North Carolina Site:

 Land Unit:

\_ County Project Number:

North Carolina

Distribution Encroachment Agreement

for Nitrification Field Encroachments

THIS NORTH CAROLINA DISTRIBUTION ENCROACHMENT AGREEMENT FOR NITRIFICATION FIELD ENCROACHMENTS (“Agreement”), made this     day of                           , 20   , by and between **DUKE ENERGY PROGRESS, LLC**, a North Carolina limited liability company (“Duke Energy”), and [KEY NAME OF Grantee] (“Grantee”).

* Grantee is the owner of a [Key acreage]-acre  of land situated in [Key name of Township] Township, [Key name of County] County, North Carolina, and being the land described in a deed from [Key deed description - Grantor, Grantee, date, book, page, & recording place] (the “Property”);
* Duke Energy has previously acquired a [Key DUKE ENERGY R/W width in text form] ([Key DUKE ENERGY R/W width in numeric form]) foot wide easement area over the Property on which easement area Duke Energy maintains and operates electrical facilities (the “Easement Area”); and
* Grantee desires to use a portion of the Easement Area for the construction, installation, operation, and maintenance of a nitrification field (the “Encroachment”).

 NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, Duke Energy, insofar as Duke Energy’s rights are concerned, hereby authorizes Grantee,  , ingress and egress to construct, install, operate, monitor, repair, and maintain the Encroachment within the Easement Area upon the following terms and conditions:

1. Grantee shall construct, install, operate and maintain the Encroachment as shown on a map, dated [Key in date of map involved], and entitled “[KEY IN TITLE OF MAP INVOLVED],” which is attached hereto as **Exhibit A** and incorporated herein by reference (the “Map”). Other than removing the Encroachment, Grantee shall not alter or add to the Encroachment in any way without receiving prior written consent from Duke Energy. Should Grantee perform any work in the Easement Area without the prior written consent of Duke Energy, should it fail to perform the work in a manner consistent with the specifications approved by Duke Energy, or should the Encroachment threaten any Duke Energy facility, then Grantee shall be liable to Duke Energy for any costs Duke Energy incurs while remedying actual or potential threats to Duke Energy’s facilities arising from such work.
2. This Agreement shall automatically terminate upon complete removal of the Encroachment by Grantee. Should the encroachment no longer be required for the facility it is designed to serve, this Agreement shall be terminable by Duke Energy upon ninety (90) days written notice of Duke Energy’s desire to terminate.

