

subsequent decennial anniversary (*i.e.*, Base Rent plus five percent (5%) of the increased amount for the first year following the tenth anniversary, ten percent (10%) for the second year, fifteen percent (15%) for the third year, and so on, until such time as the Base Rent is adjusted to equal the increase).

4. ALTERNATE BASE RENT. Upon written request of Lessee, which shall be delivered no later than sixty (60) days prior to the anniversary of the Lease Commencement Date, and upon consent of Lessor, in Lessor's sole and absolute discretion, and effective on an anniversary of the Lease Commencement Date, the Base Rent may be adjusted so as to equal one percent (1.0%) of the market value of the Property, as established in Paragraph 3 herein (the "Alternate Base Rent").

(a) ADDITIONAL ANNUAL RENT. During any period in which the Base Rent is computed at the Alternate Base Rent rate, Lessee shall pay as additional annual rent an amount equal to four percent (4%) of the gross annual revenue derived from all businesses operating from, on or reliant upon, in whole or in part, the Property during the fiscal year of Lessee ("Additional Annual Rent"). Annual tax returns filed with the Internal Revenue Service for the fiscal year shall be used when determining gross annual revenue. Additional Annual Rent payments will be established initially based on gross annual revenue in the most recent fiscal year for which Lessee has filed tax returns related to income from the Property. Each March 1st thereafter, Lessor will recalculate Additional Annual Rent to be paid during the ensuing twelve (12) months based on the prior fiscal year tax returns and inform Lessee of the amount. The Additional Annual Rent shall be payable at Lessee's option either in a lump sum due within fifteen (15) days of notification from Lessor or in twelve (12) equal monthly installments due on or before the first day of each month commencing with the next calendar month.

(b) ANNUAL TRUE-UP. Beginning March 1, ____ and March 1 for each year of the term thereafter, Lessor will calculate the Additional Annual Rent for Lessee's prior fiscal year based on the prior fiscal year tax returns and inform Lessee of the amount. If the Additional Annual Rent actually paid for a fiscal year exceeds the amount owed, Lessor will apply the surplus to future rental payments under this Lease. If the amount paid is less than the amount owed, the Lessee will pay Lessor the amount owed within thirty (30) days.

(c) TAX RETURNS. As a condition precedent to utilization of Alternate Base Rent Lessee must file state and federal tax returns as described herein. Within ten (10) days of the date established by the Internal Revenue Service for filing of an annual return, Lessee shall provide Lessor with copies of the relevant returns, and any subsequent amendments thereto filed with the United States Internal Revenue Service and the South Carolina Department of Revenue, or the successor agencies to either, which verify the gross annual revenue in the previous fiscal year of all businesses operating from, on or reliant upon, or whole or in part, the Property.

(d) RIGHT TO AUDIT. Lessor shall have the right at all reasonable times to examine the books and records of Lessee for the purpose of determining the gross receipts of the business done by Lessee on the Property. Lessor shall treat sales figures and audit reports of Lessee as confidential and not divulge them to third parties except as required by law.

5. CREDIT FOR LOW LAKE LEVELS. In the event the water level of Lake Marion remains at an elevation of 72.5 feet above sea level or lower, as determined in Lessor's sole discretion by reference to a measuring gauge maintained by the U. S. Geological Survey at Pineville, South Carolina, for ten (10) consecutive days during the period between March 1 and September 30 for every year of the term of this Lease, the Base Rent shall be adjusted such that no amount shall be charged for the month in which the ten (10) day period ends.

6. ALTERATIONS AND IMPROVEMENTS

(a) REVIEW OF PLANS. Prior to commencing installation of any buildings, structures, fences, landscaping or other improvements ("Improvements") on the Property or otherwise initiating land-disturbing activities on the Property, Lessee shall submit to Lessor copies of any required governmental approvals or permits, and shall submit to Lessor for Lessor's review and approval, either general arrangement drawings or partially completed construction drawings and specifications for the Improvements such that Lessor may assure that Lessee's design and construction work will meet the requirements of this Lease. Any subsequent changes to the construction documents shall also be subject to Lessor's review and approval prior to implementation. No review by Lessor of the construction documents shall constitute an approval of, endorsement of or confirmation of the efficacy of Lessor's designs or a waiver by Lessor of any of Lessee's obligations under this Lease.

