

# **EXHIBIT E**

Joint Motion for Entry of Consent Order

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the “Agreement”) is hereby made and entered into as of the date last signed below (the “Effective Date”), by and between KEPSC HILLSBOROUGH, LLC (“KEPSC”), a North Carolina limited liability company, and the TOWN OF HILLSBOROUGH, a North Carolina municipality (the “Town”) (collectively the “Parties”), subject to the terms and conditions set forth below:

### RECITALS

- A. This Agreement is made as a complete compromise between the Parties for the settlement of all disputed claims, differences and causes of action described below and set forth in the civil action *KEPSC Hillsborough, LLC v. Town of Hillsborough*, Civil Action No. 24CV003340-670, currently pending in Orange County Superior Court (the “Litigation”).
- B. KEPSC is the owner of a 13.41-acred parcel within the corporate limits of the Town of Hillsborough, located at 715 U.S. Highway 70 East, with parcel identification number 9874-49-0155 (the “Property”). The current zoning designation of the Property is Assisted Living Neighborhood (“ALN”).
- C. In 2006 and 2008, KEPSC’s predecessor-in-interest was issued a special use permit and amended special use permit to develop the Property as a multi-unit assisted housing with services or continuing care retirement community (the “SUP”). The special use permit also included a larger adjoining parcel, which was ultimately developed as a residential single-family development which is built out and

occupied (the “Corbinton Residential Development”). While the Corbinton Residential Development was governed by the same special use permit as the Property, the Property has not yet been developed. The two components covered by the SUP and amended SUP will be collectively referred as “Corbinton Commons.”

- D. The Parties have had ongoing disputes concerning various aspects of the development of Corbinton Commons.
- E. In 2024, KEPSC proposed that the Property be developed as 67 townhomes in lieu of developing the multi-unit assisted housing with services or continuing care retirement community originally approved by the Town. The vested rights to develop the Property are disputed between the Parties.
- F. On November 26, 2024, KEPSC filed the Complaint in the above-captioned matter, alleging that the Town violated its constitutional rights and seeking a determination of its vested rights in this matter, among other claims. On January 31, 2025, the Town filed a motion to dismiss alleging that Plaintiff lacked standing and that Plaintiff’s claims were not yet ripe.
- G. The Parties reached a resolution of all disputed issues between them in a mediated settlement conference that took place on October 21, 2025. The Parties prepared a written agreement signed by the Parties’ representatives at mediation, which was approved by the Town of Hillsborough Board of Commissioners on October 27, 2025 and is attached hereto as Exhibit A.
- H. The Parties now wish to enter a formal agreement that reflects the detailed terms of their compromise and settle all disputes between them relating to and/or arising out

of the Property, Corbinton Commons, and the Complaint, as described above, and thereby obviates the need for either party to continue the unnecessary burden and expense of litigation.

### TERMS

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by reference and are made a part of this Agreement.

2. No Admission of Liability. This Agreement effects the compromise and settlement of disputed and contested claims, and the Parties understand and agree that neither the execution of this Agreement, nor any of the terms of this Agreement, shall be construed as an admission by any party hereto of any liability of any kind to any other party.

3. Consent Order. The Parties agree that they will file the Joint Motion for Entry of Consent Order and Consent Order attached hereto within thirty (30) days of the date of this Agreement. The Parties agree to the terms of the Consent Order which requests that the Court order the Town to complete all required actions for consideration and adoption of the Development Agreement attached to this Agreement as Exhibit B (the "Development Agreement") and the Consistency Statement and Rezoning Ordinance attached to this Settlement Agreement as Exhibit C (the "Rezoning").

4. The Parties' Obligations and Promises.

- a. Within 30 days of the Effective Date, the Town will release the outstanding performance and completion bonds for the infrastructure in Corbinton Commons, but specifically excluding the bonds relating to the stormwater facility.
- b. Within 120 days of the Effective Date, the Town will carry out the procedures required by law for consideration and adoption of the Development Agreement attached to this Consent Order as Exhibit B (the “Development Agreement”) and the Consistency Statement and Rezoning Ordinance attached to this Consent Order as Exhibit C (the “Rezoning”).
- c. No later than seventy (70) days from the date the Development Agreement and the Rezoning are adopted by the Town of Hillsborough Board of Commissioners, Plaintiff will cause a voluntary dismissal with prejudice to be filed in the Litigation.
- d. The Parties will stay all proceedings related to the Property before the Town of Hillsborough Board of Adjustment until completion of all of the Obligations and Duties set forth in this Section 4, and at no later than seventy (70) days from the date the Development Agreement and the Rezoning are adopted by the Town of Hillsborough Board of Commissioners, Plaintiff will formally withdraw all applications and appeals to the Town of Hillsborough Board of Adjustment.

5. Mutual Release of All Claims.

a. *By KEPSC.* In consideration for the agreements set forth herein and attached hereto and other good and valuable consideration, KEPSC Hillsborough, LLC does hereby and for its heirs, executors, administrators, successors, and assigns (the “KEPSC Releasers”), release, acquit, and forever discharge the Town of Hillsborough, the Town of Hillsborough Board of Adjustment, the North Carolina League of Municipalities, the Interlocal Risk Financing Fund of North Carolina, and their respective elected officials, officers, owners, directors, agents, members, employees, managers, servants, successors, heirs, executors, administrators, insurers, reinsurers, representatives, attorneys, and all other persons, firms, corporations, associations, partners, or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses, claims for injunctive relief, claims for specific performance and any other form of compensation whatsoever, whether known or unknown, which KEPSC Releasers now have, relating or pertaining to the Litigation, the SUP, and any previous application or submission made to the Town at any time by any party concerning the Property or Corbinton Commons. This includes, but it not limited to, claims now existing for determination or interference with vested rights, violations of constitutional rights, takings, inverse condemnations, breach of contract, breach of warranty, or any kind of liability

whatsoever, whether based upon contract, tort, negligence, agency, professional liability, breach of fiduciary duty, or extra-contractual, statutory, common law, or administrative rules or regulations of any kind, including without limitation claims that, if known, would have materially affected KEPSC Releasers' decision to enter into this Release.

