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PUBLIC SERVICE COMMISSION  
KENTUCKY

### Agreement for Purchase of Power

THIS Agreement made and entered into this 10th day of August, 1998, by and between HENDERSON UNION ELECTRIC COOPERATIVE, P.O. Box 18, Henderson, Kentucky 42419 (hereinafter called the "Seller"), and V.C. OMAHA HOLDINGS, L.L.C., with principal offices located at One Concourse Parkway, Atlanta, Georgia 30328, called the "Customer").

#### WITNESSETH:

That for and in consideration of the premises and the mutual covenants herein contained, the parties do hereby contract and agree as follows:

#### 1. GENERAL OBLIGATIONS

1.01 Seller shall make available, sell and deliver to the Customer, and Customer shall take and pay for all of the electric power and energy, up to a maximum of 2,000 kW, as specified herein and required by Customer in the operation of its facilities, at the rates and upon the terms and conditions herein specified in SCHEDULE "LP-3 OFF-PEAK" Rate Rider attached as Exhibit A.

1.02 Customer shall become a member of Seller, shall pay the membership fee, and shall be bound by such rules and regulations as may from time to time be adopted by Seller.

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PURSUANT TO 807 KAR 0011,  
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BY: Stephan Bue  
SECRETARY OF THE COMMISSION

**2. SERVICE CHARACTERISTICS**

2.01 Service hereunder shall be alternating current 277/480 volt three-phase, four-wire, sixty hertz.

2.02 The delivery of the electric power and energy supplied hereunder shall be at point mutually agreeable to both parties.

**3. FACILITIES AND SERVICES PROVIDED BY CUSTOMER**

3.01 Customer shall furnish and install, at no expense to the Seller, the concrete pad, meter structure with conduit back to transformer secondary, together with such incidental facilities and equipment as may be necessary to enable Customer to receive and use electric power and energy purchased hereunder at and from the point of delivery.

3.02 Customer shall not directly or indirectly resell any electric power and energy purchased hereunder.

**4. FACILITIES AND SERVICES PROVIDED BY SELLER**

Seller shall furnish and install, or cause to be furnished and installed, the transformer (with an output from the metering so that Customer may monitor <sup>public SERVICE COMMISSION</sup> demand control) together with all of the facilities required for the delivery of electric power <sup>OF KENTUCKY</sup> and energy to the point of delivery. <sup>EFFECTIVE</sup>

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**5. OPERATION AND MAINTENANCE OF FACILITIES**

Seller shall operate and maintain, or cause to be operated and maintained <sup>BY: Stephan D. Bell</sup> the transmission lines and substation facilities owned by it, its wholesale power supplier, or both. Customer shall furnish, install, maintain and operate such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased <sup>SECRETARY OF THE COMMISSION</sup>

hereunder, and as may be necessary in the opinion of Seller to afford reasonable protection to the facilities of Seller, its wholesale power supplier, or both. Plans for equipment to be installed for the protection of the facilities of Customer, Seller or its wholesale power supplier, or any combination thereof, shall be subject to Seller's approval.

## **6. CONSTRUCTION STANDARDS**

Seller and Customer shall construct and maintain the facilities to be provided by each under this Agreement in accordance with applicable provisions of the National Electric Safety Code of the American National Standards Institute, the rules and regulations of the Kentucky Public Service Commission, and other applicable laws, codes and regulations, provided, however, Seller shall have no duty to inspect Customer's facilities for conformance therewith. Nothing in this Agreement shall be construed to render Seller liable for any claim, demand, cost, loss, cause of action, damage or liability of whatsoever kind or nature arising out of or resulting from the construction or operations and maintenance of facilities and equipment owned by Customer and not acquired from, or owned or maintained by, Seller.

## **7. ELECTRIC DISTURBANCE AND PHASE BALANCING, AND HARMONICS**

7.01 Customer shall not use the energy delivered hereunder in such a manner as to cause electric disturbances which may reasonably be expected to (i) cause damage or interference with Seller's system, or facilities or other property in proximity to Seller's system, or (ii) prevent Seller from serving other Customers satisfactorily. Seller may require Customer, at Customer's expense, to make such changes in its system, as may be necessary to reasonably limit such disturbances.

