

DRAFT

NORTH CAROLINA

AMENDED AND RESTATED LEASE AGREEMENT

BUNCOMBE COUNTY

THIS AMENDED AND RESTATED LEASE AGREEMENT (“Lease”) is made and entered into as of this _____ day of _____, 2012, by and between CAROLINA POWER & LIGHT COMPANY, a North Carolina public service corporation d/b/a PROGRESS ENERGY CAROLINAS, INC. (hereinafter referred to as “LESSOR”), and the COUNTY OF BUNCOMBE, a political subdivision of the State of North Carolina (hereinafter referred to as “LESSEE”).

WITNESSETH:

WHEREAS, LESSOR is the owner of Lake Julian, a lake covering approximately 320 acres of land with water for primary use as a cooling reservoir in connection with LESSOR’S Asheville Steam Electric Generating Plant (“Asheville Plant”) as now existing and as to be expanded in the future; and

WHEREAS, Lake Julian is attractive for recreational purposes, and the parties hereto desire to develop the recreational potential of the lake for reasonable public use; and

WHEREAS, to enable such development, LESSEE is willing to establish and control recreational facilities for the benefit of the public and consistent with the basic purposes of the lake; and

WHEREAS, LESSOR and LESSEE previously entered into that certain Lease dated March 5, 1973 (and recorded in Book 1120, Page 37, Buncombe County Registry), as amended by that Amendment to Lease dated June 4, 1980 (collectively the “Original Lake Julian Lease”), for the development of public recreational facilities on certain lands of LESSOR located at or near Lake Julian in Limestone Township, Buncombe County, North Carolina, said lands being more particularly described in the Original Lake Julian Lease; and

WHEREAS, LESSOR and LESSEE now desire to enter into this Amended and Restated Lease Agreement in order to more particularly describe the leased premises, extend the lease term, and amend certain other terms and conditions of the Original Lake Julian Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated into the operative provisions of this Lease), the promises and covenants herein contained, and

other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, LESSOR and LESSEE hereby agree to amend and restate the Original Lake Julian Lease in the manner hereinafter set forth.

1. Leased Premises and Excluded Areas. Subject to the terms and conditions of this Lease, LESSOR does hereby demise and lease to LESSEE all of the tracts or parcels of land with improvements lying in Limestone Township, Buncombe County, North Carolina, near LESSOR'S Asheville Plant, which are labeled "Buncombe County Park: Lake Julian" and depicted with blue cross-hatched lines on the aerial map attached hereto as Exhibit A and made a part hereof (the "Leased Premises"). The Leased Premises does not include any of the following tracts or parcels of land: (i) all areas labeled "Areas Not Available for Lease" that are depicted with light green overlay on Exhibit A; and (ii) the five (5) tracts or parcels of land more particularly described on Exhibit B attached hereto and made a part hereof.

2. Term. The term of this Lease shall commence on _____, 2012 (the "Commencement Date"), and continue for period of twenty-five (25) years thereafter, expiring at 12:00 midnight on _____, 2037 (the "Base Term"), unless sooner terminated in accordance with the terms and conditions hereof. Upon expiration of the Base Term and provided LESSEE is not in default beyond any applicable cure period, this Lease shall automatically renew on _____, 2037, and continue for successive renewal periods of five (5) years each (the Initial Term and such successive five (5) year renewal period(s) collectively referred to herein as the "Term"). Either party may elect to terminate this Lease without cause by giving written notice to the other party of its intent to terminate this Lease at least two (2) years before the expiration date of the Base Term or then current renewal period. In the event such notice is given, this Lease shall terminate on the expiration date of the Base Term or then current renewal period.

3. No Rent/Net Lease. LESSOR is granting this Lease to LESSEE for no monetary consideration because it is the desire of LESSOR that the recreational potential and public benefits of the Leased Premises be made available to the public as a county park, so as to add to the quality of life, in addition to the primary purpose of the Leased Premises and Lake Julian for use in connection with LESSOR'S Asheville Plant and helping meet the power and energy needs of LESSOR'S customers. Except as otherwise provided herein, it is intended that this Lease will be a completely "net lease" and that LESSOR is not responsible for any costs, charges, expenses,

or outlays of any nature whatsoever arising from or related to the Leased Premises, or the county park thereon, including without limitation the development, use, maintenance, and security of the county park, any improvements or Recreational Improvements (defined below), structures, equipment, or amenities located thereon by or on behalf of LESSEE or any sublessee of LESSEE, the contents thereof, or the recreational activities carried on the Leased Premises. This Lease shall create the relationship of landlord and tenant only between LESSOR and LESSEE.

