

STATE OF NORTH CAROLINA

DEVELOPMENT AGREEMENT

COUNTY OF UNION

This Development Agreement (hereinafter the “**Agreement**”) is made and entered into as of the ____ day of _____, 2024 (“**Effective Date**”), by and between **ZEPSA CAPITAL, LLC**, a North Carolina limited liability company authorized to do business in North Carolina (“**Developer**”), whose address is 1501 Westinghouse Blvd, Charlotte, NC 28273, **HISTORIC MARVIN TRUST** u/a dated 12/30/2015 (“**Owner**”), whose address is 1510 Helms Street, Monroe, NC 28110, and the **VILLAGE OF MARVIN, NORTH CAROLINA**, a municipal corporation of the State of North Carolina (“**Village**”), whose address is 10006 Marvin School Road, Marvin North Carolina 28173. Developer, Owner, and Village, and any successors in interest/assigns thereto, are sometimes referred to separately herein as a “**Party**”, or jointly referred to as the “**Parties**.”

ARTICLE 1. FRAMEWORK

- 1.1 Article 10 of Chapter 160D of the North Carolina General Statutes (hereinafter referred to as “**General Statutes**” or “**G.S.**”) provides a statutory framework for development agreements between local governments and developers in accordance with those Sections.
- 1.2 On May 14, 2024, the Village adopted OR-2024-05-06, the “**Marvin Development Ordinance**” (as amended, the “**MDO**”).
- 1.3 Article 8.5-6 of the MDO requires entry into a development agreement concurrently with rezoning to the Heritage District-Commercial Only (“**HD-CO**”) conditional zoning district.
- 1.4 In addition to any force of law conferred upon this Agreement by Applicable Laws, the terms of this Agreement also are contractual in nature, are a significant inducement and consideration to enter into this Agreement and may be enforced as contractual terms.

ARTICLE 2. DEFINITIONS

In the construction of this Agreement, unless otherwise defined herein, the following capitalized words and terms shall have the respective meanings set forth below. Except as otherwise provided in this Agreement, terms used in the relevant portions of the General Statutes and the Village of Marvin Code of Ordinances shall have the same meanings as employed in those statutes and ordinances.

- 2.1 “**Applicable Law**” means all federal, state, and local statutes, ordinances, regulations, and requirements governing the Development, including, without limitation, the Current Regulations.
- 2.2 “**Current Regulations**” means all ordinances, resolutions, permits, policies, and

regulations adopted by the Village, and in effect on or before the Effective Date and affecting the Development of the Property and includes, without limitation, laws governing permitted uses of the Property, density, design, and improvements.

- 2.3 **“Development”** or **“Develop”** shall mean any activity on the Property involving, requiring, or consisting of any of the following: (i) the construction of a new building; (ii) the construction or installation of structures or facilities such as, but not limited to, roads, greenways, paved trails, sidewalks, parking lots, and/or utility infrastructures; (iii) the clearing or alteration of land as an adjunct of such construction; (iv) the expansion of an existing building; or (v) the division of land into two or more Parcels or the recombination of Parcels. When appropriate to the context, Development refers to the planning for or the act of developing or the result of development.
- 2.4 **“Development Permit”** means any building permit, site plan, subdivision approval, rezoning certification, variance, certificate of occupancy and any other official action of Local Government having the effect of permitting the Development for the use of the Property contemplated in this Agreement.
- 2.5 **“Development Plan”** means a type of plan that becomes part of the zoning of a property that establishes the level of development allowed absent further zoning action, except as otherwise allowed or required under this Agreement, including but not limited to any subdivision plan or zoning site plan (or other plan for development of real property however designated in applicable Current Regulations) for development of a Parcel that has been approved by the Village.
- 2.6 **“Local Government”** means any municipality or governmental entity of the State of North Carolina established pursuant to Applicable Law which exercises regulatory authority over, and grants Development Permits for land Development or which provides public Infrastructure.
- 2.7 **“Master Plan”** means that site specific vesting plan identified as **“Amended Site Plan-Marvin Grove”** and which is incorporated into the zoning map change approved as part of Conditional Rezoning Case Number **[ENTER HERE]** (a copy of which is attached hereto as **Exhibit B**, together with all amendments and supplements thereto as requested by Developer and adopted by the Village after the Effective Date of this Agreement. The Conditional Rezoning Case Number **[ENTER HERE]** shall be referred to herein as the **“Conditional Rezoning”** or **“Rezoning”** and includes all elements of the Conditional Rezoning and Site Plan Amendment application approved as part of the Conditional Rezoning.
- 2.8 **“Parcel”** means each separate tract of the Property as the same may be constituted from time to time, including a tract as acquired by the Developer, a tract that has been subdivided out of another tract, or a tract that results from the recombination of two or more tracts.
- 2.9 **“Property”** shall mean the land located at 9904 & 9908 New Town Road, Marvin, NC and comprised of approximately 3.57 acres bearing Union County Parcel identification numbers 06-225-009-A (**“Tract 1A”**) and 06-225-009-B (**“Tract 2”**), said Tract 2 to

consist of that approximately 1.473AC tract (“Tract 1B”) and that approximately .296 AC tract (“New Tract 2”) as more specifically shown on the Master Plan. The Property as it exists on the Effective Date is described in **Exhibit A** attached hereto.