- b. *By the Town.* In consideration for the agreements set forth herein and attached hereto and other good and valuable consideration, the Town of Hillsborough, North Carolina does hereby and for its heirs, executors, administrators, successors, and assigns (the "Hillsborough Releasers"), release, acquit, and forever discharge KEPSC Hillsborough, LLC and their respective elected officials, officers, owners, directors, agents, members, employees, managers, servants, successors, heirs, executors, administrators, insurers, reinsurers, representatives, attorneys, and all other persons, firms, corporations, associations, partners, or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses, claims for injunctive relief, claims for specific performance and any other form of compensation whatsoever, whether known or unknown, which Hillsborough Releasers now have, relating or pertaining to the Litigation, the SUP, and any application or submission made to the Town at any time until the date of this Agreement by any party

concerning the Property or Corbinton Commons. This includes, but it not limited to, claims for determination or interference with vested rights, violations of constitutional rights, takings, inverse condemnations, breach of contract, breach of warranty, or any kind of liability whatsoever, whether based upon contract, tort, negligence, agency, professional liability, breach of fiduciary duty, or extra-contractual, statutory, common law, or administrative rules or regulations of any kind, including without limitation claims that, if known, would have materially affected the Hillsborough Releasers' decision to enter into this Release.

6. Fees and Costs. Each party will bear its own costs, including attorneys' fees, for the Litigation and all proceedings before the Town of Hillsborough Board of Adjustment.

7. Knowing and Voluntary Agreement. The Parties represent that they are represented by counsel of their choosing, that they have independently made their own analysis and decision to enter into this Agreement, and that they consider this Agreement to be fair and reasonable.

8. Complete Agreement. The Parties further agree, declare and represent that no promise, inducement, representation or agreement not herein expressed has been made to any Party or caused them to enter this Agreement. The Agreement contains the entire agreement between the Parties and the terms of the Agreement are contractual and not a mere recital. This is a fully integrated agreement.

9. Amendment: This Agreement shall not be altered, amended or otherwise modified except by the express written agreement between the Parties and executed by each of the Parties to this Agreement.

10. Counterparts. This Agreement may be executed in two or more counterparts as if all Parties had signed the same document. All counterparts shall be construed together and shall constitute one Agreement.

11. Governing Law and Jurisdiction. This Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina and the Parties consent to venue as well as personal and subject matter jurisdiction in the Orange County Superior Court for purposes of resolving any disputes which may hereinafter arise under this agreement.

**SIGNATURE PAGES TO FOLLOW**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in several counterparts, each of which is an original as of the date first written above.

KEPSC HILLSBOROUGH, LLC

By: [Signature]

Name: Ed Kalikow

Title: MANAGER

STATE OF New York

COUNTY OF Nassau

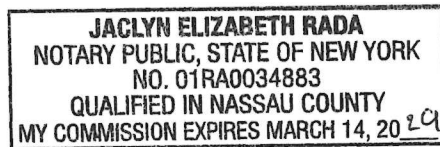
I, Jaclyn Elizabeth Rada, a Notary Public of the State and County aforesaid do hereby certify that Edward Kalikow personally appeared before me this day and after being duly sworn and providing satisfactory evidence of his identity in the form of a state issued driver's license, has duly executed the foregoing instrument for the purposes stated therein.

Witness my hand and Official Seal this the 26<sup>th</sup> day of March, 2026

Jaclyn Elizabeth Rada  
Notary Public

My Commission Expires: March 14, 2029

[Affix Notary Seal]



THE TOWN OF HILLSBOROUGH, NORTH CAROLINA

By: [Signature]

Name: Eric Peterson

Title: Town Manager

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

I, Sarah E Kimrey, a Notary Public of the State and County aforesaid do hereby certify that Eric Peterson personally appeared before me this day and after being duly sworn and providing satisfactory evidence of his identity in the form of a state issued driver's license, has duly executed the foregoing instrument for the purposes stated therein.

Witness my hand and Official Seal this the 26<sup>th</sup> day of March, 2026.

[Signature]  
Notary Public

My Commission Expires: 7/7/2029

[Affix Notary Seal] KIMREY  
NOTARY PUBLIC  
Orange County  
North Carolina  
My Commission Expires 7/7/2029

**MEDIATED SETTLEMENT AGREEMENT October 21, 2025 BETWEEN KEPSC AND  
THE TOWN OF HILLSBOROUGH  
TERMS**

In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Consent Order- The Parties agree that, within 60 days of this agreement, they will file a Joint Motion asking that the Court to enter a Consent Order that provides the Town will rezone the Senior Living Component parcel of Corbinton Commons from ALN to MF, which will include a 10 year development agreement (the “Development Agreement”). The Development Agreement will include a provision that approves 67 Townhouses (the “Townhouse Project”) to be developed substantially in compliance with the Exhibit A attached hereto and the other terms included herein.

These provisions include the following:

- a. Sewer-The Town will provide full water and sewer service to all 67 units as soon as it is available but no later than June 30, 2028. The parties will execute a Water and Sewer Extension agreement stating the same.
- b. KEPSC will pay the Town a fee to be placed in the Town’s affordable housing fund in the amount of \$40,000 at the time the Town provides KEPSC water and sewer service to the Townhouse Project.
- c. Sewer Construction – Within 30 days of this agreement, KEPSC will provide the Town with plans for water and sewer sizing and valves in accordance with the Town’s ordinances and policies that will be used in construction of the Townhouse Project.

