

STATE OF SOUTH CAROLINA     )  
   )  
COUNTY OF EDGEFIELD         )

This Water Use and License Agreement (the "Agreement") is made and entered into on the 4<sup>th</sup> day of March, 2014 (the "Effective Date") by and between the County of Edgefield (hereinafter "County") and Dixie Belle, Inc. (hereinafter "DBI"):

**RECITALS**

**WHEREAS**, County owns land known as the County Industrial Park as more particularly described on the attached Exhibit A (hereinafter the "Property"); and

**WHEREAS**, DBI owns and/or operates peach orchards adjacent to the county's Property (hereinafter the "Orchards"); and

**WHEREAS**, DBI desires to purchase and transport water from the existing pond (hereinafter the "Pond") located on the Property for orchard irrigation operations (hereinafter "Irrigation") on the Orchards; and

**WHEREAS**, the Parties desire to enter into an agreement whereby County will sell water to DBI for Irrigation; and

**WHEREAS**, County desires to allow and govern the installation, operation and maintenance of necessary equipment and infrastructure on the Property for Irrigation by DBI;

**NOW THEREFORE**, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree as follows:

**1. Grant of License.** County hereby grants a license for the purpose of using the Pond and for the installation and operation of waterlines and other necessary equipment on the Property. This Agreement and all rights granted to DBI herein shall provide exclusive irrigation rights. County shall not grant irrigation rights to any other third party.

**2. License Purpose.**

a. DBI shall, at its sole cost and under the direction of County, be allowed to install pipe waterlines ("Temporary Waterlines") on and across the Property, in a mutually agreed upon location, to have minimal impact. Waterlines may be installed underground.

b. The Temporary Waterlines will be used solely for Irrigation as described herein.

**3. Restoration.** Following completion of this lease, DBI shall remove all Temporary Waterlines and equipment and restore the area to its Original condition as such condition existed prior to entry of this Agreement.

**4. Use of Pond/Water Rights.** Subject to the terms and conditions of this Agreement, DBI shall have the right to draw water from the Pond for Irrigation on its Orchards.

**5. Use of Property.** DBI shall be entitled to use only those portions of the Property as are reasonably necessary for transporting said water.

**6. Consideration.** In consideration for the use of the Property, DBI agrees to pay to County a fee totaling \$15,000 for the Initial Term ("License Consideration Fee"). DBI shall pay the License Consideration Fee on prorated basis of \$1,000 per year. The License Consideration Fee will be due on each anniversary date of this Agreement. In addition, DBI shall make necessary repairs to the pond, sealing off the old overflow with concrete and installing a new siphon overflow system at its own expense.

**7. Maintenance.** DBI shall be responsible for the repair and maintenance of the Pond, Temporary Waterlines and Pump Equipment Area during the term of this Agreement.

**8. Term.** The term ("Initial Term") of this Agreement shall commence on the Effective Date and terminate on the earlier of:

- a. Fifteen (15) years from the Effective Date of this Agreement; or
- b. the written agreement of both Parties.

**9. Ingress and Egress.** DBI shall have right of ingress and egress to, over, and across the Property during use, construction and maintenance, with minimal impact on the Property. Right of ingress and egress shall be limited to the Pond, Temporary Waterlines, Pump(s) and Pump Equipment Area.

**10. Regulatory Requirements.** This Agreement is subject to all applicable federal, state and local laws and any applicable ordinances, statutes, rules, orders, and regulations of any local, state or federal governmental body. DBI agrees to comply with all applicable statutes, laws, rules, regulations, standards and ordinances in effect during the Term of this Agreement.

**11. Responsibility.** County shall not be liable for injuries sustained by DBI personnel while on the Property. DBI assumes the risk of use of the Pond and the Property with or without knowledge of any and all faults in the condition of the Property.

**12. Assignment.** Neither Party may assign its rights and duties under this Agreement without the other Party's written consent. Such consent may not be unreasonably withheld.

