do not need to be hauled away. The chipper will also be used for debris removal and road clearing after ice or thunder storms. This chipper is equipped with a hydraulic winch that allows dragging limbs and debris directly into the chipper and also a hydraulic cylinder that maintains constant pressure on the feed wheel. The hydraulic winch and cylinder on the feed wheel ensures that a crewman will be able to maintain a safer environment, than previous chipper. Vehicle Maintenance is already familiar with the Caterpillar 114 IIP diesel engine and this model chipper allows easier access to the chipping blades and drums which will simplify maintenance.

SPECIAL CONSIDERATIONS OR CONCERNS:

COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes. Budget Provisos for FY 2009-10, Section 10, specifically state that purchases made from the South Carolina State Contract are exempt from competitive bidding.

STAFF RECOMMENDATION:

Award the purchase of one Bandit model 1490XP drum style brush chipper for the Road Department in the amount of \$42,557.41, to Ditch Witch of the Carolinas, of Ladson, SC, per State Contract number 08-S7683-A13727.

FINANCIAL IMPACT:

For FY 2009-10, County Council approved \$43,300 specifically for a "pull behind brush chipper" (budget code 10-601-50870)

ATTACHMENTS

1. State Contract
2. Picture of brush chipper

Reviewed By/ Initials:

_____ County Attorney VB Finance _____ Grants See Procurement

Submitted or Prepared By:

Robyn Courtight
Department Head/Elected Official

Approved for Submittal to Council:

Kendra Brown
Kendra Brown, Asst. County Administrator

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LOT 3 – BANDIT

% Discount – Equipment: 10%
% Discount – Attachments: 10%
% Discount – Accessories: 10%

PLACE ALL ORDERS DIRECTLY WITH THE VENDOR BELOW:

VENDOR: Ditch Witch of the Carolinas
10048 Hwy 78
Ladson, SC 29456

CONTACT: Chad Neal
TELEPHONE: (843) 871-1022
FAX: (843) 871-1021
E-MAIL: chadn@dwotc.com

CONTRACT #: 08-S7683-A13727

FEIN #: 56-1078538

DELIVERY: 90 Days ARO



Oconee County
Planning Commission



Report to County Council
August 18, 2009

Planning Commission Members

- | | |
|------------------------------|------------|
| • Andrea Heller | District 1 |
| • Howard Moore | District 2 |
| • Bill Evatt | District 3 |
| • Tommy Abbott (Chairman) | District 4 |
| • Ryan Honea (Vice-Chairman) | District 5 |
| • Rex Ramsay | At-Large |
| • Randy Abbott | At-Large |

Authority

Title 6 Chapter 29

SC Code of Laws

'1994 Comprehensive Planning Act'

Commission Established in 1995

First Meeting on November 29, 1995

The Commission's first year of work focused mainly on completion of Oconee's first Comprehensive Plan, and the Development of Regulations for Structures Near Airport

Comprehensive Plan

First Comprehensive Plan Adopted in 1996

Rewritten 2004; Currently being Updated-
New Plan due no later than 2014.

Some Issues Addressed by Commission

- Height Restrictions Near the Airport
- Group Homes
- Communication Towers
- Sexual Oriented Businesses
- Land Development and Subdivision Regulations
- Tattoo Facilities
- Vegetative Buffer Requirements
- Sign Control Regulations
- Zoning