- d. Meter Connection – The Townhouse Project will be entitled to 2 master meters for water to serve all 67 units.
- e. One Entrance – Only one entrance will be required for the Townhouse Project, unless otherwise required by North Carolina Fire Code and approved by the Fire Marshal.
- f. Roads and Waste Collection -Roads and waste collection will be private.
- g. Residential Component - The Town will release the remainder of the bond within 60 days of this agreement and will not require KEPSC to make any further repairs or improvements on the previously provided punch list or otherwise. KEPSC will provide the Town with the as-builts for the stormwater retention pond. Other than the provision of the as-builts, KEPSC is released from all responsibility for the Residential Component.
- h. Sidewalks – KEPSC will construct and dedicate sidewalks on the subject property in accordance with Exhibit A. This will connect to the existing sidewalk now located at Corbinton Commons. KEPSC will build the perimeter walking trail on the subject property and connect to the existing trail on the east side of Corbinton Commons. KEPSC will make necessary repairs to the existing pedestrian bridge.
- i. Subdivision – The Townhouse Project parcel shall not be subdivided.


2. The parties will jointly request a stay of the civil action KEPSC Hillsborough LLC v. Town of Hillsborough (24 CVS 3340-670) (the “Lawsuit”) and KEPSC’s pending Hillsborough Board of Adjustment appeal for 120 days.

3. The parties will execute a mutual release.

4. The lawsuit and the BOA appeal will be dismissed 60 days after the approval of the rezoning and Development Agreement. Both parties will bear their own costs and attorney's fees.

5. This agreement is subject to the approval of the Hillsborough Board of Commissioners.

KEPSC HILLSBOROUGH LLC

By: 

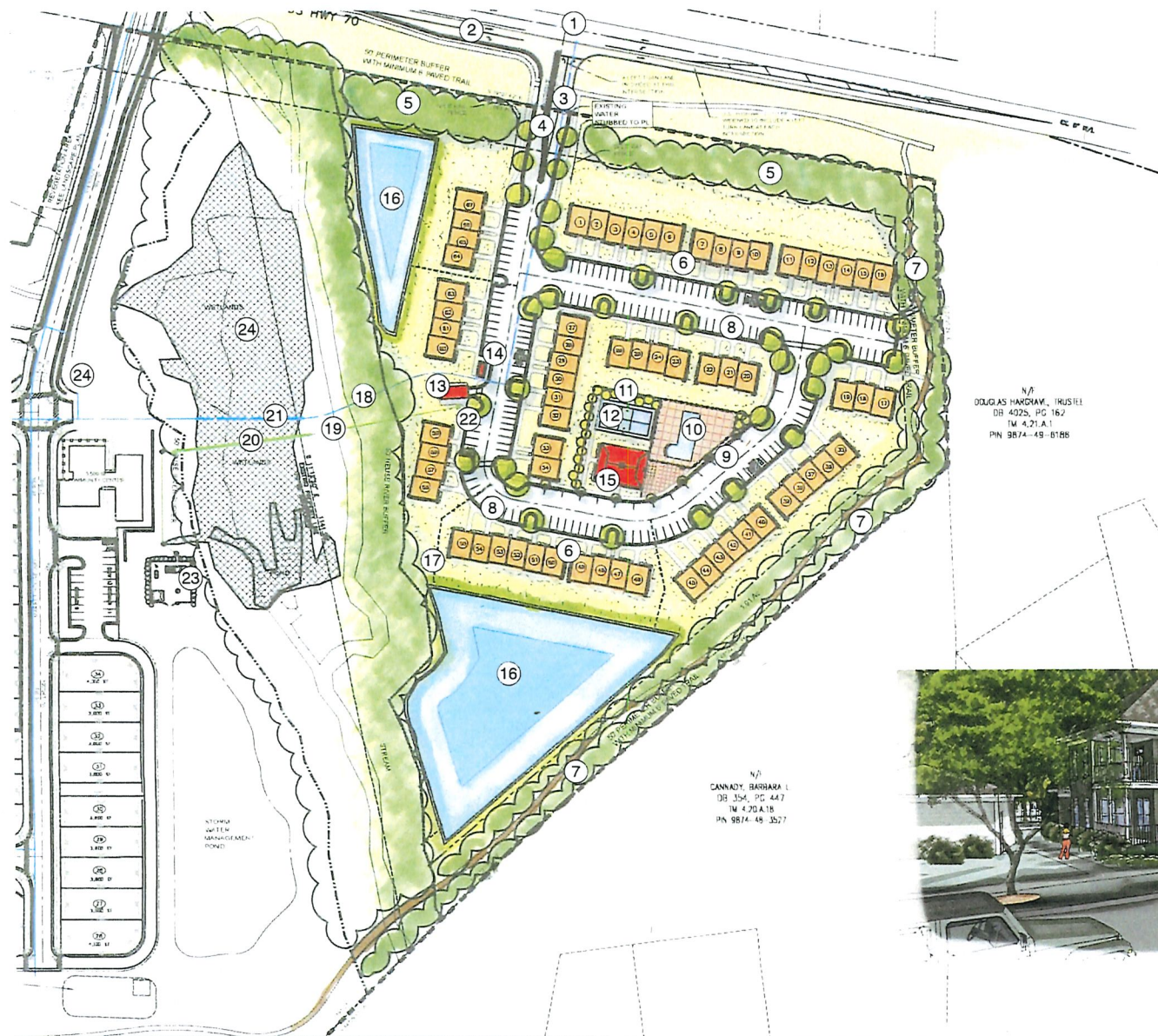
Robin Tatum - Attorney

TOWN OF HILLSBOROUGH

By: 

Matt Efirm – Assistant Town Manager

# Exhibit A



**SKETCH BREAKDOWN:**

TOTAL PARCEL: +/- 13.41 AC

TOTAL DWELLING UNITS (DU): 67  
 UNIT FOOTPRINTS:  
 END: 25'X38'  
 INTERIOR: 22'X38'

