



# VILLAGE OF MARVIN

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## VILLAGE COUNCIL MEETING MINUTES

May 11, 2021 – 6:30pm

Village Hall, 10004 New Town Road

Regular Meeting (Virtual Meeting)

### A. AGENDA ITEM

#### 1. Call to Order

Mayor Pollino called the meeting to order at 6:30pm and determined a quorum was present.

**Present:** Mayor Pollino, Mayor Pro Tem Vandenberg, Councilman Lein, Councilman Wortman

**Present Virtually:** Councilman Marcolese

**Absent:** None

**Staff Present:** Christina Amos, Austin W. Yow, Rohit Ammanamanchi, Jamie Privuznak, Chaplin Spencer

#### 2. Consider Allowing Councilmembers to Participate Remotely

**MOTION:** Mayor Pro Tem Vandenberg moved to allow Councilman Marcolese to participate remotely.

**VOTE:** The motion passed unanimously.

#### 3. Adoption of the Agenda

Mayor Pro Tem Vandenberg requested to make the following changes:

- Add New Business Item #5: Discussion and Consider Adoption of Personnel Policy Revisions, Adding Article III, Section 8 Pay for Interim Assignments.
- Add New Business Item #6: Discuss and Consider of Entering Supplemental Agreement with SharpePatel CPA in the Amount of \$3,870 for Services from May 12, 2021 to June 30, 2021 AND Authorize Manager to Execute the Agreement AND Authorize Staff to Prepare a Future Budget Amendment.
- Add New Business Item #7: Discuss and Consider Entering Agreement with United States EPA to Install Temporary Air Monitoring System at Marvin Ebird Park AND/OR Village Hall Site (if allowed by Property Owner) to Monitor Air Quality AND Authorize Manager to Execute Agreement Contingent Upon Attorney Review.

**MOTION:** Mayor Pro Tem Vandenberg moved to adopt the agenda as amended.

**VOTE:** The motion passed unanimously.

#### 4. Pledge of Allegiance

Mayor Pollino led the pledge of allegiance.

#### 5. Public Comment Period

No comments were given.

### B. PRESENTATIONS

#### TIME STAMP 3:50

#### 1. Recognition of Service of Mary Sipe

Mayor Pollino presented Mrs. Sipe a plaque recognizing her service to the Village of Marvin, including her service on the PR&G Board. Councilmembers and Staff reflected on working with Mrs. Sipe and thanked her for all she has done for Marvin.

#### TIME STAMP 7:20

#### 2. Bonds Grove Church & Waxhaw-Marvin Road Redesign (Consideration of Preferred Alternative) (See attached presentation, Item B.2., which is included as a reference in these minutes).

Rohit Ammanamanchi, Village Planning & Zoning Administrator, introduced Allison Drake and Scott Cole of RS&H, who have been working with Union County on the redesign of the Waxhaw-Marvin Road. Mrs. Drake and Mr. Cole explained the process behind the redesign. They then explained the two reconfiguration options, a signalized intersection, or a roundabout. They spoke about feedback from the public, which overwhelmingly supported a roundabout. Council agreed that a roundabout is the preferred option for the intersection.

**TIME STAMP 37:55**

**3. Estates at Marvin Branch Sketch Plan (Discussion Only)**

Mr. Ammanamanchi introduced Mark Kime and Robb Klauk of LandDesign, who have submitted a sketch plan for a proposed major subdivision, the Estates at Marvin Branch. Mr. Ammanamanchi briefly reflected on the recent public input meetings. He then discussed the proposal in depth.

**C. REPORTS AND UPDATES**

**TIME STAMP 57:25**

**1. Manager's Report**

**a. American Rescue Plan Update**

Christina Amos, Village Manager, stated that she has received initial guidance on funding from the American Rescue Plan. However, it will take a lot of staff time to analyze the documents.

**b. Disc Golf Update**

Ms. Amos stated that some of the parts for the disc golf course for Marvin Efird Park have arrived. The Village is selling sponsorships to help cover the cost of the course. A ribbon cutting is planned for the beginning of July.

**c. Street Sign Replacement Update**

Ms. Amos stated that Canterfield Creek and Weddington Chase have had their new signs installed. She added that she had received a lot of interest from those living on private and NCDOT roads, as well as Marvin roads. Council agreed to sell signs to these neighborhoods.

**d. Roadside Cleanup Update**

Ms. Amos stated that the event had low attendance due to the rainy weather. However, John Baresich, PR&G Board Chairman, managed to get a small group together to clean a few areas.

**e. NCDOT Roundabout ROW Update**

Ms. Amos stated that \$52,000 in additional has been secured from the NC Senate and that we are waiting for funding from the NC House. She added that NCDOT had a recent delay with the right of way acquisition, but that the project is still scheduled for summer 2022.

**f. Sidewalk Assessment Update**

Ms. Amos reminded Council that there are certain sidewalks in Marvin that the Village will have to pay for repairs. Council agreed to address these issues as complaints arise.

Ms. Amos briefly asked Council if they wanted to change the hours for the officers that direct traffic at New Town and Marvin Road. Council agreed to change the hours to 4pm-6:30pm.

Councilman Lein asked Ms. Amos if AMT Engineering has stated when they plan to fix the road issues in Firethorne, including the sunken manhole covers and standing water on the corner of Berwick and Firethorne Club.

**TIME STAMP 1:10:55**

**2. Planner's Report**

**a. Roundabout Lighting Update**

Ms. Amos stated that a Union Power representative has not been responsive, but now has responded about the issue. He stated that the delays were due to NCDOT. The Village is now waiting on a response from NCDOT.

**b. Update on CRTPO Marvin Loop Trail Grant and Heritage District Relationship**

Ms. Amos and Mr. Ammanamanchi explained the funding criteria for the grant the Village received from CRTPO to expand the Marvin Loop Trail.

**c. Marvin Gardens Pocket Park Update**

Mr. Ammanamanchi explained that the deed is still held by Publix and should be signed over soon. He stated that Councilman Wortman and Public Facilities Manager Derek Durst have been working to determine how best to develop the site. He also informed Council that the Weddington Chase subdivision wishes to build a connecting sidewalk to connect their subdivision to the pocket park. He then discussed an idea being considered by the PR&G Board to have elementary school students to submit designs for the park's logo.

d. **DRB Process for Village Hall Changes**

No update was given.

e. **Innisbrook Trail Easement Update**

Mr. Ammanamanchi informed Council that he has met with a property owner in Innisbrook who is amenable of housing a trail connection from Innisbrook to the Preserve trail. He explained that the property owners would want to be involved in the design process and the trail connection properly screened. A trail easement, separate from the existing sewer easement, will be needed to build the connection. Council directed Mr. Ammanamanchi and Village Attorney Chaplin Spencer to secure the needed easement.

**TIME STAMP 1:30:00**

3. **Roads Report**

Ms. Amos informed Council that the Village has resolved numerous emergency repairs recently and that the budget amendment will be needed. Council directed Ms. Amos to follow up AMT Engineering on the road issues in Firethorne and to state that the Village will deduct the cost of the repairs from future payments if they do not resolve the issues soon.

**TIME STAMP 1:33:25**

4. **Deputy's Report**

Deputy Gallis gave his report on calls received and traffic stops in the past month.

**TIME STAMP 1:38:00**

5. **Planning Board Chair Report**

Councilman Marcolese briefly reflected on the previous Planning Board Meeting, which focused on the proposed subdivision "The Estates at Marvin Branch."

**TIME STAMP 1:38:40**

6. **PR&G Chair Report**

Mayor Pro Tem Vandenberg informed Council that the PR&G Board has started coming up with ideas for the 2022 Marvin Day Celebration. The Board has added an extra meeting every other month to facilitate the event planning. She added that the roundabouts have had all the dead plants replaced.

**D. CONSENT AGENDA** (*Consent Agenda Items may be considered in one motion and without discussion except for those items removed by a Council member*)

**TIME STAMP 1:41:30**

**MOTION:** Mayor Pro Tem Vandenberg moved to adopt the consent agenda as presented.

**VOTE:** The motion passed unanimously.

1. **Consider Adoption of Resolution to Direct the Clerk to Investigate Petitions Received under G.S. 160A-31 and G.S. 160A-58.1**

**RS-2021-05-01**

**A RESOLUTION DIRECTING THE CLERK TO INVESTIGATE  
A PETITIONS RECEIVED UNDER G.S. 160A-31 AND G.S. 160A-58.1**

**G.S. 160A-31 (Contiguous) Parcels:** 06210007A (Bonds Grove Church Road)

**G.S. 160A-58.1 (Non-Contiguous) Parcels:** 06210235 (Chimneys of Marvin)

**WHEREAS**, petitions requesting annexation of an area described in said petitions have been received by the Marvin Village Council; and

**WHEREAS**, G.S. 160A-31 and G.S. 160A-58.1 provide that sufficiency of the petition be investigated by the Clerk of the municipality before further annexation proceedings take place; and

**WHEREAS**, the Marvin Village Council deems it advisable to proceed in response to this voluntary annexation request; and

**NOW, THEREFORE, BE IT RESOLVED** by the Marvin Village Council that the Village Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify, as soon as possible, the result of her investigation and present those findings to the Council.

Adopted this the 11<sup>th</sup> day of May 2021.

2. Consider Adoption of General Fund Budget Ordinance to Amend Various Operating Expense Lines in the Culture and Recreation and General Government Operating Department Budgets

OR-2021-05-02

AN ORDINANCE AMENDING THE GENERAL FUND BUDGET ORDINANCE

BE IT ORDAINED by the Village Council of the Village of Marvin, North Carolina that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2021:

SECTION 1. To amend the General Fund Budget, the revenues and appropriations are to be changed as shown.

TYPE	BUDGET ACCOUNT	AMENDMENT AMOUNT	FROM	TO
Expense	Operating – Culture and Recreation (Movie Night - A/C 4001b)	(\$2,000)	\$2,000	\$0
Expense	Operating – General Government (Meals – A/C 4805)	\$2,000	\$2,500	\$4,500
Expense	Operating – General Government (Furn/Equip – Computers & Equip -A/C 4301)	(\$300)	\$4,000	\$3,700
Expense	Operating – General Government (Furn/Equip – Furn – A/C 4302)	\$300	\$0	\$300
Expense	Salaries – General Government (Salaries – Clerk/Asst to Admin – A/C 6012)	(\$1,500)	\$48,083	\$46,583
Expense	Operating – General Government Advertising – A/C 4802	\$1,500	\$1,200	\$2,700
Expense	Operating – General Government (Direct Deposit Fees – A/C 6102)	(\$300)	\$4,800	\$4,500
Expense	Operating – General Government (Mail Chimp – A/C 4812e)	\$100	\$300	\$400
Expense	Operating – General Government (Benefit Serv/Background Check – A/C 6103)	\$200	\$300	\$500
Expense	Operating – Culture and Recreation (Tree Light – A/C 4001c)	(\$2,199.64)	\$3,000	\$800.36
Expense	Operating – Culture and Recreation (General Repairs – A/C 6739)	(\$700.36)	\$6,500	\$5,799.64
Expense	Operating – Culture and Recreation (Vehicles, Equipment Repair & Maint – A/C 6744)	(\$1,000)	\$5,890	\$4,890
Expense	Operating – Culture and Recreation (Painting/Staining – A/C 6745)	(\$500)	\$1,350	\$850
Expense	Operating – Culture and Recreation (Gas for Vehicles & Equipment – A/C 6751)	(\$700)	\$2,730	\$2,030
Expense	Operating – Culture and Recreation (Fertilizer and Chemicals – A/C 6754)	(\$200)	\$2,500	\$2,300
Expense	Operating – Culture and Recreation (Uniforms – A/C 6712)	\$400	\$350	\$750
Expense	Operating – Culture and Recreation (Landscaping Mulch – A/C 6747)	\$1,000	\$1,500	\$2,500

Expense	Operating – Culture and Recreation (Playground Mulch – A/C 6750)	\$500	\$1,000	\$1,500
Expense	Operating – Culture and Recreation (Emergency Repairs – A/C 6753)	\$3,400	\$2,500	\$5,900
Expense	Operating – Culture and Recreation (Park Projects – A/C 6765)	(\$1,800)	\$50,500	\$48,700
Expense	Operating – Culture and Recreation (Landscaping Mulch – A/C 6747)	\$600	\$1,500	\$2,100
Expense	Operating – Culture and Recreation (Playground Mulch – A/C 6750)	\$1,200	\$1,000	\$2,200

**Reason:** To reallocate \$9,100 in Operations in the Culture and Recreation Department budget to pay for emergency tree repairs (e.g., pruning, cabling and bracing) a food truck vendor for the ground-breaking event for the new Administrative Hall building and mulch. In addition, to reallocate \$2,100 in Salaries and Operations in the General Government budget for advertising, furniture and equipment, communications and background checks for new employees.

**SECTION 2.** Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, and to the Budget Officer and the Finance Officer for their direction.

Adopted this 11th day of May 2021.

3. Consider Adoption of Revised Volunteer Boards Stipends Policy to Allow Annual Stipends to Paid in Arrears *(See attached policy, Item C.3., which is included as a reference into these minutes).*
4. Consider Adoption of Proclamation Honoring Emergency Medical Services Personnel

## **PROCLAMATION**

2021-05-01

### **HONORING EMERGENCY MEDICAL SERVICES PERSONNEL**

**WHEREAS**, Union EMS was founded in 1985 and has grown to include nearly 150 Paramedics and Emergency Medical Technicians providing full Advanced Life Support and Basic Life Support services to the nearly 250,000 residents of Union County; and,

**WHEREAS**, Union EMS has for more than 35 years continuously served the citizens of Union County and,

**WHEREAS**, Union EMS offers additional healthcare services through programs such as the Community Paramedicine Program, S.R.T. Paramedics, who serve alongside the Union County Sheriffs Office, and other specialty service areas; and,

**WHEREAS**, Union County EMS responds to more than 22,000 calls per year; and,

**WHEREAS**, Union EMS is meeting the challenges of modern healthcare working to be a progressive and evidence-based healthcare provider; and,

**WHEREAS**, 2020 has been an extraordinary time for EMS and first responders nationwide; and,

**WHEREAS**, the COVID 19 pandemic has caused a tremendous strain on Paramedics and EMTs who have seen increased call volume, increased strain on resources, and increased stress from dealing with a large number of sick patients; and,

**WHEREAS**, while the COVID-19 pandemic is a national healthcare crisis, the paramedics and EMTs of Union EMS have reported to duty day in and day out under these tough circumstances to continue to provide the highest quality of care to the citizens of Union County; and,

**WHEREAS**, the COVID-19 pandemic was met head on by Union EMS professionals who rose to the challenge and served our county well throughout the worst of the virus.