(b) RESTRICTIONS. In addition to other requirements, and not by way of limitation, no building, mobile home or accessory building shall be erected at a distance of less than seventy-five (75) feet from the normal high water elevation of the reservoir (elevation 76.8 feet mean sea level at the Santee Dam) or at a distance of less than thirty (30) feet from the nearest street or road line. A minimum of fifteen (15) feet of clearance must be maintained between mobile homes and other structures excluding small, unattached utility or storage units. No dock, wharf, walkway or other structure shall be erected along the waterfront or extended below the maximum high water elevation, nor shall the environment of the area lying below the said seventy-five (75) feet from the normal high water elevation be modified or altered, without first being approved in writing by Lessor. A strip of land measuring thirty (30) feet in width from the normal high water elevation of the reservoir (elevation 76.8 feet mean sea level at the Santee Dam) shall be maintained along the entire shoreline of the Property, to which the general public may have access from the lake for limited purposes including, but not limited to, emergency boat landings and rescue operations, and in which there shall be only limited construction of water based facilities.

(c) SEPTIC SYSTEMS. Lessee, prior to construction of any building, will obtain from the County Sanitarian (or other authorized County Health Officer satisfactory to Lessor) a permit to install and maintain a septic tank approved by the South Carolina Department of Health and Environmental Control sufficient for disposal of all sewage, and such septic tanks shall be operated in such a way as not to endanger the quality of project waters. No septic tank or absorption/drainage field shall be permitted within fifty (50) feet of the shoreline of the Property. Tests will be taken immediately after the installation of the septic facilities and subsequent times as deemed necessary by Lessor and/or its agents to determine if leakage into project waters is occurring, and if such leakage does occur, modification shall be made to prevent such leakage.

In addition, Lessee shall develop and implement a solid waste disposal plan, in accordance with appropriate governmental regulations.

(d) CONSTRUCTION. Lessee shall perform all construction activities on the Property in a good and workmanlike manner, using materials appropriate for the application.

(e) LIENS. Lessee shall allow no construction liens to be placed against the Property in connection with the work to be performed by Lessee. In the event that any such lien is filed or recorded, Lessee shall promptly pay off or bond such lien within thirty (30) days, failing which Lessor may, at its option, pay or bond off such lien and claim from Lessee reimbursement for all costs and expenses in connection therewith, including attorneys' fees and costs.

(f) MODIFICATIONS. Lessee shall have the right to modify, alter, or otherwise change the Improvements from time to time during the Term; provided that, before constructing, installing, or making a material modification, alteration or change to the Improvements, Lessee shall give notice thereof to Lessor accompanied with any plans and specifications prepared by or on behalf of Lessee detailing the proposed modifications or alterations to the Improvements and/or the Property, for Lessor's prior written approval, which approval shall not be unreasonably withheld.

7. USE AND OCCUPANCY.

(a) USE OF THE PROPERTY. The Property shall be used for commercial or business purposes and open to the public as prescribed by the Federal Energy Regulatory Commission ("FERC") and Lessor and for no other object or purpose, and Lessee shall not permit or suffer any offensive use of the Property, or disorder or nuisance thereon.

(b) COMPLIANCE WITH LAWS. Lessee shall occupy and use the Property at all times subject to and in compliance with the laws of the United States, the State of South Carolina, and its subdivisions, including environmental laws, and such rules and regulations respecting sanitation, health and safety as Lessor and/or its agents may prescribe from time to time. The term "laws" as used herein shall include Lessor's administrative rules and regulations. Lessee's use of the shoreline of Lake Marion shall be subject to all applicable rules and regulations which may be prescribed from time to time by regulatory authorities and Lessor.

(c) MAINTENANCE. Lessee shall maintain the Property and Improvements in good order and condition and shall not allow the commission of waste.

(d) FOREST FIRES. Lessee agrees to use its best efforts to prevent and suppress forest fires and grass fires upon and in the vicinity of the Property. Lessee shall further inform itself as to all forest fire laws, ordinances and/or regulations which may now or in the future be applicable to the area in which the Property is situate. Lessee shall further cooperate with Lessor's reforestation program and protect any planted seedlings or trees on the Property, provided such program shall not materially interfere with the use of the Property by Lessee for commercial purposes. All timber, trees and seedlings shall be and remain the property of Lessor

and shall not be removed by Lessee at any time without the prior written consent of Lessor, which consent may be withheld in Lessor's sole discretion.