- 2.10 **“Public Facilities”** means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable watereducational, parks and recreational, and health systems and facilities.
- 2.11 **“Registry”** refers to the office of the Union County Register of Deeds.
- 2.12 **“Representative”** is a Person designated by the Developer to act for and on behalf of the Developer and Owner and subject to the terms of this Agreement. As of the Effective Date, the Representative is Peter Zepa. At any time and from time to time the Developer and Owner may designate a successor replacement Representative and shall notify the Village of any change in the Representative.
- 2.13 **“Village Planner”** means the “Planning, Zoning & Subdivision Administrator”.

ARTICLE 3. BACKGROUND INFORMATION & RECITALS

- 3.1 9908 New Town LLC is the fee simple owner of Tract 1A on the Effective Date and evidences its consent to entry into this Agreement by execution hereof. Developer is the sole manager and member of 9908 New Town LLC. Tract 1A is located within the corporate limits of the Village.
- 3.2 Tract 1A is zoned MHD-CO pursuant to Village of Marvin Conditional Rezoning Case No. CZ 2023-1 and associated rezoning site plan approved by the Village Council on August 31, 2023. To facilitate development of Tract 1A, Developer and Village entered into a Development Agreement dated September 28, 2023 and recorded in Deed Book 8788, Page 720 of the Union County Public Registry.
- 3.3 Owner is the fee simple owner of Tract 2 on the Effective Date and enters into this Agreement by execution hereof. Tract 2 is located within the corporate limits of the Village. Developer has an ownership interest in Tract 1B by virtue of having entered into a “Purchase and Sale Agreement” with the Owner and will become fee simple owner of Tract 1B upon closing on the purchase agreement. Owner will retain fee simple ownership of New Tract 2. The Property is located within the corporate limits of the Village
- 3.4 Tract 2 is zoned Single Family Residential-1 (“SFR-1”). Developer desires to expand its previously approved project and develop a commercial project on the Property as generally described in the Master Plan (the “Project”). Owner desires to develop New Tract 2 for commercial use in a manner consistent with, and complementary to, other uses and buildings developed on the Property. To permit Development of the Property for the Project, the Conditional Rezoning must be approved by the Village Council.
- 3.5 The purpose of this Agreement is to facilitate the Development (as defined herein) of the

Property in a way that best realizes the benefits to the Parties.

- 3.6 The Development of the Property requires a major investment by the Developer and substantial commitment of resources to achieve the benefits of the Development for the Parties. The Developer will be unable to make and realize the benefits from such commitments without the assurances of the Village and Owner as provided by this Agreement.
- 3.7 The Marvin Heritage District Small Area Plan (the “Small Area Plan”) was adopted by the Village of Marvin Village Council (“Village Council”) on December 14, 2021 and amended on May 14, 2024. The Small Area Plan describes as a principle goal the fostering of a village center that *“pays tribute to our rural heritage, incorporates pedestrian oriented design, neighborhood uses and inter-connected greenways”* Other goals include the establishment of a Municipal Service District for the Heritage District *“to create revenue to use funds for certain installation and maintenance of infrastructure and amenities in the Marvin Heritage District”*.
- 3.8 The associated Future Land Use Map to the Small Area Plan envisions use of the Property for Commercial Only purposes.
- 3.9 Without this Agreement, the Village will not be able to properly assure the provision of an efficient, effective, and practical overall plan for addressing the Development of the Property, including the protection of the existing structure, natural resources, the provision of open space and parkland, and commitments with respect to transit, greenways, multi- use paths, sidewalks, and road and other infrastructure improvements, as applicable.
- 3.10 After careful review and deliberation, the Village has determined and concluded that the above described Project on the Property complies with all statutory requirements and Current Regulations (unless otherwise provided herein), is consistent with the Small Area Plan and other adopted Village policies and that it is reasonable and in the public interest as the Project would further the Village’s land use policies and objectives, as well as the health, safety and economic wellbeing of the Village.
- 3.11 The Village has also determined that development of Property for the Project presents a unique opportunity for the Village to secure quality planning and growth.

ARTICLE 4. DEVELOPMENT TERMS

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

- 4.1 Paragraphs 1.1 through 3.11 are incorporated herein as if fully set out.
- 4.2 Public Hearing: Pursuant to §160D-1005 of the North Carolina General Statutes, the Village Council conducted a public hearing on **[PUBLIC HEARING DATE]**, to consider

approval of the Conditional Rezoning and execution of this Agreement in accordance with the procedures set out in North Carolina Gen. Stat. §160D-602 applicable to zoning map amendments.

