

**NORTH CAROLINA
DURHAM COUNTY**

**NON-REIMBURSABLE
UTILITY CONTRACT**

THIS CONTRACT made and entered to as of the _____ day of _____ 2025,
by and between Chin Page Apartments Owner, LLC (hereinafter the “Developer”) and the
COUNTY OF DURHAM (hereinafter the “County”)

WHEREAS, the Developer proposes to construct certain County owned Utilities (described in Appendix A, hereinafter the “Project”) including but not limited to sanitary sewer, reclaimed water, water, and/or fiber optic (hereinafter the “Utilities”) identified as “Public” on the developed parcel and within an easement dedicated to the County as shown on plans prepared by the Developer and provided to the County (said plans being incorporated herein by reference);

WHEREAS, the County desires the Project to be designed and constructed of such capacity to serve upstream and/or adjacent properties in the future;

WHEREAS, the Developer agrees to design any items not specified in this contract in accordance with the County’s Specifications and Details;

WHEREAS, the Developer agrees to fund the design and construction and any necessary easement acquisition associated with the Project;

WHEREAS, Developer agrees that the parcel is subject to an easement in favor of the County for the Utilities, as shown on the approved construction plans which is incorporated herein by reference;

WHEREAS, the County agrees the Project is for a public purpose and that following construction of the Project and Warranty Period by the Developer, the County shall be solely responsible for the operation and maintenance of the Utilities identified as “Public” on the approved construction plans for the Project;

WHEREAS, Developer has agreed that the County shall not be responsible for repairing improvements on the parcel following County’s replacement, repair or maintenance (hereinafter collectively “Repair”) of the Utilities, as stated herein;

NOW THEREFORE, in consideration of one cent and other valuable consideration, including but not limited to System Development Fee of \$449,625.95 for a 86,875 gallon per day domestic strength wastewater allocation, the receipt of which is hereby acknowledged, the Developer and the County, and the heirs, successors, and assigns of each of them agree:

1. **Included Appendices (if any).** This Contract shall include:

Appendix "A"-Project Specifications

Appendix "B"- Standard Provisions

Appendix "C"- Utility Maintenance and Repair

The above reference Appendices are incorporated herein by reference and are part of this Contract.

2. **Effective Date.** The "effective date" of this Contract shall be the date first set forth above in the preamble to this Contract, irrespective of the date of execution by the parties. All renewal or non-renewal periods or deadlines stated in this Contract, if any, shall be calculated based on the "effective date" indicated above.

3. **Definitions and Rules of Interpretation.** In this Contract, the following terms, whether capitalized or not, shall have the meanings set forth below, unless it is clear in the Contract that the context requires otherwise. In addition, the rules of interpretation set forth below shall apply.

"County" means the County of Durham, North Carolina.

"County Requirements" mean all ordinances, policies, standards, and specifications prescribed by the County applicable to the development activity, work, or construction undertaken pursuant to this Contract. Such Requirements may include, but are not limited to, Durham County Utilities Standards and Specifications, Durham County Code of Ordinances, the Unified Development Ordinance, and standards for processing of and construction of infrastructure.

"Developer" is the owner of the Property or the entity which has contracted to purchase the various parcels composing the Property thereby becoming the owner of the Property, and is the entity identified in the first paragraph of this Contract. "Developer" includes successors in interest and assigns.

"Improvements" means all infrastructure on the Property required by the County that allows water and sewer to be delivered specifically to or from the Property and integrated into the County's utility system, all as contemplated in Appendix A hereto. Developer is responsible for the construction of all Improvements required under this Contract.

"Person" includes. natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities.

"Project" means all improvements approved pursuant to site plan D2200131 and D2400240 and all improvements described under Appendix A hereto (and associated additional site plans or amendments, construction drawings, permits, construction, and operational startup).

"Property" means the land located within the Durham County Utility Basin as identified in Appendix A.

"Water, sewer, and/or reclaimed water" refer to the particular utilities being installed by Developer,

which may include water only, sewer only, reclaimed water only, or all three utilities, as generally described in Appendix A and as ultimately determined through County review of site plans and construction drawings.

The following rules of interpretation apply: (1) The singular includes the plural, and the plural the singular; (2) The word "shall" is mandatory.