(e) **EROSION.** Lessee shall refrain from acts, which have a tendency to cause soil erosion on the Property and, at its sole risk and expense, shall immediately take preventive measures to stop erosion if erosion begins to affect the Property. Lessee using proper materials, which will serve to enhance shoreline values, shall initiate shoreline protection measures. In the event that vegetative plantings will not adequately protect the shoreline, alternate protective measures shall consist of retaining walls, bulkheads or riprap. Plans and specifications shall be submitted to Lessor and will conform to acceptable standards as required by Lessor. Soil erosion which may occur as a result of run-off shall be corrected at the direction of Lessor. Further, Lessor shall not be responsible for providing maintenance excavation should accretion of sand, silt, soil, or other material affect the Property or access to the Property during the Term.

(f) **FEDERAL ENERGY REGULATORY COMMISSION.** The Property is located within the boundary of the FERC License 199, this Lease and the use thereof is subject to all present or future lawful requirements, rules and regulations of the FERC in accordance with said license, any and all amendments, modifications or revisions thereof, and any new or replacement licenses. Lessee shall permit equal and unobstructed use of all recreation facilities for the use of the public to all members of the public without regard to race, religious creed, national origin, or sex. Without limiting the generality of the foregoing, no use of the Property shall be such as to endanger health, create a nuisance, or otherwise be incompatible with the overall project recreational use of the Santee Cooper Project, License 199, as said project now exists or may be changed in the future in accordance with new amendments, modifications or revisions of the existing license and any new or replacement licenses.

(g) **HAZARDOUS MATERIALS.** Lessee shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store (in any manner which violates applicable law), handle, dispose of, transfer, produce, or process Hazardous Materials (as such term is hereinafter defined), nor shall Lessee cause or permit, as a result of the intentional or unintentional acts or omissions on the part of Lessee or any employee, officer, director, agent, contractor, Lessee or invitee of Lessee, however characterized, a release of Hazardous Materials onto the Premises or any other property. Any contamination caused, directly or indirectly, from Lessee's non-compliance with the terms of this section shall be the sole responsibility and liability of Lessee.

For purposes hereof, the term "Hazardous Materials" includes, without limitation any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act of 1976, as amended and in any regulations adopted and publications promulgated pursuant thereto or any other federal, state or local environmental laws, ordinances, rules or regulations.

8. DEFAULT AND TERMINATION.

(a) DEFAULT. The failure by Lessee to observe or perform any of its covenants or obligations contained in this Lease shall constitute a "Default", provided, however, if a Default shall have continued: (i) for five (5) days in the case a failure to make a payment due hereunder or (ii) for thirty (30) days in the case of other Defaults, after Lessor shall have given written notice of the Default to Lessee, such Default shall constitute an "Event of Default."

(b) TERMINATION.

(i) BY LESSEE. Lessee may terminate this Lease any time by giving ninety (90) days prior written notice to Lessor, specifying the termination date. Upon the termination date specified in said notice, this Lease shall terminate.

(ii) BY LESSOR.

(A) WITHOUT CAUSE. Lessor may terminate this Lease at any time by giving ninety (90) days prior written notice to Lessee, and upon the date specified in such notice, this Lease shall expire. Upon such termination by Lessor under the terms of this paragraph, but under no other circumstances whatsoever, Lessee shall have the option of selling any Improvements as may have been erected with Lessor's prior written approval to Lessee, and Lessor shall be obligated to purchase the Improvements at a price equal to the fair market value of the Improvements at the date of termination. The fair market value shall be determined by agreement between the parties; in the event the parties cannot agree, the fair market value shall be determined by appraisal, each party appointing an MAI Appraiser and the appraisers so appointed appointing a third. The parties shall abide by the decision of three appraisers or a majority of them.

(B) UPON AN EVENT OF DEFAULT. Without limiting Lessor's ability to exercise any other remedy provided by law, Lessor may terminate this Lease immediately by delivery of written notice to Lessee upon the occurrence and during the continuance of an Event of Default hereunder.