PARKING: 180 TOTAL (7 ACCESSIBLE)  
 UNIT PARKING: 134 SP  
 OVERFLOW: 30 SP  
 AMENITY: 16 SP

ALL STREETS PRIVATE

TRASH PICK BY PRIVATE VENDOR VIA COMPACTOR

WATER SYSTEM TO LOOP FROM ENTRANCE TO EXISTING WESTERN SYSTEM

SEWER TO CONNECT TO PUMP STATION

- CONCEPT KEY:**
1. US HWY 70
  2. EXISTING TURN LANES
  3. EXISTING WATER TAP
  4. PROJECT ENTRANCE
  5. 50' BUFFER
  6. TOWNHOME UNITS (TYP)
  7. 50' BUFFER WITH WALKING TRAIL
  8. RESIDENT AND OVERFLOW PARKING
  9. AMENITY PARKING
  10. POOL AND POOL DECK
  11. ACTIVITY BUFFER
  12. PICKLEBALL COURT
  13. COMPACTOR
  14. MAIL KIOSK
  15. AMENITY PAVILION
  16. STORM WATER MANAGEMENT PONDS
  17. STORM WATER CONNECTIONS
  18. WATERLINE LOOP TO WEST SYSTEM
  19. SANITARY SEWER CONNECTION TO PUMP STATION
  20. EXISTING SANITARY SEWER BORE UNDER WETLANDS
  21. WATER SYSTEM BORE UNDER WETLANDS
  22. EXISTING EAST SIDE RECEIVING MANHOLE
  23. EXISTING PUMP STATION
  24. EXISTING SUBDIVISION

N/A  
 DOUGLAS HARGRAVE, TRUSTEE  
 DR 4025, PG 16.2  
 TM 4.27.A.1  
 PN 9874-49-6T88

N/A  
 CANNADY, BARBARA L  
 DR 354, PG 44.7  
 TM 4.20.A.1B  
 PN 9874-49-35.7



**ARCHITECTURAL CONCEPT**

SUBJECT TO REGULATORY AGENCY REVIEW AND APPROVAL

SCALE 1"=120' 0" 120' 240'

**Front Street**  
 DESIGN & CONSULTING  
 PO Box 254  
 Folly Beach, SC 29439  
 tel 843-588-6021  
 www.frontstreetdesign.com

TOWNHOME SKETCH PLAN

**CORBINTON**  
 HILLSBOROUGH, NC

PROJECT #	06/06/2024
DATE	11/02/2020
SCALE	1"=120'
DESIGNER/ARCHITECT	EYC/jas
DATE	



STATE OF NORTH CAROLINA

DEVELOPMENT AGREEMENT

COUNTY OF ORANGE

This Development Agreement (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ by and among **KEPSC HILLSBOROUGH, LLC**, a North Carolina limited liability company (the "Developer"), and the **Town of Hillsborough**, North Carolina ("Town"), a municipal corporation of the State of North Carolina.

WITNESSETH:

WHEREAS, Developer is the owner of approximately 13.41-acre parcel within the corporate limits of the Town of Hillsborough, located at 715 U.S. Highway 70 East, with parcel identification number 9874-49-0155 (the "Property").

WHEREAS, Developer requested and the Town approved a General Use Rezoning Request to amend the Official Zoning Map of the Town to rezone the Property from ALN to MF, Ordinance \_\_\_\_ (the "Zoning").

WHEREAS, the Developer sought the rezoning to facilitate plans to develop the Property for attached dwellings (20+ units).

WHEREAS, the Developer desires careful integration between public and private capital facilities planning, financing, and construction, and further desires sufficient assurances that development standards, ordinances, policies and procedures remains stable throughout the extended period of development.

WHEREAS, the Town is authorized to enter into this agreement pursuant to N.C.G.S. § 160D-1001(b) and 160D-1003, and may contract with the Developer to carry out the public purposes set forth herein pursuant to N.C.G.S. §160D-1001(a) and the Town Board of Commissioners has determined that it is in the best interests of the citizens to do so.

WHEREAS, North Carolina General Statutes (“G.S.”) 160D-1001(b) and 160D-1003 expressly authorize local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of G.S. 160D-1001 through 160D-1012 for projects that require long-term commitments of both public and private resources.

WHEREAS, the Town and Developer desire to enter into this Agreement for the purposes of furthering the Town’s and the Developer’s mutual goal of providing high-quality, attainable housing in the Town and coordinating the necessary infrastructure and other facilities to serve the Property and the community at large.

NOW, THEREFORE, based on the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the parties hereby agree as follows:

1. **Recitals**. The parties agree that the foregoing recitals are true and correct and are incorporated herein by reference.
2. **Public Hearing**. Pursuant to Section 160D-1005 and Section 160D-602 of the North Carolina General Statutes, the Town conducted a public hearing on February 19, 2026, to consider the approval and execution of this Agreement in accordance with the procedures set out in Section 160D-1005. Public notice was duly given, and the notice of public hearing specified, among other things, the location of the Property subject to this Agreement, the development uses proposed on the Property, and a place where a copy of the Agreement may be obtained. The Town Board approved this Agreement and the Town executed the same.
3. **Property Subject to Agreement**. The Property subject to this Agreement is described in **Exhibit A**.
4. **Term**. The term of this Agreement shall commence on the date that all parties hereto have executed this Agreement (the “Effective Date”) and shall terminate on the date that is 10 years after the Effective Date, unless sooner terminated by the mutual consent of the parties (or their successors in interest), or unless extended by the mutual consent of the parties (or their successors in interest).
5. **Development Uses**. The development uses permitted on the Property shall be all uses permitted in compliance with this Agreement, the Zoning, the Town of Hillsborough Unified Development Ordinances (“UDO”) and other applicable laws existing on the Effective Date of this Agreement.

The Town and Developer agree that this Agreement, the Zoning, and other applicable laws permit the Developer to construct up to 67 attached dwelling units on the Property generally consistent with the concept plan attached hereto as **Exhibit B** (the “Concept Plan”).

