

PREPARED BY: Christopher King, Senior Counsel, Duke Energy Corporation

Site: 000000
Land Unit: 0000000
Project No: 000000-000000

STATE OF NORTH CAROLINA
COUNTY OF GASTON

PUBLIC ACCESS AREA
LEASE AGREEMENT WITH
GASTON COUNTY, NC

South Point Access Area
Lake Wylie, FERC Project Number 2232

THIS LEASE is made and entered into by and between **DUKE ENERGY CAROLINAS, LLC**, a North Carolina limited liability company ("Lessor"), and **GASTON COUNTY**, a political subdivision of the State of North Carolina ("Lessee"), each may be referred to herein singularly as "Party" and collectively as "Parties";

W I T N E S S E T H:

WHEREAS, Lessor holds a license ("License") from the Federal Energy Regulatory Commission ("FERC") to operate the Catawba-Wateree Hydroelectric Project, FERC Project No. 2232 ("Project"), which impounds the waters of the Catawba and Wateree Rivers, including Lake James, Lake Rhodhiss, Lake Hickory, Lookout Shoals Lake, Lake Norman, Mountain Island Lake and Lake Wylie in North Carolina and including Fishing Creek Reservoir, Cedar Creek Reservoir, Great Falls Reservoir, Lake Wateree and Lake Wylie in South Carolina, and which Project is subject to regulatory oversight by the FERC; and

WHEREAS, Lessor owns that certain property described herein lying within and adjoining the bed of Lake Wylie (the "Lake") in Gaston County, North Carolina, which is part of the Project; and

WHEREAS, Lessee desires to lease a portion of said Project on the Lake for the purpose of constructing and maintaining a public park and/or public recreational area, containing 70.00 ± acres lying within and adjoining the Lake as more particularly shown on a map entitled "Composite Map of South Point Access Area," of site parcels recorded in Deed Book 1022, Page 772 and Deed Book 1887, Page 546 in the office of the Clerk of Court for Gaston County, North Carolina (the "Leased Premises"), and as shown attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, Lessor desires to construct a public park and/or public recreation area and Lessee desires to operate and maintain a public park and/or public recreation area provided such use does not interfere with Lessor's ability to operate and maintain the Project in accordance with the Catawba-Wateree Comprehensive Relicensing Agreement ("CRA"), the License, other FERC requirements, and its business operations; and

WHEREAS, Article 411 of the License for the Project grants Lessor (as the licensee of the Project) the authority to grant permission for certain types of use and occupancy of Project lands and waters and to convey certain interests in Project lands and waters for certain types of use and occupancy as long as the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational and environmental values of the Project.

NOW, THEREFORE, the Lessor, for and in consideration of the covenants and agreements hereinafter expressed to be kept and performed by Lessee, hereby leases to Lessee and Lessee hereby leases from Lessor, subject to the exceptions and reservations and upon the terms and conditions and for the purposes in this instrument set out, the Leased Premises.

1) Term: This Lease shall begin on the date of signature (the "Effective Date"), and shall expire at the end of the term of the License granted to Lessor by the FERC effective November 1, 2015 (including any extension periods of the License as may be granted by the FERC through annual licenses or otherwise, but not including the next new or subsequent license the FERC may issue after the expiration of the License), unless terminated sooner pursuant to Paragraphs 28, 29, 30 or 31 of this Lease. Lessor may terminate this Lease at any time if directed to do so by the FERC or its successor agency having jurisdiction over hydroelectric reservoirs that are subject to the Federal Power Act or, if necessary, to comply with FERC requirements. Should Lessor so terminate this Lease, it shall so inform Lessee as soon as practicably possible of a cancellation date in accordance with the provisions of Paragraph 37 hereof. Upon receipt of such notice, this Lease shall be caused to terminate as if the cancellation date was the date originally affixed herein for the expiration of the term hereof; provided, however, that Lessee shall be held liable for any indebtedness which had accrued hereunder through the cancellation date and not yet been paid.

2) Warranties: In order to induce Lessor to enter into this Lease, Lessee warrants and represents that it has authority to enter into this Lease. Lessor represents that it has full and lawful authority to enter into this

Lease for lands dedicated to public use by terms of the License for the Project issued by the FERC pursuant to the Federal Power Act.

- a) Construction by Lessor: Lessor has constructed, at Lessor's sole cost and expense, the park amenities and improvements described on **Exhibit B** attached hereto and incorporated by this reference (collectively, the "Park Improvements"). In consideration of community needs identified in the recent "Parks & Recreation Comprehensive Master Plan Update", dated April 25, 2023, Lessor agrees to construct a canoe/kayak launch to provide additional water access, along with an associated 25 space parking lot, storage building, and sidewalks to serve the canoe/kayak launch. Lessee and Lessor agree to work together in determining the appropriate location, layout, construction schedule and cost-sharing arrangement for said facilities.
- b) Disclaimer of Certain Warranties of Condition: Lessor makes no representation or warranty, express or implied, and will bear no responsibility as to the existing or future water quality or quantity in Lake Wylie or its tributaries, or the sufficiency or suitability of the Leased Premises for use as a public park and or public recreation area.
- c) Assignment of Contractor and Vendor Warranties: Lessor shall assign and shall cause its contractors to consent to the assignment of all warranties provided for the Park Improvements which warranties shall be for a minimum of one (1) year. Lessor agrees to Lessee's rights under all assignable contractor or vendor warranties relating in any way to any building, fixture or other improvement located on the Leased Premises, as permitted by the terms and conditions of contractor or vendor warranties.

3) Rent and/or Other Consideration; Taxes: The consideration flowing to Lessor for this Lease is the Lessee's assumption of responsibility for maintenance and operation of present and future recreation facilities permitted under the terms of the License. Failure by Lessee to maintain and operate the permitted facilities and the Leased Premises to the standards reasonably required by the FERC, which standards are set forth on **Exhibit C** and Lessor shall provide any updates thereto promptly to Lessee, shall constitute a default under the terms of this Lease pursuant to Paragraph 28 herein. Should the FERC require additional public recreation facilities within the Leased Premises, Lessor and Lessee shall hold a meeting to discuss the requirement. The procedures set forth in Paragraph 6, Site Plan, shall be followed. Notwithstanding anything contained herein, nothing contained in this Lease shall require Lessee to construct any improvements on the Leased Premises.

4) Permitted Uses: The Leased Premises may be used by Lessee for the development, maintenance and operation of a public park and/or public recreation area and for no other purpose unless it is a compatible use, such as the provision of recreation-related goods and services, which may be permitted on site when authorized in advance in writing by Lessor. Any public park and/or public recreation area may include, but is not limited to, the following types of area development:

- a) All uses shown on Exhibit B as well as Public Park or Recreation Areas –
 - i) Areas that have developed recreational facilities, such as picnic tables, picnic pavilions, swimming beaches, bath houses, restrooms, campgrounds, concessions, waste pump-out facilities, challenge courses, maintenance and related structures or facilities that directly support park operations and maintenance, and other related facilities or amenities; and
 - ii) Recreation uses such as picnicking, camping, hiking, wildlife viewing, canoeing/kayaking, fishing, swimming, and other related outdoor recreation activities.
- b) Access and/or Trail Areas – areas that enable water access via canoe/kayak launches or piers, or land access via pedestrian or bike trails.
- c) Nature Preserve/Research Areas – areas that provide land for and promote the development of cooperative partnerships to enable preservation activities, conservation easements and/or research.

5) Public Use of Facilities: Use of any and all public park and/or public recreation area facilities, including such public service/convenience facilities as restrooms, water faucets, public communications equipment, trash receptacles, etc., constructed or placed on the Leased Premises by the Lessor or Lessee will be open to use by boaters, bank fishing persons and all other public recreation users of the public recreation facilities, during the times and for the applicable fees stipulated in Exhibit D.

6) Site Plan: The Site Plan provided by the Lessor for development of public recreation facilities on the Leased Premises, attached hereto as Exhibit B, shall be implemented by Lessor. Additions to, modifications or removal of any facilities will require the submittal to Lessor of detailed plans, including but not limited to, construction plans and elevation drawings. Major additions, modifications or removal may require review by other entities and may require FERC approval, as provided in Article 411 of the License and the FERC-approved Catawba-Wateree Recreation Management Plan.

Should FERC require additional recreation facilities to be located at the Leased Premises, Lessor will contact Lessee and arrange a meeting to discuss the required additional recreation facilities. At the meeting the specifics of what facilities must be added, where the facilities can be added, an estimated cost for adding the facilities, and the timing of adding additional facilities should be determined. Lessor and Lessee will then evaluate their available resources to determine how and when the required additional recreation facilities will be constructed, and if those resources will be in dollars, 'in-kind' services or a combination thereof. A revised site plan will be developed based on the results of the meeting. Once Lessor and Lessee are in agreement with the revised plan, at Lessor's option, Lessor and Lessee shall enter into a revised lease or amendment to lease. Nothing contained herein shall require the Lessee or the Lessor to pay for the construction or addition of any improvements or facilities on the Leased Premises.

