

**Riverwood Athletic Club Community Association
RESOLUTION 2018 - 6**

The following resolution was adopted by unanimous written consent of the Board of Directors for the named Association (hereinafter "Association") as indicated below:

"RESOLVED, that the Board of Directors of the Association unanimously approved the following in Riverwood Athletic Club Community:

Agreement between Town of Clayton, Riverwood on the Neuse, L.L.C., and Riverwood Athletic Club Community Association, Inc. regarding Riverwood Custom Lighting: copy of unexecuted AGREEMENT attached.

The foregoing action was approved without meeting by the Board of Directors of the Association by unanimous written agreement.

All Directors of the Association hereby certify that the foregoing is an accurate representation of the action of the Board of Directors.

This the 28th day of November 2018.

	<small>DocuSigned by:</small>	<i>Brent Wood</i>
Brent Wood, Director	<small>56603AF9778E#53...</small>	
	<small>DocuSigned by:</small>	<i>Reid Smith</i>
Reid Smith, Director	<small>0662877AC0894AA...</small>	
	<small>DocuSigned by:</small>	<i>Matt Zaske</i>
Matt Zaske, Director	<small>3241FEF84C1549D...</small>	

NORTH CAROLINA)
)
JOHNSTON COUNTY)

AGREEMENT

THIS AGREEMENT is made this the ____ day of _____, 2018, by and between the TOWN OF CLAYTON, a municipal corporation and body public organized and existing under the laws of the State of North Carolina (“**Clayton**”), RIVERWOOD ON THE NEUSE, L.L.C., a North Carolina limited liability company (“**Developer**”), and RIVERWOOD ATHLETIC CLUB COMMUNITY ASSOCIATION, INC., a nonprofit corporation organized and existing under the laws of the State of North Carolina (“**Association**”). Clayton and the Association may sometimes be referred to collectively as the “**Parties**”.

WITNESSETH:

WHEREAS, Developer is developing a residential subdivision known as the Riverwood Athletic Club (the “**Subdivision**”), which is located off of Pritchard Road in the Town of Clayton, Johnston County, North Carolina;

WHEREAS, the Association is authorized to own, operate and maintain common improvements within the Subdivision;

WHEREAS, Clayton has jurisdictional authority over the Subdivision;

WHEREAS, Clayton’s ordinances, policies, rules and regulations govern and establish minimum requirements for the street lighting in the Subdivision;

WHEREAS, Developer desired to install, and did install, custom street lighting in portions of the Subdivision;

WHEREAS, Clayton and Developer entered into that certain Lighting Agreement dated August 6, 2001 regarding the street lighting for the Subdivision, wherein Clayton agreed to reimburse Developer on a monthly basis the cost of the standard lighting improvements that otherwise would have been incurred by Clayton;

WHEREAS, Developer and Clayton desire to enter into a new Agreement (the “**Agreement**”) covering certain phases of the Subdivision;

WHEREAS, Developer and Clayton desire to terminate the aforementioned Lighting Agreement dated August 6, 2001;

WHEREAS, Developer and Clayton desire to include Association as a party to the new Agreement because the Association is responsible for paying for the ongoing costs associated with certain street lighting improvements; and

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Riverwood Custom Lighting. The following areas of the Subdivision shall utilize custom street lighting:

- a. Those portions of the Subdivision where lots have been platted and recorded in the Johnston County Register of Deeds Office as of the date of this Agreement, including those sixteen (16) lots in Alpine Valley Phase 6A-4, recorded in the Johnston County Plat Book 86, Page 295 on February 23, 2018; and
 - b. The future eighteen (18) lots in the area known as Alpine Valley Phase 6D-3, which is as of the date of this Agreement a single parcel of land totaling approximately 13.68 acres, owned by Simmental Ventures, LLC and identified as "Future Development" on that plat recorded in the Johnston County Plat Book 86, Page 295 on February 23, 2018.
2. Town of Clayton Lighting. For all other areas of the Subdivision, Clayton shall be responsible for reviewing a submitted lighting design plan from Duke Energy Progress to ensure the plan is in agreement with Clayton ordinances, policies, rules and regulations. Specifically included within the scope of this Section 2 are those phases or sections of the Subdivision commonly referred to as Walton Farms and Badger Pass.
3. Authorization for Custom Lighting. Developer and/or Association is authorized to install, maintain, operate, repair and replace customized street lights and appurtenances thereto in those aforementioned portions of the Subdivision. Developer and/or Association shall pay the full cost of purchasing, installing, maintaining, replacing and operating all of the custom street lights and appurtenances thereto in the Subdivision, including the labor for installing, maintaining and replacing such street lights and appurtenances thereto. Developer and/or Association agrees to be solely obligated for such expenses for the street lights and appurtenances thereto in the Subdivision, and will hold Clayton harmless and will indemnify Clayton from any liability that may arise against Clayton for the costs of installing, maintaining and replacing and operating such street lights and appurtenances thereto in the Subdivision.
4. Custom Light Standards. All street lights and appurtenances thereto installed by the Developer in the Subdivision shall meet or exceed the minimum standards for street lights and appurtenances pursuant to Clayton's ordinances, policies, rules and regulations, including but not limited to size, materials, location and all applicable technical specifications. Developer has installed (i) "Standard" decorative fiberglass black poles with 100 watt/9,500 lumens Town & Country fixtures, and (ii) "Standard" 25' decorative fiberglass black poles with 150 watt/16,000 lumens Cobra Head fixtures. Developer represents and warrants that the street lights and appurtenances installed as of the date of this Agreement meet or exceed all applicable minimum standards.
5. Payment Upon Execution. Upon execution of this Agreement, Clayton shall pay to the Association the following:
 - a. A lump sum amount of EIGHT THOUSAND DOLLARS AND NO/100 (\$8,000.00) which represents payment for all of the Town's obligations through January 3, 2018; and
 - b. Four (4) payments of FOUR THOUSAND EIGHT HUNDRED FOUR DOLLARS AND 38/100 (\$4,804.38), totaling NINETEEN THOUSAND TWO HUNDRED SEVENTEEN DOLLARS AND 52/100 (\$19,217.52), which represents Duke Energy Progress payments for January 3, 2018 to April 30, 2018; and
 - c. Six (6) payments of FOUR THOUSAND EIGHT HUNDRED SEVENTY-ONE DOLLARS AND 25/100 (\$4,871.25), totaling TWENTY-NINE THOUSAND TWO HUNDRED TWENTY-SEVEN DOLLARS AND 50/100 (\$29,227.50), which represents Duke Energy Progress payments for May 1, 2018 to October 31, 2018.