4. Use of Leased Premises and Lake Julian Guidelines.

(a) The Leased Premises shall be used solely for public recreational purposes. LESSEE shall comply with LESSOR's *Lands Section Procedures LSP-10 Lake Julian Land Policy* (the "Guidelines") and such future amendments, policies, guidelines, rules, or regulations as LESSOR may adopt governing the use, occupancy, and improvement of the Leased Premises and LESSOR'S other property and facilities at Lake Julian. LESSOR reserves the right to amend the existing Guidelines in its sole discretion from time to time; provided however, any such amendment to the Guidelines shall not become effective and binding upon LESSEE until ten (10) days after LESSOR sends written notice thereof to LESSEE, by U.S. mail, first class, postage prepaid. A copy of the current Guidelines is attached hereto as Exhibit C and made a part hereof. The use of the Leased Premises and waters of Lake Julian by members of the public shall be under the management, control, and supervision of LESSEE and pursuant to rules and regulations adopted by LESSEE with the approval of LESSOR (such approval not to be unreasonably withheld). LESSEE will provide suitable supervision of the Leased Premises and the waters of Lake Julian.

(b) The waters of Lake Julian lying within two hundred (200) feet of LESSOR'S dam and within one hundred (100) feet of the shoreline in the vicinity of LESSOR'S Asheville Plant will be indicated by markers placed by LESSOR to show above the surface of Lake Julian. Entry into said marked areas shall be prohibited. LESSEE shall not cause or permit any diversion of water from Lake Julian. LESSEE shall not engage in, or allow any person to engage in, any fuel sales or fuel storage operations at the Leased Premises or over or upon the waters of Lake Julian. No underground or aboveground fuel storage tank, piping, lines, or dispensers shall be located at, upon, or under the Leased Premises.

5. Compliance with Laws and Maintenance of Leased Premises. No unlawful or offensive use of the Leased Premises or Lake Julian will be made or permitted by LESSEE.

LESSEE will exercise due care and diligence to prevent persons from engaging in any such unlawful or offensive acts. LESSEE'S use and occupancy of the Leased Premises and LESSEE'S exercise of rights under this Lease shall comply, and shall cause the Leased Premises and all Recreational Improvements, other improvements, personal property, and equipment thereon to comply, with all applicable Laws. As used in this Lease, the term "Law" or "Laws" shall mean any Federal, North Carolina, and local law, statute, ordinance, code, rule, regulation, criterion, guideline, and rule of common law and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, judgment, or notice of noncompliance or violation, which now is in effect or which hereafter is enacted or amended, and any other requirements of any governmental agency having jurisdiction. LESSEE will maintain, and will require its sublessees to maintain, the Leased Premises in a clean and sanitary condition at all times, and will keep in good repair all Recreational Improvements and facilities constructed and located on the Leased Premises and adjacent waters. LESSEE will not cause or permit any sewage, garbage, other polluting substances, including heated water, chemicals, trash, or other impurities to be discharged, directly or indirectly, from the Leased Premises into the waters of Lake Julian. Houseboats shall not be permitted on Lake Julian.

6. Recreational Improvements and Alterations.

(a) Subject to LESSOR'S prior written consent in each instance, to be given or withheld in LESSOR'S sole discretion, LESSEE, at LESSEE'S cost, may construct, locate and establish upon the Leased Premises suitable facilities for public recreation, including roads, parking areas, picnic shelters and tables, piers, wharves, boat-launching ramps, one-story boathouses, bathhouses, restrooms, sanitary facilities, utility installations, camping sites, concession stands, playgrounds, frisbee/disc course, trails, security-related improvements (such as gates, fencing, lighting, and emergency telephones), and other improvements or alterations necessary to the development of the Leased Premises for public recreational purposes and public access to Lake Julian (collectively the "Recreational Improvements"). In connection with LESSOR'S review of any such proposed Recreational Improvements, LESSEE shall provide LESSOR with detailed construction plans, elevation drawings, and site plans that LESSOR may reasonably require. LESSOR'S approval of any such plans and drawings shall not create any liability for LESSOR that the same are complete and/or comply with applicable Laws. LESSEE shall construct, install, maintain, and operate any such approved Recreational Improvements (and

any existing Recreational Improvements on the Leased Premises) in compliance with applicable Laws and the terms and conditions of this Lease. LESSEE will have complete charge of construction of any Recreational Improvements and the plans therefor. All work upon the Leased Premises associated with any Recreational Improvements shall be completed in a good and workmanlike manner, using new grades of materials, and in compliance with applicable Laws. All Recreational Improvements and other LESSOR-owned improvements previously constructed by the City of Asheville under a prior lease) located upon the Leased Premises or over the waters of Lake Julian shall be maintained by LESSEE in good repair and condition. LESSEE shall not cut any timber on the Leased Premises without LESSOR's prior written consent, which may be given or withheld in LESSOR'S sole discretion.