7) User Fees and Hours of Operation: Lessee agrees that Lessor's employees operating in his/her official capacity, third party contractor employees operating in his/her official capacity, federal/state and local law enforcement officials operating in his/her official capacity, federal/state and local environmental and public health officials operating in his/her official capacity, and federal/state and local emergency response crews operating in his/her official capacity will be exempt from user fees. Any proposed changes in the schedule of fees or hours of operation by the Lessee must be submitted in writing to the Lessor at least sixty (60) days prior to proposed implementation and are subject to the approval of Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. Contracts or leases between Lessee and third parties regarding the sale of goods or services on the Leased Premises must be submitted in writing to Lessor at least sixty (60) days prior to proposed implementation; and must not be executed until Lessee receives written approval from the Lessor. Lessee agrees that user fees as well as any proceeds it collects from third party contracts or leases associated with the Leased Premises will be used exclusively to:

- a) Offset Lessee's costs of operation, maintenance, and capital improvements of the Leased Premises or other public recreation facilities for which Lessee is responsible that are also within or adjoining the Project Boundary or within or adjoining a free-flowing section of the Catawba River, or
- b) Offset Lessee's cost of improving its own public recreation department in specific areas that benefit public recreation users of the Project or the aforementioned free-flowing section of the Catawba River.

Lessee agrees to submit an annual report providing the number of users to assist Lessor in its reporting on shoreline activities and planning efforts to the FERC.

8) Joint Annual Inspection: Lessor and Lessee will perform a joint annual physical inspection of the Leased Premises each year for the term of this Lease to ensure the Leased Premises are being maintained in a safe manner, in accordance with this Lease and to the maintenance levels mutually acceptable to Lessor and Lessee.

9) Entry by Lessor: Lessor, its agents and representatives, at all reasonable times may enter the Leased Premises to examine same, and any such entry by or on behalf of Lessor shall not be or constitute an eviction, partial eviction or deprivation of any right of Lessee and shall not alter the obligations of the Lessee hereunder or create any right in Lessee adverse to the interest of the Lessor. In the event Lessee is temporarily unable to operate the recreation facilities, Lessor shall have the right to enter the Leased Premises and operate the recreation facilities until such time as Lessee is able to resume operation. Any such entry by or on behalf of Lessor for temporary operation shall not be or constitute an eviction, partial eviction or deprivation of any right of Lessee and shall not alter the obligations of the Lessee hereunder or create any right in Lessee adverse to the interest of the Lessor.

10) Maintenance: Lessee recognizes it has the continuing responsibility to ensure the constructed and placed facilities are maintained in good repair, including, but not limited to, maintenance of those facilities in the Site Plan as shown in that aerial depiction entitled, "MAINTNENANCE RESPONSIBILITY AREA, SOUTHPOINT ACCESS," dated _____, 2023, and attached hereto and incorporated herein by reference as **EXHIBIT B-2**, and proper erosion control within the Leased Premises and along the shoreline, and agrees to take all reasonable steps necessary to meet this responsibility. Lessee is to maintain all structures and improvements within the Leased Premises in a sound condition and in neat appearance and pay all costs for said maintenance. In the event Lessee fails to properly maintain all buildings and improvements or Lessee fails to obtain budgetary appropriations for the maintenance of the Leased Premises, then Lessor may terminate this Lease and retake possession of the Leased Premises, as set forth in Paragraphs 28 and 29. Lessor acknowledges and agrees that upon the expiration or termination of the Lease, Lessee shall no longer have responsibility for maintenance of any utility lines located on the Leased Premises and Lessor shall thereafter be responsible therefore.

Lessor has entered into the Duke Energy Catawba-Wateree Public Access Agreement with the North Carolina Wildlife Resources Commission (NCWRC), as attached hereto as **Exhibit E** for the maintenance of certain portions of established public access areas and for the provision of additional public recreation facilities within such areas. Lessee understands and agrees that Lessee shall be responsible for daily maintenance and operation of such areas designated within the “Maintenance Responsibility Area, Southpoint Access, dated _____, 2023. The NCWRC will retain responsibility for the long-term infrastructure maintenance of the boat ramp, associated parking, decking, handrails, pilings, abutments, etc., in accordance with the Duke Energy Catawba-Wateree Public Access Areas Agreement (maintenance agreement between Duke Energy and NCWRC).

Lessor will provide and install all beach material for the initial construction of the swim beach. The condition of the sand located at the swim beach will be discussed at the joint annual inspection required under Paragraph 8, above. If Lessor determines, in its sole discretion, that sand replenishment is needed, it will fund the purchase and delivery of the replenishment sand needed during the term of this Lease. Delivery shall be made to the swim beach and Lessee shall promptly and properly spread the sand as needed to replenish the swim beach area above the water line. Any maintenance activities below the water line related to the swim beach will be the responsibility of the Lessor. Any maintenance necessary to existing sand is the responsibility of the Lessee.