**NOW, THEREFORE**, I, Joseph E. Pollino Jr., Mayor of the Village of Marvin, on behalf of the Village Council and Citizens, in recognition of National EMS Week, does hereby issue this Proclamation in recognition of the service and dedication of Union EMS personnel, and we extend our gratitude and appreciation to all Union EMS personnel. We congratulate Union EMS for a job well done.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the Village of Marvin to be affixed this the 11<sup>th</sup> day of May 2021.

*Adopted this 11<sup>th</sup> day of May 2021.*

5. **Accept February 20210 Treasury Report as Presented** (*Approved Treasury Reports may be viewed online*)
6. **Consider Adoption of Closed Session Minutes from 4/13/21**
7. **Consider Approval of Employment Agreement - Village of Marvin & Christina Alphin-Amos #148869.3**

**MOTION:** Mayor Pro Tem Vandenberg moved to take five-minute bio break.

**VOTE:** The motion passed unanimously.

Mayor Pollino reconvened the meeting at 8:22pm.

#### **E. PUBLIC HEARING**

No hearings were scheduled.

#### **F. VILLAGE HALL**

**TIME STAMP 1:42:20**

Ms. Amos updated Council on the pending County permits for Village Hall. She reported that the project has made it through the sketch plan phase and is now having the construction documents reviewed. She added that she expects this process to be expedient, as the Village has submitted all the documents. She stated that the grading of the site should start Monday, May 17.

#### **G. UNFINISHED BUSINESS**

**TIME STAMP 1:44:10**

1. **Discuss and Consider Adoption of an Ordinance Amending the Charter of the Village of Marvin to Change the Number of Council Members from Five (5) to Six (6)**

**OR-2021-05-01**

#### **AN ORDINANCE AMENDING THE CHARTER OF THE VILLAGE OF MARVIN TO CHANGE THE NUMBER OF COUNCIL MEMBERS FROM FIVE (5) TO SIX (6)**

**WHEREAS**, pursuant to NCGS §160A-101 and 160A-102, the Marvin Village Council may adopt an ordinance to amend the Village Charter to implement any of the optional forms set out in NCGS §160A-101; and

**WHEREAS**, Council unanimously approved a resolution of intent to consider an ordinance to add one seat to the Council of the Village of Marvin on March 25, 2021; and

**WHEREAS**, Council conducted a public hearing regarding this Charter change on April 13, 2021 after due notice published thereof not less than ten (10) days prior to such hearing.

**NOW THEREFORE, BE IT ORDAINED** by the Village Council for the Village of Marvin that:

**SECTION 1.** Pursuant to NCGS §160A-101 and 160A-102 the Marvin Village Council hereby amends the Village Charter, as set forth in Session Law 2007-269 of the General Assembly of North Carolina, as amended, to change the number of Councilmembers from five (5) to six (6), as authorized under NCGS §160A-101(5); and

**SECTION 2.** Pursuant to NCGS §160A-102, the Village Clerk shall cause a notice to be duly published in the Enquirer Journal, stating that an ordinance amending the Village Charter to provide an additional council seat has been adopted. Subject to any referendum petitioned for and conducted pursuant to NCGS §160A-103, this Ordinance shall be in effect January 1, 2022 with such new council seat elected at the second regularly scheduled municipal election after the adoption date of this Ordinance to stagger elections of newly created council seats (the election of the council seat added by Ordinance 2019-06-01 is tentatively scheduled for November 2023 but elections may be rescheduled).

*Adopted this the 11<sup>th</sup> day of May 2021.*

**MOTION:** Mayor Pro Tem Vandenberg moved to adopt the Ordinance Amending the Charter of the Village of Marvin to Change the Number of Council Members from Five (5) to Six (6).

**VOTE:** The motion passed unanimously.

**TIME STAMP 1:45:30**

**2. Discussion of Statement of Economic Interest and Code of Ethics Forms**

Austin W. Yow, Village Clerk & Assistant to the Manager, explained that only one Planning Board member has not completed and returned their Statement of Economic Interest and Code of Ethics forms. He stated that this member has received numerous emails, phone calls, and reminders to complete the forms by the April 30 deadline. He noted that no communications have been returned and that he has not spoken with the member successfully since the March 17 Planning Board Meeting.

Council agreed that Planning Board Chairman John Jones should request Council to remove this member from the Planning Board since he has not submitted his forms.

**TIME STAMP 1:49:25**

**3. Consider Approval of the Village Hall Financing Instruments, located at 10006 Marvin School Road AND Authorize Manager to Execute Agreement with Truist Bank at May 13 Closing. Recognize, Receive, and Appropriate Debt Proceeds, Not to Exceed \$1.18 Million, to the Village Hall Capital Project Fund (See attached documents, Item G.3., which are included as references into these minutes).**

Jamie Privuznak, Finance Officer, briefly recapped Council's decision to select Truist Bank as the Village's lender for the Village Hall project. She added that the Local Government Commission (LGC) has approved the Village to borrow the necessary funds. She then, alongside Village Attorney Chaplin Spencer, briefly discussed the document package and the necessary motions to move forward.

**RS-2021-XX-XX**

**RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF MARVIN, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**

*WHEREAS*, the Village of Marvin, North Carolina (the "*Village*") is a municipal corporation duly created and validly existing under the Constitution, statutes and laws of the State (the "*State*");

*WHEREAS*, the Village has the power, pursuant to the General Statutes of North Carolina to (1) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced to secure repayment of the purchase price;

*WHEREAS*, the Village Council of the Village (the "*Village Council*") has determined that it is in the best interest of the Village to receive an advance of funds in an aggregate principal amount of not more than \$1,180,000 by entering into an installment financing contract (the "*Contract*") with Truist Bank (the "*Lender*") in order to finance the costs of constructing a new Village Hall administrative facility (the "*Project*"), and (2) pay the costs related to execution and delivery of the Contract;

*WHEREAS*, the obligation of the Village to make Installment Payments under the Contract is a limited obligation of the Village payable solely from currently budgeted appropriations of the Village and does not constitute a pledge of the faith and credit of the Village within the meaning of any constitutional debt limitation;

*WHEREAS*, in order to provide security for the Village's obligations under the Contract, the Village will grant to the Lender a security interest under a deed of trust, security agreement and fixture filing (the "*Deed of Trust*") in the Village's fee simple interest in the site of the Project, together all improvements and fixtures located thereon (collectively, the "*Mortgaged Property*");

*WHEREAS*, in order to provide for the financing proceeds of the advance to be deposited and disbursed to pay for the Project as set forth under the Contract, the Village will enter into a project fund agreement (the "*Project Fund Agreement*") with the Lender and in order to prevent unauthorized or fraudulent wire transfers through cyber fraud and other means, the Village and the Lender will enter into a wire transfer agreement (the "*Wire Transfer Agreement*");

*WHEREAS*, a public hearing on the Contract after publication of a notice with respect to such public hearing must be held and the Village Council conducted such public hearing at its March 10, 2021 meeting;

*WHEREAS*, there has been made available to the Village Council the form of the Contract, the Deed of Trust, the Project Fund Agreement and the Wire Transfer Agreement which the Village proposes to approve, enter into and deliver, as applicable, to effectuate the proposed financing; and

*WHEREAS*, it appears that each of the Contract, the Deed of Trust, the Project Fund Agreement and the Wire Transfer Agreement (collectively, the "*Instruments*") is in appropriate form and is an appropriate instrument for the purposes intended;

*NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF MARVIN, NORTH CAROLINA, AS FOLLOWS:*

Section 1. ***Approval, Authorization and Execution of Instruments.*** The Village hereby approves the financing of the Project in accordance with the terms of the Instruments, which will be valid, legal and binding obligations of the Village in accordance with their respective terms. The Village hereby approves the amount to be advanced by the Lender to the Village pursuant to the Contract in an aggregate principal amount not to exceed \$1,180,000 at an interest rate of 2.38% per annum, such amount to be repaid by the Village to the Lender as provided in the Contract. The form, terms and content of the Instruments are in all respects authorized, approved and confirmed, and each of the Mayor, the Village Manager, the Finance Director and the Village Clerk or their respective designees (the "*Authorized Officers*") are authorized, empowered and directed to execute and deliver the Instruments for and on behalf of the Village, including necessary counterparts, in substantially the forms presented to the Village Council, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions, and that from and after the execution and delivery of the Instruments, each of the Authorized Officers are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Instruments as executed.

Section 2. ***Further Actions.*** Each of the Authorized Officers are hereby designated as the Village's representatives to act on behalf of the Village in connection with the transactions contemplated by the Instruments, and each of the Authorized Officers are authorized and directed to proceed with the financing of the Project in accordance with the terms of the Instruments and to seek opinions on matters of law from the Village Attorney, which the Village Attorney is authorized to furnish on behalf of the Village, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. Each of the Authorized Officers are hereby authorized to designate one or more employees of the Village to take all actions which each of the Authorized Officers are authorized to perform under this Resolution, and each of the Authorized Officers, including their designees, are in all respects authorized on behalf of the Village to supply all information pertaining to the transactions contemplated by the Instruments. Each of the Authorized Officers are authorized to execute and deliver for and on behalf of the Village any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the Instruments or as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution. Any and all acts of the Authorized Officers may be done individually or collectively.

Section 3. ***Related Actions.*** All acts and doings of officers, employees and agents of the Village, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.

Section 4. ***Repealer.*** All motions, orders, resolutions, ordinances and parts thereof, in conflict herewith are hereby repealed.

Section 5. ***Severability.*** If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration will not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.



Section 6. *Effective Date.* This Resolution is effective on the date of its adoption.

Read, approved and adopted this 11th day of May 2021.

ORDINANCE 2021-XX-XX  
CAPITAL PROJECT BUDGET ORDINANCE AMENDMENT# 2

WHEREAS, the Village of Marvin Council has approved Capital Project Budget Ordinance 2016-04- 01 for the purpose of constructing a Village Hall, extending the Marvin Loop, and constructing the Tullamore Parking Lot and Trail.

WHEREAS, the Village of Marvin Council has approved Capital Project Budget Ordinance 2016-06-02 for the purpose of appropriating additional funds to construct Village Hall and a Farmer’s Market from Fund Balance.

WHEREAS, the Village of Marvin Council has approved the execution of an installment purchase agreement and related Instruments (e.g., Adopting Resolution, Deed of Trust, Project Fund Agreement and Wire Transfer Agreement) with Truist (formerly BBT) as the Lender and authorized the Village Manager to enter into a contract with the Lender.

WHEREAS, the Lender agrees to a principal amount of not to exceed \$1,180,000 at a fixed interest rate of 2.38 percent. The Lender will advance the total amount, which will be repaid to Lender over fifteen years. The Village agrees to pay semi-annual debt service payments to the Lender in April and October of each year, which will be appropriated as part of the annual operating budget development process.

NOW THEREFORE, BE IT ORDAINED by the Village Council of the Village of Marvin, North Carolina that the following Capital Project Budget Ordinance Amendment #2 is hereby adopted:

SECTION 1: The amendment authorized is to appropriate the total amount, not to exceed, \$1,180,000 per the installment financing contract agreement instruments to the Village Hall Capital Project Fund for the construction of a Village Hall.

SECTION 2: The amounts appropriated for this project are increased as follows:

Village Hall Capital Project Fund: \$1,180,000

SECTION 3:  
The revenues anticipated to be available to complete this project are as follows:

Debt Proceeds: \$1,180,000

SECTION 4: Copies of this budget amendment shall be furnished to the Clerk, the Budget Officer and the Finance Officer for their direction.

Adopted this 11th day of May 2021.

**MOTION:** Mayor Pro Tem Vandenberg moved to approve the resolution and authorize the Village Manager to Execute the Installment Financing Contract, Deed of Trust, and related instruments.

**VOTE:** The motion passed unanimously.

**MOTION:** Mayor Pro Tem Vandenberg moved to approve “Ordinance 2021-XX-XX Capital Project Budget Ordinance Amendment #2,”and appropriate the debt proceeds to the Village Hall Capital Project fund.

**VOTE:** The motion passed unanimously.

**H. NEW BUSINESS**

**TIME STAMP 1:58:55**

**1. Discussion of Well for Roundabout Irrigation**

Council discussed the need for irrigation for the roundabout plantings and the Village Hall site. They discussed installing a well to provide the required irrigation. They also discussed the permitting process that is required by Union County to install a well. Council agreed that a well should be installed on the Village Hall site.

**TIME STAMP 2:07:20**

**2. Discussion and Consideration of Clearing Underbrush and Debris on the Village Hall Site**

Councilman Wortman suggested that the Village should begin clearing the underbrush and debris from the Village Hall site since it would not affect the amount of disturbed ground. Council directed Ms. Amos to get the necessary quotes to complete this task.

**TIME STAMP 2:11:55**

**3. Update on Marvin Heritage District Process and Consensus on Direction of the “Form-Based Code” and Timeline**

Mr. Ammanamanchi explained that based on the feedback from the Council and public that he developed a form-based code, which regulates zoning by building types, lot types, and uses, rather than metrics like density. He briefly explained how zoning districts, building types, road designs, and uses would be regulated by a form-based code. He explained that he expects the complete version of the code to be considered by Council for adoption in August. Council discussed this item in depth.

