

UTILITY EXTENSION AGREEMENT FOR SEWER SERVICES

THIS UTILITY EXTENSION AGREEMENT (hereafter "Contract"), is made and entered into as of the ____ day of _____, 2025, by and between **Avalon South Durham, LP**, a Delaware partnership, **Avalon South Durham, GP, LLC**, a Delaware limited liability company, its General Partner, and **AVB NC QRS, Inc.**, a Maryland Company, its Manager (hereafter collectively referred to as "Developer") and the **COUNTY OF DURHAM**, a North Carolina body politic and corporate (hereafter the "County");

WHEREAS, the Developer proposes to extend sewer to serve **Lumley Road Multifamily**, a multi-family development with a maximum of 480 units, located at 5751 Lumley Road, further described as Parcel ID 164050 ("the Property").

WHEREAS, the Developer requires sewer lines along with the relocation and upgrade of a pump station that will connect to the County's sewer system in order to enable construction of the above described development or such other development as may be approved by the Board of County Commissioners; and

WHEREAS, to receive County approval for connection to the sewer system, Developer is willing to pay all costs associated with this Contract, in particular the costs associated with the design, materials, and installation of sewer infrastructure as described in this Agreement; and

WHEREAS, at its meeting held _____, 2025, the Durham County Board of Commissioners authorized this Contract in accordance with the terms set forth below;

NOW THEREFORE, in consideration of ten dollars and other valuable consideration, the receipt of which is hereby acknowledged, the Developer and the County, and their heirs, successors, and assigns agree:

1. **Included Appendices.** Appendix A (Reserved) and Appendix B (Project Specific Provisions) are a part of this Contract.
2. (Reserved)
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

"County Requirements" means all ordinances, policies, standards, and specifications prescribed by the County applicable to the work or construction undertaken pursuant to this Contract. Such requirements may include, but are not limited to, the County Code, and standards for processing of and construction of infrastructure.

"Developer" is 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 required by the County that allows sewer to be delivered to or from the Property and integrated into the County's utility system. It includes, but is not limited to, lines, mains, outfalls, sewer connections to the street mains including all construction and repair to streets and rights of way within which sewer infrastructure is located, specifically including pump stations and any relocation and/or upgrade of pump stations.

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

"Project" means the multifamily residential development approved by the Durham City Council for the Property through a zoning action on September 18, 2023, and any committed elements that, if also approved, would establish additional conditions for such zoning.

"Property" means the land located at Parcel ID 164050.

"Sewer" refers to the particular sewer facilities being installed by Developer as generally described in Appendix B 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 as may be required by the County in accordance with this Contract and with County Requirements. Such Improvements include but are not limited to: i) all Improvements within the Project; ii) all Improvements connecting to sewer infrastructure outside the Project, whether existing or planned; iii) modifications to any existing sewer infrastructure outside the Project that facilitate provision of utility service to the Project, or compliance with County Requirements, or integration of the Improvements with the surrounding existing or planned sewer system.

5. **Improvements.** A general description of the Improvements to be constructed to serve the Project is set forth in Appendix B. The final determination of the number, scope, size, materials, and location of required Improvements shall be as determined in the discretion of the County and shall be made in connection with site plan and County construction drawing approval. The new lift station contemplated by this Agreement shall be designed and built to full capacity, e.g., to accommodate full buildout of sewerage service area/basin with all flows and design to be as approved by County.

6. (Reserved)

7. **County Requirements.** Design, construction, materials, sizing, other specifications, permitting, inspections, testing, documentation and furnishing of as-built drawings, and acceptance of completed infrastructure shall be in accordance with County Requirements. The new lift station contemplated by this Agreement shall be built by Developer in full compliance with County standards. Design and construction shall be by professionals licensed in the state of North Carolina to do the relevant work. County approval of the design of the Improvements and location of the site shall be required prior to construction. Any construction without said approval or not being in conformity with said approval shall be considered a substantial breach of this contract.

8. **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. 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. For certain Improvements, the County may require that Developer's contracts identify the County as a 3rd party beneficiary or may require prior consultation regarding contractors for the project. If such requirements are applicable to this Project, it shall be shown in Appendix B, or the County will notify Developer in a timely manner of such requirements prior to the Developer's contracting for Improvements. In advertising for bids, qualifying potential contractors or subcontractors, and awarding bids for the construction and related services required by this Contract the Developer shall use good faith efforts to advertise bidding and contracting opportunities for, and to solicit participation from, minority and women owned businesses.