11) **Signage**: Lessor will provide and install all necessary regulatory site signage prior to the effective date of this Lease. Additional signage desired by Lessee shall be provided and installed by Lessee. Should additional signage be required by the Lessor or the FERC, Lessor will provide said signage to Lessee for installation. Lessee shall maintain all signs during the term of this Lease.

12) **Improvements**: Lessee shall have the right, but not the obligation, at its own expense to make additions or modifications to those facilities and improvements existing upon the Leased Premises. However, Lessee shall submit to Lessor for Lessor’s review detailed plans, including but not limited to construction plans and elevation drawings of all proposed material alterations or improvements and receive the written approval of Lessor prior to initiating work on proposed alterations or improvements. Dependent on the scope and substance of the proposed alterations or improvements, modification of the Site Plan may be required. Additionally, certain substantive changes may require the approval of applicable local, state and federal agencies prior to submittal of the request to Lessor and in certain situations the Lessor will need to submit Lessee’s application to the FERC for approval, prior to issuance of approval by Lessor.

13) Illegal and Prohibited Uses: Lessee shall not make or permit to be made any illegal or prohibited use of the Leased Premises or any use thereof constituting a public nuisance, and shall keep the Leased Premises in a neat and orderly manner and shall comply with all applicable building codes and health regulations and with the rules and regulations of any and all applicable governmental authorities. All water and sanitary sewer facilities shall be designed, installed, constructed, maintained and operated only with the approval of the applicable governmental authority, provided that Lessor shall be responsible for the initial construction thereof. Prohibited uses under the terms of the Lease include but are not limited to the following:

- a) Sale of alcoholic beverages or drugs;
- b) Gambling (e.g., installation of video gaming machines that pay off, etc.);
- c) Creation or installation of firearm or shooting ranges;
- d) Charging excessive fees;
- e) Establishing predetermined user groups that use specific facilities; and
- f) Excluding any user on the basis of age, sex, race, color, religion, national origin, handicap/disability, or familial status.

14) Fire Protection: In the event of a fire within or threatening to the lands or facilities of any park or recreation area which is a part of this Lease, Lessee agrees to assist Lessor with the protection of the park or recreation area against such fire.

15) Leased Premises Subject to FERC Oversight: Lessee agrees its use of the Leased Premises will comply with FERC Order No. 313, attached hereto as Exhibit C, and all regulations or directives issued by the FERC. Lessee's use of the aforesaid lands will not endanger health or safety, create a nuisance or otherwise be incompatible with the overall recreational use of the Project. Failure by Lessee to maintain and operate the FERC-required facilities and the Leased Premises to the standards reasonably required by the FERC shall constitute a default under the terms of this Lease pursuant to Paragraph 28. If the Lessee becomes temporarily unable to operate FERC-required recreation facilities, the Lessor retains the right to enter the Leased Premises and operate, or arrange for the operation of, Project-related recreation facilities in accordance with the FERC-approved Catawba-Wateree License and Recreation Management Plan. Lessee must obtain written approval from Lessor to take out of service any recreation facility located within the Leased Premises, for any period of time other than as required for routine maintenance.

16) Compliance with State, Federal and Local Laws: Lessee agrees that its use of the Leased Premises as herein provided shall be consistent with all applicable state, federal and local laws as well as all ordinances, rules, regulations and sanctions of any regulatory body or governmental agency (state, federal or local) having jurisdiction in the Leased Premises, and Lessee's use of the Leased Premises shall comply with all applicable Duke Energy Shoreline Management Guidelines and the Shoreline Management Plan, copies of which, together with subsequent amendments thereto, shall be provided to Lessee. Upon request by Lessor, Lessee shall re-enter the Leased Premises at any time after the termination or expiration of this Lease and perform such operations necessary for compliance with then applicable law, ordinances or regulations at the termination date. Lessee shall be relieved of any responsibility for compliance under this Paragraph 16 if during the Lease term Lessor causes noncompliance by changing conditions upon the Leased Premises, including but not limited to, land use pattern, or causing or allowing any third party to do so.

17) Protection of Environment: All necessary precautions shall be taken during construction and subsequent operation and maintenance of the facilities to protect and enhance the scenic, environmental, recreational and cultural values of any affected lands and waters of the Project.

18) Archaeological Resources: Lessee shall comply with the cultural resources consultation requirements specified in the Lessor's Historic Properties Management Plan for the Project (a copy of which, together with subsequent amendments thereto, shall be provided to Lessee), regarding any ground-disturbing activities, inadvertent discoveries, treatment of human remains and funerary objects or significant modifications to the leased facilities and lands. If any archaeological resources are discovered during construction or maintenance activities, such activities shall be halted and the State Historic Preservation Officer shall be contacted to determine what measures, if any, are needed to protect or salvage the resources and the Lessor shall be notified. Written notice shall be given to Lessor and all other appropriate agencies of any such discovery and the measures being implemented, if any are required.

