

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 _____, 2022 (“**Effective Date**”), by and between **JCH NC, LLC**, a Florida limited liability company authorized to do business in North Carolina (“**Developer**”), whose address is 370 CenterPointe Circle, Suite 1136, Altomonte Springs, FL 32701, 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 and Marvin are referred to herein as the “**Party**” or “**Parties**.”

ARTICLE 1. FRAMEWORK

- 1.1 North Carolina General Statutes (hereinafter referred to as “**General Statutes**” or “**G.S.**”) Chapter 160D, Article 10, Sections 160D- 1001 through 160D- 1012 provides a statutory framework for development agreements between local governments and developers in accordance with those Sections.
- 1.2 On January 11, 2022, the Village adopted “An Ordinance to Adopt the Marvin Heritage District Form-Base Code as an Amendment to Title XV, Land Usage of the Code of Ordinances in the Village of Marvin, North Carolina” (“**Heritage District Form-Based Code**”). The Heritage District Form-Based Code requires entry into a development agreement concurrently with rezoning to the Heritage District-Residential Only (“**HD-RO**”) conditional zoning district.
- 1.3 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 “**Village Regulations**” refers to an ordinance, regulation, resolution, technical or design manual, or policy officially adopted by the Village including, without limitation, the Village of Marvin Code of Ordinances, including but not limited to, the land use chapters 150 Subdivisions and 151 Zoning in effect on the Effective Date of the Agreement.
- 2.3 “**Current Regulations**” means all ordinances, resolutions, regulations, and

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

- 2.4 **“Developer”** shall mean JCH NC, LLC and any Person who (i) acquires fee simple title to a Parcel from the Developer and (ii) to whom, with respect to such Parcel, the transferring Developer expressly assigns all of its then existing rights and obligations as Developer under this Agreement. No such assignment shall be valid until it is recorded in the Registry. Any Person who acquires a Parcel in fee simple title from the Developer without a specific assignment of Developer rights shall be a “Parcel Owner” and not a “Developer.” On the Effective Date of this Agreement, JCN NC, LLC is the sole Developer.
- 2.5 **“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. It is contemplated by the Parties that numerous Development projects will occur on the Property during the Agreement Term.
- 2.6 **“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.
- 2.7 **“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 site plan (or other plan for development of real property however designated in applicable Village Regulations) for development of a Parcel that has been approved by the Village.
- 2.8 **“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.
- 2.9 **“Master Plan”** means the Heritage at Marvin plans for 68 single-family residential lots, a copy of which is attached hereto as Exhibit B, together with all amendments and supplements thereto requested by Developer and adopted by the Village after the Effective Date of this Agreement.
- 2.10 **“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.

- 2.11 **“Property”** shall mean the land constituting the Heritage at Marvin and comprised of approximately 47.115 acres bearing Union County Parcel identification numbers 06240005 and 06225022 and as more specifically shown on the Master Plan attached hereto as Exhibit B. The Property as it exists on the Effective Date is described in Exhibit A attached hereto.
- 2.12 **“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.
- 2.13 **“Registry”** refers to the office of the Union County Register of Deeds.
- 2.14 **“Representative”** is a Person designated by the Developer to act for and on behalf of the Developer and Parcel Owners and subject to the terms of this Agreement. As of the Effective Date, the Representative is Ben Kuhn. At any time and from time to time the Developer may designate a successor replacement Representative and shall notify the Village of any change in the Representative.

ARTICLE 3. BACKGROUND INFORMATION

- 3.1 John G. Pribas, Vasiliki S. Pribas, Nick Sitaras, Dimitra Sitaras, Eleftherios Sitaras, Dimitra Sitaras, and Eleftherios Sitaras as Trustee for John Sitaras (as to tax parcel number 06240005) and Anita A. O’Dell (as to tax parcel number 06225022) are the fee simple owners of the Property on the Effective Date. Developer has an ownership interest in the Property and will become fee simple owner of the Property subject to the terms of this Agreement upon closing on the purchase agreement. The Property is located within the corporate limits of the Village.
- 3.2 The purpose of this Agreement is to facilitate the Development of the Property in a way that best realizes the public benefits to the Parties. The Development of the Property requires a major investment by the Developer in Public Facilities, substantial initial investment in on- site and off- site improvements, participation in other programs for public benefit and purposes, and substantial commitment of resources to achieve the benefits of the Development for the Village and Developer. The Developer will be unable to make and realize the benefits from such commitments without the assurances of the Village as provided by this Agreement. Without this Agreement, the Village will not be able to property assure the provision of an efficient, effective, and practical overall plan for addressing the Development of the Property, including the protection of 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
- 3.3 After careful review and deliberation, the Village Council has determined and concluded that the Agreement meets the goals and needs of the Parties and complies with all statutory requirements and Village Regulations.