9. SURRENDER OF THE PROPERTY

(a) SURRENDER. Lessee shall, on or before the expiration or termination of this Lease, peaceably and quietly leave, surrender and yield up to Lessor the Property.

(b) IMPROVEMENTS. Lessee may, prior to the expiration or termination of this Lease, remove any Improvements constructed by Lessee hereunder which are susceptible of being removed from the Property without substantial injury thereto. Any Improvements remaining upon the Property upon expiration or termination of this lease shall become the property of Lessor. Lessee shall restore the Property to as good a condition as that existing on the Lease Commencement Date, normal wear and tear excepted.

(c) PERSONAL PROPERTY. Any personal property (other than the Improvements) of Lessee which remains on the Property after expiration or termination of this Lease may, at the

option of Lessor, be deemed to have been abandoned by Lessee and either may be retained by Lessor as its property, or be disposed of, at the cost and expense of Lessee, in such manner as Lessor deems appropriate.

10. **RIGHT OF INSPECTION.** Lessor shall have the right to enter upon the Property at any time during the Term for the purpose of inspecting the Property, and shall have the right to perform mosquito control, floatage removal, and other actions upon the Property for the purpose of maintaining the Property. Lessee shall make no use of the Property which will in any way interfere with such uses by Lessee. Lessor reserves the right to manipulate the levels of Lake Marion in any manner whatsoever, and reserves the right to flood any part of the Property at any time.

11. **UTILITIES.** Lessor consents that facilities suitable for providing heat, light, sewage disposal, communications service and other utility services may be located upon the Property by Lessee, by public utility companies or cooperative associations or by associations which may be organized by residents of the area where the property is located.

12. **INDEMNIFICATION.** Lessor shall not be liable to Lessee by reason of any injury to person or property, or loss of life or property, suffered or sustained in, upon or about any of the Property, the lakes and roadways of Lessor or any other area to which Lessee may have access hereunder as a result of the condition of the area and/or the aforesaid operations of Lessor. Lessee shall indemnify, hold harmless and defend Lessor, its officers, directors and employees and their respective successors and assigns, from and against any cost, liability, claim, damages, or expense (including reasonable attorneys' fees, fines and penalties) assessed, incurred or sustained by or asserted against any of them to the extent caused by or arising out of: (i) Lessee's or Lessee's agents', contractors', or invitees', use or occupation of the Property or out of any operations conducted thereon, or (ii) any breach by Lessee of any of its covenants, agreements, representations or warranties contained in this Lease, except to the extent any of the foregoing shall be caused solely by the gross negligence or willful misconduct of Lessor.

Lessee shall, at its own expense, assume the defense of all claims and actions for which indemnification is provided under this Lease, which may be brought against Lessor, and shall pay all judgments that may be rendered on such actions.

13. **TAXES.** Lessee shall pay promptly all lawful taxes and assessments now or hereafter applicable to this Lease, to the Property and to any real or personal property now or hereafter erected or located on the Property. Lessee shall further promptly reimburse Lessor for all such lawful taxes and assessments which Lessor may be required to pay.

14. **ASSIGNMENT.**

(a) **CONSENT TO ASSIGNMENT.** Except as provided for herein, Lessee may not assign or transfer this Lease or any interest therein, and the Property may not be sublet in whole or in part, unless Lessee has secured written permission from Lessor prior to such assignment, transfer or sublease. Any assignment, transfer, or sublease granted by Lessee without the prior, written consent of Lessor shall be void and of no effect. If assignment is requested, Lessor shall

have the option of requiring the assignee to execute an amendment to this Lease incorporating therein such amended or additional provisions as then may be used by Lessor in leases of comparable property, or Lessor may require the assignee to execute a new lease including any such amended or additional provisions. If Lessee has, at any time during the Term, paid Base Rent at the Alternate Base Rent rate pursuant to Paragraph 4, then on or before any assignment, transfer, sublease, amended lease, or new lease, Lessee shall pay Lessor the positive difference, if any, between (i) rental payments that would have been made during the Term if rental payments had been computed at the Base Rent rate described in Paragraph 3 of this Lease and (ii) rental payments actually made during the Term at the Alternate Base Rent, provided that this calculation shall be limited to the three (3) years preceding the requested assignment.

