

STATE OF ALABAMA

Shelby

COUNTY

1147

THIS AGREEMENT, made and entered into between ALABAMA POWER COMPANY, a corporation (hereinafter referred to as "the Company") and Raymond Burch and wife Betty V. Burch (hereinafter collectively referred to as "the Owner").

WITNESSETH:

WHEREAS, the Owner owns the following described tract of land (hereinafter sometimes referred to as "Subject Land"):

Lot 4 Lot 4, McClure Drive of Homestead Subdivision as shown in Plat Book 8 page 167 in the Office of the Probate Judge of Shelby County, Alabama.

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WHEREAS, the Company is the owner of a flood easement on that certain land which lies below that certain datum plane of 403 feet above mean sea level, as established by the United States Coast and Geodetic Survey, as adjusted in January 1955, situated adjacent and contiguous to Subject Land;

WHEREAS, Owner has excavated a portion of Subject Land so as to cause the elevation of the excavated portion to be below the elevation of 403 feet above said mean sea level, and the excavated portion of Subject Land extends under a habitable structure owned by Owner;

WHEREAS, prior to such excavation, no part of Subject Land was situated below the elevation of 403 feet above said mean sea level; and

WHEREAS, Owner recognizes that the excavated portion of Subject Land which now lies below elevation of 403 feet will be flooded from time to time by the waters of Coosa River or its tributaries impounded by the Company's Lay Dam and related facilities, without notice or warning from the Company, and Owner represents that Owner deliberately created such excavation so as to cause the flooding of such excavated portion of Subject Land;

WHEREAS, the continued maintenance of said excavation on Subject Land benefits Owner in the use of Subject Land, and Owner desires to retain said excavation at its present location; and

WHEREAS, said excavation at its present location may increase the exposure of the Company to litigation of claims arising out of or connected with the exercise, use and enjoyment of the Company's lands below the elevation 403 feet above said mean level and may increase the risks to the Company in connection with the operation of Lay Reservoir.

NOW, THEREFORE, in consideration of the premises and the covenants and conditions herein contained, it is hereby agreed and covenanted between the parties hereto as follows:

1. The term of this agreement shall be for the period beginning July 1, 19 87, and thereafter until canceled as hereinafter provided.

*Robert Keener*  
P.O. 2641  
Bham, Al. 35291

2. The Company hereby agrees, to the extent of its interest, that it will not close the excavation on Subject Land, subject to the terms and conditions of this agreement or any extension thereof.

3. The Company does not claim any interest in Subject Land nor in that portion of Subject Land caused to be situated below the elevation of 403 feet above said mean sea level by reason of said excavation; however, the Company expressly retains all ownership rights in its land adjacent to Subject Land. It is the purpose of this Section 3 to confirm and agree that such excavation by Owner on Subject Land does not in any way constitute a change or alteration of the property lines of Owner and the Company.

4. Owner shall not enlarge or add to the excavation so as to increase the flow onto Subject Land of waters of the Coosa River, or its tributaries, impounded by the Company's dam and related facilities.

5. Owner agrees and covenants that neither by the occupancy of the excavated portion of Subject Land which lies below said datum plane of 403 feet nor in any other way is Owner claiming adversely to the Company in its ownership of the adjacent land or denying the right of the Company without notice of warning to flood, damage, use and enjoy its said ownership of such adjacent land, and further to flood that excavated portion of Subject Land which lies below said datum plane of 403 feet, but that the maintenance of said excavation and improvements, including the habitable dwelling on Subject Land by Owner is with the recognition and with the full knowledge and agreement that the Company will not be responsible for any flooding or damage which occurs due to the excavated part of Owner's Subject Land being situated below said datum plane of 403 feet above mean sea level, and, therefore, subject to such flooding.

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6. Owner agrees and covenants to waive, and does hereby waive, any and all forms of notice by the Company of its intention to flood said excavated portion of Subject Land up to elevation 403 feet above said mean sea level prior to such flooding or of the fact that said excavated portion of Subject Land will be flooded prior to such flooding.