4. **Developer's Obligation.** The Developer shall bear the total cost and expense of all the obligations and duties created by this Contract unless otherwise explicitly stated in this Contract. Those obligations and duties are, generally, to create all Improvements on the Property as may be required by the County in accordance with this Contract and with County Requirements, all as described in Appendix A hereto. The Developer's obligations also include all costs, including but not limited to legal costs, of acquiring, all fees or easements cost within which the Improvements will be located, provided the parties acknowledge and agree that no such easements or fees shall be required in connection with the Improvements being constructed on the Property pursuant to this Contract.

5. **County's Obligation.** After the one-year warranty period the County shall have those obligations specifically stated in Appendix C attached hereto.

6. **Contracts.** Developer shall ensure that its contracts for design and construction of the Improvements do not shorten or limit any otherwise applicable warranties or statutes of limitation and shall not conflict with any of the conditions and provisions specified in Appendix "C". In addition, Developer shall ensure that such contracts contain an assignment clause that allows assignment of any warranties regarding the constructed Improvements to the County.

7. **Conflicts.** In the event of conflict between this Contract and any law, state or federal regulation, or County Requirements, the stricter of the applicable provisions shall control.

8. **Assignments.** Developer shall have the right to assign this Contract in the event of a sale of the Property or a portion thereof without the prior written consent of the County. Developer shall notify the County in writing of any assignment of the obligations under this Contract. An assignment by Developer of the obligations under this Contract does not limit the obligations of successor owners of the property.

9. **Contract A Covenant that Runs with Land.** The obligations and entitlements of this Contract are covenants that run with the Property, and are binding on all heirs, assigns, successors in interest, and other subsequent owners. Within 30 days of Contract execution, Developer shall record this Contract, and shall furnish the County a copy of the recorded document. No development approvals shall be issued by the County in the absence of recordation and certification as described above.

10. Notice.

(a) Mode and Designated Recipients. All notices and other communications given under this Contract shall be written, and made by personal delivery, fax, Federal Express, or United States mail, addressed as follows. The parties are also requested to send a copy by email.

To the Developer:

Company: Chin Page Apartments Owner, LLC

Attention: Caitlin Shelby

Address: 1414 Raleigh Rd., Ste 429, Chapel Hill, NC 27517

Phone: 919-355-0110

Email: Caitlin.Shelby@woodpartners.com

To the County:

County of Durham

Attention: Stephanie Brixey

Deputy Director / POTW Director

5926 NC Highway 55 East

Durham, North Carolina 27713

Phone: 919-560-9033

Email: sbrixey@dconc.gov

(b) Change of Address. Notice of a change of address, fax number, or person to receive notice shall be provided to the other party in writing through one of the means described above.

(c) Time of Receipt. A notice or other communication is effective upon delivery to the other party if it is personally delivered or sent by fax. Notice sent by mail or Federal Express is effective upon the second workday after the date it was sent, as evidenced by a postmark or similar indicia, or upon actual delivery.

11. **No Third-Party Rights.** This Contract is intended for the benefit of the County, and Developer and not for any other Person, and no such Persons shall enjoy any right, benefit, or entitlement under this Contract.

12. **Nondiscrimination Policy; EEO.** Pursuant to Durham County Policy, Developer shall not discriminate against any employee or applicant for employment because of age, race, sex, sexual orientation, gender identity or expression, creed, national origin or ancestry, marital or familial status, pregnancy, military status, religious belief or non-belief, or disability. Developer shall take affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their age, race sex, sexual orientation, gender identity or expression, creed, national origin or ancestry, marital or familial status, pregnancy, military status, religious belief or

non-belief, or disability. In the event Developer is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY, and Developer may be declared ineligible for further COUNTY contracts. **Developer certifies that Developer shall abide by Durham County Ordinance Article I, Sections 15-1 through 15-85. Failure to abide by said Ordinance is a breach of this Agreement and grounds for terminating the Agreement for cause and without fault or liability to COUNTY.**

13. **Governmental Authority Retained.** Nothing contained in this Contract shall be deemed or construed to in any way stop, limit, or impair the County from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions, or shall limit the County's discretion in the exercise of such powers and functions.

14. **Remedies; Breach.** The parties shall have all remedies allowed by law to enforce this Contract. Substantial breach of this Contract shall result in the Contract becoming void, at the election of the nonbreaching party. Prior to voiding the Contract, the party alleging a substantial breach shall give notice to the other party and shall afford an opportunity to cure of at least 60 days. In addition, in the event of breach by Developer, the County may withhold any permit or approval related to development, construction, or occupancy in the Project until such breach is cured by Developer. Enumeration of these remedies is not exclusive.