- 4.3 Term. The period of duration of this Agreement (“Term”) shall commence upon the Effective Date and it shall exist and continue through the date that is ten (10) years immediately following the Effective Date, unless sooner terminated in accordance with the provisions of this Agreement, or unless extended by the mutual consent of the Parties hereto or their successors in interest. Expiration of the Term shall not terminate mutually agreed to obligations and commitments included within this Agreement that are expressly specified to extend beyond the Term, or any extensions thereof.
- 4.4 Permitted Uses/Maximum Density/Placement. Except as otherwise set forth herein, the Property may be devoted to all listed uses, special uses, and uses listed with additional standards in the Heritage District Overlay column of Table 8.1 of the MDO, a copy of which is attached hereto as Exhibit C and incorporated herein by reference. All special uses allowed in the HD-CO District shall require a Special Use Permit. The maximum net floor area that may be devoted to commercial use shall not exceed 46,500 square feet; provided, however, that the maximum gross floor area for New Tract 2 shall not exceed 1,500 square feet and no increase of said maximum floor area square footage shall be approved without written consent of Developer.
- 4.5 Types of Buildings/Preservation of Existing Structure. Building types shall be those allowed in the HD-CO District. The placement of the buildings on the Property shall be as generally depicted on the Master Plan. The existing structures on the Property shall be remodeled in a manner that maintains their original design intent and historical character but brings said structure into compliance with applicable building regulations so that it is safe for commercial use.
- 4.6 New Tract 2. The area of the Property designated as “New Tract 2” on the Master Plan is included in the Conditional Rezoning to avoid non-compliance with the MDO’s dimensional requirements for residential lots. Actual improvements and permitted uses (other than convenience store without gas pumps) on New Tract 2 shall be determined at a later date following the process outlined in article 5.4 of the MDO for conditional zoning and in accord with this Agreement. The future determination of actual improvements and permitted uses on shall be applicable only to New Tract 2, and shall in no way affect the improvements and permitted uses contemplated herein or by the development standards set forth on the Master Plan for the areas of the Property designated as Tract 1A and Tract 1B on the Master Plan. Prior to submission to the Village for consideration, Developer shall have a minimum of 10 business days to review and approve (said approval not to be unreasonably withheld) any proposed uses or plans/elevations/renderings of improvements proposed for development on New Tract 2 to ensure consistency with the character, quality and aesthetic of the Project. Notwithstanding anything herein to the contrary, Owner acknowledges that uses offering the same or similar goods or services to those uses proposed for, or already operating on Tracts 1A and 1B of the Property would have a detrimental impact on the Project and are therefore prohibited on New Tract 2 without prior written consent of Developer.

- 4.6 Architectural Uniformity and Consistency with the Master Plan. In addition to the requirements set forth in the Article 8.5-6 of MDO, Development on the Property shall be substantially consistent with the design themes, architectural themes, architectural elements, building materials, and color palettes shown on the architectural renderings submitted and approved as part of the Conditional Rezoning (the “Elevations”) and attached hereto and incorporated herein as **Exhibit D**. Said elevations are conceptual in nature and minor modifications may occur during design, engineering and construction of the buildings provided, however that the overall design intent is maintained.
- 4.7 Vested Rights. Pursuant to the authority granted therefor in Article 10 of Chapter 160D of the General Statutes, all rights and prerogatives accorded the Developer by this Agreement, including, without limitation, application of the Current Regulations, shall constitute vested rights for the Development of the Property throughout the Term of this Agreement. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In accordance with N.C.G.S. 160D- 1007(c), in the event State or federal law is changed after the Effective Date and the change prevents or precludes compliance with one or more provisions of this Agreement, the Village, upon finding that the change in State or federal law has a fundamental effect on this Agreement, may modify the affected provisions by ordinance after written notice to the Developer and an evidentiary hearing, and the Village shall record the modification in the Registry on or before the tenth (10th) day after the date of adoption of the modification. The provisions set forth in NCGS §§ 160D-108 and 108.1 further set forth vested rights and exceptions.
- 4.8 Generally Applicable Approvals. Except as otherwise provided by this Agreement and in accordance with N.C.G.S. § 160D-1007, Development of the Property, shall be in conformance with the Current Regulations and all other Applicable Law in force at the time of execution of this Agreement. Development shall further comply with all terms and provisions set forth in the Master Plan. In the event of a conflict with the body of this Agreement and the Master Plan, the body of this Agreement shall govern and control. Without limiting the foregoing, the following shall apply:
- a) **Applicable Marvin Codes** – Standards not addressed, and code references that are referenced herein shall be governed by the Marvin Code of Ordinances and the MDO as of the Effective Date of this Agreement.
 - b) **Preliminary site & civil design plans.** The approval of a rezoning site plan confers approval upon land uses, preliminary site plans, setbacks, buffers, general arrangement of improvements upon the lot, deviation list, and development standards governing development upon the Property and shall be considered equal to the approval of a site specific vesting development plan for purposes of plan approval, described in the Subdivision Article, pursuant to Article 16.1-4 of the MDO. Within one year of the approval, preliminary site and civil design plans (i.e. construction documents) for at least Tract 1A shall be prepared to meet the requirements of Article 7.7-1(G) and in accord with the Development schedule set forth herein.
 - c) **Specific Site and Design Plans Required** –Approval of specific Site and Design Plans for roadway design, drainage, landscaping, and final lot layout shall be conferred during Design Review and Approval. Developer reserves the right to combine preliminary and civil design plans and specific site and design plan approval process phases.
 - d) **Design Review and Approval** –Construction documents for the Project shall receive