**TIME STAMP 2:29:10**

**4. Discussion and Consideration of Awarding CPA Bid, not to exceed \$20,000, for Monthly and Year-End Accounting Services (See attached documents, Item H.4., which are included as references into these minutes).**

Mrs. Privuznak explained that the purpose of this bid is to strengthen the finance team, as she will be going on leave soon and that there will be multiple job vacancies. She stated that staff is recommending SharpePatel. Council discussed this item in depth.

**MOTION:** Mayor Pro Tem Vandenberg moved to award the CPA Bid, not to exceed \$20,000, for Monthly and Year-End Accounting Services to SharpePatel.

**VOTE:** The motion passed unanimously.

**TIME STAMP 2:36:35**

**5. Discussion and Consider Adoption of Personnel Policy Revisions, Adding Article III, Section 8 Pay for Interim Assignments (See attached policy, Item H.5., which is included as a reference into these minutes).**

Ms. Amos explained that the proposed revision would allow employees to receive additional pay when absorbing additional duties resulting from job vacancies.

**MOTION:** Mayor Pro Tem Vandenberg moved to adopt the personnel policy revisions, adding Article III, Section 8 Pay for Interim Assignments.

**VOTE:** The motion passed unanimously.

**TIME STAMP 2:38:30**

**6. Discuss and Consider of Entering Supplemental Agreement with SharpePatel CPA in the Amount of \$3,870 for Services from May 12, 2021 to June 30, 2021 AND Authorize Manager to Execute the Agreement AND Authorize Staff to Prepare a Future Budget Amendment (See attached documents, Item H.6., which are included as references into these minutes).**

**MOTION:** Mayor Pro Tem Vandenberg moved to enter into a supplemental agreement with SharpePatel CPA in the amount of \$3,870 for services from May 12, 2021 to June 30, 2021 AND authorize Manager to execute the agreement AND authorize staff to prepare a future budget amendment.

**VOTE:** The motion passed unanimously.

**TIME STAMP 2:39:10**

**7. Discuss and Consider Entering Agreement with United States EPA to Install Temporary Air Monitoring System at Marvin Ebird Park AND/OR Village Hall Site (if allowed by Property Owner) to Monitor Air Quality AND Authorize Manager to Execute Agreement Contingent Upon Attorney Review (See attached agreement, Item H.7., which is included as a reference into these minutes).**

Ms. Amos explained that the Village has been working with the local DEQ Air Quality Division and the US Environmental Protection Agency to assess the smell coming from the paper mill in South Carolina. She stated the EPA wishes to install an air monitoring device for hydrogen sulfide to assess the air quality in Marvin. She added that Banks Presbyterian Church, who owns the current Village Hall property has agreed to allow the installation.

**MOTION:** Mayor Pro Tem Vandenberg moved to enter into an agreement with United States EPA to install temporary air monitoring system at Village Hall site to monitor air quality AND authorize Manager to execute agreement contingent upon attorney review.

**VOTE:** The motion passed unanimously.

## I. OPEN TOPICS

TIME STAMP 2:44:00

### Cleaning Roundabouts

Mayor Pollino briefly spoke about street sweeping the roundabouts.

## J. AGENDA ITEMS

TIME STAMP 2:45:25

### 1. Review of Action Items and Ongoing Action Item List

- Ms. Amos will proceed to sell Marvin street signs to those living on private and NCDOT roads.
- Ms. Amos will move the schedules of the off-duty officers to 4pm-6:30pm.
- Ms. Amos will pursue installing a well on the Village Hall site for irrigation of the site and roundabouts.
- Ms. Amos will receive quotes for clearing the underbrush and debris from the Village Hall site.
- Ms. Amos will follow up with AMT Engineering on the sunken manholes and standing water in Firethorne.
- Mr. Yow will speak with Planning Board Chairman Jones about formally requesting to remove a Planning Board member.
- Mr. Ammanamanchi and Mr. Spencer will secure the trail easement for the Innisbrook-Preserve Trail connection.
- Mrs. Privuznak will prepare a budget ordinance for the Village Hall Capital Project.

Council reviewed the Ongoing Action Item List and made changes.

TIME STAMP 2:53:35

### 2. Council Comments

**Mayor Pollino:** He thanked Staff for all their hard work. He reflected on the groundbreaking ceremony. He stated he was excited about the new Village Hall and the Town Hall Meeting. He briefly spoke about the new patrol car.

**Councilman Lein:** He thanked the other Councilmembers for everything they do. He implored residents to attend tomorrow night's Town Hall Meeting. He thanked staff for their work on the groundbreaking ceremony and Town Hall Meeting. He thanked Deputies Gallis and Montgomery for all they do.

**Councilman Marcolese:** He thanked staff and congratulated Marvin residents on an excellent groundbreaking ceremony for Village Hall.

## K. CLOSED SESSION

No closed session occurred.

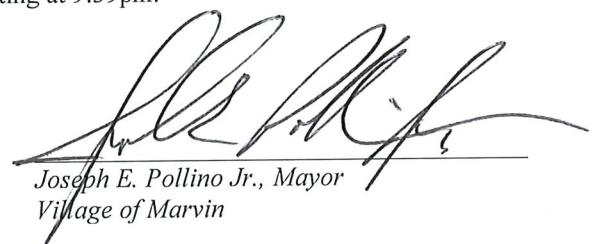
## L. ADJOURNMENT


**MOTION:** Mayor Pro Tem Vandenberg moved to adjourn the meeting at 9:39pm.

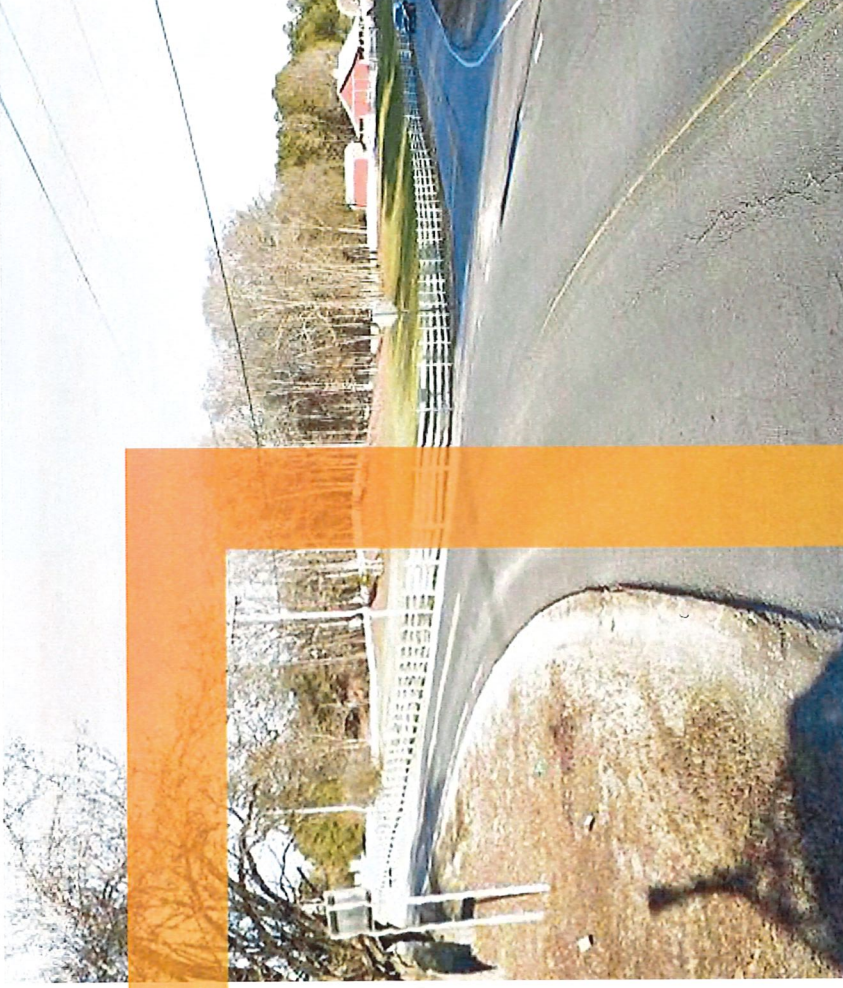
**VOTE:** The motion passed unanimously.

Adopted: 6-8-21



  
Joseph E. Pollino Jr., Mayor  
Village of Marvin

  
Austin W. Yow  
Village Clerk & Assistant to the Manager  
Village of Marvin



**UNIONCOUNTY**  
north carolina

**Union County**



Critical Intersection Analysis, Phase II  
Village of Marvin Council Meeting – May 11, 2021

**RS&H**

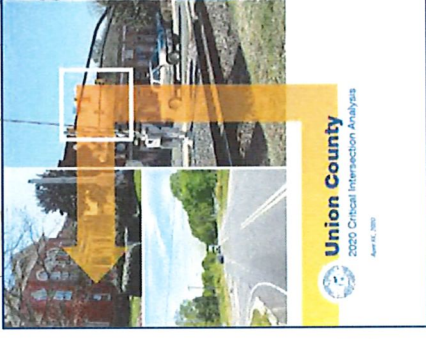
# Presentation Overview

- Background
- Phase II Study Intersections
- Study Process
- Preferred Alternative Discussion
- Next Steps
- Comments and Questions

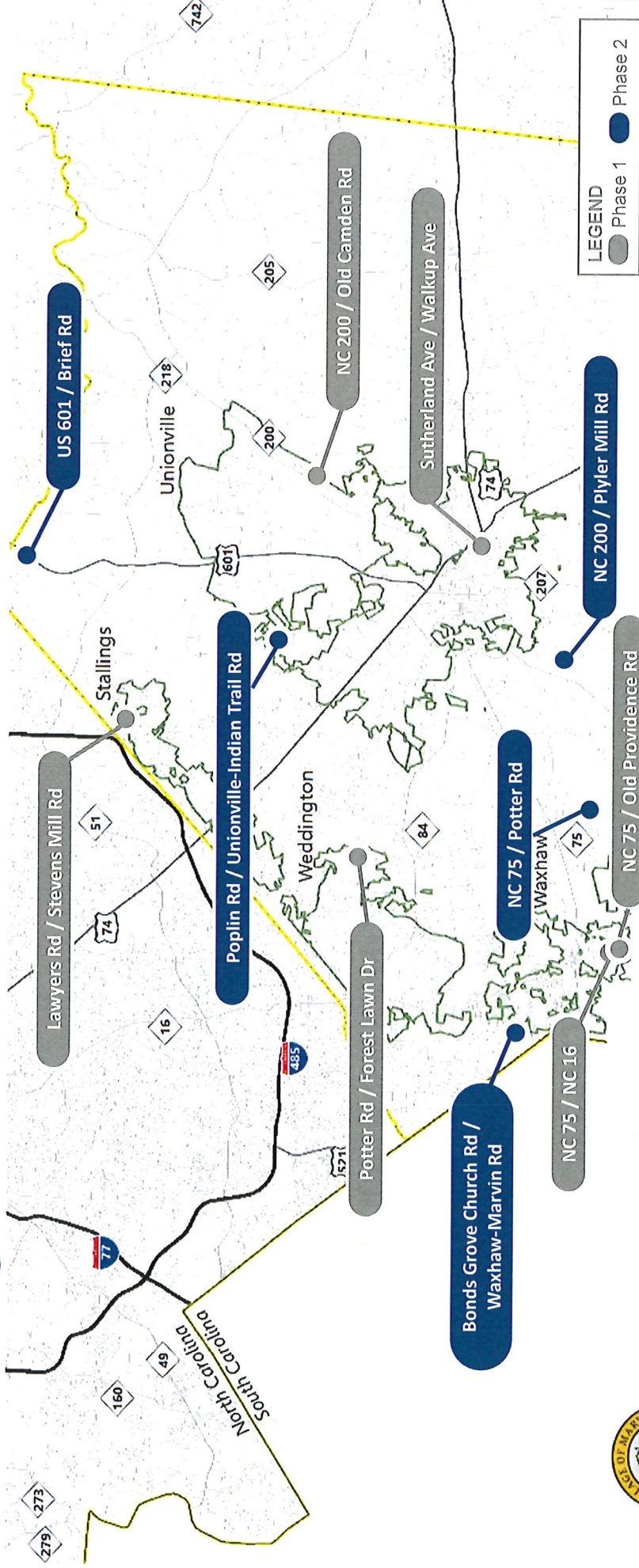


# Background

- 2014 – Need Determined
- 2016 – Identified 54 Intersections  
(Selected 15 for Additional Study)
- 2019 – Identified 15 Additional Intersections
- 2019-2020 – Phase I Intersection Analysis (6)
- 2020-2021 – Phase II Intersection Analysis (5)



# Study Intersections

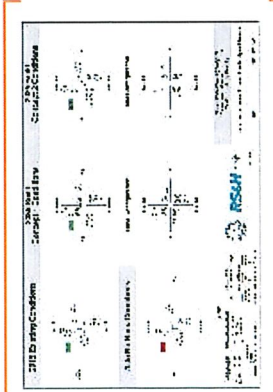


# Study Process

October 2020

March 2021

June 2021



Data Collection / Traffic & Safety Analysis



Develop Alternatives



Public Involvement

Alternative	Cost	Benefits	Drawbacks	Overall Rating
Alternative 1	\$1,200,000	High	Low	High
Alternative 2	\$1,500,000	Medium	Medium	Medium
Alternative 3	\$1,800,000	Low	High	Low

Select Preferred Alternatives & Cost Estimates



Final Report & Recommendations

## Advisory Committee

Coordinate with local representatives throughout entire process to ensure improvements are consistent with local priorities



Town of Mineral Springs





# Public Involvement

## March 8 – April 4, 2021



Bonds Grove Church Road at  
Waxhaw-Marvin Road

Village of Marvin

As part of this planning process, the Village of Marvin is conducting an  
 Open House on 3/27 and 3/28. A recording is available at:  
<https://www.youtube.com/watch?v=810X6...>  
 The feedback survey is available at:  
<https://www.surveymonkey.com/s/CommunityFeedback>  
 Please visit the website to attend.