15. **Termination.** Developer's failure to initiate substantial construction activity within one-year of execution of this Contract, and continue said construction expeditiously toward completion, with adequate forces, and in good faith may result in termination of this Contract, at the election of the County. The County's Director of Engineering shall determine if such failure exists and shall notify Developer in writing. Developer shall have at least 90 days to initiate or increase construction activity. Final notice of termination shall be given by the County Manager or a Deputy County Manager.

16. **Waiver.** No action or failure to act by the County shall constitute a waiver of any of its rights or remedies that arise out of this Contract or constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

17. **Severability.** In the event any substantive provision of this Contract is declared unenforceable by an appropriate judicial authority, such provision shall be given its nearest legal meaning or be construed or deleted as such authority determines, and the remainder of this Contract shall remain in full force and effect.

18. **Modifications.** Substantial modifications of the Contract shall be approved by the Board of County Commissioners. Minor modifications, modifications of Appendix "A", "B", or "C" regarding Improvements, and substitution of an assignee owner of a substantial portion of the property by the original Developer may be approved by the County Manager or Deputy or Assistant County Manager without the Board's approval. No approval by the County shall be required in the event of an assignment of this Contract by Developer in connection with a sale of the property or a portion thereof. A modification to the Project which both reduces the overall

density of and utility demand within the Project or which would not be considered to be a significant deviation under the standards set forth in Appendix "B" is a "minor modification" under this Paragraph. A modification of this Contract is not valid unless it is signed by all parties and is otherwise in accordance with requirements of law. Further, a modification is not enforceable against the County unless it is signed by the County Manager or a Deputy or Assistant County Manager.

19. **Recordation of Status of Agreement.** The County shall cooperate with the Developer in executing any form to be filed by the Developer if the Contract is voided, terminated or superseded, or its requirements are fully satisfied.

20. **Choice of Law and Forum; Process Agent.** This Contract shall be deemed made in Durham County, North Carolina. This Contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This limitation, however, shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. Developer shall maintain a registered agent in North Carolina with the office of the N. C. Secretary of State.

21. **Indemnification.**

Definitions. In this Section 21 the following definitions shall apply:

"Claims" are claims, losses, damages, liabilities, fines, penalties, fees, royalties, costs, demands, actions, suits, and judgments of any kind or nature whatsoever, whether at law or in equity, including court costs and reasonable attorney's fees assessed as part of any of said items.

"Persons Connected with Developer" are Developer's officers, members, managers, board members, employees, agents, contractors, subcontractors of all tiers, and invitees.

"County Indemnities" are the County, its officers, officials, employees, agents, and independent contractors, but excluding Developer.

To the fullest extent permitted by law, County hereby reserves the right to recover legal expenses including attorney fees, litigation expenses and court costs, as well as actual damages or losses suffered by County, if Developer or persons connected with Developer's breach of its obligation to this Contract is found to be a proximate cause of damages or losses suffered by County, resulting from Developer's performance during the execution of this Contract.

22. **Survival.** Section 22 (Indemnification shall remain in force despite termination of this Contract with respect to acts or omissions occurring before termination of this Contract (whether by expiration of the term or otherwise).

23. **E-Verify Requirements.** (a) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 - (i) the Developer represents and covenants that its contractor

and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the County is relying on this subsection (a) in entering into this contract. (b) If this contract is subject to NCGS 143- 133.3, the contractor and subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

24. **Entire Agreement.** This Contract contains the entire agreement between the parties pertaining to the subject matter of this Contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Contract.

IN TESTIMONY WHEREOF, the parties hereto have executed this Contract in duplicate originals, as of the day and year first above written.

COUNTY OF DURHAM

DEVELOPER

County Manager

BY: 

Representative

SEAL:

ATTEST:

Clerk to the Board

ATTEST:



CONTRACT BETWEEN CHIN PAGE APARTMENTS OWNER, LLC AND DURHAM COUNTY

DURHAM COUNTY

Claudia O. Hager, County Manager

STATE OF NORTH CAROLINA

DURHAM COUNTY

I, _____ a notary public in and for the aforesaid County and State do hereby certify that _____ personally, appeared before me this day and acknowledged that she is _____ of the County of Durham, a political subdivision of the State of North Carolina, and by the authority duly given by and the act of the Durham County Board of County Commissioners, the foregoing contract was signed in its political name by its County Manager.

Witness my hand and official stamp or seal, this _____ day of _____, 2025.

Notary Public: _____

My Commissioner Expires _____

APPENDIX A – PROJECT SPECIFICATIONS

All improvements specified below are located within the following right-of-way: Chronicle Drive

In accordance with Durham County Standards and Specifications, the Developer proposes to construct:

A sanitary sewer extension of approximately 20 linear feet of new 8-inch PVC, 22 linear feet of new 8-inch ductile iron pipe, and two new manholes to serve Bethpage Apartments Phase 2, a 336-unit apartment complex with associated amenities. The proposed extension connects to the Durham County sanitary sewer system at two locations: existing Durham County manholes T-20-117 and T-20-119. All public sanitary sewer will be located within a public right-of-way or a 30' Durham County Sanitary Sewer Easement. All sewer Improvements, including size, location, and service area shall meet Durham County Requirements. (Reference Durham County Utilities Project #22-030)

(The balance of this page intentionally left blank.)

APPENDIX B - STANDARD PROVISIONS

1. **Definitions.** The words “line” and “lines” shall include “main” and “mains” unless the context otherwise requires. “Sewer” shall mean “sanitary sewer”.
2. **Use of Registered Professional.** The Developer shall engage a North Carolina Professional Engineer to prepare plans and specifications for the construction of the following required to serve the project.
3. **Review and Approval.** The engineering plans for the Project shall be in accordance with all Durham County and North Carolina Department of Environmental Quality (“NCDEQ”) policy, standards, and specifications. All plans and documents shall be submitted to Durham County for review. The County shall designate the size and type of materials for all utility lines required to serve the project. No construction shall begin until authorized in writing by the County. Before starting construction, the Developer shall secure approval of the construction plans and all necessary permits from the following:

The City of Durham
The County of Durham
The North Carolina Department of Transportation
The North Carolina Department of Environmental Quality
4. **Fees.** The Developer shall bear the total cost of all utility design and construction within the Project and to extend Service to the Project. Unless otherwise explicitly and specifically stated, the Developer shall bear the costs and expenses of all the obligations and duties created by this contract. The Developer shall hold the County harmless from any cost or claims associated with the construction.
5. **Construction.** All construction shall be performed by a contractor licensed to perform this type of work in the State of North Carolina. The contractor must be approved by the County before a contract is entered into between the Developer and the contractor. The contractor will construct all utilities according to construction plans and specifications approved by the Utilities Division. Construction shall conform to all Federal, State, and local laws, regulations, ordinances. Any unapproved alterations may not be accepted by the County and will be reconstructed as to the approved plans and specifications by the Developer.
6. **Inspections and Testing.** All work shall be subject to inspection by the County or its designated representative. Inspection shall be provided according to County policy. A registered professional engineer shall be engaged by the Developer to provide construction inspection and supervision duties if directed by the County. The County may require any testing it deems appropriate to determine that the work complies with County standards and specifications. All such testing shall be at the Developers’ expense.
7. **Records.** The Developer shall furnish the County record drawings on mylar, in PDF format, by .txt files (sanitary pipes and structures), and by CAD file, along with a television

inspection report of all lines eight (8) inches in diameter and larger. The County Engineer will specify format for each.

8. **Easements.** The Developer shall record all easements necessary for the project in the Durham County registry before the County shall assume maintenance, ownership, or provide service through any utility line constructed pursuant to this contract.

9. **Warranty.** If defects in workmanship or materials are discovered within one year of the date of acceptance, in work done pursuant to this contract by or for the Developer, the Developer shall see that such defects are promptly corrected to Durham County Standards at the Developers expense. The County may elect to correct the defects and bill the Developer for the costs of correction. Failure to pay the County for the correction costs may result in the disconnection of utility service and or the institution of legal action to recover the costs of correcting the system.

10. **Extensions.** The County may make extensions from any of the utility lines covered in this contract without the permission of the Developer.

11. **Release.** Developer hereby indemnifies, releases and holds County and all of its officers, agents, or Employees harmless from any claim, loss, damage or charges (whether property damage, bodily injury or death), in all suits, actions, claims, demands, liabilities of any nature whatsoever arising out of, because of, or due to the sole negligent act(s) or occurrence(s) of omission or commission of Developer, its Sub-contractors, agents, or employees, including, but not limited to, those activities which may cause disruption of services or inconvenience to the Owner, Parcel or any business operating thereon. This indemnity shall include the cost of defending any action, including attorney's fees. This Agreement shall not require the Developer to indemnify or hold harmless County against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence of County.

12. **Signing Authority.** The individual signing Agreement has the right and power to do so and bind Developer to the obligations set forth herein and such individual does so warrant that he/she has such authority.

13. **Miscellaneous.** This Agreement, executed in multiple copies, is to take effect as a sealed instrument; shall be construed under North Carolina law; sets forth the entire agreement between the Parties; and supersedes all prior agreements and memoranda with respect to the subject matter hereof. The captions are used only as a matter of convenience and are not to be considered a part of the Agreement or to be used in determining the intent of the parties. All recitals contained at the beginning of this Agreement are an integral part of this Agreement and are fully incorporated into the body of this Agreement. The benefits and burdens, rights and obligations, easements and restrictions created by this Agreement shall be appurtenant to and run with and burden and be binding upon the Owner Parcel and shall inure to the benefit of and be binding upon the Parties and those claiming by, through, or under them/it. The covenants, agreements, terms, provisions and conditions of the Agreement shall bind and benefit the successors in interest of the Parties hereto with the same effect as if mentioned in each instance when a party hereto is named or referred to, it being understood and agreed that upon any transfer of ownership of all or any part

of the Owner Parcel, each such successor in interest shall thereupon and thereafter assume, and perform and observe, any and all obligations of its predecessors in interest under this Agreement.

APPENDIX C - UTILITY MAINTENANCE AND REPAIR

Upon sanitary sewer acceptance by Durham County Utilities and after the one-year warranty, the following conditions apply:

1. **Maintenance.** Regarding Maintenance and Repair of the Utilities, following any such Repairs the County shall only be responsible for backfilling and compacting the soil to the finished grade within the easement of the Utilities. In Repair areas where the Utilities are located under pavement or any other improvements, the County will backfill the repair area to within eight (8) inches of the existing finished paved grade. Developer shall be responsible for replacing any and all improvements and/or pavement damaged or removed as a result of any such Repairs by the County to the Utilities. Trench settlement which occurs after final backfilling is completed by the County shall not be the responsibility of the County. Developer shall correct all trench settlement after the County backfills and shall make final pavement repairs and/or repairs to other improvements following Repairs to the Utilities within sixty (60) days.

Where County Utilities are located within a public right-of-way, the County will be responsible for the repairs or replacement of improvements damaged or removed by the County during County Repair activities, including replacing pavement.

2. **Access.** While performing any Repairs on the Utilities or the County's Utilities, the County shall have the right of ingress, egress, and regress over the parcel and the County may block and erect temporary barriers around any work area the County deems necessary including but not limited to any access, drives, and customer parking areas; however, the County agrees to use its best efforts to avoid blocking access to the parcel and to limit the amount of time said access is blocked. Except for emergency Repairs (such emergencies determined by the County in its sole discretion), the County will provide notice to Developer prior to blocking said parking areas or access drives.

3. **Release and Indemnity.** Developer hereby indemnifies, releases and holds County and all of its officers, agents, or Employees harmless from any claim, loss, damage or charges (whether property damage, bodily injury or death), in all suits, actions, claims, demands, liabilities of any nature whatsoever arising out of, because of, or due to the sole negligent act(s) or occurrence(s) of omission or commission of Developer, its Sub-contractors, agents, or employees, including, but not limited to, those activities which may cause disruption of services or inconvenience to the Owner, Parcel or any business operating thereon. This indemnity shall include the cost of defending any action, including attorney's fees. This Agreement shall not require the Developer to indemnify or hold harmless County against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence of County.

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UTILITY PLAN

Kimley»Horn

REV	DATE	REVISIONS	NO.
02/08/24	02/08/24	ORIGINAL SUBMITTAL DATE	1
08/03/24	08/03/24	REMOVED PER 1ST COUNTY UTILITIES COMMENTS	2
11/07/24	11/07/24	REMOVED PER 2ND COUNTY UTILITIES COMMENTS	3

[illegible]

UTILITY LEGEND	
PROPOSED WATER LINE	—
EXISTING WATER LINE	—
PROPOSED SANITARY SEWER LINE	—
EXISTING SANITARY SEWER LINE	—
WATER METER SHOWN	—
WATER METER	—
GATE VALVE	—
REDUCER	—
PORT REDUCER VALVE (PRV)	—
PIPE TEE/BRANCH	—
VALVE	—
VALVE/BOX LOCATED FIRE DEPARTMENT CONNECTION (FDC)	—
SANITARY SEWER CLEANOUT	—
SANITARY SEWER MANHOLE	—



This map may not be a certified survey and has not been reviewed by a local government agency for compliance with any applicable land and development regulations and has not been reviewed for compliance with recording requirements for plats.