7.02 Customer shall take and use the power and energy hereunder in such a

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manner that the load at the Point of Delivery shall not cause a current imbalance between phases greater than ten percent (10%). Seller reserves the right to require Customer, at Customer's expense, to make necessary changes to correct such conditions. Upon written notice by Seller, Customer will have sixty (60) days to correct the condition, and if no correction is forthcoming, Seller may, in its determination of billing demand, assume the load on each phase is equal to the greatest load on any phase.

7.03 Customer shall take and use power and energy hereunder in such a manner that the current harmonic total demand distortion (TDD) shall not exceed limits as described in IEEE Standard 519, Section 10. When necessary to maintain an acceptable TDD level, Customer, at its expense, will install, own, operate, and maintain required harmonic filtering equipment. Seller reserves the right to install at Customer's expense, suitable equipment to maintain a TDD level in accordance with IEEE Standard 519.

7.04 Seller shall give Customer written notice of any disturbances, imbalances, or harmonic distortions, described in Section 7, that Seller determines are caused by Customer's operation of its facilities. Seller's written notice will describe the changes, requirements, corrections or remedies that Seller deems necessary to correct the operations problems. Customer may request a meeting of representatives of both Seller and Customer to review the matters contained in Seller's written notice and to resolve any disputes that arise.

## 8. POWER FACTOR

Customer shall maintain a power factor as described upon SCHEDULE "OFF-PEAK" Rate Rider attached as Exhibit A.

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**9. METERING**

Seller shall install, maintain and operate the metering equipment located at the point of delivery or other agreed upon location. The meter shall be read on or about the twentieth (20th) day of each month (or such other date as may be mutually agreed upon) by a representative of the Seller. Seller shall make such tests and inspections of the meter as may be necessary to maintain it at the highest practical commercial standard of accuracy. If periodic tests indicate that a meter used for billing purposes is accurate within two percent (2%) slow or fast, no correction shall be made in the billing. If any such tests indicate that such meter is inaccurate by more than two percent (2%) slow or fast, correction shall be made in the billing to the proper party for the period during which the parties agree that the inaccuracy existed. Seller will make additional tests of meters at the request and expense of Customer and in the presence of Customer's representative. In all other respects, meters shall be installed, operated, maintained and tested in accordance with the rules and regulations of the Kentucky Public Service Commission.

**10. RIGHT OF REMOVAL**

Any and all equipment, apparatus, devices or facilities placed or installed, or caused to be placed or installed by either of the parties hereto on or in the premises of the other party shall be and remain the property of the party owning and installing same, regardless of mode or manner of annexation or attachment to real property of the other. Upon termination of this Agreement, the owner thereof shall have the right to enter upon the premises of the other party and shall within a reasonable time remove such equipment, apparatus, devices, or facilities, except that Customer shall not recover any easement

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SECRETARY OF THE COMMISSION

conveyed to Seller or its wholesale power supplier necessary to provide service to other customers served through such easements or sites. The party effecting removal under this provision shall pay any damages to the premises or property of the other party caused by such removal.

## 11. RIGHT OF ACCESS

Duly authorized representatives of Seller shall be permitted to enter the Customer's premises at all reasonable hours in order to carry out the provisions of this Agreement.

## 12. RATES AND PAYMENT

12.01 Customer shall pay Seller for service hereunder at the rates set forth upon Exhibit A, attached hereto and made a part hereof, subject to such changes as may become effective from time to time by operation of law, by order of the Kentucky Public Service Commission.

12.02 Subject to all necessary regulatory approvals, including approval by the Public Service Commission of Kentucky, Seller may change the rates and terms reflected in Exhibit A, and such revised rates and term shall automatically be incorporated into this Agreement, effective on the date Seller provides written notice of, and a copy of, such changed rate schedule to Customer. Contemporaneously with such notice, Seller agrees to provide Customer copies of all similar rate schedules and afford Customer an opportunity to change the rate schedule applicable to this agreement.

12.03 Customer shall pay all taxes, charges, or assessments ~~applicable to electric service hereunder~~ applicable to electric service hereunder.

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BY: Stephan Bee  
SECRETARY OF THE COMMISSION

12.04 Bills for service furnished during the preceding monthly billing period shall be processed and mailed to Customer no later than the first (1st) day of each month. Payment by Customer shall be made by check or electronic bank transfer on or before the tenth (10th) day of each month or on the next full work day should the 10th day fall on a Saturday, Sunday, or holiday. In the event the current monthly bill is not paid by its due date, Seller may discontinue delivery of electric power and energy hereunder upon fifteen (15) days written notice to Customer of its intention to do so. Late charges shall apply per Exhibit "A" (Attachment). Any such discontinuance of service under this paragraph shall not relieve Customer of any of its obligations under this Agreement. No provision of the Agreement shall be construed or operate to deny Customer the right to appear before any administrative or legal tribunal to protest any rate adjustment proposed by Seller's wholesale power supplier.

### **13. CUSTOMER DEPOSIT**

As security for payment of its monthly billing obligations, Customer shall provide Seller a cash deposit or other sufficient guaranty (a certificate of deposit issued in the name of Seller, arranged so that the interest thereon is payable to Customer, shall be sufficient guaranty) in the sum of \$40,000, representing two months' estimated billing. Seller may request additional payment security from Customer as monthly billing obligations increase. Seller is required by law to pay 6% interest on all cash deposits and reserves the right to refund a cash deposit, in whole or in part, if deemed appropriate.

### **14. BILLING DEMAND**

14.01 If the first day service is taken under this Agreement is other than the first day of the month, the billing demand for that initial partial month shall be the maximum

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integrated fifteen-minute demand during the current billing month, prorated on the basis of the total days service is taken in such month.

14.02 The minimum billing demand of Customer following the partial month described in Section 14.01 shall be 501 kW per month ("Contract Demand").

### 15. TERM OF AGREEMENT

15.01 This Agreement shall remain in full force and effect for an initial term of one (1) year from the beginning of the first day after the approval set forth in Section 23, and shall automatically renew annually thereafter for successive one-year terms upon the same terms and conditions stated herein and in any amendment hereto, until terminated by either party giving the other party at least six (6) months written notice prior to the effective date of such termination.

15.02 This Agreement shall not be assigned without the prior written consent of Seller, which consent will not be unreasonably withheld. Seller may withhold approval of a proposed assignment until, among other things, Seller has been provided with all information it may require regarding the proposed assignee, and until the proposed assignee has provided Seller with assurances of payment, if any, required by Seller.

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### 16. TERMINATION

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BY: Stephan Bell  
SECRETARY OF THE COMMISSION

16.01 In the event Customer terminates this agreement for any reason other than a material default by Seller hereunder, Customer will pay a termination charge equal to the actual cost of the relocation of transmission facilities (which costs may not exceed a maximum of \$100,000) described in the Pre-Contract Construction Authorization dated October 7, 1997, between Big Rivers Electric Corporation and Customer, less an amount equal to \$.90

per each kW of electricity purchased by Customer from Big Rivers Electric Corporation through Seller ("Relocation Credit"). After the aggregate amount of Relocation Credits is equal to or exceeds the actual cost of the relocation of such transmission facilities, Customer may terminate this agreement without charge or penalty.

16.02 Upon termination of this Agreement for any reason, the Customer will pay a distribution facilities termination charge equal to the actual cost of distribution facilities (estimated to be \$25,000). This amount shall be reduced by 1/36 (estimated to be \$700) for every month service is rendered, so that by the end of the third year of receiving service the obligation will have been met.

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**17. FORCE MAJEURE**

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17.01 In the event either party is rendered unable, wholly or in part, by force majeure or uncontrollable forces to carry out its obligations, upon such party's giving written notice and reasonable full particulars of such force majeure or uncontrollable forces, in writing or by telegraph, to the other party within a reasonable time after the occurrence of the cause relied on, then the obligations, so far as and to the extent that they are affected by such force majeure or uncontrollable forces, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, insofar as possible, be remedied with all reasonable dispatch.

By: Patricia M. Sullivan  
SECRETARY OF THE COMMISSION

17.02 The term "force majeure" as used herein, shall mean acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of government, either

federal or state, civil or military, civil disturbances, explosions, breakage or accident to machinery or transmission lines, inability of either party hereto to obtain necessary materials, supplies, or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (either federal or state), including both civil and military, which are not reasonably within the control of the party claiming suspension.

