

NORTH CAROLINA)
FORSYTH COUNTY)

A G R E E M E N T

THIS AGREEMENT, made this _____ day of _____, 20__, and between **CCC Ballpark Apartments LLC and ONBROAD, LLC.** and the CITY OF WINSTON-SALEM, NORTH CAROLINA, a municipal corporation (hereinafter the “City”):

W I T N E S S E T H:

WHEREAS, CCC Ballpark Apartments LLC and ONBROAD, LLC represents the owners of certain property as shown on the map attached hereto as Exhibit A, said property known as “The Easley Apartments”; and

WHEREAS, CCC Ballpark Apartments LLC and ONBROAD, LLC desires to have a decorative system for The Easley Apartments that will consist of 21 Acorn decorative streetlights and fiberglass poles; and

WHEREAS, the lighting system will, be owned, operated, and maintained by Duke Energy and leased by the City in accordance with the City’s formal streetlighting contract with Duke Energy; and

WHEREAS, the cost of operation and maintenance of the streetlighting system will be billed by Duke Energy to the City in accordance with the most current Rate Schedule GL; and

WHEREAS, the City has agreed to pay the costs of 10 standard street light fixtures (the “standard charges”) in accordance with Duke Energy’s Rate Schedule GL; and

WHEREAS, CCC Ballpark Apartments LLC and ONBROAD, LLC will fulfill their up-front decorative charge to Duke Energy; and

WHEREAS, it is the desire of CCC Ballpark Apartments LLC and ONBROAD, LLC that the City not incur expenses on account of additional charges for the decorative added facilities and agrees to pay the cost difference between the decorative system and the standard system and the annual administrative charges as described above and outlined in the City Streetlighting Policy and will remain in service within The Easley Apartment property.

NOW, THEREFORE, for and in consideration of the premises and the mutual terms and conditions as hereinafter set forth, the City and CCC Ballpark Apartments LLC and ONBROAD, LLC agree as follows:

1. CCC Ballpark Apartments LLC and ONBROAD, LLC shall reimburse the City for all charges and expenses which the City incurs due to the difference between (a) the standard charges for 10 standard luminaries and (b) the extra charges for 21 Acorn decorative luminaries of the streetlighting system in The Easley Apartment property. These charges shall be based on the City’s design, management, opportunity, and other costs as well as the costs charged by Duke Power.
2. The City shall bill CCC Ballpark Apartments LLC and ONBROAD, LLC annually and the reimbursement shall be paid by CCC Ballpark Apartments LLC and ONBROAD, LLC to the City

annually and shall be received by the City not more than 30 days following the date of the reimbursement bill. If payment has not been made within 30 days, the City shall have the authority to terminate this Agreement immediately. Upon termination, the City reserves the right, in its sole discretion, to have Duke Energy remove decorative fixtures in The Easley Apartments and install standard LED fixtures with wooden poles. CCC Ballpark Apartments LLC and ONBROAD, LLC will be responsible for any and all costs for the removal and installation of these lights.

3. Nothing in this contract shall be construed to grant an ownership interest in the decorative light fixtures to THE EASLEY APARTMENTS. CCC Ballpark Apartments LLC and ONBROAD, LLC hereby acknowledges that the City merely leases the fixtures from Duke Energy and Duke Energy is solely responsible for its decorative adder, underground installation, and electrical rates. CCC Ballpark Apartments LLC and ONBROAD, LLC further acknowledges that it understands that the monthly payment option is no longer available and that all decorative adder charges and any installation charges must be paid up front. Further, CCC Ballpark Apartments LLC and ONBROAD, LLC acknowledges that it understands that it will be responsible for the cost difference for the electrical service as well as an annual administrative charge.
4. CCC Ballpark Apartments LLC and ONBROAD, LLC shall defend, indemnify, save, and hold harmless the City, its employees, agents, and servants against any and all liabilities, judgments, costs, damages, and expenses, including, but not limited to, attorney's fees, which may in any manner arise, come, or accrue against the City in consequence of any acts or omissions of The Easley Apartments, its agents, servants, or employees pertaining to the terms of this Agreement.
5. The initial term of this Agreement shall be ten years, beginning on the first day of the next month following the date of execution of this Agreement. The Agreement shall automatically be extended for successive periods of one year under the same terms and conditions of the original Agreement until such time as the City may give The Easley Apartments notice of termination. The City reserves the right to terminate this Agreement for any reason upon 60 days' notice to CCC Ballpark Apartments LLC and ONBROAD, LLC. Any notice of termination shall be in writing to CCC Ballpark Apartments LLC and ONBROAD, LLC at its last known address.
6. This Agreement shall inure to the benefit and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
7. The Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.
8. The invalidity, illegality or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity, legality, or enforceability of any other portion or provision of this Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes all prior negotiation, representations, or agreements whether written or oral. This Agreement may be amended only by a written instrument executed by each of the parties.
9. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes all prior negotiation, representations, or agreements whether written or oral. This Agreement may be amended only by a written instrument executed by each of the parties.

10. CCC Ballpark Apartments LLC and ONBROAD, LLC. warrants it has the authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

ATTEST:

CCC Ballpark Apartments LLC
(SEAL)

BY: _____

President

Printed Name and Title

Printed Name

ATTEST:

ONBROAD, LLC
(SEAL)

BY: _____

President

Printed Name and Title

Printed Name

ATTEST:

(SEAL)

CITY OF WINSTON-SALEM
(SEAL)

Sandra Keeney
City Secretary

Lee Garrity
City Manager

This instrument has been preaudited in the manner required by the Local Government and Fiscal Control Act.

Approved as to form and legality.

This ____ day of _____, 20__

This ____ day of _____, 20__

Patrice Toney, Budget Director

Angela Carmon, City Attorney