**13. Indemnification.** DBI SHALL, AT ITS SOLE COST AND EXPENSE, INDEMNIFY AND HOLD HARMLESS COUNTY AND ANY OFFICER, AGENT, EMPLOYEE, OR OFFICIAL OF THE COUNTY (HEREINAFTER REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST ANY AND ALL LIABILITY, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS), WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY ACT OR OMISSION OF DBI, ITS PERSONNEL, EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, RESULTING IN PERSONAL INJURY, BODILY INJURY, SICKNESS, DISEASE OR DEATH TO ANY PERSON OR DAMAGE TO, LOSS OF OR DESTRUCTION OF TANGIBLE OR INTANGIBLE PROPERTY, WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH DBI'S OPERATION, CONSTRUCTION, INSTALLATION, OR OPERATION ON, OR MAINTENANCE, USE OR CONDITION OF, THE PROPERTY OR DBI'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE OR REGULATION.

**14. Termination.**

a. For Convenience. With the written agreement of both Parties, either Party may terminate this Agreement at any time for any reason.

b. For Cause. Notwithstanding subsection (a), if DBI fails to fulfill any obligation under this Agreement, DBI shall be considered to be in default. If DBI fails to cure such default within ten (10) days after written notice and request to cure from County, County may terminate this Agreement.

**15. Notices.** All notices and other communications hereunder shall be in writing and shall be deemed sufficiently given for all purposes hereof if (i) delivered in person, by courier or by registered or certified United States Mail to the person to be notified, with receipt obtained, or (ii) sent by telecopy, telefax or other facsimile or electronic transmission, with "answer back" or other "evidence of receipt" obtained, in each case to the appropriate address or number as set forth below (or at such other address or number for a Party as shall be specified by like notice). Each notice shall be deemed effective on receipt by the addressee as aforesaid; provided that, notice received by telex, telecopy, telefax or other facsimile or electronic transmission after 5:00 p.m. at the location of the addressee of such notice shall be deemed received on the first business day following the date of such electronic receipt. Until changed pursuant to this Section, notices to the Parties shall be addressed as follows:

**If to County:**

County Administrator  
County of Edgefield  
124 Courthouse Square  
Edgefield, SC 29824

**If to DBI:**

Dixie Belle, Inc.  
Matt Forrest  
1536 Highway 191  
Johnston, SC 29832

**16. Invalid Provision.** In the event any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

**17. Construction and Definition.**

a. Whenever used herein the singular number shall include the plural and the plural number shall include the singular. Whenever used herein the masculine gender shall include the feminine and neuter genders and the neuter gender shall refer to any gender.

b. Section headings used in this Agreement are intended for convenience only and not necessarily to describe the intent of a particular section and therefore shall not be construed as limiting the effect of any provision of this Agreement.

c. This Agreement shall be construed to require good faith and fair dealing between the Parties.

**18. Governing Law; Attorneys' Fees and Expenses.** This Agreement and all controversies relating to the subject matter herein, including tort claims, shall be governed by the laws of the State of South Carolina. If any action at law or in equity is necessary to enforce or construe this Agreement, to the extent permitted by law, the prevailing Party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and other disbursements reasonably

incurred in such action in addition to all other relief to which the prevailing Party may be entitled. Venue for any action brought to interpret or enforce this Agreement shall lie in Edgefield County, South Carolina.

**19. Force Majeure.** In the event that either Party is delayed, hindered, or prevented from performing any action required herein, either Party shall not be liable or responsible if the delay is due to strike, riot, act of God, shortage of labor or materials, war, governmental laws, regulations, or other restrictions or any other causes of any kind which are beyond the reasonable control of either Party, and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

**20. Binding Effect.** This Agreement shall extend to and be binding upon the Parties hereto and their respective successors and permitted assigns.

**21. Amendment.** This Agreement may be waived, altered, amended or repealed, in whole or in part, only by written consent of the Parties.

**22. Entire Agreement.** This Agreement contains the entire understanding between the Parties hereto concerning the subject matter contained herein.

Edgefield County, SC

Dixie Belle, Inc.

by Dean Campbell *D-C*  
Print Name

by Matt Forrest *Matt Forrest*  
Print Name

Its Edgefield County Council Chairman  
Position

its VP  
Position



Google earth

miles

km



1

2





Google earth

