

**ELECTRIC SERVICE AGREEMENT  
FOR 1350 EAST OGDEN REDEVELOPMENT**

THIS ELECTRIC USAGE AGREEMENT (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (“**Effective Date**”) between the City of Naperville, a municipal corporation and home rule unit of local government under the Constitution and laws of the State of Illinois with offices located at 400 South Eagle Street, Naperville, IL 60540 (“**CITY**”), and Naperville Apartments, LLC, an Illinois limited liability company which is registered with the Illinois Secretary of State’s Office with offices at 400 Skokie Blvd., Suite 580, Northbrook, Illinois 60062 (“**OWNER**”). The CITY and OWNER are together hereinafter referred to as the "**Parties**" and sometimes individually as "**Party**".

**RECITALS**

- A. The OWNER owns the real property located at 1350 Ogden Avenue, Naperville, legally described on **Exhibit A** and depicted on **Exhibit B**. (“**Owner’s Property**”).
- B. The building located on the Owner’s Property was previously operated as a hotel; upon redevelopment of the Owner’s Property, said building will be operated and maintained as an apartment complex which is anticipated will contain one hundred and twelve (112) apartment units (“**Apartment(s)**”). The building, including but not limited to the Apartments, is referenced herein as the “**Building**”.
- C. To retrofit the Building to provide a separate meter for each of the one hundred and twelve (112) Apartments would be logistically extremely difficult to achieve and cost prohibitive.
- D. In lieu of providing an electric meter for each Apartment which would reflect the usage data for a monthly electric utility bill to be paid for by the occupant of each Apartment, the OWNER has requested that the Building, including but not limited to all Apartments, be served by one or more electric meters which would provide usage data for a monthly electric utility bill for the entire Building, payment of which will be the responsibility of the OWNER (“**Centralized Metering**”).
- E. The CITY agrees to the Centralized Metering described in Recital D above subject to the terms and conditions set forth and referenced herein.

**WITNESSETH**

- 1. Recitals Incorporated. The Recitals above are hereby incorporated and made a part of this Paragraph 1 as though fully set forth in this Paragraph 1.
- 2. OWNER’S Obligations. The Naperville Municipal Code (“**Code**”) defines “Customer” as “The person who uses electric energy supplied by the City Department of Public Utilities by means of its electrical distribution system.” In consideration of the CITY’S agreement to permit Centralized Metering as described herein, the OWNER agrees and acknowledges that during the term of this Agreement, the OWNER shall be deemed the sole Customer of the Building, including but not limited to every Apartment within the Building, and agrees to:

- 2.1 Comply with the terms of this Agreement;
  - 2.2 Comply with all provisions related to electric service set forth and referenced in the Naperville Municipal Code (“Code”), as amended from time to time, including but not limited to the provisions set forth in Chapter 8 of the Naperville Municipal Code and the Service Rules and Policies Handbook, as amended from time to time;
  - 2.3 Timely pay in full all electric bills issued by the CITY for the Building. Such payment shall be made in compliance with Code provisions then in effect. Failure by the occupants of one or more Apartments to timely pay rent to the OWNER, or any other circumstance, shall not relieve the OWNER of OWNER’S obligation to make said full and timely payment. If the OWNER claims that a CITY electric bill has been incorrectly calculated, the OWNER may seek a correction as provided for in the Code. If the OWNER has been underbilled by the CITY, the OWNER will promptly pay the underbilled amount or enter into a deferred payment agreement with the CITY as provided for in the Code;
  - 2.4 Include in every Apartment rental or lease agreement a provision that clearly notifies the occupants of the Apartment that the City of Naperville may discontinue and/or disconnect electric service to the Building, including all Apartments in the Building, if the OWNER fails to timely pay electric utility bills issued by the CITY for the Building, or otherwise fails to comply with the requirements set forth or referenced in this Agreement. Said notice shall be in not less than 12-point font, shall be bolded and underlined, and shall be prominently located in the rental or lease agreement; and
  - 2.5 If the CITY gives notice to the OWNER of its intent to discontinue and/or disconnect electric service to the Building for OWNER’S failure to comply with OWNER’S obligations under Section 2 of this Agreement, the OWNER shall be required to hand-deliver copies of the notice to each Apartment within twenty-four (24) hours of receipt of said notice from the CITY, and to provide an affidavit of compliance with this requirement to the CITY within forty-eight (48) hours of receipt of such notice.
  - 2.6 If OWNER transfers, conveys, or assigns all or any portion of Owner’s Property, OWNER shall give the CITY notice thereof within ten (10) days pursuant to the notice provisions set forth in paragraph 8 below.
3. CITY’S Remedies for OWNER’S Failure to Timely Pay. Failure to timely pay in full electric bills and penalties, or bills for other electric facility costs issued by the CITY for the Building may result in the discontinuance and/or disconnection of electric service to all portions of the Building. The CITY will not discontinue service to individual Apartments at the OWNER’S request due to failure of the occupant of an