19) Utility Easement: Lessor for itself, successors and assigns, reserves an easement to build, construct, maintain and operate electric distribution/transmission lines on, over, under, along and above the Leased Premises. Lessor also reserves the right, privilege and easement to erect, construct, reconstruct, replace, maintain and use towers, poles, wires, crossarms and other appliances and fixtures for the purpose of transmitting

or distributing electric power, for Lessor's communication purposes, and for any other purpose that is, in Lessor's sole discretion, consistent with its business operations, together with the right to keep said lines, appliances, and fixtures free of structures, trees and other objects that may endanger or interfere with same. Lessor will notify and consult with the Lessee as to the plans for the construction of any buildings or structures to be placed within the Leased Premises, necessary to conduct Lessor's business.

20) Reservation of Use: The right to use the Leased Premises for Project purposes is hereby reserved to the Lessor, its successors and assigns.

21) Reservation of Authority: No terms or conditions herein contained shall be construed as limiting or affecting in any way the authority of Lessor in connection with its exercise of proper protection and administration of the Public Access Areas or its License.

22) Response to Increase in Recreation Use: Lessor will in good faith, for the included lakes aforementioned in the Project, endeavor to accommodate future increases in public recreation use of the lakes by arranging for the designation of lands for recreation use that are or may become available for such purposes and when such land areas are consistent with the Shoreline Management Plan, Recreation Management Plan and/or the operation of Lessor's business.

23) FERC License and CRA Conflicts: This Lease is subject to the terms and conditions of the License for the Project and the CRA. In the event of any conflict between the terms and conditions of this Lease and the terms of the License or CRA, it is agreed that the terms of the License or CRA, respectively, shall prevail.

24) Transfer or Assignment: The Lessee may not transfer or assign this Lease or let or sublet the whole or any part of the Leased Premises to anyone without the prior written consent of the Lessor.

25) Insurance by Lessee: Lessee agrees that, at its own cost and expense, it shall obtain and maintain in force during the term of this Lease the following insurance coverage and minimum insurance limits:

- a) Commercial General liability insurance from a reputable insurance company authorized to do business in North Carolina, providing coverage for any and all risks of liability associated with

Lessee's occupancy and use of the Leased Premises and the activities authorized hereunder, with limits of at least \$2,000,000 per occurrence.

- b) Workers' Compensation meeting statutory limits
- c) Employers' Liability Insurance of not less than \$1,000,000 each accident.
- d) Automobile Liability Insurance of not less than \$1,000,000 each occurrence.

The Lessee must meet the following additional insurance-related requirements:

- i. Insurance coverage must be from the State Insurance Reserve Fund, or where applicable and authorized, with insurance companies with a minimum A.M. Best Rating of A-VII.
- ii. Lessee shall deliver to Lessor certificates of insurance prior to the beginning of the Lease and **within 30 days** of each insurance renewal. The certificates of insurance shall list the coverages and limits, the expiration dates and terms of policies and all endorsements whether or not required by Lessor, and listing all carriers issuing said policies. Lessor shall not be obligated to review any of Lessee's certificates of insurance, insurance policies and/or endorsements or advise the Lessee of any deficiencies in such documents, and any receipt of copies or review by Lessor shall not relieve the Lessee from or be deemed a waiver of Lessor's right to insist on strict fulfillment of the Lessee's obligations.
- iii. Lessee shall name Lessor as an additional insured, using Insurance Services Office, Inc. (ISO) additional insured (CG 20 10) or equivalent, under all required policies of liability insurance. (Except Worker's Compensation Insurance). All policies shall include waivers of any right of subrogation of the insurers using standard ISO forms. The certificate(s) of insurance shall specifically confirm the "waiver of subrogation" and "additional insured" obligations.
- iv. All insurance policies shall each contain a provision that coverage will not be cancelled, not renewed or materially modified unless at least thirty (30) days' prior written notice has been given but, in any event, if Lessee becomes aware of any such cancellation, reduction in coverage or non-renewal, Lessee shall provide written notice to Lessor of such action within ten (10) days of receipt of notice of any such action from its carrier. All policies of insurance required shall be endorsed or shall otherwise provide that Lessee's insurance shall be primary with respect to their own acts or omissions and not be in excess of, or contributing with, any insurance maintained by Lessor. Lessee will be responsible for their own respective deductibles, self-insured retentions, and self-insurance under its insurance program.