(b) No Recreational Improvements shall be constructed on the Leased Premises in such manner as to obstruct unduly the passage of vehicles along the shore adjacent to Lake Julian. When it appears that any such construction might so obstruct, LESSEE will prohibit such construction until the plans therefor have been approved by LESSOR. Any pier, wharf, boat-launching ramp or boathouse erected and maintained on the Leased Premises, shall be built of sturdy construction in such manner that no part thereof is subject to detachment from the remainder of the structure. Any boathouse constructed on the Leased Premises shall be designed to accommodate boats only; and no living quarters, bath or toilet facilities shall be constructed or used thereon. Should any such structure be abandoned, LESSEE will remove the same or have it removed, including any foundation, timbers or piling from Lake Julian and the Leased Premises.

7. Fees and Concessions. LESSEE may charge reasonable fees and charges for the use of its recreational area and/or Recreational Improvements upon the Leased Premises or for the privilege of entering upon Lake Julian. LESSEE may operate or grant concession privileges to other persons to operate facilities for the sale of food, fishing and recreational supplies, and other merchandise upon the Leased Premises and facilities for the rental of "jon boats" (electric motors only), paddle boats and canoes. LESSEE shall be responsible for all such concession facilities and the operation thereof and LESSOR shall bear no responsibility in connection therewith. Concession privileges shall not be granted for periods in excess of one (1) year. No concession privilege shall be extended or renewed beyond the Base Term (or then current renewal period of the Term) of this Lease if nonrenewal is requested by LESSOR. Any

concession privilege shall be cancelled and terminated if the concession privilege results in any violation of applicable Laws and/or the terms and conditions of this Lease.

8. Assignment and Subleasing. LESSEE shall not transfer, assign, mortgage, encumber, or sublet LESSEE'S interest in this Lease, in whole or in part, or any portion of the Leased Premises without first obtaining the prior written consent of LESSOR, which may be given or withheld in LESSOR'S sole discretion. In the event of any such approved assignment or subletting, LESSEE shall not be relieved of any of LESSEE'S liabilities and obligations under this Lease, but shall be and remain primarily liable to LESSOR for performance of all of its obligations hereunder. Consent by LESSOR to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. LESSEE is prohibited from subletting any portions of the Leased Premises (i) that are adjacent to the Asheville Plant or any other real property owned by LESSOR; or (ii) to any person for private residential recreational use. Any sublease involving the Leased Premises shall be only for public use as access to the lake for recreational purposes. LESSEE'S sublease agreements shall require any sublessee to assume and agree to keep, observe, and perform all of the agreements, conditions, obligations, covenants, and terms of this Lease on the part of LESSEE to be kept, observed, and performed with respect to such subleased area and use of Lake Julian. LESSEE shall initiate and complete appropriate and prompt enforcement action(s), including sublease termination, for any sublessee's violation of the terms and conditions of this Lease or any sublease agreement entered into with LESSEE.

9. Acknowledgment of Asheville Rowing Club Sublease. The parties acknowledge that as of the date of this Lease, the only sublease involving the Leased Premises is LESSEE'S Sublease with the Asheville Rowing Club dated May 3, 2005.

10. Environmental.

(a) Definitions. As used in this Lease:

The term "Law" or "Laws" shall include, but is not limited to, all applicable Laws regulating, protecting, pertaining or relating to the environment, natural resources, fish and wildlife, health and safety, as well as the terms and conditions of any order, decree, directive, permit or approval of any governmental authority having jurisdiction over the Leased Premises relating thereto (collectively "Environmental Laws").

“Regulated Substance” means any chemical, material, substance, sewage, or waste the exposure to, access to, handling, possession, use, transportation, storage or management of which is now or hereafter prohibited, limited, or regulated by any Law or governmental body. Regulated Substances include without limitation any petroleum or petroleum product, organic solvent (whether halogenated or non-halogenated), and any chemical, material, substance, or waste which is now or hereafter becomes defined as or included in the definition of hazardous substance, hazardous waste, hazardous material, extremely hazardous substance, restricted hazardous waste, toxic substance, toxic pollutant, or words of similar import, under any Law.

“Release,” with respect to any material, means any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of such material into the environment or Lake Julian, or any other act or event the occurrence of which would require containment, remediation, notification, or similar response under any Law.