The precise location of buildings, parking areas, and interior drives will be shown on a final site plan (the “Site Plan”) to be prepared by Developer following execution of this Agreement and reviewed administratively by Town Staff.

If attached dwelling units are constructed on the Property consistent with the Concept Plan (the “Project”):

- a. Only one entrance will be required for the development, unless additional entrances are required by the North Carolina Fire Code and approved by the Fire Marshal.
- b. The Property will not be subdivided into lots.

6. **Affordability.** For the benefit of the public health, safety and welfare, and recognizing that there is a need in the Town for housing that is affordable and attainable for lower income residents, the Developer shall donate \$40,000 to the Town’s Affordable Housing Fund (the “Affordable Housing Donation”) when water and sewer service is made available to the Property. The Affordable Housing Donation will be paid to the Town of Hillsborough no later than the time a Water and Sewer Extension Contract (WSEC) is signed to provide water and sewer service to the Property. The parties acknowledge and agree that the Affordable Housing Donation is a condition of the Town providing water and sewer service to the Property, even if the development is other than that according to the Concept Plan.

7. **Law in Effect at Time of the Agreement Governs the Development; Vested Rights.**

Except as provided in G.S. 160D-1007, G.S. 160D-1010(b), and this Agreement, the Town may not apply subsequently adopted Town regulations to the Property during the Agreement Term without the written consent of Developer. During the Agreement Term, Developer shall have a vested right to develop the Property in accordance with (i) this Agreement, (ii) the Zoning, (iii) the UDO, (iv) Town regulations, and (v) any other applicable laws, all of the foregoing (i) through (v) as they exist on the Effective Date. In accordance with G.S. 160D-106, the parties agree, intend, and understand that all conditions,

terms, restrictions, or other requirements applicable to the Project and reasonably determined to be necessary by the Town for the public health, safety, or welfare of its citizens, are provided for by the foregoing (i) through (v) as they exist on the Effective Date. This Agreement does not abrogate any rights that may vest pursuant to statutory or common law or otherwise in the absence of this Agreement. If the Town adopts new, different, or amended development regulations that Developer views as more favorable to the Project than the regulations in effect at the time of adoption of this Agreement, Developer may elect to be bound by the new regulations or ordinance (the "After-Adopted Regulation") without any further agreement from the Town. In the event that Developer elects to be bound by the After-Adopted Regulation, Developer will communicate that fact to the Planning Director in writing and note such change on any future permit applications affected by the change.

8. **Development Moratoria.** Absent an imminent threat to public health or safety, no development moratorium shall apply to the Property so long as this Agreement exists; the Town recognizes that all rights established by this Agreement have vested for the Term of the Agreement.
9. **Good Faith.** The Parties acknowledge and understand that Sections 5, 7, and 8 impose a duty of good faith performance and fair dealing on all Parties and that neither Party knows as of the Effective Date any reason it or any other Party cannot perform or abide by these sections so as to confer on each Party the full benefits of this Agreement.
10. **Public Facilities.** Developer shall be responsible for installation and/or repairs of all of the items below in accordance with the UDO.
  - a. Construction of streets, with curb and gutter, within the Property reasonably necessary to serve development on the Property. All streets constructed on the Property must meet UDO requirements for private streets.
  - b. Stormwater facilities serving the Property.
  - c. Construction of utility lines within the Property to serve the Project, including water, sewer, and electric lines.
  - d. Any and all additional facilities reflected in the Water and Sewer Extension Contract, as described in paragraph 12 below.
  - e. Sidewalks along the Property's frontage with U.S. 70 East, as generally shown on the Concept Plan, including connections with the

sidewalk installed for the Corbinton Commons development and the perimeter walking trail.

- f. Walking trail on the perimeter of the Property.
- g. Necessary repairs to or restoration of the existing pedestrian bridge or construction of a new pedestrian bridge located at the southeast corner of the Property. Any repairs or restoration of the existing pedestrian bridge shall bring the bridge into compliance with the applicable provisions of the Building Code.

**11. Traffic and Roadways; Emergency Access; Solid Waste Services.**

Developer shall install all improvements required by the UDO, the Town of Hillsborough Street Manual, the North Carolina Building Code, the North Carolina Fire Prevention Code, and any other applicable regulations for the Project in effect on the Effective Date. Developer and the Town acknowledge and agree that if the Project is constructed, all roadways internal to the project, except any access road connecting the internal roadways to U.S. 70 E, will be private roads and alleys.

Developer and the Town further acknowledge and agree that if the Project is constructed, the Project will not receive solid waste collection services from the Town and shall be required to contract with a private provider for solid waste services.

**12. Pedestrian Connectivity Construction.** If the Project is constructed on the Property, Developer agrees to:

- a. build the sidewalks along the Property's frontage with U.S. 70 East and all facilities necessary to connect that sidewalk to the existing sidewalk located in front of the existing Corbinton Commons development.
- b. make the improvements on the Concept Plan, including the 6' asphalt perimeter trail and repairs to the existing wooden bridge at the SE corner of the Property.

All sidewalks will be constructed according to the standards and specifications set forth in the UDO, the Town of Hillsborough Street Manual, and Street Construction Standard Specifications set forth in Appendix A to Chapter 7 of the Town of Hillsborough Code of Ordinances in effect on the Effective Date. Pedestrian facilities constructed pursuant to this Section 10 will be completed and ready for final inspection no later than the date the application for the

twentieth certificate of occupancy (“CO”) for the Project is submitted. Notwithstanding the foregoing and except as provided in the following sentence, the Town may not withhold the approval of COs for the Project for failure to complete pedestrian facilities consistent with this Section 10. The sidewalks must be accepted for dedication by the Town, and the perimeter trail, bridge, and connections to existing facilities must be complete prior to issuance of the final five COs for the Project and will be subject to a public access easement in the final recorded plat. The parties expressly agree that the perimeter trail will be a 6-foot asphalt path available for public use and not dedicated to the Town.