**Provide Feedback**

Where do you live?

How long have you lived in Union County?

Select your age group.\*

Select your preferred alternative for Bonds Grove Church Road at Waxhaw Marvin Road.\*

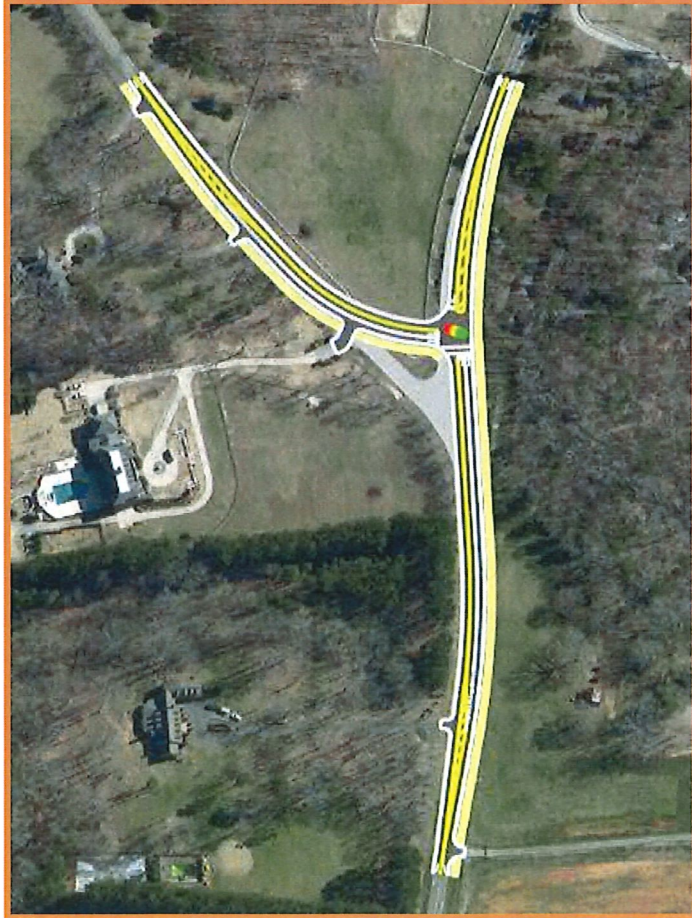
Please explain why you prefer this alternative:

**390 Comments Submitted**



# Bonds Grove Church Rd and Waxhaw-Marvin Rd

## Alternative 1 – Signalized Intersection



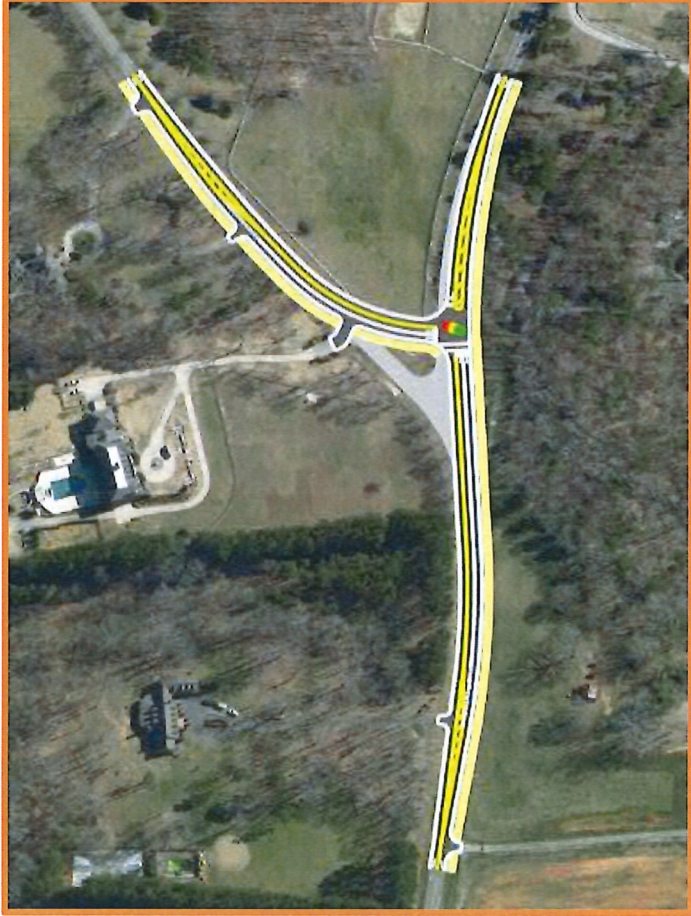
### Design Information

Realign Bonds Grove Church Road to improve sight distance, approach angle, and safety
Accommodate future Waxhaw-Marvin Road greenway project
Improve traffic flow and safety
Add turn lanes on the southbound and eastbound approaches
Shift intersection to create through movement on Waxhaw-Marvin Road to accommodate heaviest traffic movements
Potentially reduce total crashes by 27% and injury crashes by 30%
Average peak hour vehicle delay of 20 seconds in 2035 (reduction of 88%)
Approximate Project Cost - \$3,640,000



# Bonds Grove Church Rd and Waxhaw-Marvin Rd

## Alternative 1 – Signalized Intersection

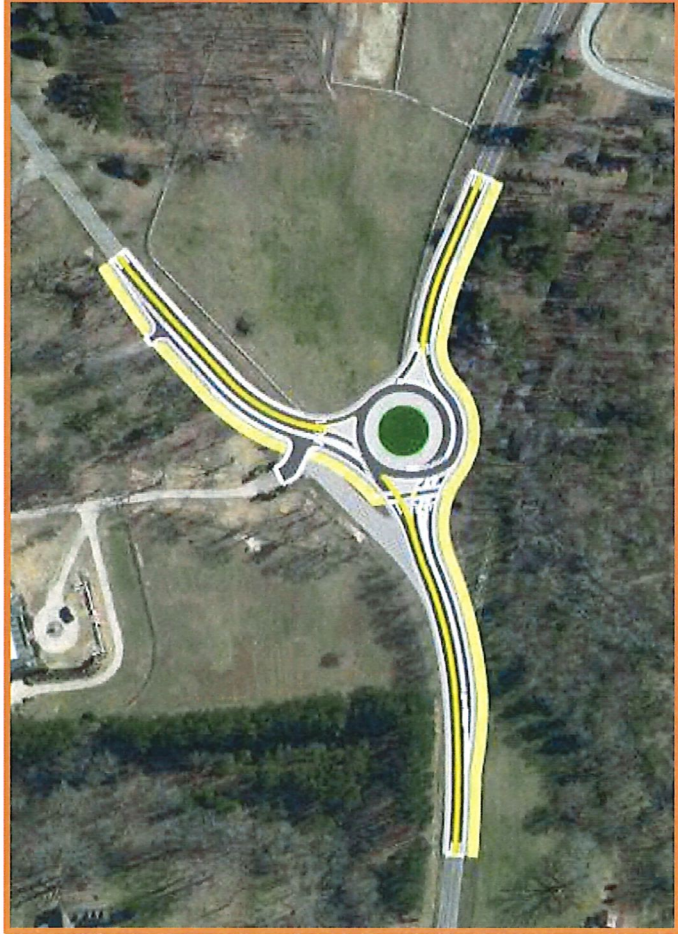


<i>Public Feedback</i>	
<i>Likes</i>	<ul style="list-style-type: none"> <li>➤ Improves safety</li> <li>➤ Easier to use/understand</li> <li>➤ Lower cost</li> </ul>
<i>Dislikes</i>	<ul style="list-style-type: none"> <li>➤ Will cause traffic backups</li> <li>➤ Less effective at reducing accidents</li> </ul>
<i>General Comments</i>	<ul style="list-style-type: none"> <li>➤ Dangerous intersection; many wrecks</li> <li>➤ Blind spots exist</li> <li>➤ Many inexperienced drivers in area</li> </ul>



# Bonds Grove Church Rd and Waxhaw-Marvin Rd

## Alternative 2 – Roundabout

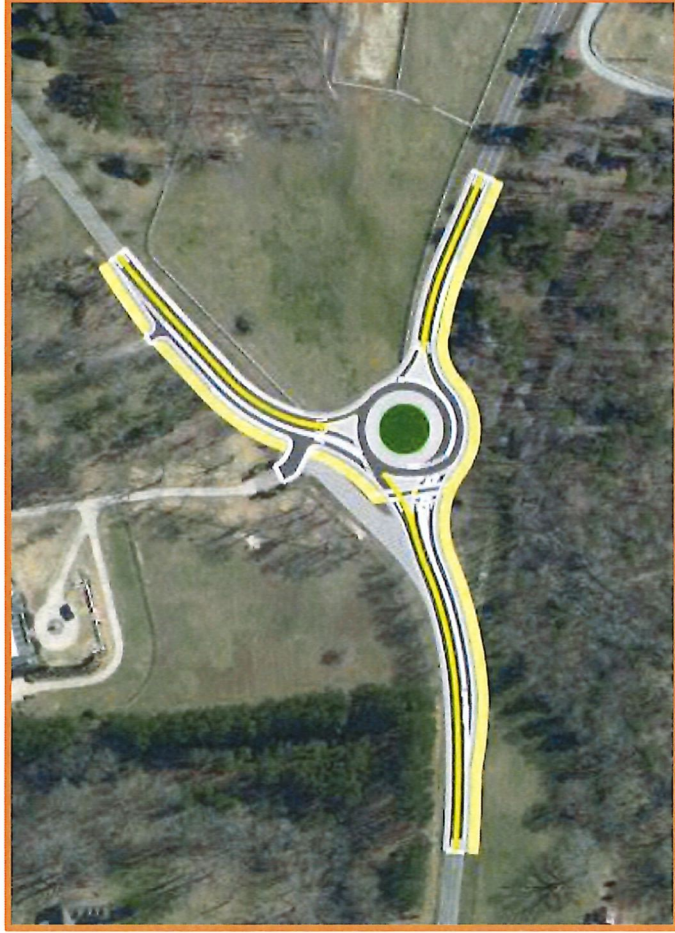


<i>Design Information</i>	
Realign Bonds Grove Church Road to improve sight distance approach angle, and safety	
Accommodate future Waxhaw-Marvin Road greenway project	
Improve traffic flow and safety	
Add turn lanes on the southbound and eastbound approaches	
Shift intersection to create through movement on Waxhaw-Marvin Road to accommodate heaviest traffic movements	
Potentially reduce total crashes by 50% and injury crashes by 78%	
Average peak hour vehicle delay of 13 seconds in 2035 (reduction of 92%)	
Approximate Project Cost - \$5,360,000	



# Bonds Grove Church Rd and Waxhaw-Marvin Rd

## Alternative 2 – Roundabout

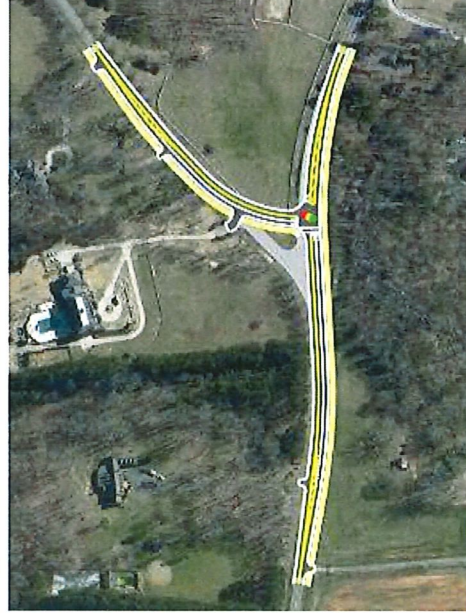


<i>Public Feedback</i>	
<i>Likes</i>	<ul style="list-style-type: none"> <li>➤ Better traffic flow</li> <li>➤ Improves safety</li> <li>➤ Slows traffic</li> <li>➤ Proven success in nearby areas</li> <li>➤ More aesthetically pleasing</li> </ul>
<i>Dislikes</i>	<ul style="list-style-type: none"> <li>➤ Confusing (especially to inexperienced drivers)</li> <li>➤ Too much traffic to warrant a roundabout</li> <li>➤ Design is typically too tight/undersized</li> </ul>
<i>General Comments</i>	<ul style="list-style-type: none"> <li>➤ Dangerous intersection; many wrecks</li> <li>➤ Blind spots exist</li> <li>➤ Many inexperienced drivers in area</li> </ul>

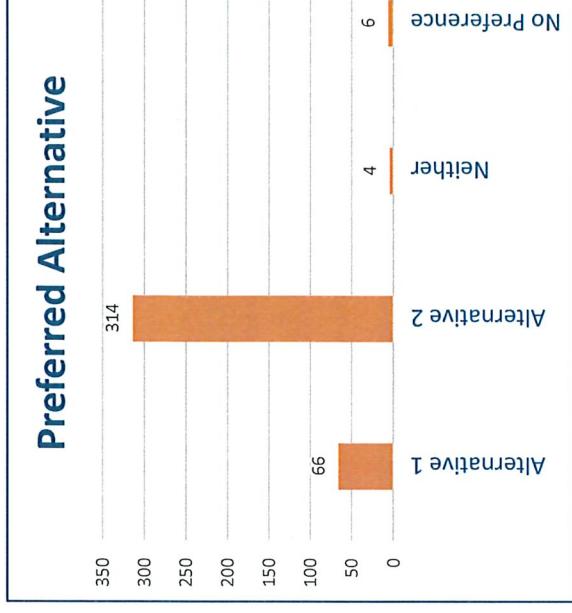
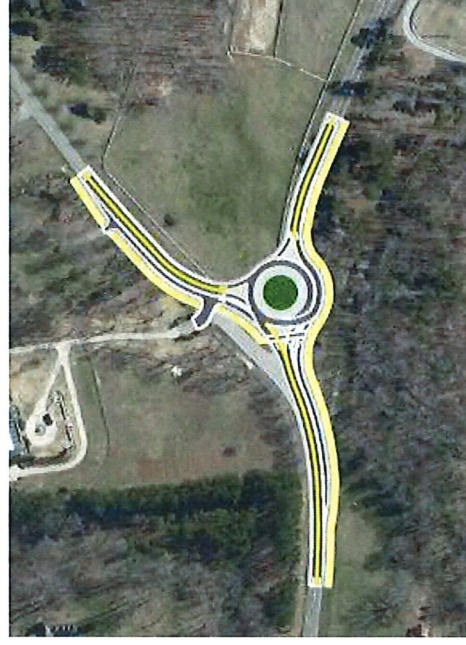


# Bonds Grove Church Rd and Waxhaw-Marvin Rd Public Feedback

Alternative 1  
Signalized Intersection



Alternative 2  
Roundabout



# Bonds Grove Church Rd and Waxhaw-Marvin Rd

## Alternative Comparison

Alternative 1  
Signalized Intersection



Alternative 2  
Roundabout



Alternative 1 Signalized Intersection	Alternative 2 Roundabout
Realign Bonds Grove Church Road to improve sight distance, approach angle, and s	
Accommodate future Waxhaw-Marvin Road greenway project	
Improve traffic flow and safety	
Add turn lanes on the southbound and eastbound approaches	
Shift intersection to create through movement on Waxhaw-Marvin Road to accommodate heaviest traffic movements	
Potentially reduce total crashes by 27% and injury crashes by 30%	Potentially reduce total crashes by 50% and injury crashes by 78%
Average peak hour vehicle delay of 20 seconds in 2035 (reduction of 88%)	Average peak hour vehicle delay of 20 seconds in 2035 (reduction of 92%)
Approximate Project Cost of \$3,640,000	Approximate Project Cost of \$5,360,000



# Next Steps...





**Questions?**

**Thank you!**



**RS&H**

<b>Policy Number</b> <del>P-2014-10-01</del> <u>P-2021-XX-XX</u>	<b>Title</b> Volunteer Board Stipends	<b>Subject</b> Finance
<b>Date of Adoption</b> 10/14/2014 Revised 7/9/2015 Revised 10/11/16 Revised 05/22/2021	<b>Adopted by</b> Village Council	<b>Number of Pages</b> 1

Planning Board and Parks, Recreation & Greenways Advisory board members are to receive a monthly stipend if they attend the regular monthly board meeting. If they do not attend the regular monthly meeting, a stipend will not be given for that month. Stipends are not given for special meetings, unless the special meeting is to replace a regular monthly meeting. Members will only receive one stipend each month.

The stipend amount is approved by the Village Council in the annual budget.

Volunteer Board stipends are paid quarterly in arrears OR the board member can elect to be paid in one annual payment at the end of the fiscal year based on attendance.



# VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | [www.marvinnc.org](http://www.marvinnc.org)

## Memorandum

**TO:** Mayor and Village Council  
**FROM:** Jamie Privosznak, Finance Officer  
**SUBJECT:** Village Hall: Approving Resolution, Instruments and Capital Project Ordinance Amendment  
**DATE:** Tuesday, May 11, 2021

### Background:

On April 13, you reviewed various bank bids for financing the construction of Village Hall. Based on the terms of their proposal, you selected Truist (formerly BBT) as the Lender and authorized the Village Manager to enter into an installment purchase agreement contract with the Lender contingent upon Village Attorney review. You agreed to the principal amount not to exceed \$1,180,000 at a fixed interest rate of 2.38 percent with a fifteen-year term length. This is an annual debt service payment of \$102,808 for the first fiscal year, and you will appropriate this amount as part of adopting your FY22 budget later in May. The first payment of principal and interest is due in October 2021, and future payments of principal and interest will be semi-annual in April and October of each year. (See attached "Sources and Uses of Funds, Truist Bank" for details.)

On May 4, the Local Government Commission reviewed our borrowing request application as part of its consent agenda at its monthly meeting. On May 5, Village staff received word that the Local Government Commission approved our request for to borrow funds to build Village Hall.

### Current:

In your Council packet, you received the following documents (collectively, the "Instruments") as prepared by Parker Poe (Special Counsel) and approved by Chaplin Spencer, Village Attorney.

- 1) Adopting Resolution,
- 2) Contract,
- 3) Deed of Trust,
- 4) Project Fund Agreement and the
- 5) Wire Transfer Agreement.

Village staff respectfully ask that you review and approve the financing of the Village Hall project in accordance with the terms of the Instruments. The Instruments are valid, legal and binding obligations of the Village.



# VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | [www.marvinnc.org](http://www.marvinnc.org)

Village staff, First Tryon (Financial Advisor) and Parker Poe (Special Counsel) will attend closing with Truist and its partners on May 13.

In addition, Council must receive the debt proceed funds and appropriate the amount (\$1.8m) to the Village Hall Capital Project Fund for construction. The attached capital project ordinance is an amendment to the existing project ordinance(s) related to Village Hall. Village staff respectfully ask that you review "Ordinance 2021-XX-XX Capital Project Budget Ordinance Amendment #2," approve and appropriate the debt proceeds to the Village Hall Capital Project fund.

### *Suggested Action(s):*

*Approve the Instruments AND Authorize the Village Manager to Execute the Installment Purchase Agreement.*

*Approve "Ordinance 2021-XX-XX Capital Project Budget Ordinance Amendment #2," and appropriate the debt proceeds to the Village Hall Capital Project fund.*

SOURCES AND USES OF FUNDS

Village of Marvin, North Carolina  
2021 Installment Financing  
Truist Bank  
Final Numbers - 4.13.21

Approved by  
Council on 4/13/21

Dated Date 05/13/2021  
Delivery Date 05/13/2021

Sources:

Bond Proceeds:	
Par Amount	1,180,000.00
	1,180,000.00

Uses:

Project Fund Deposits:	
Project Fund	1,133,000.00
Delivery Date Expenses:	
Cost of Issuance	47,000.00
	1,180,000.00

BBT Playou: Andy Smith  
Matti Pauw  
Trina Britt

BOND SUMMARY STATISTICS

Village of Marvin, North Carolina  
 2021 Installment Financing  
 Truist Bank  
 Final Numbers - 4.13.21

Dated Date	05/13/2021
Delivery Date	05/13/2021
First Coupon	10/01/2021
Last Maturity	04/01/2036
Arbitrage Yield	2.380180%
True Interest Cost (TIC)	2.380180%
Net Interest Cost (NIC)	2.380000%
All-In TIC	2.969754%
Average Coupon	2.380000%
Average Life (years)	7.871
Weighted Average Maturity (years)	7.871
Duration of Issue (years)	7.039
Par Amount	1,180,000.00
Bond Proceeds	1,180,000.00
Total Interest	221,038.53
Net Interest	221,038.53
Total Debt Service	1,401,038.53
Maximum Annual Debt Service	105,227.60
Average Annual Debt Service	94,134.73
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	
Total Underwriter's Discount	
Bid Price	100.000000

Bond Component	Par Value	Price	Average Coupon	Average Life	PV of 1 bp change
Bond Component	1,180,000.00	100.000	2.380%	7.871	816.19
	1,180,000.00			7.871	816.19

	TIC	All-In TIC	Arbitrage Yield
Par Value	1,180,000.00	1,180,000.00	1,180,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense		(47,000.00)	
- Other Amounts			
Target Value	1,180,000.00	1,133,000.00	1,180,000.00
Target Date	05/13/2021	05/13/2021	05/13/2021
Yield	2.380180%	2.969754%	2.380180%

BOND PRICING

Village of Marvin, North Carolina  
 2021 Installment Financing  
 Truist Bank  
 Final Numbers - 4.13.21

Bond Component	Maturity Date	Amount	Rate	Yield	Price
Bond Component:					
	04/01/2022	78,000	2.380%	2.380%	100.000
	04/01/2023	79,000	2.380%	2.380%	100.000
	04/01/2024	79,000	2.380%	2.380%	100.000
	04/01/2025	79,000	2.380%	2.380%	100.000
	04/01/2026	79,000	2.380%	2.380%	100.000
	04/01/2027	79,000	2.380%	2.380%	100.000
	04/01/2028	79,000	2.380%	2.380%	100.000
	04/01/2029	79,000	2.380%	2.380%	100.000
	04/01/2030	79,000	2.380%	2.380%	100.000
	04/01/2031	79,000	2.380%	2.380%	100.000
	04/01/2032	79,000	2.380%	2.380%	100.000
	04/01/2033	78,000	2.380%	2.380%	100.000
	04/01/2034	78,000	2.380%	2.380%	100.000
	04/01/2035	78,000	2.380%	2.380%	100.000
	04/01/2036	78,000	2.380%	2.380%	100.000
		1,180,000			

Dated Date	05/13/2021		
Delivery Date	05/13/2021		
First Coupon	10/01/2021		
Par Amount	1,180,000.00		
Original Issue Discount			
Production	1,180,000.00	100.000000%	
Underwriter's Discount			
Purchase Price	1,180,000.00	100.000000%	
Accrued Interest			
Net Proceeds	1,180,000.00		

## BOND DEBT SERVICE

Village of Marvin, North Carolina  
 2021 Installment Financing  
 Truist Bank  
 Final Numbers - 4.13.21

Dated Date 05/13/2021  
 Delivery Date 05/13/2021

Period Ending	Principal	Coupon	Interest	Debt Service
06/30/2022	78,000	2.380%	24,807.53	102,807.53
06/30/2023	79,000	2.380%	26,227.60	105,227.60
06/30/2024	79,000	2.380%	24,347.40	103,347.40
06/30/2025	79,000	2.380%	22,467.20	101,467.20
06/30/2026	79,000	2.380%	20,587.00	99,587.00
06/30/2027	79,000	2.380%	18,706.80	97,706.80
06/30/2028	79,000	2.380%	16,826.60	95,826.60
06/30/2029	79,000	2.380%	14,946.40	93,946.40
06/30/2030	79,000	2.380%	13,066.20	92,066.20
06/30/2031	79,000	2.380%	11,186.00	90,186.00
06/30/2032	79,000	2.380%	9,305.80	88,305.80
06/30/2033	78,000	2.380%	7,425.60	85,425.60
06/30/2034	78,000	2.380%	5,569.20	83,569.20
06/30/2035	78,000	2.380%	3,712.80	81,712.80
06/30/2036	78,000	2.380%	1,856.40	79,856.40
	1,180,000		221,038.53	1,401,038.53



BOND DEBT SERVICE

Village of Marvin, North Carolina  
 2021 Installment Financing  
 Truist Bank  
 Final Numbers - 4.13.21

Dated Date 05/13/2021  
 Delivery Date 05/13/2021

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
10/01/2021			10,765.53	10,765.53	
04/01/2022	78,000	2.380%	14,042.00	92,042.00	102,807.53
06/30/2022					
10/01/2022			13,113.80	13,113.80	
04/01/2023	79,000	2.380%	13,113.80	92,113.80	105,227.60
06/30/2023					
10/01/2023			12,173.70	12,173.70	
04/01/2024	79,000	2.380%	12,173.70	91,173.70	103,347.40
06/30/2024					
10/01/2024			11,233.60	11,233.60	
04/01/2025	79,000	2.380%	11,233.60	90,233.60	101,467.20
06/30/2025					
10/01/2025			10,293.50	10,293.50	
04/01/2026	79,000	2.380%	10,293.50	89,293.50	99,587.00
06/30/2026					
10/01/2026			9,353.40	9,353.40	
04/01/2027	79,000	2.380%	9,353.40	88,353.40	97,706.80
06/30/2027					
10/01/2027			8,413.30	8,413.30	
04/01/2028	79,000	2.380%	8,413.30	87,413.30	95,826.60
06/30/2028					
10/01/2028			7,473.20	7,473.20	
04/01/2029	79,000	2.380%	7,473.20	86,473.20	93,946.40
06/30/2029					
10/01/2029			6,533.10	6,533.10	
04/01/2030	79,000	2.380%	6,533.10	85,533.10	92,066.20
06/30/2030					
10/01/2030			5,593.00	5,593.00	
04/01/2031	79,000	2.380%	5,593.00	84,593.00	90,186.00
06/30/2031					
10/01/2031			4,652.90	4,652.90	
04/01/2032	79,000	2.380%	4,652.90	83,652.90	88,305.80
06/30/2032					
10/01/2032			3,712.80	3,712.80	
04/01/2033	78,000	2.380%	3,712.80	81,712.80	85,425.60
06/30/2033					
10/01/2033			2,784.60	2,784.60	
04/01/2034	78,000	2.380%	2,784.60	80,784.60	83,569.20
06/30/2034					
10/01/2034			1,856.40	1,856.40	
04/01/2035	78,000	2.380%	1,856.40	79,856.40	81,712.80
06/30/2035					
10/01/2035			928.20	928.20	
04/01/2036	78,000	2.380%	928.20	78,928.20	79,856.40
06/30/2036					
	1,180,000		221,038.53	1,401,038.53	1,401,038.53

FY22

FORM 8038 STATISTICS

Village of Marvin, North Carolina  
 2021 Installment Financing  
 Truist Bank  
 Final Numbers - 4.13.21

Dated Date 05/13/2021  
 Delivery Date 05/13/2021

Bond Component	Date	Principal	Coupon	Price	Issue Price	Redemption at Maturity
Bond Component:						
	04/01/2022	78,000.00	2.380%	100.000	78,000.00	78,000.00
	04/01/2023	79,000.00	2.380%	100.000	79,000.00	79,000.00
	04/01/2024	79,000.00	2.380%	100.000	79,000.00	79,000.00
	04/01/2025	79,000.00	2.380%	100.000	79,000.00	79,000.00
	04/01/2026	79,000.00	2.380%	100.000	79,000.00	79,000.00
	04/01/2027	79,000.00	2.380%	100.000	79,000.00	79,000.00
	04/01/2028	79,000.00	2.380%	100.000	79,000.00	79,000.00
	04/01/2029	79,000.00	2.380%	100.000	79,000.00	79,000.00
	04/01/2030	79,000.00	2.380%	100.000	79,000.00	79,000.00
	04/01/2031	79,000.00	2.380%	100.000	79,000.00	79,000.00
	04/01/2032	79,000.00	2.380%	100.000	79,000.00	79,000.00
	04/01/2033	78,000.00	2.380%	100.000	78,000.00	78,000.00
	04/01/2034	78,000.00	2.380%	100.000	78,000.00	78,000.00
	04/01/2035	78,000.00	2.380%	100.000	78,000.00	78,000.00
	04/01/2036	78,000.00	2.380%	100.000	78,000.00	78,000.00
		1,180,000.00			1,180,000.00	1,180,000.00

	Maturity Date	Interest Rate	Issue Price	Stated Redemption at Maturity	Weighted Average Maturity	Yield
Final Maturity	04/01/2036	2.380%	78,000.00	78,000.00		
Entire Issue			1,180,000.00	1,180,000.00	7.8706	2.3802%

Proceeds used for accrued interest	0.00
Proceeds used for bond issuance costs (including underwriters' discount)	47,000.00
Proceeds used for credit enhancement	0.00
Proceeds allocated to reasonably required reserve or replacement fund	0.00

PROOF OF ARBITRAGE YIELD

Village of Marvin, North Carolina  
 2021 Installment Financing  
 Truist Bank  
 Final Numbers - 4.13.21.