“Remediate” means any and all abatement, removal, assessment, monitoring, sampling and analysis, installation, clean-up, remediation, remedial or corrective action, response action, restoration, closure, post-closure, or mitigation required by Environmental Laws, the North Carolina Department of Environment and Natural Resources (“NCDENR”), or other governmental agencies having jurisdiction

(b) Environmental Requirements. LESSEE shall implement best management practices to protect the physical and environmental conditions of the Leased Premises and prevent potential impacts from the Leased Premises to Lake Julian, including without limitation, cooperating with LESSOR and all governmental authorities having jurisdiction to prevent soil erosion and protect existing vegetative cover; and protect and minimize adverse impacts to air, land, subsurface (including groundwater) and surface water quality, aquatic life, and shoreline habitat in and around Lake Julian. LESSEE shall obtain, keep in good standing, and comply with any and all environmental permits required for LESSEE’s use, activities, operations, management, and/or development of the Leased Premises, Recreational Improvements, or any other improvements, facilities, structures, or equipment of LESSEE thereon. LESSEE shall copy LESSOR simultaneously on all material correspondence or reports from LESSEE to any environmental, health or safety governmental agency that relates to the Leased Premises or Lake Julian. LESSEE promptly shall forward to LESSOR any material correspondence or reports received by LESSEE from any environmental, health or safety governmental agency that relates

to the Leased Premises or Lake Julian. LESSEE shall notify LESSOR immediately and again in writing within three (3) days of becoming aware of any of the following: (i) any material violation of Environmental Laws affecting the Leased Premises; and/or (ii) any actual or threatened Release of Regulated Substances onto the Leased Premises or into Lake Julian resulting from LESSEE's use of or activities on the Leased Premises and in a quantity that triggers or reasonably may trigger reporting to a governmental agency or third party under applicable Environmental Laws. If any Release of Regulated Substances occurs on or from the Leased Premises in circumstances that trigger such a legal requirement to report the Release, LESSEE immediately shall comply with all notification requirements and Remediate the Release to the extent required by and in accordance with Environmental Laws and to LESSOR'S reasonable satisfaction in light of Environmental Laws. If LESSEE fails to Remediate any such Release as required by applicable Environmental Laws, then LESSOR may, but is not obligated to, enter the Leased Premises and complete necessary actions to Remediate the Release in order to comply with applicable Environmental Laws. LESSEE'S obligations and the provisions of this Paragraph 10 shall survive the expiration or termination of this Lease.

11. LESSOR'S Use of Lake Julian and Leased Premises. It is recognized by the parties that the raising and lowering of the water level of Lake Julian is essential to the business operations of LESSOR. LESSOR reserves the right at any and all times to raise or lower, in its sole discretion, said water level, including the right to flood with impunity the Leased Premises. With respect to the Leased Premises and waters of Lake Julian, LESSOR reserves the right to go and send its agents and employees upon any of the Leased Premises at will for any purpose; to take upon and remove from the Leased Premises its signs, tools, machinery, conveyances, boats, barges, equipment, and other facilities and equipment of any nature, and with agents, employees, and contractors and their employees, engage in and perform any business, inspections, work, construction, repairs or alterations of the Leased Premises desired by it in connection with the protection, maintenance and operation of the Asheville Plant and all improvements, changes, extensions and additions thereto; and to perform any work which LESSOR may desire to do with respect to controlling erosion, or as may be necessary or desirable to comply with any applicable Laws, including but not limited to, building and maintaining roads and ways, and constructing and maintaining drains, ditches, dykes, canals, grades, fills, excavations, signs and the like, as

LESSOR may desire in operating, maintaining and protecting the land and water of Lake Julian in a manner suitable to LESSOR.

12. LESSOR'S Right of Entry. LESSOR reserves the right of access to all of the Leased Premises for the purpose of inspection to determine compliance with the provisions of this Lease and for such other purposes as are suitable to the business operation of LESSOR, including the right to install on said Leased Premises transmission and distribution lines, pipe lines and other facilities deemed by the LESSOR to be desirable in its business operations as an electric utility. Nothing in this Lease shall be construed to limit or deny in any way the right of LESSOR to full and unrestricted access to and use of the Leased Premises, the waters of the lake, and the land lying below the waters of Lake Julian for any purposes, including construction of additional facilities, related to LESSOR'S Asheville Plant and any additions thereto. It is understood that free use of the Leased Premises, Lake Julian, and land under Lake Julian is essential in the operation of LESSOR'S business and that all rights of LESSEE under this Lease and of any sublessee must be and are subordinate to the right of LESSOR to make full use of the Leased Premises at any time for its business purposes.