review and approval pursuant to the process outlined in Article 7 of the MDO.

- e) **Building Codes and Laws Other Than Land Use Regulations.** The Parties, notwithstanding any provision which may be construed to the contrary in this Agreement, shall comply with any building, housing, electrical, mechanical, plumbing and gas codes subsequently adopted by the Village or other governmental entity.
- f) **Local Development Permits and Other Permits Needed.** The Parties anticipate that the following local Development Permits and other regulatory permits will be needed to complete the Development of the Project: Zoning permits, land development permits, street, water, sewer and stormwater construction drawing approval, building permits, certificates of compliance, Union County water and sewer permits, and stormwater control measure agreements.
- g) The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer or Owner of the necessity of complying with all laws governing permit requirements, conditions, terms, or restrictions.

4.9 Tree Preservation and Buffers. Developer shall provide a twenty foot (20') wide vegetative buffer along the rear of the Property as shown on the Master Plan. Developer and Owner (as the case may be) shall provide the Village with a tree removal and mitigation plan prior to preliminary site and civil design plan approval.

4.10 Public Facilities.

- a) The responsibility for provision of Public Facilities that will service the Development on the Property are described in this Agreement, and other agreements between or among any of the following: Developer, Owner, the Village, other governmental authorizes, and private providers of services.
- b) Village Administration, Parks & Recreation, and Solid Waste Collection shall be provided to the Development commensurate with other areas within the municipal limits. Water services will be supplied through Union County's water system. Collection and treatment of wastewater (i.e., sewer) from the Property will be provided by utilization of Union County Water and Sewer Department.
- c) If applicable, construction of streets on the Property will be provided by the Developer as necessary to serve the Property, except for any streets and related facilities that are constructed by Village or the North Carolina Department of Transportation ("NCDOT"). Developer will determine what, if any, right of way may be requested by NCDOT during its scoping meeting and agrees to dedicate to NCDOT, at no additional cost or expense, any reasonable requested right of way as will be shown on the Master Plan along New Town Road.
- d) Stormwater control measures serving the Property will be either private facilities under management by the Developer, or part of an off-site regional system to be determined during preparation of the construction documents for the Project as part of the preliminary site and civil design plans process. All stormwater and drainage improvements shall be installed using best management practices, in accordance with the Applicable Laws and as otherwise provided by the plans and Village specifications therefor. Stormwater design and improvement plans shall be subject to review and approval in accordance with the Village Code. Structural

BMPs (if any) will be maintained by the Developer or pursuant to a regional agreement (as the case may be) in accordance with the “North Carolina Department of Water Quality Best Management Practices Manual” and shall be performed with good materials in a good and workmanlike manner.

- e) Developer shall provide for the construction and revision of all necessary water mains, service laterals and associated improvements.
- f) Developer shall provide for the construction or revision of all necessary sewer and water mains, service lateral lines and associated improvements which will serve the Property as required to connect to the existing Union County system or other applicable system.
- g) Permits and Occupancy. Upon approval by the Village of the final plans and specifications for the Public Facilities associated therewith, then zoning, stormwater, and building permits may be issued and, later, certificates of occupancy will be issued at such time as the Public Facilities have been constructed with respect to the development and have been accepted for use. Notwithstanding anything herein to the contrary, and in lieu of constructing Public Facilities for water and/or sewer, Developer reserves the right and option to investigate through the Union County Environmental Health Department, the use of private well water and/or septic systems to service one or more buildings on the Property until Public Facilities to the Property become available. In the event Developer chooses this option, the required permits and certificates of compliance/occupancy shall be issued based on compliance with applicable requirements for the aforementioned private facilities. Notwithstanding anything to the contrary, in the event of a material breach of the provisions of this Agreement by Developer, the Village shall not be required to issue any certificates of occupancy, or to approve or accept the receipt and/or delivery of any service to any part of the property until and unless such breach is cured.
- h) Plans and Specifications; Inspections; and Warranties. The Public Facilities shall be constructed by the Developer in accordance with Applicable Law, subsequently approved construction plans and specifications, and as set forth in the Master Plan. The Village Planner and/or any entity accepting such Public Facilities (or their respective designee(s)) shall inspect the construction of the Public Facilities as is customary and prior to the connection of same. Inspection shall not in any way imply that the project shall not be inspected and supervised by the Developer’s Engineer, nor shall the Village or other entity have any liability or responsibility with respect to the proper construction of the improvements, the function of such inspections being solely for the purpose of determining whether said improvements will qualify for connection to the respective systems. The Developer agrees that all construction contracts shall have a provision providing for customary warranties of not less than one year from completion date with respect to the work and materials furnished and that said warranties may be assignable and enforceable by the Village and/or the Developer. Connection to the street systems of the Village shall not be evidence that the improvements are defect free or that the contractors constructing the same have no further liability