9. **Compliance; Permits.** All activity undertaken pursuant to this Contract shall be in compliance with federal and state law and regulations and County ordinances and Requirements. Developer shall obtain all permits and approvals required to do the work authorized under this Contract.

10. **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.

11. **Testing.** Developer shall pay for any testing deemed necessary to determine that the Improvements, and their environmental impact, comply with federal or state law and regulations, or County Requirements. If such testing is conducted, Developer agrees to notify County of testing and to provide testing results to County.

12. **Dedication to County.** With the exception of Improvements that are designated in Appendix B or in construction plan approvals as private, upon completion of the Improvements in accordance with County Requirements, the Developer shall dedicate to the County, in the manner specified by the County, the Improvements located within public streets, and all outfalls and pump stations. In addition, any property in which the Improvements are located shall be dedicated in fee simple at no cost to the County if it has not already been dedicated. Such dedicated property to be a tract of adequate size to accommodate the new lift station, all appurtenances, maintenance needs and setbacks. Developer shall provide permanent access in

favor of County from an easily accessible public or private road or drive, and County shall have right of refusal if access point offered does not provide, in the sole opinion of County Utilities, ample and adequate access to properly access and service the lift station facilities with all anticipated equipment. However, both Parties understand that NCDOT is planning to modify Highway 70 and is likely to make it a controlled access highway, thus making access off Highway 70 unlikely. Upon acceptance of the dedicated Improvements by the Board of County Commissioners, the County shall thereafter be responsible for maintenance. The determination as to whether the Improvements comply with County Requirements shall be made by the Director of Engineering or designee in his or her sole discretion. The County may require, among other things, certified as-built plans for the Improvements; a release of liens from contractors and subcontractors; additional plats or deeds for property containing the Improvements; releases of any mortgage or security interests in such property; and any other information the County deems to be necessary to accept the constructed Improvements.

13. **Warranty/Repair.** Developer warrants that the Improvements shall be constructed in accordance with County Requirements and other applicable professional standards, fit for the purpose for which they were constructed, and free from defects for a one-year period which shall run from the time of acceptance by the County. Developer shall be responsible for repairs and maintenance needed during the one-year period. Upon request by the County, Developer will assign any warranty rights it has under its contracts to the County.

14. **County Extensions.** Developer agrees that the County may make extensions from or connections to the sewer improvements that Developer has dedicated to the County.

15. (Reserved)

16. **No obligations.** This Contract does not create any express or implied obligation that the County: i) approve a permit or connection, which shall be granted only upon compliance with all requirements of law, including County Requirements; ii) offer utility services to any user within the Project; or iii) waive or not charge fees that are otherwise applicable pursuant to County Requirements.

17. **Capacity Reservation.** The County agrees that Developer shall have capacity of up to a maximum of 54,750 gallons per day reserved in the Stirrup Iron Creek lift station which receives the flow from the Page Pointe lift station which is to be relocated and expanded by Developer pursuant to this Agreement. It is the intent of the Parties that in exchange for Developer's obligations to relocate and expand the Page Pointe lift station, Developer shall have assurance of needed capacity as specified above for the development on the Property all the way from the Property to the Triangle Waste Water Treatment Plant so long as this contract remains in force.

18. **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 a Memorandum of this Contract, and shall furnish the County a copy of the recorded document and a statement from an attorney licensed to practice law in North Carolina, in form and substance acceptable to the County, that the Memorandum of Contract has

been recorded, and that the obligations of the Contract are binding upon all subsequent owners of the Property.

19. **Notice.**

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

To the County:

County Manager
200 East Main Street, 3rd Floor
Durham, NC 27701
Email: county_manager@dconc.gov

And

Director of Engineering
County of Durham
5926 NC Highway 55 East
Durham, NC 27713
Fax: (919) 560-0740
Email: utilities@dconc.gov

To the Developer:

Avalon Bay Communities, Inc.
Attention: Elizabeth (Liz) Smith
555 South Mangum Street, Suite 100
Durham, NC 27701
Phone: 475-766-7321
Email: liz_smith@avalonbay.com

(b) *Change of Address.* Notice of a change of address, , 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. 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.

20. **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.