6. Monthly Payment Order. Clayton shall reimburse Association through a monthly Payment Order (a “**Payment Order**”) in the below amounts, which represents the estimated total monthly cost that would be incurred by Clayton if it were required to install and operate standard street lights and appurtenances thereto according to Duke Energy Progress’s most recent published Street Lighting Service Schedule, which initial amount is reflected on Exhibit A, which may be updated from time to time. Association shall transmit the receipt from Duke Energy Progress, confirming the bill for the prior month has been paid in full. Upon receipt, the Town shall transmit the monthly Payment Order within fifteen (15) business days.
 - a. Initial Payment Order Amount. For the monthly period beginning November 1, 2018 and for every monthly period thereafter until that date identified in the below Subparagraph 6.b., the Payment Order amount shall be FOUR THOUSAND EIGHT HUNDRED SEVENTY-ONE DOLLARS AND 25/100 (\$4,871.25).
 - b. Payment Order Amount Including Alpine Valley Phase 6D-3. Beginning on that date which is sixty (60) days from the date of recording of the plat for Alpine Valley Phase 6D-3 in the Johnston County Registry, the amount of the monthly Payment Order shall be automatically changed to FOUR THOUSAND NINE HUNDRED THIRTY-EIGHT DOLLARS AND 12/100 (\$4,938.12). Developer shall notify the Town within five (5) business days of the recordation in the Johnston County Registry.
7. Annual Reconciliation Meeting. Within thirty (30) days following the calendar year, Association shall certify to Clayton that all of Association’s Duke Energy Progress bills for the previous year have been paid. Following certification, the Parties shall conduct a meeting to reconcile the difference between the monthly Payment Order amount and the actual Duke Energy Progress costs for the previous year. Town shall be responsible for any underpayment that may have occurred during the preceding calendar year, and Association shall be responsible for any overpayment that may have occurred during the preceding calendar year, and the amount of such underpayment or overpayment shall be paid to the other party within sixty (60) days of the reconciliation meeting. At the reconciliation meeting, Association must provide the Town with an updated copy of the Association’s contract with Duke Energy Progress, if applicable.
8. Revisions to Payment Order. In the event of changes to the estimated total monthly cost of installing, maintaining and operating street lights in accordance with Clayton’s regulations, as reflected in the monthly Payment Order, Clayton shall notify Developer and Association in writing prior to transmittal of the upcoming Payment Order.
9. Right to Terminate. Clayton reserves the right to terminate this Agreement upon the giving of sixty (60) days’ written notice to Developer and Association. However, such termination may not be arbitrary and must be reasonable. In the event Clayton terminates this Agreement, Clayton shall (i) remove or cause to be removed the custom street lighting and appurtenances thereto, (ii) install or cause to be installed in the Subdivision standard street lights and appurtenances thereto, and (iii) assume all obligations for the costs and expenses associated with replacing and operating such standard street lights and appurtenances thereto in the Subdivision.
10. Indemnification. To the maximum extent permitted by law, Developer, its successors and assigns, and Association, its successors and assigns, agree to and shall indemnify and hold Clayton, its officials (elected and appointed), commissioners, council members, employees, managers, insurers, attorneys, agents, representatives, successors and assigns, jointly and severally, harmless from and against any and all threatened and actual claims, suits, demands, causes of action, actions,

judgments, damages, liability, losses, penalties, fines, assessments, violations, notices of violations, costs, fees and expenses (including, without limitation, reasonable attorneys' fees and expenses) arising out of or relating in any way (or alleged to arise out of relate in any way) to this Agreement, including but not limited to any claims, suits, demands, causes of action, actions, judgments, damages, liability, losses, penalties, fines, assessments, violations, notices of violations, costs, fees and expenses (including, without limitation, reasonable attorneys' fees and expenses) for alleged negligence, gross negligence, personal injury, bodily harm or property damage, breach of this Agreement, or breach of the warranties included in Sections 3 or 4 above, arising out of or relating in any way to this Agreement. The obligations set forth in this Paragraph shall survive termination or expiration of this Agreement for any reason.

11. Assignment. Developer may, in its sole discretion, assign its rights and obligations hereunder to the Association. By executing this document, Clayton consents to the assignment of such rights and obligations to the Association and no further documentation is necessary to effectuate such assignment. In the event of an Assignment, Association must notify Clayton in writing within ten (10) business days of the assignment.

12. Notice. All notices, requests, consents, or other communications provided for in or to be given under this Agreement shall be in writing, may be delivered by US mail or electronic mail, and shall be deemed to have been duly given and to have become effective: (i) upon receipt if delivered by electronic mail; or (ii) three (3) days after having been deposited in the US mail, all fees prepaid, directed to the parties or their assignees at the following address (or at such other address as shall be given in writing by a party hereto):

To the Town: Town of Clayton
 Attn: Public Works Director
 P.O. Box 879
 Clayton, NC 27528

 Email: tsimpson@townofclaytonnc.org

To Developer: [Insert physical address and email]

To Association: [Insert physical address and email]

The address to which any notices, requests, consents, or other communications may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

13. Entire Agreement. This Agreement reflects the complete understanding of the parties hereto and constitutes their entire agreement with respect to the subject matter hereof, superseding all prior negotiations, representations, contracts, agreements, promises, understandings, and statements concerning the subject matter hereof.