with respect to warranties. The Plans and Specifications shall be subject to the approval of Union County for water and sewer infrastructure and of such agencies of the State of North Carolina as is required by law, including, without limitation, the North Carolina Department of Environmental Quality and the NCDOT. The Developer shall be required to secure all easements and permit approvals from third parties which shall be required to construct the Public Facilities.

- 4.11 Density; Commercial Lot Regulations. There will be no more than 6 buildings on the Property as shown on the Master Plan. The placement of the buildings on the Property is generally depicted on the Master Plan subject to the applicable standards contained in Article 8.5-6 of the MDO, including but not limited to, Current Regulations.
- 4.12 Trails and Open Space. Developer recognizes the benefits of open space including both passive and active spaces, and agrees to preserve open space as identified on the Master Plan. A standard Maintenance Plan and Agreement addressing buffer and landscaping maintenance shall be executed by Developer or Owner (as the case may be) prior to preliminary site and civil design plan approval.
- a) **Open space and trail system.** Developer will preserve the open space located on the Property as identified on the Master Plan for common use by occupants or customers of the Project on the Property. Developer will construct an 8 foot wide connection between the Project and the adjacent Preserve Internal Trail in the location as generally shown on the Master Plan. Developer reserves the right to gate the connection during non-business hours.
 - b) **Sidewalk along New Town Road.** Developer will construct an eight (8) foot asphalt sidewalk within the existing right of way along the Property's New Town Road frontage in the location as generally shown on the Master Plan, or, upon the election of the Developer, make a payment to the Village (in an amount equal to the direct linear foot cost of the asphalt material for the proposed 8 foot asphalt sidewalk) in lieu of such construction, and the Village shall construct the sidewalk in accordance with the Marvin Loop project (NCDOT Project No. BL-0012). Developer reserves the right to meander the sidewalk out of the existing right of way to avoid physical and environmental constraints. Upon completion of construction, and to the extent to sidewalk exceeds the New Town right of way, Developer will dedicate and/or convey an easement for the sidewalk to the Village in a form reasonably acceptable to the Village. Developer shall have no obligation to maintain, repair or replace said sidewalk after the completion of construction. Developer's obligation to construct the sidewalk is subject to NCDOT approval and must comply with NCDOT and Village plans for the Marvin Loop.
 - c) In the event that Developer secures permanent off-site parking for the Property prior to approval of its construction plans, Developer may seek approval omitting or reducing the rear row of parking spaces and leaving a greater buffer with the approval of the Planning Director.
- 4.13 Deviations. Notwithstanding anything in this Agreement to the contrary, Developer shall have the right (but not the obligation) to deviate from the Current Regulations as set forth in the Deviations Table attached hereto as **Exhibit E** and incorporated herein by reference. Said Deviations are approved as part of the Conditional Rezoning.

4.14 Miscellaneous Conditions. The following terms and conditions shall be a part of Development of the Property.

- a) Building height shall not exceed 2.5 stories or a maximum building height of 35 feet.
- b) Outdoor Lighting. Development shall be subject to Chapter 152: Outdoor Lighting of the Village Ordinances.
- c) Photometric Plan. A photometric plan for all pedestrian facilities, roadways and signs shall be provided and approved with the preliminary site & civil design plans.
- d) Engineering Manual. Development shall be subject to the Village of Marvin Engineering Standards and Procedures Manual.
- e) Additional Road Improvements Along New Town Road. The Developer and Owner shall consult with NCDOT about the need for any road improvements along New Town Road and reflect any agreed upon road improvements on the preliminary site & civil design plans.
- f) Access. Developer shall consult with NCDOT and the Village on making the exit of the Development a right out only.
- g) Native Plants. The Development shall conserve native plants where possible and replant with native species and identify this on their preliminary site & civil design plans.
- h) Developer reserves the right to Develop the Property with fewer than six buildings upon written notification to the Village. Notwithstanding anything herein to the contrary, the maximum total gross floor area shall not exceed 62,000 square feet. For avoidance of doubt, gross square foot floor area shall not include drive aisle(s), loading spaces, surface parking facilities, open space areas, and outdoor amenities.
- i) The number of parking spaces may be reduced from the 112 designated on the Master Plan provided that either: i) off-premises parking is secured in accordance with Paragraph 4.11(c), (ii) as required to meet dumpster/loading space requirements; or (iii) as approved by the Village Planning Director, provided however, that the Planning Director shall approve any reduction of parking spaces determined by the Developer as reasonable necessary to facilitate preservation of trees or better overall site design.
- j) Developer agrees to have all uses close by midnight for a period of nine (9) months after a certificate of occupancy has been issued.
- k) Amplified music/sound outdoors in exterior guest areas shall only be allowed between the hours of (i) 10:00 a.m. through 10:00 p.m. on Sunday through Thursday and (ii) 10:00 a.m. through 11:00 p.m. on Friday and Saturday.