- v. Should Lessee fail to provide or maintain any required insurance, Lessor shall have the right, but not the obligation, to provide or maintain any such insurance, and to invoice the cost to the Lessee whereupon Lessee shall reimburse Lessor annually within forty-five (45) days following the request for payment.
- vi. Upon Lessee's contracting with an entity for the purpose of constructing any facilities on the Leased Premises, Lessor shall be named as an additional insured on a policy of insurance covering the scope of such activity prior to the commencement of any activity by Lessee, its agents or contractors. All policies shall include waivers of any right of subrogation of the insurers using standard ISO forms. Any contractor or subcontractor performing work on property that is the subject of this Lease shall have in place prior to commencement of any activity and during the performance of any activity, the following types of insurance and minimum coverage limits:
 - Commercial General Liability Coverage – \$2 million per occurrence.
 - Workers Compensation – Within statutory limits.
 - Employer's Liability – \$1 million each accident.
 - Automobile Liability – \$1 million per occurrence.

26) Hazard Insurance: Lessee shall also, at all times during the term of this Lease, keep all improvements which are now or hereafter a part of the Leased Premises insured against loss or damage by fire and the extended coverage hazards for one hundred percent (100%) of the full replacement value of such improvements of like kind and quality. Any loss adjustment shall require the written consent of both Lessor and Lessee. In the event any improvements upon the Leased Premises shall be damaged or destroyed by fire or other casualty, then Lessee shall promptly restore same to the condition existing before such loss or damage.

27) Hazardous Materials: The following items are to be implemented by the Lessee for the Leased Premises:

- a) Lessee shall not bring to or handle, store, dispense, transport or locate on or about the Leased Premises any chemical substances, oil, gasoline, other petroleum products, formaldehyde, PCBs, or any toxic, carcinogenic, radioactive or hazardous wastes, materials, substances or contaminants (known collectively "Hazardous Materials") for purposes other than construction, maintenance or repair of the recreation facilities, without Lessor's prior written authorization.

Notwithstanding the foregoing, Lessee shall not bring to or handle, store, dispense, transport or locate on or about the Leased Premises any materials that contain asbestos, methylene chloride, or hexavalent chromium. For primers or coatings suspected of containing lead, Lessee shall ensure the lead content of such products or materials is no more than the current Consumer Product Safety Commission threshold.

- b) While handling, transporting or storing any Hazardous Materials on or about the Leased Premises, Lessee shall act in full compliance with all applicable federal, state and local laws, ordinances and regulations.
- c) Lessee shall give Lessor immediate written notice of any problem, spill, discharge or threatened discharge of or relating to Hazardous Materials on or about the Leased Premises, and of any private or governmental investigation relating to Hazardous Materials on or about the Leased Premises. Lessor shall have the right to participate in and approve any environmental assessment or environmental clean-up plan for the Leased Premises. Lessee, its employees, agents and contractors, shall fully cooperate with any and all federal, state and local governmental officials having jurisdiction over the Leased Premises in resolving any environmental problem.
- d) Lessee's failure to comply strictly with the provisions and mandates of this Paragraph 27 shall constitute a breach of this Lease, entitling Lessor to terminate this Lease and to exercise any other rights and remedies available to Lessor hereunder or otherwise.

28) Events of Default; Termination:

- a) The following events shall be deemed to be events of default by Lessee under this Lease (each singularly referred to herein as an "Event of Default"):
 - i) If Lessee fails to comply with any term, provision or covenant of this Lease other than the payment of any sum of money, and shall not cure such failure within sixty (60) days after due written notice thereof to Lessee; provided, however, if Lessor, in its reasonable discretion, determines that such failure cannot be cured within sixty (60) days, Lessee shall be in default under this Lease if Lessee fails to commence to cure such failure within the same sixty (60) day period or thereafter fails to act to diligently and promptly cure such failure; or

- ii) If Lessee voluntarily discontinues or voluntarily ceases to use the Leased Premises and the improvements for the permitted use or closes its operations on the Leased Premises for any period greater than ninety (90) days
 - iii) Intentionally Deleted; or
 - iv) Any other event of default as specifically addressed in the paragraphs contained herein.
- b) Upon the occurrence of an Event of Default hereunder, Lessor shall be entitled to pursue any one or more of the following remedies without notice or demand:
 - i) Terminate this Lease and Lessee's right of possession of the Leased Premises in which event Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have for such Event of Default, enter upon and take possession of the Leased Premises, and expel or remove Lessee and any other person or entity who may be occupying the Leased Premises or any part thereof, by force, if necessary, without being liable for prosecution or any claim for damages therefore;
 - ii) Without having terminated this Lease, terminate Lessee's right of possession of the Leased Premises, by force, if necessary, without being liable for prosecution of any claim for damages therefore, and perform Lessee's obligations under this Lease, and Lessee shall reimburse Lessor upon demand for any expenses which Lessor may incur in effecting compliance with the terms of the Lease and Lessor shall not be liable for any damages resulting to Lessee from such actions;
 - iii) Bring suit for the collection of any amounts for which Lessee is then in default, or for the performance of any other covenant or lease by which Lessee is bound, with or without entering into possession or terminating this Lease.
- c) In the event Lessor elects to terminate this Lease by reason of the occurrence of an Event of Default, this Lease shall terminate and come to an end as if that were the date originally fixed herein for the expiration of the term hereof. Notwithstanding such termination, Lessee shall be liable for and shall pay to Lessor all indebtedness accrued hereunder to the date of such termination.
- d) In case of any Event of Default or breach by Lessee, Lessee shall also be liable for the costs of removing and storing Lessee's or any other occupant's personal property and all expenses