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 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 five (5) years immediately following the Effective Date, unless sooner terminated in accordance with the provisions of this Agreement. 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.
- 4.2 Uses; Development Plan. The Property is zoned HD-RO. Single-family residential land uses along with associated common open space elements are authorized and provided for in the Master Plan. Residential open space and parkuses will be located generally as depicted in the Master Plan and more specifically as provided in the Development Plans approved by the Village. The Developer shall also submit to the Village Planner for approval and comment draft restrictive covenants upon use and development of the Property.
- 4.3 Architectural Uniformity and Consistency with the Master Plan. In addition to the requirements set forth in the Heritage District Form-Based Code, the Development shall be substantially consistent with the design themes, architectural themes, architectural elements, building materials, and color palettes on Sheet RZ-7.0 of the Master Plan (which are conceptual) and any rezoning plan document, adopted as part of the conditional district rezoning plan. Development will use historic styling with front porches, columns, dormer windows, along with a mix of high quality building materials, including a mix of metal roof accents, gable accents, brick, stone, and cementous siding to maintain the agrarian feel with an updated, modern living style. Single family detached dwellings will range from 2,400 to 4,200 square foot and will include two and three car garages.
- 4.4 Vested Rights. Pursuant to the authority granted therefor in N.C.G.S. § 160D- 1001 through 1012, 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 a 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. Provided, however, if the Developer does not agree with the modification, the Developer may either appeal such decision or terminate this Agreement by recording a notice of termination in the Registry on or before the tenth (10th) day after the Village records the modification.

4.5 Generally Applicable Standards. 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. 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 as of January 11, 2022 and the Marvin Heritage District Form Based-Code as adopted on January 11, 2022.
- b) **Design Review and Approval** – Development Plans and Development Agreement for the Heritage at Marvin HD-RO CD, shall receive review and approval pursuant to the process outlined in the Administration Section of the Marvin Heritage District Form-Based Code as adopted January 11, 2022.
- c) **Specific Site and Design Plans Required** – Approval of the Heritage at Marvin HD-RO CD Sketch 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 site. Approval of specific Site and Design Plans for roadway design, drainage, landscaping, and final lot layout shall be conferred during Design Review and Approval.
- d) **Building Codes and Laws Other Than Land Use Regulations.** Developer, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any building, housing, electrical, mechanical, plumbing and gas codes subsequently adopted by the Village or other governmental entity. This Agreement shall not be construed to supersede or contravene the requirements of any building, housing, electrical, mechanical, plumbing, fire and gas codes subsequently adopted by the Village or other governmental entity.
- e) **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: Site Plan approval, plat approvals (preliminary or final), street, water, sewer and stormwater construction drawing approval, building permits, certificates of compliance, Union County water and sewer permits, and stormwater control measure agreements. The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer of the necessity of complying with all laws governing permit requirements, conditions, terms, or restrictions.

4.6 Density; Residential Lot Regulations. There will be no more than 68 lots on the Property yielding a density of 1.55 units per acre. The following lot regulations shall apply to the HD-RO conditional district.

Development Component	Development Standard
Lot Size Min. Square Footage:	10,000 sq. ft. minimum
Side Yard Setbacks	5 ft. minimum

Rear Yard Setback	25 ft. minimum
Front Yard Setbacks	25 ft. minimum
Lot Width	70 ft. minimum
Front Porch encroachment	5 ft
Pool Deck Setback	5 ft
Pool Setback (water)	10 ft
Boundary Buffer	100 ft
Major Road Buffer	100 ft

