

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 Releasors' 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: _____

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the State and County aforesaid do hereby certify that _____ 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 _____ day of _____, _____.

Notary Public

My Commission Expires: _____

[Affix Notary Seal]

THE TOWN OF HILLSBOROUGH, NORTH CAROLINA

By: _____

Name:

Title:

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

I, _____, a Notary Public of the State and County aforesaid do hereby certify that _____ 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 _____ day of _____, _____.

Notary Public

My Commission Expires: _____

[Affix Notary Seal]