

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

DEVELOPMENT AGREEMENT

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 _____, 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, and the standard requirements of the WSEC, a copy of which is attached as **Exhibit C**, 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.

DRAFT

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 _____, _____ for a duly noticed legislative hearing. Based on the information presented at the _____ 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: