

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 _____, 2023 (“**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 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 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 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”).
- 1.3 The Heritage District Form-Based Code 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, regulations, and comprehensive plans 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, subject to Section _____ herein.
- 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. **It is contemplated by the Parties that numerous Development projects will occur on the Property during the Agreement Term.**
- 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 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 the Development Plan which is incorporated into the zoning map change approved as part of Conditional Rezoning Case Number CZ 2023-1, 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.
- 2.8 **“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 9008 New Town Road, Marvin, NC and comprised of approximately 1.54 acres bearing Union County Parcel identification number 06-225-009-A 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.
- 2.10 **“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 Parcel Owners 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 may designate a successor replacement Representative and shall notify the Village of any change in the Representative.

ARTICLE 3. BACKGROUND INFORMATION & RECITALS

- 3.1 9908 New Town LLC is the fee simple owner of the Property on the Effective Date. Developer is the sole manager and member of 9908 New Town LLC. The Property is located within the corporate limits of the Village.
- 3.2 Developer desires to develop a commercial project on the Property as generally described in the Master Plan attached as Exhibit B hereto (“Project”). To permit Development of the Property for the Project, the conditional rezoning and associated Master Plan must be approved by the Village Council.
- 3.3 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.
- 3.4 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 City as provided by this Agreement.
- 3.5 The Marvin Heritage District Small Area Plan (the “Small Area Plan”) was adopted by the Village of Marvin Village Council on December 14, 2021 and 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 finds for certain installation and maintenance of infrastructure and amenities in the Marvin Heritage District”*.
- 3.6 The associated Future Land Use Map to the Small Area Plan envisions use of the Property for Commercial Only purposes.

- 3.7 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 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.
- 3.8 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.
- 3.9 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.
- 3.10 Accordingly, Developer and Village desire to enter into this Agreement for the purposes of (a) coordinating the construction of infrastructure that will serve the Project and the community at large; and (b) providing assurances to Developer and its successors in interest that Developer may proceed with the development of the Project on the Property in accordance with the Master Plan and the terms of this Agreement without encountering future changes in ordinances, regulations, or policies that would affect Developer’s ability to develop the Project and the Property under the Master Plan and the terms hereof for the term of this Agreement.
- 3.11 After careful review and deliberation, the Village Council has determined and concluded that the Agreement meets the goals and needs of the Parties.

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 the _____, 2023 to consider the approval and execution of this Agreement in accordance with the procedures set out in North Carolina Gen. Stat. §160D-602 applicable to zoning map amendments. The notice of public hearing specified, among other things, the location of the Property that is the subject of this Agreement, the development uses proposed on the Property and a place where a copy of the Agreement can be obtained. The Village Council approved this Agreement and authorized the Village’s execution of the same at the conclusion of the public hearing.
- 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 Uses; Development Plan. The Property is zoned HD-CO. Commercial land uses are authorized and provided for in the Master Plan. Open space will be located generally as depicted in the Master Plan and more specifically as provided in the Development Plans approved by the Village[DELETE?].
- 4.5 Permitted Uses/Maximum Density/Placement and Types of Buildings. The Property may be devoted to commercial uses such as retail, restaurant, office or as allowed by right or subject to Special Use Permit or special use conditions, together with any incidental or accessory uses associated therewith that are permitted under the Heritage District Form Based Code in the HD-CO zoning district. The maximum gross floor area that may be devoted to commercial use shall not exceed 23,500 SF. Building types may include Conventional Square Commercial, Village House, Bungalow or Greek Revival/Southern Colonial. The placement of the buildings on the Property is more particularly depicted on the Master Plan.
- 4.6 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 the architectural renderings (which are conceptual) 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 quality building materials.
- 4.7 Vested Rights. Notwithstanding anything in this Agreement to the contrary, the laws, land development regulations, ordinances, including Current Regulations, applicable to the Development of the Property and Project are those in force as of the Effective Date of this Agreement. Accordingly Developer and its successors in interest shall have a vested right to develop the Property and the Project in accordance with the Master Plan, the terms of this Agreement and the terms of the Marvin Ordinance and the Heritage District Form Based Code, the terms of this Agreement and the any applicable laws land development regulations and ordinances as they exist as of the date hereof during the entire term of the Agreement. Pursuant to North Carolina Gen. Stat. §160D-1007 and except as provided in North Carolina Gen. Stat. § 60D-108.1(f), the Village may not apply subsequently adopted laws, land development regulations, ordinances or Current Regulations or development policies to the Property or the Project without the written consent of the Developer or its successor in interest. Additionally, no future development moratoria or impact fees shall apply to the Property or the Project without the written consent of Developer or its success in interest. This Agreement does not abrogate any rights preserved by North Carolina Gen. Stat. §§160D-108 or 160D- 160D-108.1 that may vest pursuant to common law or otherwise in the absence of this Agreement. The Village agrees that the specific laws, land development regulations and ordinances in force on the Effective Date are:
The Marvin Code of Ordinances

The Heritage District Form Based Ordinance
This Agreement and Master Plan for the Property