17.03 This Agreement shall not subject either party to consequential damages or damages for loss of anticipated profits.

### **18. REMEDIES OF THE PARTIES**

Except as specifically provided for herein, nothing contained in this Agreement shall be construed to limit or deprive either party of any means of enforcing any remedy, either at law or equity for the breach of any of the provisions of this Agreement. Waiver at any time by either party of rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter.

### **19. NOTICES**

Any notice, demand or request required or authorized under this Agreement shall be served upon the other party in writing and placed in the mail, postage prepaid, or delivered to the other party at the following address:

To the Seller:

Henderson Union Electric Cooperative  
Post Office Box 18  
Henderson, Kentucky 42419  
Attention: John West, President & CEO

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BY: Stephan D. Bell  
SECRETARY OF THE COMMISSION

To the Customer: V.C. Omaha Holdings, L.L.C.  
One Concourse Parkway, Suite 450  
Atlanta, Georgia 30328  
Attention: President

Each party shall have the right to change the name of the person or location to whom or where notice shall be given or served by notifying the other party in writing of such change.

**20. SUCCESSION AND APPROVAL**

This Agreement shall be binding upon and inure to the benefit of the successors, legal representatives, and assigns of the respective parties hereto.

**21. SURVIVAL**

Invalidity of any portion of this Agreement shall not affect the validity of the remainder thereof.

**22. ENTIRE AGREEMENT AND VENUE**

The terms, covenants and conditions herein contained constitute the entire Agreement between the parties and shall supersede all previous communications, representations, or Agreements, either oral or written, between the parties hereto with respect to the subject matter hereof, provided, however, that service to the Customer shall be subject to the provisions of Seller's articles of incorporation and bylaws and subject to the lawful orders of the Kentucky Public Service Commission. All respective rights and obligations of the parties hereto shall be governed by the laws of the Commonwealth of Kentucky.

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BY: Stephan D. Bell  
SECRETARY OF THE COMMISSION

**23. EFFECTIVE DATE**

This Agreement shall not become effective unless and until it is filed with and accepted by the Kentucky Public Service Commission.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement, as of the date and year first herein written.

**Seller: HENDERSON UNION ELECTRIC COOPERATIVE**

By: *John West*  
President & CEO

**Customer: V.C. OMAHA HOLDINGS, L.L.C.**

By: *Fred B. Beiler, Jr.*

TITLE: *Senior Vice President + CFO*

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BY: *Stephan D. Bee*  
SECRETARY OF THE COMMISSION

HENDERSON UNION ELECTRIC  
COOPERATIVE CORPORATION

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P.S.C. 7

SEP 02 1997

Fourth Revised SHEET NO.13.1

PURSUANT TO 807 KAR 5.011,  
SECTION 9 (1)

CANCELING P.S.C. 7

BY: Stephan O. Bell  
SECRETARY OF THE COMMISSION

Third Revised SHEET NO.13.1

CLASSIFICATION OF SERVICE

SCHEDULE "LP-3 OFF-PEAK" Rate Rider - LARGE POWER (501 to 2000 KW)  
Non-dedicated Delivery

AVAILABILITY

This rate shall apply for large power consumers contracting for a demand of 501 to 2000 KW.

CONDITIONS OF SERVICE

(1) An "Agreement for Purchase of Power" for a period of one year shall be signed by the consumer for service under this rate. The agreement will be automatically renewable on its anniversary date.

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(2) The LP-30P rider may be terminated by either the Cooperative or by the consumer with a thirty-day written notice.

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CHARACTER OF SERVICE

PURSUANT TO 807 KAR 5.011,  
SECTION 9 (1)

Service shall be the 60 Hz, 3-phase, at voltage as mutually agreed by the consumer and consumer.

BY: Stephan O. Bell  
SECRETARY OF THE COMMISSION

DETERMINATION OF BILLING DEMAND

For all delivery points, the Billing Demand in kilowatts shall be the highest of: a.) The Member's maximum integrated fifteen-minute demand at such delivery point during each billing month, determined by meters which record at the end of each fifteen-minute period the integrated kilowatt demand during the preceding fifteen minutes; b.) the Contract Demand; or c.) 500 KW.

