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## MEMORANDUM

**TO:** KB Garner, LLC and the Town of Garner

**FROM:** James F. Goodwin

**RE:** Proposed Modifications to Town of Garner Loan Documents for Tryon Station

**DATE:** April 15, 2026

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This firm is counsel to KB Garner, LLC (“Borrower”), the owner of the Tryon Station Apartments affordable housing property (“Tryon Station”) located in the Town of Garner, North Carolina (the “Town”). The Town lent the sum of \$750,000.00 to Borrower to assist in financing the construction of Tryon Station, as evidenced by a Promissory Note dated March 5, 2024, and associated loan documents (the “Loan Documents”).

As a project financed by the federal Low-Income Housing Tax Credit program, the Project is required to make a long-term affordability election in its tax filings with the IRS. In simplest terms, either (a) the units at the Project must be restricted to households whose income does not exceed 60% of the area median income, adjusted for family size (the “40/60 Test”), or (b) the units must be rented such that the average income of all units does not exceed 60% AMI, and no single household’s income exceeds 80% AMI (the “Average Income Test”).

When Borrower obtained the loan from the Town, it was contemplated that Borrower would elect the 40/60 Test, and the Loan Documents were drafted and executed accordingly. Borrower has since determined that electing the Average Income Test is in the best interest of the Project. To accommodate this election, certain terms of the Loan Documents must therefore be amended.

We propose the following modification to Section 4.2(b) of the Town Loan Agreement:

The use will not change from the proposed use as multifamily apartments affordable to qualified tenants whose income is ~~whose income is~~ at or below ~~6080~~% of the area median income of Wake County (“AMI”) determined by the U.S. Department of Housing and Urban Development (“HUD”) or if unavailable, as determined by the County; provided, the collective average income limit of all residential units at the Project shall not exceed 60% of AMI. In addition, eighteen (18) of the units will be reserved for Wake County Housing Permanent Supporting Housing Voucher clients (“County Permanent Supportive Housing Units”) and eighteen (18) units will be reserved for other non- County housing clients, including those eligible under North Carolina Housing Finance Agency’s Key Program.

And the following corresponding modification to Section 21 of the Town Deed of Trust:

Affordability. The Grantor shall develop Tryon Station Apartments, a one hundred seventy-six (176) unit multifamily apartment complex, as per the plans submitted to and approved by the Town and to be located at 1509 Creech Road, Garner, Wake County, North Carolina. During the Period of Affordability, which for this loan shall be defined as thirty (30) years from: i) the last date that a Certificate of Occupancy is issued for the Project; or ii) the date that this Town Deed of Trust is recorded, whichever is later. All one hundred seventy-six (176) residential apartment units will be located on the Property (“Apartments”) and made available to qualifying tenants whose income is at or below ~~6080~~% of the area median income of Wake County (“~~AMI~~”) ~~as established~~determined by the U.S. Department of Housing and Urban Development (“HUD”) or if unavailable, as determined by the County; provided, the collective average income limit of all residential units at the Project shall not exceed 60% of AMI. Eighteen (18) units will be reserved for Wake County Housing Permanent Supportive Housing Voucher clients (“County Permanent Supportive Units”) and eighteen (18) units will be reserved for other County or non-County supporting housing clients, including those eligible under the North Carolina Housing Finance Agency’s Key Program.

As a condition to making the above modifications, the Town has requested, and Borrower has agreed, to modify the Loan Documents to waive Borrower’s right to admit a non-profit managing member and thereby claim an exemption from real property taxation. Accordingly, we propose adding the following new Section 4.15 to the Town Loan Agreement:

Tax Status of Project. For so long as the Town Loan remains outstanding, Borrower covenants and agrees that it shall not, without the Town’s prior written consent, apply for an exemption from real property taxation under N.C.G.S. § 105-278.6(a)(8) based on nonprofit ownership interests in the Borrower as established by the so-called “Blue Ridge” doctrine; *In Re Blue Ridge Housing of Bakersville LLC*, 738 S.E. 2d 802 (N.C. App. 2013).