- 4.8 Updates to Village Ordinances. Where any Village ordinance, fee structure, resolution or regulation adopted after the Effective Date hereof (“New Ordinance”) differs from the Current Regulations Developer may, at any time after adoption of the such New Ordinance , request that such New Ordinance, or any portion thereof, be incorporated into the Current Regulations. The Parties recognize that this section shall not apply to any commitments reflected in the Master Plan or this Agreement. Developer shall submit such request in writing to the City and the City shall review and respond to such request within sixty days. Incorporation of a New Ordinance or any portion thereof into the Current Regulations shall be a non-material change to the Amendment.
- 4.9 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 Project HD-CO 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. Preliminary site & civil design plans. The approval of a rezoning master/site plan shall be considered equal to the approval of a sketch plan, described in the Subdivision Chapter, pursuant to § 150.050. Within one year of the approval, preliminary site and civil design plans shall be prepared to meet the requirements of CHAPTER 150, Appendix 1 and receive review and approval pursuant to § 150.050.
 - c) **Specific Site and Design Plans Required** – Approval of the Marvin Grove HD-CO 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.

- f) 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.

4.10 Density; Commercial Lot Regulations. There will be no more than 3 buildings on the Property yielding a density of _____per acre. The following lot regulations shall apply to the HD-CO conditional district.

Development Component	Development Standard
Lot Size Min. Square Footage:	21,780 sq. ft. minimum
Side Yard Setbacks	5 ft. minimum
Rear Yard Setback	40 ft. minimum
Front Yard Setbacks	10 ft. minimum
Lot Width	70 ft. minimum
Front Porch encroachment	5 ft (confirm)
Rear Boundary Buffer	50 ft min building setback (existing buildings exempt)
Major Road Buffer	

4.11 Tree Preservation and Buffers. Development of the Property shall comply with the Master Plan. Developer must comply and preserve the 20’ no cut buffer along the rear of the Property as shown on the Master Plan. **If the Village Planner reasonably determines that existing trees do not provide a satisfactory 95% 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.**

4.12 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 Water and Sewer Department.

- 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 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 (if any) 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 therefore. 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 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 may be required to execute a mutually agreeable Stormwater Agreement and 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 which will serve the Property.
- 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 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 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.

4.13 Parks and Open Space. Recognizing the benefits of public open space including both passive and active spaces, Developer has agreed to allocate 40 % of the Property as open space which will be provided through the following elements.

a) **Open space and trail system.** Developer will preserve open space and construct the trail system as depicted in the Master Plan. A standard maintenance agreement obligating the owner or property owners association must be executed prior to approval of preliminary site and civil design plans.

b) **Sidewalk along New Town Road.** The sidewalk consisting of approximately _____ linear square feet shall be provided per the Master Plan. The trail portion along New Town Road will be paved asphalt. The trail must provide connectivity along New Town Road and may contain a pedestrian station. Developer will provide additional screening as deemed necessary in the reasonable discretion of the Village Planner. This sidewalk will be dedicated to the Village of Marvin by a special warranty deed in a form acceptable to the Village.

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

a) Building height shall not exceed 2.5 stories or a maximum building height of 35 feet as measured from _____.

b) Outdoor Lighting. The 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. The Development shall be subject to the Village of Marvin Engineering Standards and Procedures Manual (upon adoption).
- e) Additional Road Improvements Along New Town Road. The Developer shall discuss any recommended road improvements and traffic calming with NCDOT and Village Staff for portions along New Town Road and reflect those recommendations 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) Buffer Width Modifications
- h) 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.
- i) Future Sidewalk Connection. The Developer shall provide easements on their preliminary site & civil design plans and final plat for future sidewalk connectivity with the New Town Road roundabout and adjacent Mixed-Use Parcels.
- j) Developer reserves the right to amend the Master Plan to add additional property to the Property and such amendment to add additional property shall not constitute a major modification and may be approved administratively provided Developer meets the buffer and yard requirements as shown on the Master Plan against rear and side properties for any new property and the gross square footage of building area does not increase beyond the maximum gross building square footage by more than 5% and no building footprint moves closer to any adjacent residentially zoned property.
- k) Developer reserves the right to Develop the Property with fewer than three buildings.

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:

- 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, 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.
- 4.17 Development Timing and Moratoria. Development may occur in three (3) phases. A development schedule is attached hereto at Exhibit C. 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.
- 4.18 Periodic Review; Default.
 - a) The Village Planner shall conduct a periodic 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 for no less than 60 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, lack of sewer capacity; 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:

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

- 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. 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. Upon the recordation of such assignment in the Registry, the Developer shall be released from the obligations assigned by Developer to such Successor Purchaser or Association. 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 two 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 4.1** 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.
- 4.30 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 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 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 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 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 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)

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)

Exhibit A

Legal Description

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.

EXHIBIT B
Master Plan/Development Plan

Exhibit C
Development Schedule (Phasing)

1-3 Years (From Council approval)	Existing House & Addition
4-7 Years	Conventional Commercial Square Building
7-10 Years	Greek Revival/Southern Colonial

NOTE: This development schedule is an estimate.