4.7 Tree Preservation and Buffers. Development of the Property shall comply with the Village Code along with the Master Plan. Developer must comply and preserve the 100' tree preservation strip around the Property as shown on the Master Plan including a 75' no-cut buffer along with existing residential properties in the abutting Meadowlark Subdivision. In the Village Planner determines that existing trees to not provide a satisfactory opaque buffer, vegetative screening must be installed and maintained to enhance the buffer. A tree preservation and mitigation plan is required in the preliminary plan and construction document phase. The Development must also have a 100' buffer surrounding the Property as set forth in the Master Plan

4.8 Public Facilities.

- a) The Public Facilities that will service the various Development projects on the Property, the responsibility for provision of such Public Facilities are described in this Agreement, and other agreements between or among any of the following: Developer, 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's existing wastewater treatment plant.
- c) 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 agrees to dedicate to NCDOT, at no additional cost or expense, that certain right of way as shown on the Master Plan along New Town Road and approximately .7 acres for a fourth leg of the traffic circle to allow connection to the Meadowlark Subdivision.
- d) Stormwater control measures serving the Property will be private facilities under management by a property owners association established for the Property. 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 therefore. Stormwater design and

improvement plans shall be subject to Design Review and Approval pursuant to Section 151.215 of the Village Code. Structural BMPs will be maintained by the Developer or a properly formed homeowner's association for the Development ("HOA") and shall be performed according to "North Carolina Department of Water Quality Best Management Practices Manual" as apply from time to time and performed with good materials in a good and workmanlike manner. The Developer or HOA shall be responsible for perpetual maintenance of Structural BMPs. The Developer or HOA shall be required to execute a Stormwater Agreement and a Stormwater BMP Facility Access Easement upon request of Village.

- e) Developer shall pay for the construction and revision of all necessary water mains, service laterals and associated improvements, including fire hydrants.
- f) Developer shall pay for the construction of all necessary sewer mains, and service lateral lines and revisions connecting to the existing Union County system with manholes and associated improvements along with a pump station will serve the Property with additional capacity to serve other properties in the vicinity.
- 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 made with respect to the development and have been accepted for use. Notwithstanding anything to the contrary, in the event of a breach of the provisions of this Agreement, 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.
- 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 specification, 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 for not less than one year from completion date with respect to the work and material 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 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.

- i) **Security Deposit.** Developer shall secure and guarantee the construction of the Public Facilities with the security deposit provided prior to commencement of construction of the Public Facilities for herein in the amount not to exceed 125% of the reasonably estimated cost of completion at the time the performance guarantee is issued in accordance with the Village Code.

4.9 Parks and Open Space. Recognizing the benefits of public open space including both passive and active spaces, Developer has agreed to 19.10 acres or 40.55% of the Property as conservation area along with the following for Development of the Property.

- a) **Open space and trail system.** Developer will preserve open space and construct the trail system as depicted in the Master Plan. The walking trails will include low intensity lighting with timers. A standard maintenance agreement obligating the owner or property owners association must be executed prior to Development.
- b) **Neighborhood Park.** A small neighborhood park shall be provided per the Master Plan. It shall be connected to the sidewalk system of the neighborhood to provide pedestrian connectivity to the Heritage Park and Linear Park. This park must also be landscaped with trees and plantings and provide an open gathering space for residents of the neighborhood. This park will be owned and maintained by the property owners association.
- c) **Linear Park.** The linear park consisting of approximately 5.8 acres shall be provided per the Master Plan. It shall be connected to the sidewalk system of the neighborhood to provide pedestrian connectivity to the Heritage Park. The paved trail must provide connectivity along New Town Road and contain at least two pedestrian stations consisting of benches and landscaped sitting areas. This park will be dedicated to the Village of Marvin by a deed in a form acceptable to the Village.
- d) **Heritage Park.** The Heritage Park consisting of approximately 2.25 acres shall be provided per the Master Plan. It shall be connected via future connection points to the sidewalk system of the neighborhood to provide pedestrian connectivity to the Neighborhood Park and Linear Park. The Village will construct park improvements as proscribed by Village Council. This park will be dedicated to the Village of Marvin by a deed in a form acceptable to the Village.

4.10 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 Planning Director shall determine whether it is a major modification or a minor modification and shall notify the Developer of that determination using the following criteria:

- 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 unit density 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 Planning Director by a letter.

4.11 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, the Village and its successors in interest, to the Developer and its assignees to whom such burdens and/or benefits are assigned in accordance with this Agreement, and, to the extent provided in this Agreement. 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.