(b) ASSIGNMENT TO LENDER. Notwithstanding any other provision of this Lease, Lessee may assign this Lease to any bank, savings and loan association or other institution whose primary business is the making of loans, for the purpose of securing a loan for the construction of improvements on the Property. Such an assignment does not require the prior approval of Lessor, and will be valid if made on the forms to be provided by Lessor and upon payment to Lessor of a fee to be determined by it as partial reimbursement for costs incurred in connection therewith. An assignment shall be subject to all rights of Lessor provided and reserved under this Lease.

15. WARRANTY OF TITLE. Lessor makes no warranty of any nature whatsoever as to its title or rights to any of the Property herein described, or its suitability for the leased purposes, and only grants the rights set out in this instrument insofar as its titles and rights extend.

16. NOTICES. All notices and other communications under this Lease shall be in writing and delivered (a) in person, (b) by registered or certified mail with postage prepaid, and return receipt requested or (c) by recognized overnight courier service for next day delivery with charges prepaid, directed to the intended recipient as follows:

If to Lessee:

If to Lessor:

South Carolina Public Service Authority
Attention: Property Management
One Riverwood Drive
Moncks Corner, South Carolina 29461-2901

A notice or other communication shall be deemed delivered on the earliest to occur of (i) its actual receipt when delivered in person, (ii) the third business day following its deposit in registered or certified mail, with postage prepaid, and return receipt requested, or (iii) the next

business day following its deposit with a recognized overnight courier service. Either party may change the address to which notices or other communications hereunder can be delivered by giving the other party notice in the manner herein set forth.

17. **INSURANCE.** During the Term of the Lease and for any further time that Lessee shall hold the Property, Lessee shall obtain and maintain at its expense the following types and amounts of insurance:

Personal Injury and Property Damage Insurance. Insurance against liability for bodily injury and property damage, in forms of insurance policies as approved by Lessor in an amount of not less than One Million and no/100 dollars (\$1,000,000.00).

All insurance provided by Lessee as required by this Article shall be carried in favor of Lessor and Lessee as their respective interest may appear. Lessor shall be listed as an additional insured on the certificate of insurance, which shall be provided to Lessor. All insurance shall be written with responsible companies that Lessor shall approve and the policies or copies thereof shall be held by Lessor or, when appropriate, by the holder of any mortgage, in which case copies of the policies or certificates of insurance shall be delivered by Lessee to Lessor. All policies shall require thirty (30) days' notice by registered mail to Lessor of any cancellation or change affecting any interest of Lessor.

18. **NO WAIVER.** Failure of Lessor to exercise any of its rights hereunder upon Default by Lessee in the performance of any condition, covenant or provision herein contained shall not be construed as a waiver thereof, nor as a waiver of the same or any other Default by Lessee subsequently occurring.

19. **RECORDING.** Lessee may record a memorandum evidencing this Lease in the Office of the Register of deeds (or other appropriate official) in Berkeley County, South Carolina.

20. **GOVERNING LAW.** The laws of the State of South Carolina shall govern the construction, interpretation and effect of this Lease.

21. **SEVERABILITY.** If any term or provision of this Lease shall be adjudicated to be invalid or unenforceable, the remainder of the Lease shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

22. **NO THIRD PARTY BENEFICIARIES.** Nothing in this Lease shall be construed as giving any person other than the parties and their successors and permitted assigns, any right, remedy or claim under or in respect of this Lease or any provision hereof.

23. **TIME OF THE ESSENCE.** Time is of the essence of this Lease.

24. **SUCCESSORS.** The terms and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties and their successors and permitted assigns.

IN WITNESS WHEREOF, Lessee has executed this Lease _____, 2019.

WITNESS:

By:

Its:

“As to Lessee”

STATE OF SOUTH CAROLINA)

)

COUNTY OF _____)

PERSONALLY appeared before me _____ and made oath that he/she saw _____ sign and as the act and deed of the Lessee deliver the Lease; and that he/she with _____ witnessed the due execution thereof.

SWORN to before me this _____ day of _____, 2019.

(SEAL)

Notary Public for South Carolina

My commission expires: _____