13. Indemnification. To the extent allowed by applicable Law, LESSEE agrees to indemnify, defend and save harmless LESSOR, its parent, affiliates, successors and assigns, from and against any liabilities, claims, expenses, costs (including reasonable attorneys' fees), damages, or losses on account of or arising out of (i) any claim of any person whomsoever arising from use of the Leased Premises or use of the waters of Lake Julian by persons lawfully having access thereto pursuant to the rules and regulations as established by LESSEE for use of the Leased Premises; (ii) any action or omission of LESSEE; and/or (iii) LESSEE's failure to comply with terms and conditions of this Lease. LESSEE shall notify LESSOR promptly of (x) any accident, fire, injury, or material damage occurring on or to the Leased Premises; and/or (y) any claim, cause of action, suit, obligation, liability, loss, fine, or demand imposed on, incurred by, or asserted by any person against LESSOR or LESSEE that arises from, or in any way relates to, LESSEE'S use, management, operations, or activities with respect to the Leased Premises and/or Lake Julian. LESSEE'S obligations and the provisions of this Paragraph 13 shall survive the expiration or termination of this Lease.

14. Insurance. LESSEE, at its cost, shall obtain and maintain in force during the Term of this Lease the following insurance coverage and minimum insurance limits: (i)

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 use and occupancy of the Leased Premises and activities thereon, with limits of at least \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate; (ii) worker's compensation meeting statutory limits; and (iii) automobile liability insurance of at least \$1,000,000.00 per occurrence. Any contractor, subcontractor, or concessionaire performing work on the Leased Premises on the LESSEE'S behalf or at LESSEE'S direction and/or any sublessee hereunder, shall have in place prior to commencement of performing such work or commencement of the sublease, all insurance as required by this Lease. All required policies, except worker's compensation, shall name LESSOR as an additional insured. All required policies shall provide that such insurance shall not be cancelled or failed to be renewed unless at least thirty (30) days' prior notice is given to LESSOR and shall include a waiver of any rights of subrogation of the insurer. LESSEE shall provide LESSOR with a copy of certificates of such insurance coverage promptly upon LESSOR'S request.

15. Default and Termination. LESSEE shall be in default and breach of this Lease if LESSEE violates or fails to comply with any covenant, condition, term or provision of this Lease and LESSEE fails to cure such or violation or non-compliance within sixty (60) days after receiving written notice thereof from LESSOR; provided however, (i) any default and breach of this Lease involving a violation of Law shall be cured immediately or within the time period required by applicable Law; and (ii) if such non-compliance or violation cannot reasonably be cured within the 60-day cure period, LESSEE shall not be in default or breach of this Lease if LESSEE commences to cure the default within the 60-day period and diligently and in good faith pursues such cure to completion. LESSOR shall have the option to declare this Lease terminated immediately and shall have the right to enter upon the Leased Premises and take immediate possession thereof, without further notice to LESSEE upon the occurrence of any of the following events: (i) LESSEE's default and breach of this Lease after expiration of any applicable cure period; (ii) LESSEE being adjudged bankrupt or insolvent by any federal or North Carolina state court; (iii) LESSEE ceasing to operate the Leased Premises as a public recreational area; or (iv) LESSOR being directed or ordered to do so by any governmental authority having jurisdiction over LESSOR's utility operations, LESSOR's use of the Leased Premises, or Lake Julian. Upon the termination or expiration of this Lease, in whatever manner

and whenever terminated, all Recreational Improvements and other improvements of LESSEE located upon said Leased Premises not presently owned by LESSOR shall become and remain the property of LESSOR, its successors and assigns.

16. Signs. LESSEE will permit LESSOR to install and maintain on the Leased Premises suitable plaques or signs indicating the role of LESSOR in making the Leased Premises available for public recreation.

17. Subordination. All rights and privileges granted to LESSEE hereunder shall be subordinate to the rights, obligations, and duties of LESSOR under the license issued by the Federal Energy Regulatory Commission (“FERC”), or its predecessor, for the Asheville Plant power generation project, as now or hereafter amended or renewed, and in the Federal Power Act, both of which are incorporated herein by reference as part of this Lease to the extent applicable to place LESSEE on notice thereof; and LESSEE shall be subject to such orders, rules and regulations, as FERC has issued or may issue from time to time that apply to the Leased Premises or this Lease. LESSOR specifically reserves the right to use and/or maintain the Premises for Asheville Plant project purposes as may be contemplated by said FERC license and the Federal Power Act. Further, LESSEE’S receipt and exercise of rights and privileges hereunder shall be subject to all matters of record and LESSOR’S Mortgage and Deed of Trust recorded on June 5, 1940 in Book 370, Page 1, Buncombe County Registry, as supplemented, and any other mortgage, deed of trust, lien, or hypothecation for security now or hereafter existing.