Date	Debt Service	PV Factor	Present Value to 05/13/2021 @ 2.3801795170%
10/01/2021	10,765.53	0.990970853	10,668.33
04/01/2022	92,042.00	0.979316113	90,138.21
10/01/2022	13,113.80	0.967798442	12,691.52
04/01/2023	92,113.80	0.956416231	88,099.13
10/01/2023	12,173.70	0.945167885	11,506.19
04/01/2024	91,173.70	0.934051830	85,160.96
10/01/2024	11,233.60	0.923066510	10,369.36
04/01/2025	90,233.60	0.912210387	82,312.03
10/01/2025	10,293.50	0.901481943	9,279.40
04/01/2026	89,293.50	0.890879675	79,549.76
10/01/2026	9,353.40	0.880402100	8,234.75
04/01/2027	88,353.40	0.870047751	76,871.68
10/01/2027	8,413.30	0.859815178	7,233.88
04/01/2028	87,413.30	0.849702951	74,275.34
10/01/2028	7,473.20	0.839709652	6,275.32
04/01/2029	86,473.20	0.829833884	71,758.39
10/01/2029	6,533.10	0.820074264	5,357.63
04/01/2030	85,533.10	0.810429426	69,318.54
10/01/2030	5,593.00	0.800898021	4,479.42
04/01/2031	84,593.00	0.791478714	66,953.56
10/01/2031	4,652.90	0.782170187	3,639.36
04/01/2032	83,652.90	0.772971136	64,661.28
10/01/2032	3,712.80	0.763880275	2,836.13
04/01/2033	81,712.80	0.754896332	61,684.69
10/01/2033	2,784.60	0.746018047	2,077.36
04/01/2034	80,784.60	0.737244180	59,557.98
10/01/2034	1,856.40	0.728573501	1,352.52
04/01/2035	79,856.40	0.720004798	57,496.99
10/01/2035	928.20	0.711536870	660.45
04/01/2036	78,928.20	0.703168534	55,499.83
	1,401,038.53		1,180,000.00

Proceeds Summary

Delivery date	05/13/2021	
Par Value	1,180,000.00	
Target for yield calculation	1,180,000.00	

DISCLAIMER

Village of Marvin, North Carolina  
2021 Installment Financing  
Truist Bank  
Final Numbers - 4.13.21

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**INSTALLMENT FINANCING CONTRACT**

BETWEEN

**TRUIST BANK**

AND

**VILLAGE OF MARVIN, NORTH CAROLINA**

DATED AS OF  
MAY 13, 2021

# INSTALLMENT FINANCING CONTRACT

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and is not part of the Installment Financing Contract.)

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## INSTALLMENT FINANCING CONTRACT

***THIS INSTALLMENT FINANCING CONTRACT***, dated as of May 13, 2021 (this “*Contract*”), is between TRUIST BANK, a state banking corporation (the “*Bank*”), and its successors and assigns, and the VILLAGE OF MARVIN, NORTH CAROLINA (the “*Village*”), a municipal corporation validly existing under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the “*State*”).

### PREAMBLES

***WHEREAS***, the Village has the power, pursuant to the General Statutes of North Carolina to (1) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced to secure repayment of the purchase price;

***WHEREAS***, the Village Council of the Village (the “*Village Council*”) has determined that it is in the Village’s best interests to receive an advance of funds in an aggregate principal amount of \$1,180,000 (the “*Advance*”) under this Contract in order to finance a portion of the costs of the Project (as defined below), in exchange for which the Village will make Installment Payments and Additional Payments (as each term is defined below) on the terms set forth below;

***WHEREAS***, the Village Council has authorized, approved and directed the Village’s execution, performance and delivery of this Contract by a resolution passed and adopted by the Village Council on May 11, 2021 (the “*Resolution*”);

***WHEREAS***, the Bank’s execution, delivery and performance of this Contract have been authorized, approved and directed by all necessary and appropriate action of the Bank;

***WHEREAS***, the Village’s obligation to make the Installment Payments and Additional Payments constitutes a limited obligation of the Village, payable solely from currently budgeted appropriations of the Village; does not constitute a general obligation or other indebtedness of the Village within the meaning of the Constitution of the State; and does not constitute a direct or indirect pledge of the faith and credit or taxing power of the Village within the meaning of the Constitution of the State;

***WHEREAS***, in order to secure the Village’s obligations under this Contract, the Village has executed and delivered a Deed of Trust, Security Agreement and Fixture Filing dated as of May 13, 2021 (the “*Deed of Trust*”) to the deed of trust trustee named therein for the benefit of the Bank, creating a lien on all of the Village’s right, title and interest in the real property on which the Project is located and all improvements thereon (the “*Mortgaged Property*”); and

***WHEREAS***, no deficiency judgment may be rendered against the Village in any action for breach of a contractual obligation under this Contract, and the taxing power of the Village is not and may not be pledged in any way directly or indirectly or contingently to secure any money due under this Contract;



*NOW, THEREFORE*, for and in consideration of the premises and the mutual covenants in this Contract contained, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

*Section 1.1 Definitions.* The following terms have the meanings specified below unless the context clearly requires otherwise:

“*Additional Payments*” means the reasonable and customary expenses and fees of the Bank, any expenses of the Bank in defending an action or proceeding in connection with this Contract and any taxes or any other expenses, including, but not limited to, licenses, permits, state and local income, sales and use or ownership taxes or property taxes which the Bank is expressly required to pay as a result of this Contract (together with interest that may accrue thereon in the event that the Village shall fail to pay the same, as set forth in this Contract).

“*Advance*” means the original aggregate principal amount equal to \$1,180,000 advanced by the Bank for the purposes provided in this Contract, as such amount advanced may be adjusted by amendment to this Contract.

“*Bank*” means Truist Bank, a state banking corporation, and its successors and assigns.

“*Bank Representative*” means any person or persons at the time designated to act on behalf of the Bank for purposes of performing any act on behalf of the Bank under this Contract by a written certificate furnished to the Village containing the specimen signatures of such person or persons and signed on behalf of the Bank by any vice president.

“*Business Day*” means a day other than a Saturday or Sunday on which the Bank, at its principal corporate offices, is not required or authorized by law to remain closed.

“*Closing Date*” means May 13, 2021.

“*Code*” means the Internal Revenue Code of 1986, as amended, including regulations promulgated thereunder.

“*Completion Date*” means the date on which completion of the Project has occurred, as evidenced by a certificate provided for in Section 5.3.

“*Construction Contracts*” means the contracts between the Village and contractors selected and hired by the Village relating to the construction of the Project.

“*Costs of Construction*” are deemed to include the payment of, or the reimbursement to the Village for the following items:

(1) obligations incurred or assumed for the Project in connection with the Project;

(2) the cost of the Project; including, without limitation, the Bank’s fees and expenses incurred in connection with the delivery of the Advance to the Village, fees and expenses of the LGC, if any, legal fees and expenses, taxes, inspection costs, the cost of

permit fees, filing and recording costs and survey expenses in connection with the granting of any lien on, or security interest in, the Mortgaged Property;

(3) all other costs which are considered to be a part of the costs of the Project in accordance with generally accepted accounting principles payable by the Village under this Contract, including sums required to reimburse the Village for advances made by the Village that are properly chargeable to the Project; and

(4) payment or prepayment of the principal components of the Installment Payments from any funds remaining in the Project Fund after the Completion Date.

*“Deed of Trust”* means the Deed of Trust, Security Agreement and Fixture Filing dated as of May 13, 2021 from the Village to the deed of trust trustee named therein, for the benefit of the Bank and its successor and assignees, creating a lien in and to the Mortgaged Property, and as the same may be amended and supplemented from time to time as provided in the Deed of Trust, all of the terms, definitions, conditions and covenants of which are incorporated herein by reference and are made a part of this Contract as if fully set forth herein.

*“Deed of Trust Trustee”* means BB&T Collateral Service Corporation, as the trustee named in the Deed of Trust, and any successor trustee thereto.

*“Determination of Taxability”* means the circumstance of the interest portion of Installment Payments hereunder becoming includable for federal income tax purposes in the gross income of the Bank as a consequence of any action, inaction, error or omission of the Village. A Determination of Taxability shall be evidenced by (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest portion of one or more Installment Payments made under this Contract is includable for federal income tax purposes in the gross income of the Bank, which notice or notification is not contested by either the Village or the Bank, or (ii) a determination by a court of competent jurisdiction that the interest portion of any Installment Payment is includable for federal income tax purposes in the gross income of the Bank thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Village to the effect that the interest portion of any Installment Payment is includable for federal income tax purposes in the gross income of the Bank.

*“Event of Default”* means any of the events of default as defined in Section 13.1.

*“Fiscal Year”* means a twelve-month period commencing on July 1 of any year and ending on June 30 of the immediately succeeding year, or such other twelve-month period which may subsequently be adopted as the Fiscal Year of the Village.

*“Installment Payment Date”* means each date that an Installment Payment is due and payable to the Bank in accordance with the terms of this Contract.

*“Installment Payments”* means, collectively, the payments made by the Village to the Bank as described in Article III and in the Payment Schedule attached hereto.

*“Interest Rate”* means 2.38% per annum, calculated on the basis of a 360 day year consisting of twelve-30 day months.

*“LGC”* means the Local Government Commission of North Carolina or any successor to its functions.

“*Mortgaged Property*” means, the real property located within the Village on which the Project is located, and all improvements thereon, as more particularly described in Exhibit A to the Deed of Trust, as the same may be amended and supplemented from time to time so as to add real property thereto or to release real property therefrom.

“*Net Proceeds*” when used with respect to any proceeds from policies of insurance or construction bonds required under this Contract, proceeds of any condemnation award arising out of the condemnation of all or any portion of the Mortgaged Property, or the proceeds from any sale or lease of the Mortgaged Property pursuant to this Contract, the Deed of Trust or otherwise, means the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds.

“*Payment Schedule*” means the document setting forth the Village’s Installment Payments which is attached hereto and incorporated herein by reference.

“*Plans and Specifications*” means the plans and specifications, if any, to be prepared by an architect approved by the Village relating to the construction, improving, equipping and furnishing of the Project.

“*Prime Rate*” shall mean a rate of interest equal to the announced prime commercial lending rate per annum of the Bank. The Prime Rate is a reference rate for the information and use of the Bank in establishing the actual rate to be charged to the Village. The Prime Rate is purely discretionary and is not necessarily the lowest or best rate charged any customer. The Prime Rate shall be adjusted from time to time without notice or demand as of the effective date of any announced change thereof.

“*Project*” means a portion of the costs of constructing a new Village Hall administrative facility.

“*Project Fund*” means the fund of that name created pursuant to the Project Fund Agreement into which the Bank shall deposit the Advance.

“*Project Fund Agreement*” means the Project Fund Agreement dated as of May 13, 2021 between the Village and the Bank.

“*Revenues*” means all revenues derived from this Contract, including all Installment Payments and all Net Proceeds not applied to the replacement of the Mortgaged Property.

“*State*” means the State of North Carolina.

“*Taxable Rate*” shall mean a rate equal to the Prime Rate times that percentage which after the Determination of Taxability will result in the same after-tax yield to the Bank of the interest portion of Installment Payments as before the Determination of Taxability.

“*Village*” means the Village of Marvin, North Carolina, a municipal corporation validly existing under and by virtue of the Constitution, statutes and laws of the State, and any successor to its functions.

“*Village Council*” means the duly elected governing Village Council of the Village, or any successor to its functions.

“*Village Representative*” means (1) the person or persons at the time designated to act on behalf of the Village for the purpose of performing any act under this Contract by a written certificate furnished to the Bank containing the specimen signatures of such person or persons and signed on behalf of the Village by the Village Manager or the Finance Director of the Village, or (2) if any or all of the Village’s rights and

obligations are assigned under this Contract, the person or persons at the time designated to act on behalf of the Village and the assignee by a written certificate similarly furnished and of the same tenor.

[END OF ARTICLE I]

## ARTICLE II

### THE ADVANCE

*Section 2.1 Advance.* The Bank hereby makes an advance to the Village of the Advance, and the Village hereby accepts from the Bank the Advance to be applied in accordance with the terms and conditions of this Contract. The Village will use the proceeds of the Advance (1) to complete the Project in accordance with the Plans and Specifications, if any, and (2) to pay certain costs incurred in connection with the execution and delivery of this Contract.

[END OF ARTICLE II]

## ARTICLE III

### INSTALLMENT PAYMENTS; ADDITIONAL PAYMENTS

#### *Section 3.1 Amounts and Times of Installment Payments and Additional Payments.*

(a) Subject to the provisions of Article XV, the Village shall repay the Advance in Installment Payments consisting of an interest component and a principal component, as applicable, on each Installment Payment Date in the amounts set forth in this Contract and the Payment Schedule attached to this Contract. The Village hereby approves the Advance by the Bank to the Village pursuant to this Contract in the amount of \$1,180,000 to be repaid by the Village in Installment Payments at an interest rate per annum equal to the Interest Rate.