Apartment to timely pay rent or other amounts OWNER claims are due. The CITY shall give notice of its intent to discontinue service to the entire Building to the OWNER as the Customer of the Building as such notice is required to be given by Code. The OWNER shall provide copies of such notice to the occupants of the Apartments as set forth in paragraph 2.5.1 above. The CITY may also take other appropriate legal action as set forth in the Code, as amended from time to time, or as otherwise deemed appropriate. In addition, the CITY may terminate this Agreement as provided for in paragraph 5 herein.

4. Term. This Agreement shall be in effect for a period of thirty (30) years from the Effective Date of this Agreement and shall automatically renew from year to year without further action by either Party unless otherwise terminated as provided herein.

5. Termination.

5.1 The CITY may terminate this Agreement on not less than ninety (90) days' written notice to the OWNER should the OWNER default on any Material Term of this Agreement (as "Material Term" is defined in Paragraph 9 below) and remain in default for more than thirty (30) days after issuance of notice from the CITY. Notice shall be given as provided in paragraph 8 herein. Upon termination, the CITY will cease to provide electric service to the Building until the OWNER of the Building has provided individual meters to each Apartment in the Building as approved by the CITY unless agreed to by the CITY in writing.

5.2 The OWNER may terminate this Agreement on not less than ninety (90) days' written notice to the CITY. Notice shall be given as provided in paragraph 8 herein. Upon termination, the CITY will cease to provide electric service to the Building until the OWNER of the Building has provided individual meters to each Apartment in the Building as approved by the CITY unless agreed to by the CITY in writing.

6. Defense, Indemnification, and Hold Harmless. The OWNER shall defend (with legal counsel approved by the CITY, which approval shall not be unreasonably withheld), indemnify, and hold harmless the CITY and the CITY's electric utility, and its officers, agents, employees, and representatives from and against all claims, suits, actions, administrative enforcement proceedings, losses, damages of all kinds, costs, expenses, fines and penalties, attorneys' fees and expenses of litigation, of any nature whatsoever, related to or arising out of this Agreement, including but not limited to any claim or action related to the provision, or discontinuance and/or disconnection of electric service to the Building and related to any negligent act or omission of the CITY related to this Agreement. Nothing contained herein shall be construed as a limitation or waiver

of defenses available to the Lessor and its agents, including, but not limited to the Illinois Local Government and Local Governmental Employees Tort Immunity Act.

7. Binding Effect. This Agreement shall be binding upon the Parties hereto and their successors and assigns.
8. Notice. When notice (“Notice”) is required herein, it shall be given by FedEx or overnight mail addressed to the individuals or entities set forth below:

IF TO THE CITY:  
City of Naperville  
Attention: City Manager  
400 South Eagle Street  
Naperville, IL 60540

WITH COPIES TO:  
City of Naperville Department of Utilities  
Electric Service Center  
Attention: Director of DPU-Electric  
1392 Aurora Avenue, Naperville, IL 60540

IF TO THE OWNER:  
Brad Zaransky  
Naperville Apartments, LLC  
400 Skokie Blvd., Suite 580  
Northbrook, Illinois 60062

WITH COPIES TO:  
Vince Rosanova  
Rosanova & Whitaker, Ltd  
127 Aurora Avenue  
Naperville, Illinois 60540

The CITY and the OWNER may, by written Notice to the other Party, substitute names and addresses for notices as appropriate.

