

Encroachment No. 12

W I T N E S S E T H:

WHEREAS, Licensor has acquired and is the owner of an easement over a portion of the following described tract of land (which tract of land is owned by Licensees, and will hereinafter be referred to as "Subject Land");

Lot 4, Block 2 of Parker's Subdivision, a map or plat of which is recorded in the Probate Office of Shelby County, Alabama.

This document replaces and supercedes that certain document which was signed and executed by Paul F. Carlisle Sr. and wife, Dore Carlisle and recorded in Deed Book 284, Pages 77, 78 and 79 of the Index of Probate Records of Shelby County, Alabama.

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which easement embraces, among other rights, the right to flood or cover with water from time to time all that portion of Subject Land which lies above that certain datum plane of 307 feet above mean sea level, as established by the United States Coast and Geodetic Survey, as adjusted in January 1955, but below that certain datum plane of 401 feet above mean sea level; and

WHEREAS, the said flood easement owned by Licensor over Subject Land will, from time to time and without notice or warning, be used by Licensor in the operation of its Ray Dam and Reservoir; and

WHEREAS, a portion of Subject Land is situated above said datum plane of 397 feet but below said datum plane of 401 feet, and consequently is subject to flooding from time to time and without notice or warning by Licensor under its said easement; and

WHEREAS, Licensees have constructed or placed a five-room frame house on a portion of Subject Land which is subject to said flood easement of Licensor and which will be so flooded by Licensor from time to time, such five-room frame house being hereinafter referred to as the "encroachment"; and

WHEREAS, the continued maintenance of said encroachment in the flood easement area benefits Licensees in the use of Subject Land, and Licensees desire to retain said encroachment at its present location; and

WHEREAS, said encroachment at its present location interferes with and inconveniences Licensor in the exercise, use and enjoyment of its said flood easement and increases the risks to Licensor in connection with the exercise, use and enjoyment of such flood easement.

2. Licensor hereby expressly gives, to the extent of its interest, its consent and permission to Licensees that such encroachment may remain upon Subject Land in its present location in the flood easement owned by Licensor, subject to the terms and conditions of this agreement, or any extensions thereof.

4. Licensees agree and covenant that neither by the occupancy of Subject Land with said encroachment, nor in any other way are Licensees claiming adversely to Licensor in its ownership of such easement over Subject Land or denying the right of Licensor without notice of warning to exercise, use and enjoy its said easement pursuant to the terms thereof, but that the maintenance of said encroachment in the easement area by Licensees is with the recognition of the superior easement of Licensor.

6. Licensees agree and covenant to release, indemnify, protect and hold harmless Licensor from and against any and all claims and demands by Licensees, any member of their 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 Licensor's negligence, including, without being limited to, Licensor's contributory negligence, concurring negligence, active negligence and passive negligence) which may arise out of or be caused by, directly or indirectly, the use or exercise of said easement over Subject Land by Licensor, or the flooding of Subject Land and said encroachment situated thereon by the waters of the Copen River, or its tributaries, impounded by Licensor's Lay Dam and related facilities.

7. If Licensees shall fail to comply with any of the provisions of this agreement or default in any of their obligations under this agreement, and shall fail within thirty (30) days after written notice from Licensor to correct such default or noncompliance, Licensor may, at its option, forthwith or at any time thereafter terminate the consent and permission granted under Paragraph 2 above. If such permission and consent is so terminated, Licensees shall within sixty (60) days after such termination remove said encroachment from Subject Land. In the event it becomes necessary for Licensor to institute court proceedings to enforce the provisions of this agreement or to require Licensees to remove said encroachment, then Licensees expressly waive hereby any defenses of estoppel, laches, the statute of limitations and similar defenses in such court proceedings. Further, the Licensees for themselves, their heirs and assigns, expressly agree to reimburse Licensor, its successors and assigns, for all costs and expenses, including attorneys' fees incurred in seeking to enforce this agreement.

8. The licensed premises shall at all reasonable times be subject to inspection by the Licensor 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 Licensees agree 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 Licensor.

9. This license may be canceled by either party hereto by giving the other party thirty (30) days' notice in writing of their intent to so cancel.

10. It is understood and agreed between the parties hereto that this entire agreement touches, concerns and benefits both the dominant and servient estates in Subject Land, is intended by the parties hereto to be construed as covenants which run with the land and are to be binding upon and enforceable against the parties hereto and their respective heirs, successors and assigns. The continued use of the encroachment by an heir or assign of Licensees shall conclusively be deemed his agreement to be bound by all the covenants and agreements herein assumed by Licensees, including the acknowledgment of the permissive nature of the continuation of such encroachment and the agreements of indemnity.

11. The rights granted herein are 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 said lands 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 Licensor 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.

12. The Licensees herein for themselves, their heirs and assigns, as a condition of this grant, shall give to Licensor, its successors and assigns, notice in writing of the name and address of their proposed grantee of said lands within ten (10) days of their disposing of such lands. In the event that Licensor is not given such notice by Licensees or their heirs or assigns, then at the option of Licensor this license may be terminated.

13. Wherever in this agreement the terms "Licensor" or "Licensees" are used, they shall be deemed to include their respective successors, heirs or assigns.

14. 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 Licensor

Alabama Power Company  
Corporate Real Estate Dept.  
P. O. Box 2641  
Birmingham, Alabama 35201

Notice to Licensees

R. M. Longston  
6128 Highway 155  
Montevalle, AL 35115

IN WITNESS WHEREOF, the parties hereto have executed this agreement and affixed their hands and seals on this 15th day of December, 1992.

Witness as to Licensor:

ALABAMA POWER COMPANY, Licensor

Hannie B. Sullivan

By Robert F. Weaver  
Corporate Real Estate

Witness as to Licensees:

LICENSEES:

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R. H. Langston  
Wife, Mrs. Rhonda Langston  
Wife, Mrs. Rhonda Langston  
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STATE OF ALABAMA )  
COUNTY OF Shelby )

I, Robert F. Weaver, a Notary Public, in and for said County, in said State, hereby certify that R. H. Langston and Wife, Mrs. Rhonda Langston

whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of this instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 15th day of December, 1992.