18. Liens. LESSEE shall not permit any mechanics’, laborers’, material men’s liens or other liens to be placed or filed against all or any part of the Leased Premises, nor against Lessee’s leasehold interest in the Leased Premises. If any such lien is filed against the Leased Premises as a result of any activity of LESSEE, the LESSEE shall cause the same to be discharged of record within ten (10) days after filing thereof. If LESSEE fails to discharge such lien within said 10-day period, then LESSOR may at its election, in addition to any other right or remedy available to LESSOR, discharge the lien by paying the amount claimed to be due or by procuring the discharge by giving security or in such other manner as may be allowed by law. If LESSOR acts to discharge or secure the lien, then LESSEE shall promptly reimburse LESSOR, upon written demand by LESSOR, for all sums paid and all costs and expenses (including reasonable attorneys’ fees) incurred by LESSOR associated with such lien.

19. Notice. Except as otherwise provided herein, all notices under this Lease shall be in writing and shall be delivered to the other party by personal delivery, or by commercially recognized overnight courier service, or by prepaid U.S. registered or certified mail, return receipt requested, addressed as follows: If to LESSOR:
_____. If to LESSEE: Buncombe County, 200 College Street, Suite 300, Asheville, N.C. 28801, Attention: Michael Frue, County Attorney. Notice shall be effective upon the earlier of: (i) actual receipt; or (ii) three days after deposit with the U.S. mail service or other commercially recognized overnight courier service. Each party shall be responsible for notifying the other of any change of address.

20. Miscellaneous. (a) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina. (b) LESSOR'S Obligations and Limitation of Liability. In the event that, subsequent to the execution of this Lease, any State or Federal statute, or rule adopted thereunder, regulating or affecting any duty or obligation imposed upon LESSOR pursuant to this Lease is enacted, amended or repealed, LESSOR may, at its option, elect to perform in accordance with such statute or rule amendment, or act of repeal in lieu of complying with the analogous provision of this Lease. If LESSOR shall be in default under this Lease, and if as a consequence of such default, LESSEE shall recover a money judgment against LESSOR, such judgment shall be satisfied only out of the right, title, and interest of LESSOR in the Leased Premises as the same may then be encumbered and neither LESSOR nor any other person or entity comprising LESSOR shall be liable for any deficiency. (c) Entire Agreement. This Lease and exhibits attached hereto contain the entire agreement between LESSOR and LESSEE and shall not be modified in any manner except by a document executed by LESSOR and LESSEE or their respective successors in interest. (d) Severability. If any provision of this Lease shall be determined to be invalid or unenforceable or in conflict with any law of a Federal, State or local government having jurisdiction over this Lease, the validity of the remaining provisions shall not be affected thereby, and every provision of this Lease shall remain in full force and effect and enforceable to the fullest extent permitted by law. (e) Survival. The covenants contained in this Lease which, by their terms, require their performance after the expiration or termination of this Lease shall be enforceable notwithstanding the expiration or other termination of this Lease. (f) Waiver. Neither LESSOR'S nor LESSEE'S waiver of the other's breach of any term, covenant or condition contained in this Lease shall be

deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition in this Lease. (g) Remedies. The rights and remedies of LESSOR provided in this Lease are cumulative and not exclusive and are in addition to any other rights and remedies, now or hereafter provided by law. (h) Binding Effect. The provisions of this Lease shall be binding on and inure to the benefit of the parties hereto, their respective successors and permitted assigns. (i) Headings/Counterparts/Authority. Headings of paragraphs or subparagraphs are for convenience only and shall not be considered in construing the meaning of the contents. This Lease may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document.

21. Recording. This Lease shall not be recorded. At the request of either party, the parties shall execute a short-form memorandum of lease, in recordable form, specifying the Term of the Lease, a description of the Leased Premises and other provisions that the parties mutually agree to incorporate therein.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, LESSOR has caused this Amended and Restated Lease Agreement to be signed in its name, by its duly authorized officer, as of the day and year first above written.

CAROLINA POWER & LIGHT COMPANY d/b/a
PROGRESS ENERGY CAROLINAS, INC.

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, LESSEE, County of Buncombe, has caused this Amended and Restated Lease Agreement to be executed by its Chairman, attested to by its Clerk, and its seal to be hereunto affixed all by authority duly given by Resolution No. _____ referenced above, as of this the day and year first above written.

COUNTY OF BUNCOMBE

By: _____

David Gantt, Chairman

ATTEST:

Kathy Hughes, Clerk to the Board

My Commission Expires: _____

EXHIBIT A

(AERIAL MAP OF LEASED PREMISES)

EXHIBIT B

(AREAS EXCLUDED FROM LEASED PREMISES)

Excluded from the Leased Premises are (i) all areas labeled “Areas Not Available for Lease” and depicted with light green overlay on Exhibit A; and (ii) all of the five (5) tracts or parcels of land lying and being in Limestone Township, Buncombe County, North Carolina more particularly described as follows:

First Parcel (0.72 Acre Parcel):