incurred by Lessor in enforcing or defending Lessor's rights and/or remedies, including reasonable attorneys' fees.

Lessee acknowledges that, upon the termination of this Lease by Lessor upon an Event of Default or termination by the Lessee, the FERC has authority to reclassify non-Project recreation facilities permitted by this Lease (as identified on **Exhibit B**) as Project facilities and to require the Lessor to operate and maintain all recreation facilities. In such event, all buildings, improvements, fixtures and other items of real property shall become the property of the Lessor. At the option of Lessor or Lessee, Lessee shall remove all personal property of Lessee located upon the Leased Premises. If Lessee shall not have removed its personal property within thirty (30) days of the termination or expiration of the Lease as directed by Lessor, Lessor may at its option retain and use any portion of same or remove and dispose of any portion of same without liability to Lessor and shall be reimbursed by Lessee for its cost thereof. In no event shall either Lessor or Lessee be liable or responsible for any punitive damages, lost profits, incidental damages or consequential damages. If either Party defaults on its obligations under this Lease, the non-defaulting Party shall be entitled to recover from the defaulting Party the reasonable costs and attorneys' fees incurred in the enforcement or interpretation of any provision of the Lease.

29) Termination by Lessee: Notwithstanding any other provision of this Lease, it is understood and agreed by and between the Parties that in the event Lessee is unable to obtain funding by appropriation beyond the end of any then-current Lessee fiscal year and so notifies Lessor thereof within ninety (90) days of the final approval of Lessee's appropriations for that coming fiscal year, or otherwise becomes unable, through no fault of its own, to operate and maintain the recreational facilities herein provided and so notifies Lessor thereof within sixty (60) days of such event, this Lease shall be considered canceled. Such cancellation shall cause the Lease to terminate as if that was the date originally affixed herein for the expiration of the term hereof and shall not constitute an "Event of Default" as defined herein. Notwithstanding such cancellation, Lessee shall be liable for and shall pay to Lessor all indebtedness accrued hereunder to the date of such cancellation. Lessee agrees to utilize its best efforts throughout the term of this Lease to obtain adequate appropriations or other funding to accomplish the purposes of this Lease.

30) Surrender of Lease: The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Lessor, terminate all or any existing

subleases or sub tenancies, or may at the option of Lessor, operate as an assignment to it of any or all such subleases or sub tenancies.

31) Condemnation: If the whole or any part of the Leased Premises is taken or condemned by any competent authority for any public use or purpose, then this Lease shall automatically terminate as to the portion taken as of the date said title shall be taken. If a portion of the Leased Premises shall be taken so as to render the remainder thereof unusable for the purposes for which the Leased Premises were leased, then this Lease shall terminate as of the date said title shall be taken. In the event that any portion of the Leased Premises shall be taken or this Lease shall be terminated as a result of a taking of the whole or a portion of the Leased Premises, Lessee shall have no claim against Lessor for the value of any unexpired portion of the Lease term. Lessor shall be entitled to the entire award given, including any special damages, except that, as to any portion of payment received by way of just compensation which is attributable to the value, if any, of any capital improvements, taken or damaged, Lessee shall be entitled to receive a pro-rata share thereof based on the percentage that its funding contribution therein bears to the total capital costs thereof. In the event that either Party should disagree with the valuation given within any award to any improvements taken or damaged, or be unable to agree between themselves as to such value, the Parties agree to arbitrate such question of valuation and to apportion their award so as to separately set forth the contributing value, if any, of each improvement taken or damaged.

32) Severability: The provisions hereof are independent covenants and should any provision or provisions contained in this Lease be declared by a court or other tribunal of competent jurisdiction to be void, unenforceable or illegal, then such provision or provisions shall be severable and the remaining provisions hereof shall remain at Lessor's option in full force and effect.