9. General Provisions.
  - 9.1 Amendment. No subsequent amendment, modification or waiver of any of the provisions of this Agreement shall be effective unless in writing and executed by the Parties hereto.
  - 9.2 Choice of Law and Venue. The laws of the State of Illinois shall govern the terms of this Agreement as to both interpretation and performance. Venue for action arising out the terms or conditions of this Agreement shall be in

the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

- 9.3. Severability. In the event that one or more of the provisions contained in this Agreement should for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 9.4. Ambiguity. If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
- 9.5. Recordation. This Agreement shall be recorded in the Office of the DuPage County Recorder.
- 9.6. No Waiver. No waiver or any breach of any one or more of the conditions or covenants of this Agreement by the CITY or by the OWNER shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.
- 9.7. Subordination. The CITY'S rights and interests under this Agreement shall not be subordinated to any other interest.
- 9.8. Attorneys' Fees. OWNER shall be responsible to pay the CITY'S reasonable attorneys' fees and costs (whether in-house or outside counsel) associated with enforcement of any aspect of this Agreement.
- 9.9. Captions and Paragraph Headings. Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.
- 9.10. Authorization. The undersigned warrant and represent that they are authorized to execute this Agreement. A certified copy of resolution or minutes approving execution of this Agreement by the OWNER is attached hereto as **Exhibit C**.
- 9.11. Material Term as defined for the purpose of this Agreement, shall include failure to comply with the provisions of Paragraph 2 above.
- 9.12. Survival. All provisions of this Agreement which provide that the City is owed money or is otherwise entitled to reimbursement for any reason and the provisions contained in the following paragraphs shall survive any expiration, termination or novation of this Agreement. In addition, the following provisions shall survive the expiration or termination of this Agreement: paragraphs 1, 2.3, 3, 6, 9.2, 9.3, 9.4, 9.6, 9.7, 9.8, 9.9, 9.11 9.12, and 10.

10. Agreement Applicable Only to the Current Structure on Owner's Property.

This Agreement applies only to the Building located on Owner's Property as of the Effective Date of this Agreement and shall not apply to a new structure on Owner's Property.

/SIGNATURES ON FOLLOWING PAGES/

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date entered on page 1 hereof.

**CITY OF NAPERVILLE**

By: \_\_\_\_\_  
Douglas A. Krieger  
City Manager

Attest:

By: \_\_\_\_\_  
Pam Gallahue, Ph.D.  
City Clerk



**EXHIBIT A**

**Petition for Development Approval: 1350 E Ogden Redevelopment  
Legal Description**

**Property P.I.N.: 08-08-106-037**

**LOT 1 AND THE EAST 17.56 FEET OF LOT 2 IN T. AND O. RESUBDIVISION BEING A RESUBDIVISION OF LOTS 1, 2, 3, 24, 25 AND 26 IN BLOCK 4 IN ARTHUR T. MCINTOSH AND COMPANY'S DUPAGE FARMS, BEING A SUBDIVISION OF PART OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 10 EAST, OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED JULY 15, 1982 AS DOCUMENT R82-30010, IN DUPAGE COUNTY, ILLINOIS.**





**Exhibit C**

**Managers' Certification and Resolution**

**Written Consent**

We, Michael H. Zaransky and Bard Zaransky, sole Members and Managers of Naperville Apartments, LLC, an Illinois limited liability company, do hereby certify and provide unanimous written consent that:

Brad Zaransky has full authority and is authorized to execute the preceding Electric Usage Agreement for 1350 East Ogden Redevelopment ("Agreement") between the City of Naperville and Naperville Apartments, LLC.

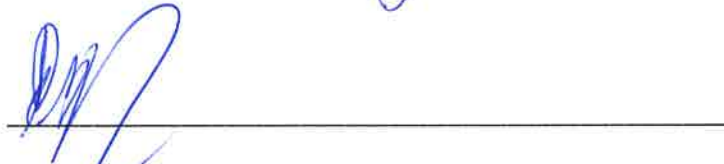
Furthermore, Brad Zaransky has been validly appointed a Manager and his signature opposite his name, on behalf of Naperville Apartments, LLC, on the Agreement is genuine.

**Naperville Apartments, LLC**  
**An Illinois Limited Liability Company**



---

Michael H. Zaransky, Manager-Member



---

Brad Zaransky, Manager- Member