(b) The Village shall pay each Installment Payment in the amounts and at the times set forth in the attached Payment Schedule, except as otherwise provided in this Contract. If an Installment Payment is due on any day which is not a Business Day, such Installment Payment is due on the next succeeding Business Day and the Village shall make such Installment Payment on such Business Day with no additional interest due thereon. Installment Payments will be sufficient in the aggregate to repay the principal amount of the Advance, together with interest thereon, as the same become due and payable. The Village shall pay any Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed. All payments must be made in lawful currency of the United States.

*Section 3.2 Place of Payments.* All payments required to be made to the Bank hereunder shall be made to the Bank (1) at the address set forth in Section 16.1 in immediately available funds, (2) as wire transfers to the Bank on the payable date as directed by the Bank or (3) as may be otherwise directed in writing by the Bank.

*Section 3.3 Late Charges.* An Installment Payment that is not paid within 30 days of the due date thereof is subject to a late payment charge of 4% of the amount of the past due Installment Payment. Interest with respect to the principal component of such unpaid Installment Payment shall continue to accrue at the Interest Rate until paid.

*Section 3.4 No Abatement.* There will be no abatement or reduction of the Installment Payments or Additional Payments by the Village for any reason, including but not limited to, any failure by the Village to appropriate sufficient funds for the payment of the Installment Payments or Additional Payments, any defense, recoupment, setoff, counterclaims or any claim (real or imaginary) arising out of or related to the Mortgaged Property or the completion of the Project. The Village assumes and shall bear the entire risk of loss and damage to the Project from any cause whatsoever, it being the intention of the parties that the Installment Payments shall be made in all events unless the obligation to make such Installment Payments is terminated as otherwise provided herein.

*Section 3.5 Prepayment of the Advance.* The Village may prepay the Advance in whole at its option before its maturity from any funds that may be available for such purpose on any date on or after November 1, 2028 at a prepayment price equal to 100% of the outstanding principal amount to be prepaid, together with accrued interest and any Additional Payments due to the date of prepayment.

[END OF ARTICLE III]

**ARTICLE IV**

**PROJECT FUND**

The Bank and the Village hereby agree to comply with the terms of the Project Fund Agreement.

[END OF ARTICLE IV]

## ARTICLE V

### CONSTRUCTION OF THE PROJECT

**Section 5.1 Construction.** The Village shall comply with Article 8 of Chapter 143 of the General Statutes of North Carolina. The Village shall cause the Project to be carried on expeditiously in accordance with the Plans and Specifications, if any, all applicable ordinances and statutes, and in accordance with the requirements of all regularly constituted authorities having jurisdiction over the same. The Village shall ensure (1) that the Project does not impermissibly encroach on nor impermissibly overhang any easement or right of way and (2) that the Project, when completed, (a) will, if applicable, be wholly within the real property on which the Project is located and any building restriction lines, however established, and (b) will not violate applicable use or other restrictions contained in prior conveyances or applicable protective covenants or restrictions. The Village shall cause all utility lines, septic systems and streets serving the Project to be completed in accordance with health department standards and other applicable regulations of any governmental agency having jurisdiction. The Village will promptly correct or cause to be corrected any structural defect in the improvements or any departure from the Plans and Specifications, if any.

**Section 5.2 Right of Entry and Inspection.** The Bank and its representatives and agents have the right to enter on and inspect the Project from time to time, during and after any construction, and the Village will cause the contractor, the design-builder or any first-tier subcontractor to cooperate with the Bank and its representatives and agents during such inspections. No right of inspection or approval contained in this Contract imposes on the Bank any duty or obligation whatsoever to undertake any inspection or to give any approval.

**Section 5.3 Completion of Construction.** The Village shall proceed with reasonable diligence to complete the Project in a timely manner. On completion of the Project, and upon request of the Bank, a Village Representative shall deliver to the Bank (1) a certificate of the Village stating the fact and date of such completion and stating that all of the Costs of Construction have been determined and paid (or that all of such Costs have been paid less specified claims which are subject to dispute and for which a retention in the Project Fund is to be maintained in the full amount of such claims until such dispute is resolved), and (2) upon request of the Bank, proof of the insurance coverage required by the Deed of Trust and Section 6.5 of this Contract.

**Section 5.4 Payment and Performance Bonds.** Each contractor entering into a Construction Contract, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder for the construction of the Project, shall be required to furnish a performance bond and a separate labor and material payment bond as required by Article 3, Chapter 44A of the General Statutes of North Carolina, as amended. In lieu of furnishing a performance bond and a separate labor and material payment bond, each contractor, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder, may furnish collateral in an amount of its construction contract securing the Village.

In the event of any material default by a contractor, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder, under any Construction Contract, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the Village shall promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against such contractor and/or against each surety of any bond securing the performance of the Construction Contracts.

**Section 5.5 Contractor's General Public Liability and Property Damage Insurance.** To the extent mandated by State and local requirements (and in amounts required thereby), the Village shall require



each contractor entering into a Construction Contract to procure and maintain standard form (a) comprehensive general public liability and property damage insurance, at such contractor's own cost and expense, during the duration of such contractor's construction contract, and (b) comprehensive automobile liability insurance on owned, hired and non-owned vehicles. Such insurance shall provide protection from all claims for bodily injury, including death, property damage and contractual liability, products/completed operations, broad form property damage and XCU (explosive, collapse and underground damage), where applicable.

**Section 5.6 Contractor's Builder's Risk Completed Value Insurance.** To the extent mandated by State and local requirements, the Village will procure and maintain, or will require each contractor entering into a Construction Contract for the construction of the Project, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder for the construction of the Project, to procure and maintain, property insurance (builder's risk) on all construction, improving, equipping and furnishing of the Project (excluding contractor's tools and equipment) at the full and insurable value thereof. Such insurance will include the interest of the Village and the contractor as additional insureds, and shall insure against "all risk" subject to standard policy conditions and exclusions. With respect to any portion of the Project in a flood plain, flood insurance is required up to, but not exceeding, the maximum attainable amount of coverage under Federal flood insurance. Each contractor, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder, shall purchase and maintain similar property insurance for portions of the work stored off the real property on which the Project is located or in transit when such portions of the work are to be included in an application for payment. Each contractor, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder, is responsible for the payment of any deductible amounts associated with this insurance.

**Section 5.7 Contractor's Worker's Compensation Insurance.** To the extent mandated by State and local requirements, each contractor entering into a Construction Contract for the construction of the Project, or the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder for the construction of the Project, shall be required to procure and maintain, at its own cost and expense, worker's compensation insurance during the term of its Construction Contract, covering its employees working thereunder. Such insurance, if issued by a private carrier, shall contain a provision providing that if such policies are cancelled or terminated that the issuing insurer will endeavor to mail 30 days prior written notice to the named insureds, but failure to mail such notice will impose no liability on the insurer. A certificate evidencing such coverage shall be provided to the Village and, if the Bank so requests, to the Bank; or, if such insurance is provided by a private carrier, a completed certificate of insurance, in form acceptable to the Village and the Bank, shall be provided to the Village and the Bank, if the Bank so requests, with respect to each contractor entering into a Construction Contract or, in the case of a design-builder, to the design-builder or any first-tier subcontractor entering into a construction contract with the design-builder.

[END OF ARTICLE V]

## ARTICLE VI

### COVENANTS OF THE VILLAGE

**Section 6.1 Care and Use.** The Village shall use, and shall cause the use of, the Mortgaged Property in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole cost and expense, shall service, repair and maintain the Mortgaged Property so as to keep the Mortgaged Property in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace any part of the Mortgaged Property as may from time to time become worn out, unfit for use, lost, stolen, destroyed or damaged. Any and all additions to or replacements of the Mortgaged Property and all parts thereof shall constitute accessions to the Mortgaged Property and shall be subject to all the terms and conditions of this Contract and included in the term "Mortgaged Property" as used in this Contract.

**Section 6.2 Inspection.** The Bank has the right on reasonable prior notice to the Village to enter into and on the Mortgaged Property to inspect the Mortgaged Property and observe the use of the Mortgaged Property during normal business hours.

**Section 6.3 Utilities.** The Village shall pay or cause to be paid all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility services furnished to or used on or in connection with the Mortgaged Property. There shall be no abatement of the Installment Payments on account of interruption of any such services.

**Section 6.4 Taxes.** The Village agrees to pay or cause to be paid when due any and all taxes relating to the Mortgaged Property and the Village's obligations under this Contract including, but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licensees and charges imposed on the ownership, possession or use of the Mortgaged Property by any governmental body or agency, together with any interest and penalties.

**Section 6.5 Insurance.** The Village shall maintain, or cause to be maintained, at its own expense, except as hereinafter provided, insurance with respect to its property and business against such casualties and contingencies in amounts not less than is customary in similar activities and similarly situated. Without limiting the foregoing, the Village shall maintain, or cause to be maintained, except as hereinafter provided, the following insurance:

(a) Insurance against loss and/or damage to the Mortgaged Property under a policy or policies covering such risks as are ordinarily insured against by similar facilities, in an amount not less than the lesser of (1) the full replacement cost of the Mortgaged Property, or (2) the prepayment price of all outstanding Installment Payments.

(b) Comprehensive general liability insurance protecting the Village and the Bank as their respective interests may appear, against liability for injuries to persons and/or property, occurring on, in or about the Mortgaged Property, in the minimum amount of \$1,000,000 liability to any one person for property damage, \$1,000,000 liability for personal injury for any one occurrence and an aggregate annual liability limit of not less than \$2,000,000, with a deductible amount of not more than \$100,000, to the extent commercially available at a reasonable price and as required by State law.

(c) Workers' compensation insurance respecting all employees of the Village, if any, working at the Mortgaged Property in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; *provided, however*, that the

Village may be self-insured with respect to all or any part of its liability for workers' compensation, to the extent commercially available at a reasonable price and as required by State law.

(d) During the course of any construction or repair of improvements on the Mortgaged Property, builder's risk insurance, covering the total value of work performed and equipment, supplies and materials furnished in connection with such construction or repair of the improvements, to the extent commercially available at a reasonable price and as required by State law.

(e) National flood insurance, if applicable, in an amount acceptable to the Bank.

Each insurance policy obtained pursuant to this Section shall (1) be issued by a generally recognized and responsible insurance company qualified under the laws of the State to assume the risks covered by such policy, (2) with respect to the policies contained in paragraphs (a) and (d) above, contain standard mortgagee clauses naming the Bank as mortgagee, and (3) unless unavailable from the insurer, provide that such policy shall not be cancelled or modified in any way adverse to any insured party without at least 30 days' prior written notice to each insured party named therein. The Village shall have the right to receive the proceeds from any insurance maintained pursuant to this Section, subject, however, to the limitations of this Article VI.

In lieu of separate insurance policies, the Village may maintain blanket or umbrella insurance policies if such policies provide the same coverage required by this Section with protection against each risk not reducible by claims for other risks to amounts less than that specified in this Section.

In lieu of policies of insurance written by commercial insurance companies meeting the requirements of this Section, the Village may maintain a program of self-insurance or participate in group risk financing programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs.

**Section 6.6 Risk of Loss.** The Village shall bear all risk of loss or damage to and condemnation of the Mortgaged Property.

**Section 6.7 Performance by the Bank of the Village's Responsibilities.** Any performance required of the Village or any payments required to be made by the Village may, if not timely performed or paid, be performed or paid by the Bank, and, in such event, the Bank shall be immediately reimbursed by the Village for such payments or other performance by the Bank, with interest thereon at a rate equal to the Interest Rate applied to determine the interest component of Installment Payments.

**Section 6.8 Financial Statements.** The Village agrees that it will furnish the Bank current audited financial statements within 270 days of the end of each Fiscal Year, carrying an unqualified opinion of a certified public accountant and prepared in accordance with generally accepted accounting principles and presented on a consistent basis. The Village represents and warrants to the Bank that all financial statements which have been delivered to the Bank in connection with this Contract fairly and accurately reflect the Village's financial condition and there has been no material adverse change in the Village's financial condition as reflected in the financial statements since the date thereof.

[END OF ARTICLE VI]

## ARTICLE VII

### TITLE; LIENS

**Section 7.1 Title.** Title to the Mortgaged Property and any and all additions, repairs, replacements or modifications thereto shall be in the Village from and after the Closing Date. On the Closing Date, the Deed of Trust will be in full force and effect and no events of default shall have occurred thereunder. On payment or provision for payment in full of all of the Village's obligations hereunder, including the principal components of the Installment Payments then outstanding and all other payments due hereunder, the Bank or its assignee, at the Village's expense and request, shall cancel the Deed of Trust and this Contract will terminate.

**Section 7.2 Liens.** The Village shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance or claim on or with respect to the Mortgaged Property or any interest therein, except for: (1) the lien and security interest of the Bank in the Mortgaged Property; (2) utility, access and other easements and rights of way, restrictions and exceptions which do not interfere with or impair the intended use of the Mortgaged Property; (3) any permitted encumbrances as described in Exhibit B to the Deed of Trust; and (4) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Mortgaged Property and as do not materially impair title thereto or the ability of the Village to complete and operate the Project thereon. The Village shall promptly, at its own expense, take such action as may be necessary duly to discharge any such mortgage, pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time. The Village shall reimburse the Bank for any expense incurred by the Bank in order to discharge or remove any such mortgage, pledge, lien, security interest, charge, encumbrance or claim.