7. Owner agrees and covenants to release, indemnify, protect and hold harmless the Company from and against any and all claims and demands by Owner, any member of his family, their employees, their tenants, their guests, their invitees or any other person whomsoever, for damages to property and injury or death to persons (whether or not caused by the Company's negligence, including, without being limited to, the Company's contributory negligence, concurring negligence, active negligence and passive negligence), which may arise out of or be caused by directly or indirectly the said excavation and/or the use or flooding of said excavated portion of Subject Land by the Company, or the flooding of said excavated portion of Subject Land by the Company, or the flooding of said excavated portion of Subject Land and/or said improvements situated on Subject Land by the waters of the Coosa River, or its tributaries, impounded by Company's dam and related facilities.

8. In the event it becomes necessary for the Company to institute court proceedings to enforce the provisions of this agreement, then Owner expressly waives hereby any defenses of estoppel, laches, the statute of limitations and similar defenses in such court proceedings. Further, the Owner, for himself, his heirs and assigns, expressly agrees to reimburse the Company, its successors and assigns, for all costs and expenses, including attorneys' fees incurred in seeking to enforce this agreement.

9. As relates to conditions resulting from or related to said excavation, Subject Land shall at all reasonable times be subject to inspection by the Company and the authorized agents of the Alabama State Health Department and any other department of the State or county having similar functions or duties, and the Owner agrees to abide by and perform any requested compliance with the health and sanitation provisions laid down by such departments, as well as those prescribed by the Company.

10. This agreement may be cancelled by either party hereto by giving the other party thirty (30) days' notice in writing of its intent to so cancel. The provisions hereof will govern and control the rights, responsibilities and liabilities of the parties hereto arising out of or related to events occurring prior to such cancellation.

11. It is understood and agreed between the parties hereto that this agreement shall be binding upon and enforceable against the parties hereto and their respective heirs, successors and assigns. The continued use or maintenance of the excavation and/or improvements on Subject Land by an heir or assign of Owner shall conclusively be deemed their agreement to be bound by all the covenants and agreements herein assumed by Owner, including the agreements of indemnity.

12. This agreement is subject to such rights as the United States of America, the Federal Energy Regulatory Commission (formerly Federal Power Commission), or any other agency of the United States of America may have in such adjacent lands situated

below the datum plane of 403 feet above said mean sea level under and by virtue of any license and amendments thereto which have been issued, or which may be issued in the future by the Federal Energy Regulatory Commission to the Company pursuant to the provisions of the Federal Power Act for the construction, operation and maintenance of presently existing or future dam or dams, powerhouse or powerhouses, and electrical appurtenances necessary or thereto convenient which are to be, or may be located on or near said lands.

13. The Owner herein for himself, his heirs and assigns, shall give to the Company, its successors and assigns, notice in writing of the name and address of their proposed grantee of Subject Land within ten (10) days of their disposing of such lands.

14. Wherever in this agreement the terms "Owner" or "Company" are used, they shall be deemed to include their respective successors, heirs or assigns.

15. Where notices are provided for herein, such notices shall be conclusively deemed given when posted in the United States mail, addressed as follows:

Notice to Company:

Alabama Power Company  
Corporate Real Estate Department  
P. O. Box 2641  
Birmingham, AL 35291

Notice to Owner:

Raymond Burch  
No. 4 McClure Drive  
Wilsonville, Alabama 35186

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IN WITNESS WHEREOF, the parties hereto have executed this agreement and affixed their hands and seals on this 4<sup>th</sup> day of July, 1988.

Witness:

Ramsey Brown  
As to Company

ALABAMA POWER COMPANY

By [Signature]  
Manager - Corporate Real Estate

Witness:

Phillip Edell  
As to Owner

OWNER(S):

1 Raymond Burch  
Betty V. Burch

As to Owner

As to Owner

As to Owner

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

89 JUN 16 PM 2:46

1. Deed Tax \$  
2. Mtg. Tax  
3. Recording Fee 7.50  
4. Indexing Fee 2.00  
TOTAL 9.50

STATE OF ALABAMA

COUNTY OF Jefferson

JUDGE OF PROBATE

I, Rebecca S. Alexander, a Notary Public in and for said County in said State, do hereby certify that Raymond Burch

and Betty V. Burch only  
whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, is executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 9 day of July, 1988

[Signature]  
Notary Public