BEGINNING at a 1 ¼" iron pipe found with cap and tack, flush with grade, and said iron pipe being located South 80° 22' 39" West a distance of 1,705.93 feet from North Carolina Geodetic Survey Monument “Kelvin” said monument having North Carolina state plane coordinates of Northing=648,114.80 feet, Easting=951,043.17 feet, said coordinates being related to the NAD 83(2007) datum; and thence from said beginning point thus established and with the line of property owned by Buncombe County as described in deed recorded in Book 4895, Page 358 Buncombe County, NC Registry the following four (4) courses and distances: North 25° 25' 55" East 71.09 feet to a 5/8 inch rebar; North 25° 25' 55" East 75.08 feet; North 11° 26' 44" West 98.07 feet; and thence South 63° 18' 06" West 265.08 feet to a 3/4" iron pipe found with cap, 0.1' above grade; thence leaving said Buncombe County property line, South 26° 39' 47" East 48.10 feet to a point; thence North 86° 45' 50" East 31.0 feet to a point; thence South 75° 58' 25" East 34.82 feet to a point; thence South 53° 49' 56" East 52.47 feet to a point; thence South 26° 34' 46" East 6.67 feet to a point; thence South 03° 21' 27" East 22.71 feet to a point; thence South 75° 12' 17" East 18.97 feet to a point; and thence North 83° 06' 20" East 42.48 feet to the point and place of the BEGINNING.

And, being the area shown as “0.72 ± Acre” on a survey entitled “Survey of a Portion of Property Owned by Buncombe County & Progress Energy of the Carolinas TOTAL AREA = 0.72 ± ACRE” prepared by Martin A. Barnes, PLS of Ed Holmes & Associates Land Surveyors, PA, and dated 8-22-2011 (PEC Drawing No. L-C-10422); the same being a portion of the land described in that Non-Warranty Deed from Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. recorded in Book 4993, Page 1716, Buncombe County Registry.

Second Parcel (0.19 Acre Parcel):

BEGINNING at a 3/4" iron pipe found with cap and tack, flush with grade, and said iron pipe being located North 86° 41' 04" West a distance of 2,491.06 feet from North Carolina Geodetic Survey Monument "Kelvin" said monument having North Carolina state plane coordinates of Northing=648,114.80 feet, Easting=951,043.17 feet, said coordinates being related to the NAD 83(2007) datum; and thence from said beginning point thus established and with the line of property owned by Buncombe County as described in deed recorded in Book 4895, Page 358 Buncombe County, NC Registry the following two (2) courses and distances: North 04° 08' 31" West 96.82 feet to a 3/4" iron pipe found with cap; and North 14° 48' 12" West 63.65 feet; thence leaving said Buncombe County property line, South 12° 33' 50" West 66.10 feet to a point; thence South 22° 13' 56" West 86.84 feet to a point; thence South 69° 58' 44" West 29.46 feet to a point; thence South 86° 10' 19" West 20.3 feet to a point; thence North 77° 52' 44" West 32.4 feet to a point; thence North 72° 20' 18" West 6.45 feet to a point located on the said Buncombe County line; thence with said Buncombe County line the following three (3) courses and distances: South 46° 28' 04" East 7.46 feet to a 3/4" iron pipe found with cap; South 74° 40' 36" East 121.09 feet to a 5/8" rebar with yellow "EHA" cap set; and North 51° 59' 39" East 43.22 feet to the point and place of the BEGINNING.

And, being the area shown as "0.19 ± Acre" on a survey entitled "Survey of a Portion of Property Owned by Buncombe County & Progress Energy of the Carolinas TOTAL AREA = 0.19 ± ACRE" prepared by Martin A. Barnes, PLS of Ed Holmes & Associates Land Surveyors, PA, and dated 6-15-2011 (PEC Drawing No. L-C-10423); the same being a portion of the land described in that Non-Warranty Deed from Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. recorded in Book 4993, Page 1716, Buncombe County Registry.

Third Parcel (0.13 Acre Parcel):

BEGINNING at a 3/4" pipe found with cap, 0.1' above grade, and said pipe being located South 83° 44' 40" West a distance of 2,788.80 feet from North Carolina Geodetic Survey Monument "Kelvin" said monument having North Carolina state plane coordinates of Northing=648,114.80 feet, Easting=951,043.17 feet, said coordinates being related to the NAD 83(2007) datum; and thence from said beginning point thus established and with the line of property owned by Buncombe County as described in deed recorded in Book 4895, Page 358 Buncombe County, NC Registry the following three (3) courses and distances: North 46° 49' 10" West 104.04 feet to a 5/8 inch rebar; North 00° 16' 59" West 93.97 feet; and North 07° 43' 21" West 41.91 feet; thence leaving said Buncombe County property line, South 05° 44' 17" West 90.72 feet to a point; thence South 16° 24' 28" West 9.16 feet to a point; thence South 22° 54' 31" West 48.78 feet to a point; thence South 51° 04' 36" East 122.28 feet to a point; and thence South

74° 24' 45" East 50.17 feet to a point in the said Buncombe County line; and thence with said Buncombe County line, North 48° 10' 47" West 41.40 feet to the point and place of the BEGINNING.