21. **Nondiscrimination Policy; EEO.** The County opposes discrimination for any basis contrary to law or 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 contract and grounds for terminating the contract for cause and without fault or liability to County.**

22. **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.

23. **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. Enumeration of these remedies is not exclusive and is in addition to any other termination provisions or remedies available in law or pursuant to this contract.

24. **Services Dependent on Improvements.** The County's furnishing of sewer service to the Property is dependent upon completion of the Improvements. In the event Developer does not complete the Improvements, Developer and its successors in interest shall have no entitlement to receive sewer service. Entitlement to sewer service is dependent upon: completion of and conformance with this Contract; construction of the Improvements by Developer or its successors in interest; sewer capacity as described in Appendix B; and compliance with all other lawful requirements.

25. **Termination.** Developer's failure to timely comply with Section 17 and initiate substantial construction activity within three years 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. Completion and acceptance of the Improvements shall be within one-year of construction initiation. The County's Director of Engineering, or their designee, 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 to the satisfaction of the County. Final notice of termination shall be given by the County Manager.

26. **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.

27. **Contract not Severable.** In the event any substantive provision of this Contract is declared unenforceable the Contract shall become void. This paragraph, however, does not prohibit the parties from agreeing to eliminate or modify the unenforceable provision or enter into a new agreement.

28. **Modifications.** Substantial modifications of the Contract shall be approved by the Board of County Commissioners. Minor modifications, modifications of Appendix B regarding Improvements, and substitution of an assignee owner of a substantial portion of the Property for the original Developer may be approved by the County Manager or deputy or assistant County Manager without County Commission approval. A modification of this Contract is not valid unless it is signed by both 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.

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

30. **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.

31. **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.

32. **Indemnification.**

(a) In general. The terms of subsection (c) (Standard Indemnification Provision) below shall apply to the Contractor, subject to subsections (d) through (k), where applicable.

(b) Definitions. These definitions apply to this Section unless otherwise stated.

Contractor – Each party to this contract except Durham County.

Construction agreement -- any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, utility infrastructure,

appurtenance, or appliance, including moving, demolition, and excavating connected therewith.

Defend –In this Section except in subsection (c), defend means to pay for or furnish counsel at the expense of the Contractor to defend any of the Indemnitees against claims alleged or brought against any of the Indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.

Derivative parties -- with respect to a party, any of that party's subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory, tort, or contractual duty.

Design professional -- a person or entity who is licensed under and provides professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Design professional agreement -- any promise or agreement in, or in connection with, a contract or agreement with a design professional to provide design professional services.

Design professional services -- a service or work performed by a design professional for which licensure is required under Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Fault – a breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violations of applicable statutes or regulations.

Indemnitees -- County and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

Subcontractor – any person or entity, of any tier, providing labor or material through the Contractor for use on the project at issue in the applicable construction agreement or design professional agreement.

(c) Standard Indemnification Provision. (i) The Contractor shall defend, indemnify, and hold harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or its derivative parties. In performing its duties under this subsection “c,” the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to County. (ii) “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses. Included without limitation within “Charges” are (1) interest and reasonable attorney’s fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract. By appropriate litigation, each Indemnatee, severally, shall have the right to enforce this section (titled “Indemnification”) directly against the Contractor, but not against Durham County.

(d) Restriction regarding Indemnitees’ Negligence. This contract shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

(e) Restriction regarding Fault in Construction Agreements and Design Professional Agreements. If this contract is a construction agreement or design professional agreement, nothing in this contract requires the Contractor to indemnify or hold harmless Indemnitees or any other person or entity against losses, damages, or expenses unless the fault of the Contractor or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

(f) Restriction regarding Negligence of Design Professionals. Nothing in this contract requires the Contractor, provided that it is a design professional, to defend Indemnitees or any other person or entity against liability or claims for damages, or expenses, including attorney's fees, proximately caused or allegedly caused by the professional negligence, in whole or in part, of the Contractor, the County, or their derivative parties, whether the claim is alleged or brought in tort or contract.

(g) Liability When at Fault. The parties intend that nothing in this contract shall be construed to exclude from any indemnity or hold harmless provisions enforceable under subsection (d) (Restriction regarding Indemnitees' Negligence) and subsection (e) (Restriction regarding Fault in Construction Agreements and Design Professional Agreements) any attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the County to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the County by law or by contract, if the fault of the Contractor or its derivative parties is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified. Every provision in this contract that violates the parties' intent expressed in the preceding sentence shall be construed and revised to the extent that it is lawful in order to make the provision conform with such intent.