- m) Notwithstanding anything herein to the contrary, nothing in this Agreement shall be construed to alter or amend the rights, obligations, terms and conditions set forth in any agreements between Developer and Owner, including but not limited to that Access, Parking and Utility Easement Agreement recorded in Bk8818, Pg0064 of the Union County Public Registry and as may be amended from time to time.
- n) The Village shall grant Developer a temporary construction easement over and across a portion of property identified as Union County Tax Parcel # 06225010 to allow Developer to grade said portion of property in order to facilitate the installation of the Public Facilities on the Property.

4.15 Amendment; Modification; Termination; or Extension of the Agreement Term. This Agreement may be amended, modified, or terminated, or the Agreement Term extended, by the mutual consent of the Parties. The Village Planner shall determine whether it is a major modification or a minor modification and shall notify the Developer of that determination using the following criteria, if applicable:

- a) A proposed increase or decrease of more than five percent (5%) of the acreage of the Property subject to this Agreement at the time of the proposed increase or decrease shall be considered a major modification. A cumulative increase or decrease of a total of fifteen percent (15%) of the initial acreage subject to this Agreement shall be considered a major modification.
- b) A change in the Agreement Term is a major modification.
- c) An increase in gross building area of more than five (5) percent is a major modification.

A major modification of this Agreement shall follow the same procedures as required by North Carolina law for the initial approval of a development agreement and shall follow any applicable provisions of the Village Code. A minor modification may be approved by the Village Planner by a letter.

4.16 Recordation/Binding Effect. Within fourteen (14) days after the Village and the Developer execute this Agreement, the Developer or Village shall record this Agreement in the Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the benefit of, all successors in interest to the Parties hereto. All 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.

4.17 Development Timing and Moratoria. A development schedule is attached hereto at **Exhibit F**. The Parties acknowledge that the development schedule is an estimate. The failure of the Developer to meet a commencement or completion date does not, in and of

itself, constitute a material breach of this Agreement, but must be judged based on the totality of the circumstances. The development schedule is a planning and forecasting tool only.

4.18 Periodic Review; Default.

- a) The Village Planner shall conduct a periodic review of the Project at least every 12 months and the Developer shall demonstrate good faith compliance with the terms hereof.
- b) The failure of any Party to comply with the material terms of this Agreement shall constitute a default, entitling the non- defaulting Party or Parties to pursue such remedies as allowed under applicable law against the defaulting Party, provided, however, that no termination of this Agreement may be declared by a Party prior to the notice and opportunity to cure process. A Party seeking to hold another Party in default shall provide written notice of that default to the other Party with reasonable particularity of the nature of the material breach. After such notice of breach has been served, the Party shall have a reasonable time in which to cure the material breach but such time shall generally be for no less than 30 days. If the breaching Party fails to timely cure its material breach of this Agreement, then the non-breaching party may elect to terminate this Agreement.

4.19 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, pandemics, wars, embargoes, fires, hurricanes, adverse weather, acts of God, acts of terrorism, 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 a Party otherwise is 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

4.20 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.

4.21 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.

4.22 Legal Actions. Any Party may institute legal action against a defaulting Party to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Union, State of North Carolina, and the Parties submit to the personal jurisdiction of such court without application of any conflicts of laws provisions of any jurisdiction.

4.23 Notices. Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a Party is required to or may give to another Party hereunder shall be in writing and shall be delivered or addressed to other applicable Parties 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. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery, independent courier service or certified mail, return receipt requested.