1. Duke Energy shall have the right to install at any time additional structures for the support of its present or future electric lines within the Easement Area. Duke Energy agrees to locate these additional structures, if reasonably possible, so as not to obstruct use of the Encroachment and in compliance with 15A NCAC 18E .0601.
2. Grantee may plant low-growing shrubbery on and around the Encroachment provided that Duke Energy shall have necessary access to its structures for maintenance purposes. Any trees or shrubs in the Easement Area shall not be permitted to reach a height of more than twelve (12) feet. If any such trees or shrubs do reach a height of more than twelve (12) feet, then Duke Energy shall have the right to remove them without removing the stumps if removal could damage system.
3. Grantee shall not place, or cause to be placed, a septic tank or any related device, constructed of any material type, in Duke Energy’s Easement Area other than inert piping for septic draining purposes.
4. Grantee shall, upon request of Duke Energy and at no cost to Duke Energy, erect barriers around the Encroachment area or existing facilities owned or operated by Duke Energy. Barriers shall be of an acceptable size and construction to Duke Energy. Once installed to Duke Energy’s specifications, Grantee shall not be liable for the costs of relocating or replacing any barrier that is later determined by Duke Energy to hinder its access to the facilities or Easement Area.
5. Grantee shall not utilize any equipment within Duke Energy’s Easement Area in such a manner that any portion of said equipment would come any closer than  feet from any conductors of its electric lines. Grantee’s operation of equipment and use of materials within Duke Energy’s Easement Area shall adhere to applicable federal, state, and local laws, rules and regulations, including the guidelines set forth by the National Electrical Safety Code (NESC), the OSHA Standard for equipment minimum safe working distances, and the North Carolina Overhead High-Voltage Line Safety Act (OHVSA).
6. Grantee shall be liable for, and shall indemnify, protect, and save harmless Duke Energy from any taxes or assessments which may be levied for or as a result of the Encroachment.
7. Duke Energy shall not be liable for any damage to the Encroachment resulting from Duke Energy or its contractors in the construction, reconstruction, replacement, maintenance, or removal of Duke Energy’s present or future facilities.
8. Grantee shall not do any digging, grading, or filling nearer than [Key distance in text form of grading allowed to structures] ([Key distance in numerical form of grading allowed to structures]) to any of Duke Energy structures or anchors and any slopes within the Easement Area shall be no greater than a one to four ratio.
9. Grantee shall not do any filling or piling of earth on Duke Energy’s Easement Area unless shown on the Map and approved by Duke Energy. The surface of the Easement Area shall be properly graded, raked, and seeded after construction of the Encroachments is complete.
10. Duke Energy may have facilities (e.g. counterpoise wires) buried in the vicinity of the Encroachment. Grantee shall exercise diligence to avoid damaging any underground facilities, will notify Duke Energy immediately if any damage does occur, and reimburse Duke Energy for the costs of any repairs made necessary by such damage.
11. The Encroachment is subject to the paramount right of Duke Energy at all times to make use of Duke Energy’s entire Easement Area for the construction, maintenance, reconstruction, and operation of electric lines. In the future, Duke Energy may require, within the N.C. G.S. 130A and the 15A NCAC 18E rules, the relocation or modification of the Encroachment, and Grantee shall comply with the demand at no cost to Duke Energy within ninety (90) days after receipt of the written demand.
12. This Agreement is effective only insofar as the easement rights of Duke Energy in the Easement Area are concerned; and Grantee shall obtain from others such permission sand permits as may be necessary from third parties.
13. Grantee assumes all risks incident to the Encroachment and does hereby release and shall indemnify, defend, and save harmless Duke Energy, its officers, directors, employees, contractors, and agents from and against claims, damages, demands, legal or administrative actions (formal or informal), expenses (including reasonable attorney’s fees and court costs), and liability (whether or not such liability has been judicially determined) for loss of or damage to property of Grantee, Duke Energy or others, (including environmental damages and hazardous or toxic waste cleanup) and injuries to or death of all persons, howsoever resulting, by reason of Grantee’s use of the Encroachment.
14. The recitals set forth at the opening of this Agreement are incorporated herein as if fully restated in this Section 16.
15. Should Grantee desire or be required to contact Duke Energy for any reason related to this Agreement it shall contact Duke Energy’s customer service center and request to speak to the land services group.
16. This Agreement shall be governed by the laws of the state of North Carolina without regard to the conflicts of law provisions therein. The parties agree that the proper venue for any dispute related to this agreement are the courts located in county in which the Property is located, and the parties hereby submit to the jurisdiction thereof.
17. This Agreement contains the complete understanding of the parties and shall supersede any prior and contemporaneous communications, agreements, and assurances related to the subject matter of this Agreement. Any modification of this Agreement must be agreed to in writing and signed by the parties. The parties agree that the Easement shall remain in full force and effect. The only modifications to the terms thereof, caused by the Agreement, shall be those which are expressly stated in this Agreement.
18. The failure of Duke Energy in any one or more instances to insist upon compliance with any provision or covenant herein or to exercise any right or privilege herein shall not constitute or be construed as a waiver of such or any similar provision or covenant.
19. This Agreement shall be recorded at Grantee’s sole expense.

***[Remainder of Page Left Intentionally Blank]***

IN WITNESS WHEREOF, Duke Energy and Grantee have caused this Agreement to be signed under seal in their names, as of the date first above written.

 **DUKE ENERGY PROGRESS, LLC** (SEAL)

Witnesses: a North Carolina limited liability company

 By: (SEAL)

 Name:

Name: Title:

Name:

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The foregoing document was acknowledged before me this day of 20\_\_\_, by , as of **DUKE ENERGY PROGRESS, LLC**, a North Carolina limited liability company, who is personally known to me or who has produced as identification.

Notary Public: My Commission Expires:

Printed Name: *[Affix Notary Seal Here]*

IN WITNESS WHEREOF, Duke Energy and Grantee have caused this Agreement to be signed under seal in their names, as of the date first above written.

 (SEAL)

Witnesses: a

 By: (SEAL)

 Name:

Name: Title:

 ­

Name:

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The foregoing document was acknowledged before me this day of 20\_\_S, by , as of , a , who is personally known to me or who has produced as identification.

Notary Public: My Commission Expires:

Printed Name: *[Affix Notary Seal Here]*