13. **Water and Sewer Allocation.** Upon the availability of construction drawings and additional engineering information, the Parties shall execute a Water and Sewer Extension Contract (the “Extension Contract”) which will, govern the terms under which the Town will provide water and sewer service to the Project. The Town and Developer hereby agree that the following terms will be included in the final WSEC:

- a. The Town will reserve full water and sewer capacity for the Project, specifically for up to 67 attached dwelling units and irrigation meters and resident amenities depicted on the Concept Plan, on the Property. The Town will provide full water and sewer service as soon as it is available, but no later than June 30, 2028.
- b. The Project will be developed with two (2) master meters with backflow prevention assemblies for the development.
- c. The water infrastructure for the Project shall be developed with two (2) points of connection for water lines, with an in-line valve in between.
- d. Developer shall complete and test the water lines and sewer line connecting the Project to the Corbinton Commons pump station prior to connection.
- e. Developer shall otherwise comply with the requirements of the UDO, the Developer/Engineer Checklist for Projects Involving Town of Hillsborough Water and Sewer Utilities in effect when the Project is connected, the standard requirements of the WSEC, and any applicable federal and state laws and regulations.

14. **Local Development Permits.** In accordance with G.S. 160D-1001(d), the development authorized by this Agreement shall comply with all applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws affecting the development of the Property, including laws governing permitted uses of the Property, density, intensity, design, and improvements.

The Town agrees that it shall act consistent with its rules, regulations, and common practices on any application for permits associated with the development of the Project.

15. **Good Standing.** The Developer shall pay required development fees, including system development fees, and fees-in-lieu pursuant to the applicable Town ordinances at such time as they would ordinarily become due and in the amounts set forth in the fee schedule in effect at the time the fees are due. The Town may require the payment of such fees before accepting the Developer's development permit applications for the Property for review.

16. **Amendment; Modification; Termination; or Extension of the Agreement Term.** This Agreement may be amended, modified, terminated, or extended by the mutual consent of both Parties. The modifications below shall be considered Major Modifications and require the same procedures as required by North Carolina law for the adoption of a development agreement. All other modifications shall be considered Minor Modifications and shall be reviewed and approved administratively, to the extent allowed by law, by the Town of Hillsborough Planning Director (the "Planning Director").

- a. An increase or decrease in the acreage of the Property subject to this Agreement of more than five (5) percent.
- b. A change in the Agreement Term.

17. **Recordation/Binding Effect.** Within 14 days after the Effective Date, Developer shall record this Agreement in the Orange County Register of Deeds (the "Registry"). The benefits and burdens under this Agreement shall inure to and be binding upon the parties and their successors and assigns. All of the provisions of this Agreement shall be enforceable during the Agreement Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law.

18. **Force Majeure.** In addition to specific provisions of this Agreement, no party shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond such party's reasonable

control, including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities, epidemics, wars, embargoes, fires, hurricanes, adverse weather, acts of God, lawful work stoppages ordered by a governmental entity, interference duly caused by any other party, or the default of a common carrier. In the event of a default, delay or failure to perform due to causes beyond such party's reasonable control or due to interference by another party, any date or times by which the parties are otherwise scheduled to perform, if any, shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of such party. If written notice of such delay is given to the other party after the commencement of such delay, an extension of time for such cause shall be deemed granted for the period of the enforced delay, or longer as may be mutually agreed to by the parties.

19. **Disclaimer of Joint Venture, Partnership and Agency.** This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between or among the parties, or to impose any partnership obligation or liability upon such parties.

20. **No Third Party Beneficiaries.** The Agreement is not intended to and does not confer any right or benefit on any third party that is not a party.

21. **Notices.** Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or if by mail on the 5th business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals or communications to the parties shall be addressed to:

Town:           Town of Hillsborough  
                  Attn: Shannan Campbell  
                  101 E. Orange St.  
                  Hillsborough, NC 27278  
                  Shannan.Campbell@hillsboroughnc.gov

w/ a copy, which shall not constitute notice, to:

Bob Hornik, Town Attorney  
Town of Hillsborough  
1526 E. Franklin St., Suite 200  
Chapel Hill, NC 27514  
hornik@broughlawfirm.com

and

Town Manager  
Town of Hillsborough  
101 E. Orange St.  
Hillsborough, NC 27278

Developer: The Kalikow Group  
KEPSC Hillsborough, LLC  
c/o Ed Kalikow  
7001 Brush Hollow Road  
Suite 200  
Westbury, NY 1150

w/ a copy, which shall not constitute notice, to:

Robin Tatum  
Smith Anderson  
150 Fayetteville Street, Ste. 2800  
Raleigh, NC 27601  
rtatum@smithlaw.com

22. **Entire Agreement.** This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between the parties relative to this Agreement and the Property. There are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the parties relative to the matters addressed herein other than as set forth or as referred to in this Agreement or as contained in the UDO or the Zoning as of the Effective Date.

23. **Assignment.** The Developer may at any time and from time to time assign its rights and responsibilities hereunder, which assignee and subsequent assigns shall retain the right to assign their respective rights and/or responsibilities hereunder or any part of all or any portion of the Property as Developer. The Developer shall provide the Town with prior written notice of any assignment and a written assignment of rights and responsibilities expressly

acknowledging the assignee's agreement to the terms of this Agreement, shall be executed by the Developer and the assignee and recorded in the Registry. A deed from Developer to a subsequent owner shall be deemed to assign the conveying Developer's rights and obligations under this Agreement to the subsequent owner and this Agreement shall be enforceable during the Agreement Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Any violation of the terms and conditions of this Agreement occurring after such an assignment will be the responsibility of the then current Developer in violation.