Until changed as provided herein, all notices, demands, requests, consents, approvals, or communications to the Village shall be addressed to:

Village Manager
Village of Marvin
1006 Marvin School Road
Marvin, NC 28173

With copy to:

W. Chaplin Spencer, Jr.
Village Attorney
Spencer & Spencer, PA
P.O. Box 790
Rock Hill, SC 29731

Until changed as provided herein, all notices, demands, requests, consents, approvals or communications to the Developer shall be addressed to:

Peter Zepa
Zepa Capital, LLC
1501 Westinghouse Blvd,
Charlotte, NC 28273

With copy to:

Brian Zepa
9908 New Town LLC
1501 Westinghouse Blvd,
Charlotte, NC 28273

Until changed as provided herein, all notices, demands, requests, consents, approvals or communications to the Owner shall be addressed to:

Historic Marvin Trust
1510 Helms St,
Monroe, NC 28110

With copy to:

[COPY ADDRESSEE]

- 4.24 Entire Agreement. This Agreement sets forth and incorporates by reference all 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.
- 4.25 Construction. All Parties agree that, in the interpretation of this Agreement, any amendments to this Agreement, or any Exhibits to this Agreement, there shall be no presumptions, preferences, or resolution of ambiguities in favor of or against any Party with respect to any part of this Agreement drafted by legal counsel of that Party.
- 4.26 Benefits and Burdens; Assignment. After notice to the Village, the Developer may at any time and from time to time assign its rights and responsibilities hereunder to subsequent developers or land owners of all or any portion of the Property, provided that no assignment as to a portion of the Property will relieve Developer of responsibility with respect to the remaining portion of the Property without the Village's consent, which shall not be unreasonably withheld. The Village Manager shall be authorized to consent for the Village. Upon the recordation of such assignment in the Registry, the Developer shall be released from the obligations assigned. No such assignment shall be effective until a written assignment of rights and responsibilities is executed by the assignor and the assignee and recorded in the Registry.
- 4.27 Governing Law. 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 ("G.S.") shall be deemed to include any successor or replacement statute as to the same matters subject to the statute that has been superseded or replaced.
- 4.28 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
- 4.29 Termination. Unless the Agreement Term is extended by the Village and Developer or by other provisions of this Agreement, this Agreement shall terminate on the earlier of the expiration of the Agreement Term specified in Section 4.3 of this Agreement or a specific termination made by operation of the provisions of this Agreement, or by agreement of the Parties. Any termination other than by expiration of the Agreement Term shall be recorded in the Registry. Termination of this Agreement as to the Developer shall not affect any requirements to comply with the applicable terms and conditions of the Ordinance, approval and acceptance of infrastructure improvements, and any applicable permits.
- 4.30 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.

- 4.31 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.
- 4.32 Parcels and Parcel Owners. This Agreement shall apply to the Property and to all Parcels and Parcel Owners, and by acceptance of a deed of conveyance, each subsequent Developer and Parcel Owner agrees to be bound by and abide by the terms and conditions of this Agreement as a Developer or Parcel Owner, as applicable to such Person's respective Parcel.
- 4.33 Representations and Warranties of the Developer. The Developer and Owner represent and warrant to the Village that:
- a) it is an entity duly organized, existing, and in good standing under the laws of the State of North Carolina and authorized to do business in North Carolina; and
 - b) it has the full right, power, and authority to execute this Agreement and to perform its obligations hereunder.
- 4.34 Indemnification. Developer and Owner agree to indemnify, defend, and hold harmless the Village and each other from liability for injury or death to any Person, or damage to any property, that arises out of or results from the willful or negligent acts or omissions of the indemnifying Developer or Owner, as applicable, in connection with any one or more of the following: (i) Development by the applicable developer on the Property; and (ii) operation of any portion of the Property owned by the applicable developer, except to the extent of the negligence or willful misconduct of the Village.

(End of Page; Execution Pages Follow)

IN WITNESS WHEREOF, the Parties have executed this Agreement in legal and binding form on the dates indicated with the acknowledgments of their signatures,

Village of Marvin, a municipal corporation of the State of North Carolina

By: _____
Name: Joe Pollino
Title: Mayor

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

Village of Marvin

By: _____
Name: _____
Title: Finance Director

State of North Carolina
County of Union

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Austin Yow personally appeared before me this day and acknowledged to me that (s)he is the Village Clerk of the Village of Marvin, a municipal corporation of the State of North Carolina, and that by authority duly given and as the act of the Village Council, the foregoing document was signed in the Village's name by Joe Pollino, its Mayor, sealed with its Village seal, and attested by him/her as the Village Clerk.

Date: _____

Notary Public
Printed/Typed Name: _____
My Commission Expires: _____

(Affix Seal or Stamp here)

ZEPSA CAPITAL, LLC
a North Carolina limited liability company

By: _____
Name: Peter Zepa
Title: Manager

State of _____
County of _____

I, _____, the undersigned, a Notary Public of the County and State aforesaid, certify that Peter Zepa personally appeared before me this day and acknowledged to me that, by authority duly given, he executed the foregoing document on behalf of ZEPSA CAPITAL, LLC, a North Carolina limited liability company, in the capacity indicated:

Date: _____

Notary Public
Printed/Typed Name: _____
My Commission Expires: _____

(Affix Seal or Stamp here)

HISTORIC MARVIN TRUST U/A
12/30/2015

By: _____
Name: _____
Title: Trustee

State of _____
County of _____

I, _____, the undersigned, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged to me that, by authority duly given, he executed the foregoing document on behalf of HISTORIC MARVIN TRUST U/A 12/30/2015, in the capacity indicated:

Date: _____

Notary Public
Printed/Typed Name: _____
My Commission Expires: _____

(Affix Seal or Stamp here)

The undersigned as current owner of the Property executed this Agreement in legal and binding form on the date indicated with the acknowledgment demonstrating consent of the Developer to enter into this Agreement.