33) Flooding and Drawdown: Lessor reserves the unlimited right to back, flood, or draw down the waters of the Project, the Catawba River and its tributaries from time to time and at any and all times over and upon the Leased Premises or any portion of the same, to such extent the flooding or drawdown may be necessary or convenient in connection with the practical operation of its hydroelectric or other electric generation power plants located or to be located in the future upon the Catawba River. Lessee agrees that any damage it may suffer as a result of such flooding or drawdown shall not be claimed or charged against Lessor, provided however, Lessor and Lessee agree that in no event shall Lessee be obligated to repair or restore any part of the Leased Premises or the improvements located thereon that are damaged or destroyed as a result of such flooding or

drawdown. Should such flooding or drawdown cause damage to the Leased Premises or any improvements thereon, Lessee shall notify Lessor and Lessor shall call a meeting with Lessee. At the meeting the specifics of the damage, an estimated cost for repairing, replacing or retiring the impacted portion of the Leased Premises or improvements, and the timing of repairing, replacing or retiring the impacted portion of the Leased Premises or improvements thereon should be determined. Lessor and Lessee will then evaluate their available resources to determine how and when the necessary repairs, replacements and/or retirements will be completed, and if those resources will be in dollars, 'in-kind' services or a combination thereof. If necessary, a revised site plan will be developed based on the results of the meeting. Once Lessor and Lessee are in agreement with the revised plan, at Lessor's option, Lessor and Lessee shall enter into a revised lease or amendment to lease. Nothing contained herein shall require the Lessee or Lessor to pay for the construction of any repairs, replacements or retirements of the Leased Premises or any improvements thereon. Lessee hereby waives all claims against Lessor for damages resulting from floods or drawdowns that may occur on the Catawba River or any tributary thereof.

34) FERC Project Restoration: Lessor shall be under no obligation to Lessee to maintain or continue to operate the Project and should said Project be damaged, destroyed or removed, the Lessor shall be under no obligation to restore or rebuild same, and Lessee hereby waives all claims against Lessor for damages to or destruction or removal of the Project.

35) Parties Bound: The covenants and conditions herein contained shall, subject to the provisions as to assignment, transfer and subletting, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto; provided, however, that neither this Lease nor any provisions therein may be assigned by Lessee except with the prior written consent of the Lessor.

36) Survival: Provisions of this Lease for Re-entry (Paragraph 16), Termination (Paragraph 28), and Survival (Paragraph 36) shall survive the termination or cancellation of this Lease and shall remain in effect.

37) Notices: Wherever in the Lease it shall be required or permitted that notice be given by either Party to this Lease to the other, such notices must be in writing and must be given personally or forwarded by certified mail addressed as follows:

To Lessor: Duke Energy Carolinas, LLC
Attn: Jeffrey G. Lineberger
General Manager, Water Strategy, Hydro Licensing and Lake Services

Mail Code – EC12Q
526 South Church Street
Charlotte, NC 28202

With copy to: Duke Energy Carolinas, LLC
Attn: Lease Administration
525 South Tryon Street, DEC 22A
Charlotte, North Carolina 28202

To Lessee: County of Gaston
Attn: County Manager or designee
128 West Main Avenue
PO Box 1578
Gastonia, NC 28053-1578

Such addresses may be changed from time to time by notice given hereunder.

38) Recordation: In no event shall this Lease be recorded in any Public Registry or other public records by Lessee or on Lessee's behalf. Violation of the provisions in the immediately preceding sentence shall entitle Lessor to terminate the lease rights granted herein. Lessor and Lessee acknowledge and agree Lessor shall record a Memorandum of Lease in the Public Registry in the county where the Leased Premises is located, and Lessor shall provide Lessee with a recorded copy of said Memorandum of Lease.

39) Existing Lease Amended and Superseded: Beginning on the Effective Date, this Lease shall amend, restate, replace and supersede all previous leases or other agreements, except the CRA, between Lessor and Lessee, or their respective predecessors in interest, for, and only for, the lease of the Leased Premises, and such prior leases or other agreements are of no further force or effect.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their duly authorized officials this the day and year first above written.

LESSOR:

Duke Energy Carolinas, LLC
a North Carolina limited liability company

By: _____

Print Name: Randy Herrin

Title: Vice President, Regulated Renewables

LESSEE:

GASTON COUNTY

By: _____

County Manager/Assistant County Manager

Date: _____

ATTEST:

Clerk to the Board/Deputy Clerk to the Board

APPROVED AS TO FORM:

County Attorney/Deputy County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget Act.

Finance Director/Deputy Finance Officer

Exhibits Needed

Exhibit A – Survey/Plat map

Exhibit B-1 – Site Plan – Project

Exhibit B-2 – Site Plan Non-Project

Exhibit B-3 – Maintenance Responsibility Area

Exhibit C – FERC Order 313

Exhibit D – Gaston County Operations Plan

Exhibit E – NCWRC Maintenance Agreement