14. Modifications to Agreement. This Agreement may be modified only by a written instrument duly executed by all Parties hereto.

15. Binding Agreement. This Agreement shall bind and inure to the benefit of the Parties hereto and their successors and assigns. This Agreement and all documents referred to herein shall be governed by, constructed and interpreted in accordance with the laws of the State of North Carolina.

16. Waiver of Breach. The waiver of either of the Parties of any breach or violation of any terms or provisions of this Agreement by any other party hereto shall not operate as a waiver of any other breach or violation.
17. Severability. The provisions of this Agreement are hereby deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity and enforceability of the remaining provisions hereof.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the Effective Date.

RIVERWOOD ON THE NEUSE, L.L.C.
a North Carolina limited liability company

By: _____ (SEAL)

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public do hereby certify that _____ personally appeared before me this day and acknowledged that (s)he is _____ of Riverwood On The Neuse, L.L.C., and that (s)he in such representative capacity voluntarily signed this Agreement for the purposes stated therein.

WITNESS my hand and official seal this the ____ day of _____, 2018.

Notary Public

(SEAL)

Print Name

My Commission Expires: _____

IN WITNESS WHEREOF, this Agreement has been duly executed as of the Effective Date.

RIVERWOOD ATHLETIC CLUB COMMUNITY ASSOCIATION, INC.
a North Carolina non-profit corporation

By: _____ (SEAL)
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public do hereby certify that _____ personally appeared before me this day and acknowledged that (s)he is _____ of Riverwood Athletic Club Community Association, Inc., and that (s)he in such representative capacity voluntarily signed this Agreement for the purposes stated therein.

WITNESS my hand and official seal this the ____ day of _____, 2018.

Notary Public

(SEAL)

Print Name

My Commission Expires: _____

IN WITNESS WHEREOF, this Agreement has been duly executed as of the Effective Date.

TOWN OF CLAYTON
a North Carolina municipal corporation

By: _____ (SEAL)

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public do hereby certify that _____ personally appeared before me this day and acknowledged that (s)he is _____ of the Town of Clayton, and that (s)he in such representative capacity voluntarily signed this Agreement for the purposes stated therein.

WITNESS my hand and official seal this the ____ day of _____, 2018.

Notary Public

(SEAL)

Print Name

My Commission Expires: _____

Pre-Audit Certificate Required by N.C.G.S. § 159-28(a):

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.

By: _____

Name: _____

Title: Finance Director

EXHIBIT A**CALCULATION OF INITIAL MONTHLY PAYMENT**

For Initial Payment Order Amount (Section 6(a))

Type of Pole and Custom Street Light (as of December 1, 2018)	Rate Per Pole + Street Lights	Quantity Installed	Total
25' Pole + Cobrahead Fixture	\$15.80	65	\$1,027.00
16' Pole + Town and Country	\$12.53	228	\$2,856.84
UG Service Charge	\$3.37	293	\$987.41
			\$4,871.25

For Payment Order Amount Including Alpine Valley Phase 6D-3 (Section 6(b))

Type of Pole and Custom Street Light (60 days after recordation of Alpine Valley 6D-3)	Rate Per Pole + Street Lights	Quantity Installed	Total
25' Pole + Cobrahead Fixture	\$15.80	66	\$1,042.80
16' Pole + Town and Country	\$12.53	231	\$2,894.43
UG Service Charge	\$3.37	297	\$1,000.89
			\$4,938.12

*Amounts based on Duke Energy Progress's Street Lighting Service Schedule SLS-32, effective January 1, 2015.