9908 New Town, LLC
a North Carolina limited liability company

By: _____
Name: _____
Title: _____

State of North Carolina
County of _____

I, _____, the undersigned, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged to me that, by authority duly given, he executed the foregoing document on behalf of 9908 New Town LLC, a North Carolina limited liability company, in the capacity indicated:

Date: _____

Notary Public
Printed/Typed Name: _____
My Commission Expires: _____

(Affix Seal or Stamp here)

The undersigned as current owner of the Property executed this Agreement in legal and binding form on the date indicated with the acknowledgment demonstrating consent of the Developer to enter into this Agreement.

Historic Marvin Trust u/a 12/30/2015

By: _____

Name: _____

Title: _____

State of North Carolina
County of _____

I, _____, the undersigned, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged to me that, by authority duly given, he executed the foregoing document on behalf of 9908 New Town LLC, a North Carolina limited liability company, in the capacity indicated:

Date: _____

Notary Public
Printed/Typed Name:
My Commission Expires:

(Affix Seal or Stamp here)

Exhibit A

Legal Description

Tract 1A:

Lying and being situate in Union County, North Carolina, and being more particularly described as follows:

BEGINNING at a point located in the centerline of S. R. #1315, a corner of the Marvin Methodist Church and runs thence with two lines of said church property as follows: 1st, North 24 degrees 19 minutes East 25.8 feet to a concrete monument; 2nd, North 29 degrees 09 minutes East 426.3 feet, passing a concrete monument at 295.2 feet, to an iron pin located in a line of the William E. Ezzell (now or formerly) property (Deed Book 271, page 692); thence with a line of said Ezzell Property, South 51 Degrees 08 minutes East 174.86 feet to an iron pin, a corner of the 2.05 acre tract conveyed to Louise C. Payne in Book 383, page 132, Union County Registry; thence with a line of said Payne Property, South 35 degrees 05 minutes West; passing an iron pin at 412.43 feet, a total distance of 442.43 feet to a point located in the centerline of S. R. #1315; thence with the centerline of said road, North 52 degrees 49 minutes West 125.7 feet to the point of BEGINNING, and containing 1.54 acres, more or less, as shown on plat thereof by Allen D. Carter, NCRLS, dated March 31, 1984.

LESS AND EXCEPT the land conveyed by Deed for Highway Right of Way recorded in Book 7011, Page 45, Union County Registry.

Tract 2:

Lying and being situate in Union County, North Carolina, and being more particularly described as follows:

BEGINNING at a point in the center line of County Road #1315, said point being located South 17 degrees 58 minutes West 18.5 feet from a post oak indicating the southwest corner of the John W. McKinney property as described in Book 140, page 258, Union County Registry; thence with the center line of said road, North 52 degrees 49 minutes West, 120.0 feet to a point, a corner of a 1.54 acre tract; thence with a line of said 1.54 acre tract, North 35 degrees 05 minutes East, 442.43 feet to an iron in a line of the property of William E. Ezzell, passing an iron on the north side of the road at 30.0 feet; thence with two lines of the said Ezzell property as follows: 1st. South 51 degrees 08 minutes East, 221.34 feet to an iron; 2nd. South 21 degrees 27 minutes West, 266.8 feet to an iron, a corner of the John W. McKinney property; thence with a line of the said McKinney property, North 71 degrees 58 minutes West 207.8 feet to an iron; thence South 17 degrees 58 minutes West, 118.1 feet to the point of BEGINNING, containing 2.05 acres, more or less, as shown on a survey and plat thereof by Allen D. Carter, R.L.S., dated April 25, 1984.

Being the same property conveyed to HMT by deed recorded on December 30, 2015, in Deed Book 6593, Page 0125, in the Office of the Union County Register of Deeds.

EXHIBIT B
Master Plan/Development Plan

EXHIBIT C
Marvin Heritage District Commercial Only (HD-CO) Permitted Uses and Supplemental Standards

EXHIBIT D
(Architectural Elevations)

EXHIBIT E
Approved Deviations

Deviation Requested		Justification for Request
No designated Loading Space	Article 12.14 of the MDO: Requires provision of a 10 x 25 ft loading space	Applicant is proposing to use the two parallel parking spots near the trash and recycling area as a loading zone during certain hours.

Exhibit F
Development Schedule (Phasing)

1-3 Years (From Council approval)	Building 1
3-5 Years	Building 2
5-7 Years	Building 3
7-10 Years	Buildings 4, 5 and 6

NOTE: This development schedule is an estimate.