24. **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of North Carolina. Any reference in this Agreement to a North Carolina General Statute be deemed to include any successor or replacement statute as to the same matters subject to the statute that has been succeeded or replaced. Venue for any disputes arising from this Agreement shall be the Superior Court of Orange County, North Carolina.
25. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
26. **Termination.** Unless the Agreement Term is extended by the Town and Developer, this Agreement shall terminate on the earlier of the expiration of the Agreement Term or by agreement of the parties. Notwithstanding the foregoing, the Developer shall have the unilateral right to terminate this Agreement upon any change in the Developer's plan for development that renders this Agreement inapplicable, in which case the Town shall be relieved of all obligations hereunder. Any termination other than by expiration of the Agreement Term shall be recorded in the Registry.
27. **No Deemed Waiver.** Failure of a party to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder.
28. **Severability.** If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions. The parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the

extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.

29. **Authority**. Each party represents it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement on behalf of such party has the authority to bind that party.
30. **Construction**. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.
31. **Lender Protections**. Any lender of Developer (or any successor-in-title thereto) having a security interest in all or a part of the Property (a "Secured Lender") may give written notice to the Town of its security interest (a "Lender Notice"). If a Secured Lender provides a Lender Notice, then the Town shall copy the Secured Lender on any notice of default given to Developer (or any successor-in-title thereto), and the Secured Lender shall have 30 days, or such applicable longer cure period given to Developer (or any successor-in-title thereto), to cure the alleged default.
32. **Estoppel**. At any time and from time to time, Town shall deliver, to the extent accurate and permitted by law, within 45 days after Developer's (or any other owner of the Property's) written request, a written statement addressed to the requesting party, and if requested, its Secured Lender and any proposed purchaser or investor in the Property that to the best of its knowledge: (1) that this Agreement is in full force and effect; (2) that it acknowledges that this Agreement has not been amended or modified, or if so amended, acknowledges the accurateness of the amendments provided by the requestor; and (3) whether, to the knowledge of the Town, Developer (or the requesting party) is in default or claimed default in the performance of its obligation under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default; and (4) whether, to the knowledge of the Town, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute default, and, if so, specifying each such event.
33. **Non-Discrimination**. To the extent permitted by North Carolina law, the Parties for themselves, their agents, officials, directors, officers, members, representatives, employees, and contractors agree not to discriminate in any manner or in any form based on actual or perceived age, mental or physical

disability, sex, religion, creed, race, color, sexual orientation, gender identity or expression, familial or marital status, economic status, veteran status or national origin in connection with this Agreement or its performance. This provision is incorporated into the Agreement for the benefit of the Town of Hillsborough and its residents and may be enforced by an action for specific performance, injunctive relief, or any other remedy available at law or equity. This section shall be binding on the successors and assigns of all parties with reference to the subject matter of the Agreement.

**SIGNATURE PAGES FOLLOW.**

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

Pursuant to N.C.G.S. 160D-1005, this Development Agreement came before the Town of Hillsborough Board of Commissioners on February 19, 2026 for a duly noticed legislative hearing. Based on the information presented at the February 19, 2026 hearing, the Town of Hillsborough Board of Commissioners determined that the Town entering into this Development Agreement is in the public interest as it provides a contribution to affordable housing and pedestrian infrastructure, approved this Development Agreement, and authorized the Town Manager to execute the same.

TOWN OF HILLSBOROUGH, NORTH CAROLINA

By: \_\_\_\_\_(SEAL)

Name: Eric Peterson

Title: Town Manager

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Town Clerk

STATE OF NORTH CAROLINA TOWN ACKNOWLEDGEMENT  
COUNTY OF ORANGE

This is to certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, with whom I am personally acquainted, who, being by me duly sworn, says that she is the Town Clerk, and Eric Peterson is the Town Manager of the Town of Hillsborough, the municipal corporation described herein and which voluntarily executed the foregoing; that she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by said Acting Town Clerk & Treasurer and that the said seal was affixed, all by order of the governing body of said municipal corporation, and that the said instrument is the act and deed of said municipal corporation.

Witness my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Notary Public

(Seal)

My Commission Expires:

Approval as to Form:

\_\_\_\_\_  
Town Attorney

**Certificate of Town of Hillsborough Finance Officer**

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

\_\_\_\_\_  
Finance Officer  
KEPSC HILLSBOROUGH, LLC

\_\_\_\_\_  
Date

a North Carolina limited liability company

By: \_\_\_\_\_

[Authorized Signatory]

STATE OF \_\_\_\_\_

\_\_\_\_\_ COUNTY

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and, in the capacity indicated: \_\_\_\_\_.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

\_\_\_\_\_, Notary

Public

*[Affix Notary Stamp or Seal]*

\_\_\_\_\_

My Commission Expires:

## EXHIBIT A

### Property Description

BEING in Orange County, North Carolina, and being more particularly described as follows:

(Add) BEGINNING at an existing iron pipe which has North Carolina Grid coordinates of North = 849,101.43 feet and East = 1,974,584.86 feet, said point being the POINT OF BEGINNING; thence South 48 degrees 32 minutes 14 seconds West, a distance of 696.76 feet to an existing iron pipe; thence South 45 degrees 01 minutes 13 seconds West, a distance of 196.49 feet to a point; thence North 11 degrees 12 minutes 20 seconds West, a distance 1141.26 feet to a point on the southern right-of-way of U.S. Highway 70 Bypass; thence along said right-of-way South 79 degrees 07 minutes 42 seconds East, a distance of 883.84 feet to an iron pipe set; thence South 02 degrees 25 minutes 29 seconds East, a distance of 352.88 feet to an existing iron pipe, the POINT OF BEGINNING, containing 13.41 acres, more or less.

**EXHIBIT B**  
Concept Plan

# EXHIBIT B



N/A  
DOUGLAS HARDWAY, INUSHE  
DR 4025, PG 162  
M 4.21.A1  
PN 9874-19-6188

N/A  
CANNODY, BARBARA L  
DB 354, PG 447  
M 4.70.A.18  
PA 9874-19-3527

**SKETCH BREAKDOWN:**  
 TOTAL PARCEL: +/- 13.41 AC  
 TOTAL DWELLING UNITS (DU): 67  
 UNIT FOOTPRINTS:  
 END: 25'X38'  
 INTERIOR: 22'X38'  
 PARKING: 180 TOTAL (7 ACCESSIBLE)  
 UNIT PARKING: 134 SP  
 OVERFLOW: 30 SP  
 AMENITY: 16 SP  
 ALL STREETS PRIVATE  
 TRASH PICK BY PRIVATE VENDOR VIA COMPACTOR  
 WATER SYSTEM TO LOOP FROM ENTRANCE TO EXISTING WESTERN SYSTEM  
 SEWER TO CONNECT TO PUMP STATION

- CONCEPT KEY:**
1. US HWY 70
  2. EXISTING TURN LANES
  3. EXISTING WATER TAP
  4. PROJECT ENTRANCE
  5. 50' BUFFER
  6. TOWNHOME UNITS (TYP)
  7. 50' BUFFER WITH WALKING TRAIL
  8. RESIDENT AND OVERFLOW PARKING
  9. AMENITY PARKING
  10. POOL AND POOL DECK
  11. ACTIVITY BUFFER
  12. PICKLEBALL COURT
  13. COMPACTOR
  14. MAIL KIOSK
  15. AMENITY PAVILION
  16. STORM WATER MANAGEMENT PONDS
  17. STORM WATER CONNECTIONS
  18. WATERLINE LOOP TO WEST SYSTEM
  19. SANITARY SEWER CONNECTION TO PUMP STATION
  20. EXISTING SANITARY SEWER BORE UNDER WETLANDS
  21. WATER SYSTEM BORE UNDER WETLANDS
  22. EXISTING EAST SIDE RECEIVING MANHOLE
  23. EXISTING PUMP STATION
  24. EXISTING SUBDIVISION



**ARCHITECTURAL CONCEPT**

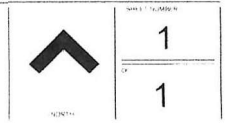
SUBJECT TO REGULATORY AGENCY REVIEW AND APPROVAL

SCALE: 1"=120' 120' 240'

**Front Street**  
 DESIGN & CONSULTING  
 P.O. Box 254  
 Folly Beach, SC 29439  
 tel 843 588 5021  
 www.frontstreetdesign.com

TOWNHOME SKETCH PLAN  
 CORBINTON  
 HILLSBOROUGH, NC

PROJECT #	06/06/2024
DATE	11/02/2020
SCALE	1"=120'
RESPONSIBLE	EYC/gsk
DATE	





## **ORDINANCE**

### **Amending the Official Zoning Map of the Town of Hillsborough, NC**

715 U.S. Highway 70 East (Parcel Identification Number 9874490155)

WHEREAS, a request has been made to amend the Official Zoning Map for the Town of Hillsborough, specifically to rezone 13.41 acres at 715 U.S. Highway 70 East (PIN # 9874490155), the legal description of which can be found in Deed Book 5843, Page 457 of the Orange County Registry; and

WHEREAS, the application was referred to the Hillsborough Planning Board for its recommendation, and the Planning Board has provided the town board with a written recommendation addressing the consistency of the proposed rezoning amendment with the town's comprehensive plan and such other matters as the Planning Board deemed appropriate; and

WHEREAS, the town board has, prior to acting on the application, adopted a statement describing the consistency of the proposed rezoning with the town's comprehensive plan and explaining why the action contemplated by the town board as reflected herein is reasonable and in the public interest.

NOW, THEREFORE, the Hillsborough Board of Commissioners ordains:

- Section 1. The Official Zoning Map of the Town of Hillsborough is hereby amended to rezone the aforementioned property from Assisted Living Neighborhood (ALN) to Multi-Family (MF).
- Section 2. All provisions of any town ordinance in conflict with this ordinance are repealed.
- Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2026.

Ayes:	
Noes:	
Absent or excused:	

\_\_\_\_\_  
Sarah E. Kimrey, Town Clerk



# CONSISTENCY STATEMENT

Pursuant to North Carolina General Statute § 160D-605  
Request to Amend Hillsborough's Official Zoning Map  
715 U.S. Highway 70 East (PIN: 9874-49-0155)  
Month DD, Year

The Hillsborough Board of Commissioners has reviewed a request from KEPSC Hillsborough LLC to rezone the parcel identified as 715 U.S. Highway 70 East (PIN 9874-49-0155) from Assisted Living Neighborhood (ALN) to Multi-Family (MF). The town board has determined the proposed action is consistent with the town's Comprehensive Sustainability Plan because:

- Section 1.** The proposed amendment is **consistent** with the Comprehensive Sustainability Plan (CSP), specifically the following goal, strategy, and action of the plan:
- (a) Goal: Ensure that future growth and development, including infill and redevelopment, are aligned with smart growth principles and consider infrastructure constraints such as water and wastewater system capacity.
  - (b) Strategy: Develop and adopt plans that contribute to meeting preferred future land use and growth patterns.
  - (c) Action: Analyze additional opportunities for infill and redevelopment and increased density in existing neighborhoods, focusing on the provision of water and sewer and other infrastructure and services.
- Section 2.** The proposed map amendment is **reasonable** because it **advances** identified goals and strategies found in the Comprehensive Sustainability Plan and **promotes** the public health, safety, and welfare because it will create additional rental housing and add to affordable housing in the Town of Hillsborough.

The foregoing consistency statement, having been submitted to a vote, received the following vote and was duly adopted this \_\_\_\_ day of \_\_\_\_\_ in the year 2026.

Ayes:  
Noes:  
Absent or excused:

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Sarah E. Kimrey, Town Clerk