And, being the area shown as "0.13 ± ACRE" on a survey entitled "Survey of a Portion of Property Owned by Buncombe County & Progress Energy Carolinas, Inc. TOTAL AREA = 0.13 ± ACRE" prepared by Martin A. Barnes, PLS of Ed Holmes & Associates Land Surveyors, PA, and dated 8-22-2011 (PEC Drawing No. L-C-10424); the same being a portion of the land subject to that Lease Agreement between Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. and Buncombe County dated as of June 22, 2012, and that Assignment and Assumption of Lease between Buncombe County and Linamar North Carolina, Inc., dated as of July 2, 2012.

Fourth Parcel (0.04 Acre Parcel):

BEGINNING at a mag nail set, and said nail being located North 61° 51' 60" West a distance of 2,588.05 feet from North Carolina Geodetic Survey Monument "Kelvin" said monument having North Carolina state plane coordinates of Northing=648,114.80 feet, Easting=951,043.17 feet, said coordinates being related to the NAD 83(2007) datum; and thence from said beginning point thus established and with the line of property owned by Buncombe County as described in deed recorded in Book 4895, Page 358 Buncombe County, NC Registry the following two (2) courses and distances: North 05° 55' 20" West 46.81 feet to a 5/8 inch rebar; and North 12° 39' 40" East 16.75 feet; thence leaving said Buncombe County property line, South 35° 08' 48" West 33.02 feet to a point; thence South 52° 57' 45" West 47.66 feet to a point; thence South 46° 29' 37" West 10.57 feet to a point in the said Buncombe County line; and thence with said Buncombe County line, North 89° 55' 40" East 65.87 feet to the point and place of the BEGINNING.

And, being the area shown as "1700 ± Sq. Ft. or 0.04 ± Acre" on a survey entitled "Survey of a Portion of Property Owned by Buncombe County & Progress Energy Carolinas, Inc. TOTAL AREA = 0.04 ± ACRE" prepared by Martin A. Barnes, PLS of Ed Holmes & Associates Land Surveyors, PA, and dated 6-15-2011 (PEC Drawing No. L-C-10425); the same being a portion of the land subject to that Lease Agreement between Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. and Buncombe County dated as of June 22, 2012, and that Assignment and Assumption of Lease between Buncombe County and Linamar North Carolina, Inc., dated as of July 2, 2012.

Fifth Parcel (Ramp Area):

BEGINNING at a point found in the property line of the southern side of the entrance drive of property owned by Buncombe County as described in deed recorded in Book 4895, Page 358 Buncombe County, NC Registry, and said point being located South 87° 03' 30" West 25.13 feet from a railroad spike found flush

with the pavement having North Carolina state plane coordinates (NAD 83(2007)) of Northing=648,157.84 feet, Easting = 950,919.51 feet, and said railroad spike also being located North 70° 48' 39" West a distance of 130.97 feet from North Carolina Geodetic Survey Monument "Kelvin" said monument having North Carolina state plane coordinates of Northing=648,114.80 feet, Easting=951,043.17 feet, said coordinates being related to the NAD 83(2007) datum; and

Thence from said BEGINNING point thus established, and with the said property line of Buncombe County, South 87° 03' 30" West 61.71 feet to a point; thence leaving said Buncombe County line, South 67° 13' 48" East 16.39 feet to a point; thence South 74° 18' 10" East 43.20 feet to a point; thence South 49° 19' 58" East 12.77 feet to a point; thence South 51° 49' 07" East 5.81 feet to a point; thence North 41° 25' 36" East 21.78 feet to a point; thence North 48° 44' 14" West 22.33 feet to a point; and thence North 73° 34' 32" West 7.25 feet to the point and place of the BEGINNING.

And, being the area shown as "0.03 ± acre Proposed Easement" on a survey entitled "Survey of a Portion of Property Owned by Buncombe County & Progress Energy Carolinas, Inc. TOTAL AREA = 0.03 ± ACRE" prepared by Martin A. Barnes, PLS of Ed Holmes & Associates Land Surveyors, PA, and dated 8-22-2011 (PEC Drawing No. L-C-10426); the same being a portion of the land subject to that Lease Agreement between Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. and Buncombe County dated as of June 22, 2012, and that Assignment and Assumption of Lease between Buncombe County and Linamar North Carolina, Inc., dated as of July 2, 2012.