(h) Insurance Contracts and Bonds. This Section does not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer; and this Section does not apply to lien or bond claims asserted under Chapter 44A of the N.C. General Statutes.

(i) Other Provisions. Every provision in this contract that violates subsection (d) (Restriction regarding Indemnitees' Negligence), subsection (e) (Restriction regarding Fault in Construction Agreements and Design Professional Agreements), or subsection (f) (Restriction Regarding Negligence of Design Professionals) shall be construed and revised to the extent that it is lawful in order to make the provision conform with those subsections.

(j) Survival. This Section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(k) Compliance with Law. This Section shall be applied to the maximum extent allowed by law but it shall be construed and limited as necessary to comply with N.C.G.S. § 22B-1. This Section is not to be construed in favor or against any party as the drafter. The preceding sentence is not intended to imply or direct how the remainder of this Section or of this contract is to be construed.

33. **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.

34. **Iran Divestment Act Certification.** Developer certifies that as of the date that this contract is entered into, the Developer is not identified on the Iran List. It is a material breach of contract for Developer to be identified on the Iran List during the term of this contract or to utilize on this contract any contractor or subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- “Developer” means the person entering into this contract with Durham County; and “Iran List” means the Final Divestment List – Iran, the Parent and Subsidiary Guidance List – Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 147-86.58 of the N.C. Iran Divestment Act.

IN **TESTIMONY** WHEREOF, the parties hereto have executed this Contract as of the dates shown below.

Avalon South Durham, LP

**By: _____
Avalon South Durham, GP, LLC, a Delaware limited liability company, its General Partner**

**By: _____
AVB NC QRS, Inc., a Maryland Company, its Manager**

**State of _____
County of _____**

I certify that _____ personally (1) appeared before me this day, (2) stated that he or she is an authorized officer of Avalon South Durham, LP. a company organized and existing under the laws of the State of _____, (3) acknowledged that the foregoing agreement with the County of Durham carries on in the usual way the company’s business, and (4) acknowledged the due execution of the contract on behalf of the company. This the _____ day of _____, 20_____.

My commission expires: _____
Notary Public

**State of _____
County of _____**

I certify that _____ personally (1) appeared before me this day, (2) stated that he or she is an authorized officer of Avalon South Durham, GP, LLC. a limited liability company organized and existing under the laws of the State of Delaware, (3)

acknowledged that the foregoing agreement with the County of Durham carries on in the usual way the company's business, and (4) acknowledged the due execution of the contract on behalf of the company. This the _____ day of _____, 20_____.

My commission expires: _____
Notary Public

State of _____
County of _____

I certify that _____ personally (1) appeared before me this day, (2) stated that he or she is an authorized officer of AVB NC QRS, Inc., a company organized and existing under the laws of the State of Maryland, (3) acknowledged that the foregoing agreement with the County of Durham carries on in the usual way the company's business, and (4) acknowledged the due execution of the contract on behalf of the company. This the _____ day of _____, 20_____.

My commission expires: _____
Notary Public

ATTEST:

COUNTY OF DURHAM

Clerk to the Board

By: _____
Claudia Hager, County Manager

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

Crystally Wright, Interim Durham County Chief Financial Officer

APPENDIX A (RESERVED)

APPENDIX B -PROJECT SPECIFIC PROVISIONS

1. The Preliminary Engineering Report (PER) dated January 2024, and the subsequently amended Technical Memorandum dated August 27, 2024, represents the design specifications for the Page Pointe lift station relocation and upsizing. Developer shall design and construct a new Page Pointe lift station and force main in accordance with the Durham County Utilities Lift Station Design Guidelines, dated January 29, 2024. Complete scope of work shall include: new Page Pointe lift station; abandonment of existing Page Pointe lift station; gravity sewer extension from existing lift station to new lift station; construction of new force main from new lift station to discharge manhole T-12-092 in Rathie Drive; and abandonment of existing force main per the County approved construction plans. The Developer is required to obtain all necessary approvals, permits, and easements, at its sole expense, from Durham County and/or any other party for any improvements to the wastewater collection and treatment systems required to serve the Project.