DATE OF ISSUE September 9, 1997 DATE EFFECTIVE September 2, 1997

(Interim rates subject to change)

ISSUED BY John West TITLE President & CEO  
Name of Officer

Issued by authority of an Order of the Public Service Commission of Kentucky in Case No. 97-220

Dated August 29, 1997

HENDERSON UNION ELECTRIC  
COOPERATIVE CORPORATION

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
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P.S.C. \_\_\_\_\_ 7 \_\_\_\_\_

SEP 02 1997

Fourth Revised SHEET NO.13.2

PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

CANCELING P.S.C. \_\_\_\_\_ 7 \_\_\_\_\_

BY: Stephan D. Bell  
SECRETARY OF THE COMMISSION

Third Revised SHEET NO.13.2

CLASSIFICATION OF SERVICE

SCHEDULE "LP-3 OFF PEAK RATE RIDER" - LARGE POWER (501 to 2000 KW)  
Non-dedicated Delivery

The Billing Demand as modified by this rider shall be the greater of the applicable percentages as listed below.

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- 60% of any demand set between 8:00 a.m. & 5:00 p.m.
- 110% of any demand set between 5:00 p.m. & 10:00 p.m.
- 20% of any demand set between 10:00 p.m. & 5:00 a.m.
- 110% of any demand set between 5:00 a.m. & 8:00 a.m.

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POWER FACTOR ADJUSTMENT

BY: Stephan D. Bell  
SECRETARY OF THE COMMISSION

The consumer agrees to maintain unity power factor as nearly as practicable. Demand charge will be adjusted for average power factor lower than 90%. Such adjustment will be made by increasing demand 1.% for each 1.% by which the average power factor is less than 90% leading or lagging.

MINIMUM DEMAND CHARGE

The minimum monthly demand charge shall be no less than the amount as specified in the "Agreement for Purchase of Power."

MONTHLY RATE

Customer charge per delivery point ..... \$100.00 (1)

DATE OF ISSUE September 9, 1997 DATE EFFECTIVE September 2, 1997  
(Interim rates subject to change)

ISSUED BY John West TITLE President & CEO  
Name of Officer

Issued by authority of an Order of the Public Service Commission of Kentucky in Case No. 97-220  
Dated August 29, 1997

Form for Filing Rate Schedules

For All Territory Served  
Community, Town or City

HENDERSON UNION ELECTRIC  
COOPERATIVE CORPORATION

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

P.S.C. \_\_\_\_\_ 7 \_\_\_\_\_

SEP 02 1997

Third Revised SHEET NO. 13.3

PURSUANT TO 807 KAR 5.011,  
SECTION 9 (1)

CANCELING P.S.C. \_\_\_\_\_ 7 \_\_\_\_\_

BY: Stephan Bue  
SECRETARY OF THE COMMISSION

Second Revised SHEET NO. 13.3

CLASSIFICATION OF SERVICE

SCHEDULE "LP-3 OFF PEAK RATE RIDER" - LARGE POWER (501 to 2000 KW)  
Non-dedicated Delivery

First 500 kW of Billing Demand, per KW.....	8.75	(R)
Over 500 kW of Billing Demand, per KW.....	7.80	(R)
First 200 kWh/kW of Billing Demand, per KW.....	.03100	(R)
Next 200 kWh/kW of Billing Demand, per KW.....	.02550	(R)
Over 400 kWh/kW of Billing Demand, per KW.....	.02300	(R)

School Taxes added to bill if applicable.  
Kentucky Sales Taxes added to bill if applicable.

PRIMARY SERVICE DISCOUNT

(N)

If service is furnished at primary distribution voltage, a discount of \$.50 per kW of Billing Demand will be applied to the monthly bill if consumer owns and maintains all facilities beyond the meter. The Cooperative shall have the option of metering at primary or secondary voltage.

TERMS OF PAYMENT

Delinquent accounts are subject to a collection fee of \$10.00 or disconnection of service. The above rates are net, the gross rate being five (5%) higher. In the event the current monthly bill is not paid within fifteen (15) days from the date of the bill, the gross rate shall apply.

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DATE OF ISSUE September 9, 1997 DATE EFFECTIVE September 2, 1997  
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ISSUED BY John West TITLE President & CEO  
Name of Officer

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