4.12 Development Timing and Moratoria. Development will occur in one phase but is anticipated that construction of single family residences on each of the Parcels may take additional time. A development schedule is attached hereto at Exhibit C. Absent an imminent threat to public health or safety, neither the right to Develop nor the timing of Development shall be affected by a moratorium or suspension of development rights adopted by the Village, except to the extent imposed by this Agreement or by supervening federal or state law, order, rule or regulation. The Village and Developer 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.

4.13 Periodic Review; Default.

- a) The Planning Director shall conduct a period review of the Development 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 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 notice of that default to the other Party with reasonable particularity the nature of the 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 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. The Village may also elect to modify the Agreement as applicable to the default.

- 4.14 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
- 4.15 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.
- 4.16 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.
- 4.17 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.
- 4.18 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:

Ben Kuhn
JCH NC, LLC
370 CenterPointe Circle, Suite 1136
Altomonte Springs, FL 32701

- 4.19 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.
- 4.20 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.
- 4.21 Benefits and Burdens; Assignment. Any subsequent Developer is responsible for the performance of Developer's obligations pursuant to this Agreement as to the portion of the Property so properly transferred. The Developer may at any time and from time to time assign such Person's respective rights and responsibilities hereunder, with the Village's consent which shall not be unreasonably withheld, and assignee and subsequent assignees also shall have the right to assign their respective rights and/or responsibilities hereunder with the Village's consent which shall not be unreasonably withheld. The Village Manager shall be authorized to consent for the Village. 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.
- 4.22 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.

- 4.23 Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
- 4.24 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 4.1 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 Village Code, approval and acceptance of infrastructure improvements, and any applicable permits.
- 4.25 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.
- 4.26 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.
- 4.27 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.
- 4.28 Representations and Warranties of the Developer. The Developer represents and warrants to the Village that:
- a) it is an entity duly organized, existing, and in good standing under the laws of the State of Florida 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.
- 4.29 Indemnification. Developer agrees to indemnify, defend, and hold harmless the Village 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, 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 Village and Developer 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 Conover

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 Auston 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)

JCH NC, LLC
a Florida limited liability company

By: _____
Name: _____
Title: _____

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 JCH NC, LLC, a Florida 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

Parcel 1

BEGINNING at a point in the center of State Road No. 1315 (New Town Road), said point being indicated by an old iron witness in the South margin of said road; runs thence with the center of said road. first North 34-35 East 140.50 feet; North 36-34 East 550 feet; N011h 39-0 l East 100 feet: North 51-36-30 East 100 feet; North 64-25 East 100 feet; thence, South 34-17-40 East l. l 02.96 feet to an old iron: thence, South 55-03 West 313.69 feet to an old iron: thence South 47-15 West 594.10 feet to an old iron: thence North 27-17 West 675. 10 feet to an old axle; thence. North 59-09-30 West 300 feet passing the iron witness in the South margin of New Town Road to the point and place of BE GINN 1 NG and containing 21.6850 acres according to a survey of Robert E. Rembert, R. L. S., dated May 25, 1971.

Being in all respects the same property described in Deed dated November 13. 1972. recorded in Union county. North Carolina Public Registry in Book 252 at Page 426

Tax Parcel Number 06240005

Parcel 2

Starting at an iron pin in the Marvin Newtown Road

1314.93 feet S 30°38'40" W

706.89 feet N 45°33' W

313.53 feet N 55°30' E

1107.86 feet N 35°16'50"W

133.0 feet N 71°59' E

150.0 feet N 86°04' E

400.0 feet S 80°49' E

710.05 feet S 45°00' E

348.58 feet N 56°19'10" E

154.69 feet S 37°40' E

Back to the starting point

Being the same Property as is described in that certain Deed recorded in Deed Book 199, Page 98, in the office of the Register of Deeds for Union County, North Carolina.

Tax Parcel Number 06225022

EXHIBIT B
Master Plan/Development Plan

DRAFT

Exhibit C
Development Schedule (Phasing)

<u>Years</u>	<u>Residential</u>
1	<u>0 units</u>
2	<u>10 units</u>
3	<u>40 units</u>
4	<u>18 units</u>
5	<u>0 units</u>

This development schedule is an estimate.

****Developer to confirm and revise at or prior to Village Council meeting**