[END OF ARTICLE VII]

## ARTICLE VIII

### DAMAGE, DESTRUCTION, AND CONDEMNATION; USE OF NET PROCEEDS

**Section 8.1** *Damage, Destruction or Condemnation.* If, during the term of this Contract, (1) the Mortgaged Property or any portion of the Mortgaged Property is destroyed, or is damaged by fire or other casualty; (2) title to or the temporary or permanent use of the Mortgaged Property or any portion thereof or the estate of the Village or the Bank or its assignee in the Mortgaged Property or any portion thereof is taken under the power of eminent domain by any governmental authority; (3) a material defect in construction of the Mortgaged Property becomes apparent; or (4) title to or the use of all or any portion of the Mortgaged Property is lost by reason of a defect in title thereto, the Village shall continue to be obligated, subject to the provisions of Section 8.2, to pay the amounts specified in Section 3.1 at the respective times required.

**Section 8.2** *Obligation of the Village to Repair and Replace the Mortgaged Property.* Subject to the provisions of Section 8.3, the Net Proceeds of any insurance policies, performance bonds, condemnation awards or Net Proceeds made available by reason of any occurrence described in Sections 5.4, 6.5(a) or 8.1, shall be applied to the prompt repair, restoration, modification, improvement or replacement of the damaged or destroyed Mortgaged Property. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the Village, subject, if located on the Mortgaged Property, to the Deed of Trust, and shall be included as part of the Mortgaged Property under this Contract.

**Section 8.3** *Insufficiency of Net Proceeds; Discharge of the Obligation of the Village To Repair the Mortgaged Property.* If the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Mortgaged Property as required under Section 8.2, the Village may elect to proceed under either of the following options:

(a) The Village may complete the work and pay any cost in excess of the amount of the Net Proceeds, and the Village agrees that, if by reason of any such insufficiency of the Net Proceeds, the Village shall make any payments pursuant to this Section, the Village is not entitled to any reimbursement therefor from the Bank nor is the Village entitled to any diminution of the amounts payable under Section 3.1; or

(b) The obligation of the Village to repair or replace the Mortgaged Property under Section 8.2 may be discharged by causing the Net Proceeds of such insurance policies, performance bonds or condemnation awards to be applied to the prepayment of all or any part of the then outstanding principal component of the Installment Payments as agreed to by the Bank or pursuant to Section 3.5 hereof. If the Net Proceeds exceed the amount necessary to prepay the then outstanding principal component of the Installment Payments, such excess shall be paid to or retained by the Village.

Within 120 days of the occurrence of an event specified in Section 8.1, the Village shall commence the repair, restoration, modification, improvement or replacement of the Mortgaged Property, or shall elect, by written notice to the Bank, to proceed under the provisions of paragraph (b) above. For purposes of this Section, "commence" shall include the retention of an architect or engineer in anticipation of repair, restoration, modification, improvement or replacement of the Mortgaged Property.

**Section 8.4** *Cooperation of Bank.* The Bank shall cooperate fully with the Village in filing any proof of loss with respect to any insurance policy covering the events described in Section 8.1. In no

event shall the Bank or the Village voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Mortgaged Property without the written consent of the other.

[END OF ARTICLE VIII]

## ARTICLE IX

### REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE VILLAGE

*Section 9.1 Representations, Warranties and Covenants of the Village.* The Village represents, warrants and covenants to and with the Bank (all such representations, warranties and covenants to be continuing) that:

(a) The Village is a municipal corporation validly organized and existing under the laws of the State and has all powers necessary to enter into the transactions contemplated by this Contract and the Deed of Trust and to carry out its obligations hereunder;

(b) The Village agrees that during the term of this Contract, it will take no action that would adversely affect its existence as a political subdivision in good standing in the State, cause the Village to be consolidated with or merge into another political subdivision of the State or permit one or more other political subdivisions of the State to consolidate with or merge into it, unless the Village is the surviving entity or the entity created thereby expressly assumes in writing the Village's obligations hereunder;

(c) This Contract, the Deed of Trust and all other documents relating hereto and thereto, and the performance of the Village's obligations hereunder and thereunder, have been duly and validly authorized, executed and delivered by the Village and approved under all laws, regulations and procedures applicable to the Village including, but not limited to, compliance with public meeting and bidding requirements, and, assuming the due authorization, execution and delivery hereof and thereof by the other parties hereto and thereto, constitute valid, legal and binding obligations of the Village, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and such principles of equity as a court having proper jurisdiction may impose;

(d) Neither the execution and delivery of this Contract or the Deed of Trust or the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof conflicts with or results in a breach of the terms, conditions, or provisions of any restriction or any agreement or instrument to which the Village is now a party or by which the Village is bound or constitutes a default under any of the foregoing, nor conflicts with or results in a violation of any provision of applicable law or regulation governing the Village and no representation, covenant and warranty in this Contract is false, misleading or erroneous in any material respect;

(e) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best of the Village's knowledge, threatened, against or affecting the Village challenging the validity or enforceability of this Contract, the Deed of Trust or any other documents relating hereto and the performance of the Village's obligations hereunder and thereunder, and compliance with the provisions hereof or thereof, under the circumstances contemplated hereby or thereby, does not and will not in any material respect conflict with, constitute on the part of the Village a breach of or default under, or result in the creation of a lien or other encumbrance on any property of the Village (except as contemplated herein or therein) pursuant to any agreement or other instrument to which the Village is a party, or any existing law, regulation, court order or consent decree to which the Village is subject;

(f) The estimated Costs of Construction are not less than \$1,180,000 and, other than building permits or other procedural requirements which are a prerequisite to the construction of the Project and the approval of the LGC, which approval has been obtained, no approval or consent

is required from any governmental authority with respect to the entering into or performance by the Village of this Contract, the Deed of Trust and all other documents related hereto and thereto and the transactions contemplated hereby and thereby or if such approval is required, such approval has been duly obtained;

(g) The funds in the Project Fund and any investment earnings thereon will be used only for the purposes permitted in Article II;

(h) There are no liens or encumbrances on the Mortgaged Property other than the lien created by this Contract, the Deed of Trust and the other liens permitted thereby;

(i) The resolutions relating to the performance by the Village of this Contract, the Deed of Trust and the transactions contemplated hereby and thereby, have been duly adopted, are in full force and effect, and have not been in any respect modified, revoked or rescinded;

(j) The Project is essential to the proper, efficient and economical operation of the Village and the delivery of services and permits the Village to carry out its public functions that it is authorized and required by law to perform;

(k) The Village reasonably believes sufficient funds will be available to satisfy all of its obligations hereunder;

(l) The Village shall (1) cause its Village Manager to include the Installment Payments coming due in any Fiscal Year in the corresponding annual budget request and shall require the Village Manager to use his or her best efforts to obtain an appropriation therefor and (2) require that the deletion of such funds from the Village's final budget be made only pursuant to an express resolution of the Board which explains the reason for such action. This covenant on the part of the Village contained in this Section 9.1(l) shall be deemed to be and shall be construed to impose by law ministerial duties and it shall be the duty of each and every public official of the Village to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Village to carry out and perform the covenant in this subparagraph and the agreements in this Contract to be carried out and performed by the Village; *provided, however*, that nothing contained in this Section 9.1(l) shall obligate the Village to so appropriate the funds included in such proposed budget;

(m) Funds appropriated by the Village to make Installment Payments due in any Fiscal Year shall be used for no other purpose;

(n) The Village agrees that during the term of this Contract, it will maintain the appropriate insurance required pursuant to this Contract and the Deed of Trust;

(o) The Village has or will have good and marketable title to the Mortgaged Property, not subject to any possibility of reverter, right of re-entry or other reversionary interest; and

(p) The Mortgaged Property is bordered on and has access to Marvin School Road.

[END OF ARTICLE IX]



## ARTICLE X

### TAX COVENANTS AND REPRESENTATIONS

#### *Section 10.1 Covenants and Representations.*

(a) The Village covenants that it will not take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest portion of the obligations created by this Contract for federal income tax purposes. The Village will not directly or indirectly use or permit the use of any proceeds of any fund created under this Contract or any funds of the Village, or take or omit to take any action that would cause the obligations created by this Contract to be an “*arbitrage bond*” within the meaning of Section 148(a) of the Code. The Village will maintain books on which will be recorded (1) the Bank, or (2) any assignee of the Installment Payments due under this Contract, as the registered owner of such Installment Payments. To that end, the Village has executed and delivered the Tax Certificate and will comply with all of the requirements of Section 148 of the Code to the extent applicable. The Village further covenants that this Contract is not a “*private activity bond*” as defined in Section 141 of the Code.

(b) Without limiting the generality of the foregoing, the Village agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the obligation created under this Contract from time to time. This covenant shall survive the termination of this Contract for any reason.

(c) Notwithstanding any provision in this Contract to the contrary, if the Village shall provide to the Bank an opinion of nationally recognized bond counsel reasonably acceptable to the Bank to the effect that any action required under this Article X is no longer required, or to the effect that some further action is required, to maintain tax-exempt status, the Village and the Bank may rely conclusively on such opinion in complying with the provisions of this Article X.

(d) If at any time there is a Determination of Taxability, the principal portion of the indebtedness of the Village to the Bank which is represented by the Installment Payments shall, from and after the Date of Taxability, as hereinafter defined, bear interest at the Taxable Rate payable from the Date of Taxability to such time as the Advance matures or is prepaid or the Determination of Taxability is no longer in effect. In such event, the Village also shall be required to pay to the Bank all amounts, if any, which may be necessary to reimburse the Bank for any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America or the Department of Revenue of the State of North Carolina by reason of the Bank’s failure to include the interest portion of the Installment Payments related to the Advance (hereinafter called “Interest”) in its gross income for income tax purposes. All such additional interest, additions to tax, penalties and interest shall be paid by the Village within sixty (60) days following the Determination of Taxability and demand by the Bank. Installment Payment amounts shall be increased as a result of the applicability of the Taxable Rate. The Village shall pay to the Bank the Interest calculated at the Taxable Rate notwithstanding any transfer by the Bank or payment or prepayment by the Village prior to the date such Determination of Taxability was made.

The Date of Taxability shall mean the first date upon which Interest is included in the gross income of the Bank for federal income tax purposes as a result of a Determination of Taxability.

(e) The Village hereby designates the Installment Payments due under this Contract as a “*qualified tax-exempt obligation*” eligible for the exception from the disallowance of the deduction of interest by financial institutions allocable to the cost of carrying tax-exempt obligations in accordance with the provisions of Section 265(b)(3) of the Code. The Village does not reasonably anticipate issuing more

than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3), including all entities which issue obligations on behalf of the Village and all subordinate entities of the Village, during calendar year 2021 and will not designate more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3) during calendar year 2021.

[END OF ARTICLE X]

## ARTICLE XI

### INDEMNIFICATION

*Section 11.1 Indemnification.* To the fullest extent permitted by applicable law, the Village hereby agrees to indemnify, protect and save the LGC, the Bank and their respective officers, employees, directors, members and agents harmless from all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees that (1) arise in tort, in contract, under 42 U.S. Code §1983 or under the public bidding laws of the State or (2) arise out of, are connected with, or result, directly or indirectly, from the Project or any portion thereof, including, without limitation, the manufacture, selection, acquisition, delivery, possession, condition, construction, improvement, environmental or other condition, lease, use operation or return of the Project or any portion thereof. The indemnification arising under this Article XI shall continue in full force and effect notwithstanding the payment in full of all of the obligations under this Contract.

[END OF ARTICLE XI]

## ARTICLE XII

### DISCLAIMER OF WARRANTIES

**Section 12.1 No Representations by the Bank.** The Village acknowledges and agrees that the designs for the Project have not been made by the Bank, and the Bank has not supplied any plans or specifications with respect thereto and that the Bank (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Project or similar projects; (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Project or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the construction thereof; (c) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof or any property or rights relating thereto; and (d) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the result which the Village intends therefor, or (iii) is safe in any manner or respect.

**Section 12.2 Disclaimer by the Bank.** THE BANK MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECT OF ANY COMPONENT PART THEREOF TO THE VILLAGE OR IN REGARD TO ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATIONS WITH RESPECT TO: THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE DESIGN OR CONDITION THEREOF; THE SAFETY, WORKMANSHIP OR QUALITY THEREOF; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE BANK THEREIN; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE ADVANCE WILL BE SUFFICIENT (TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE VILLAGE) TO PAY THE COST OF IMPLEMENTING THE PROJECT; OR ANY OTHER CHARACTERISTICS OF THE PROJECT, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECT, THE COMPLETION THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE VILLAGE AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE BANK ARE HEREBY WAIVED BY THE VILLAGE.

[END OF ARTICLE XII]

## ARTICLE XIII

### DEFAULT AND REMEDIES

**Section 13.1** *Definition of Event of Default.* The Village shall be deemed to be in default hereunder on the happening of any of the following events of default (each, an “*Event of Default*”):

(a) The Village fails to pay any Installment Payment or Additional Payment when due within 10 days after written notice specifying such failure and requesting that it be remedied has been given to the Village by the Bank;

(b) The Village fails to budget and appropriate money sufficient to pay all Installment Payments and the reasonably estimated Additional Payments coming due in the following Fiscal Year of the Village;

(c) The Village deletes from its duly adopted budget any appropriation for the purposes specified in clause (b) above;

(d) The Village fails to perform or observe any term, condition or covenant of this Contract on its part to be observed or performed, other than as referred to in clauses (a), (b) or (c) above, or of the Deed of Trust on its part to be observed or performed, or breaches any warranty by the Village herein or therein contained, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Village by the Bank, unless the Bank shall agree in writing to an extension of such time prior to its expiration;

(e) Any bankruptcy, insolvency or reorganization proceedings, or similar litigation is instituted by the Village, or a receiver, custodian or similar officer is appointed for the Village or any of its property, and such proceedings or appointments are not vacated or fully stayed within 90 days after the institution or occurrence thereof;

(f) Any representation, warranty or statement made by the Village herein, in the Deed of Trust or in any other document executed or delivered in connection herewith or therewith is found to be incorrect or misleading in any material respect on the date made; or

(g) An attachment, levy or execution is levied on or against any portion of the Mortgaged Property.

**Section 13.2** *Remedies on Default.* On the occurrence of any Event of Default, the Bank may exercise any one or more of the following remedies as the Bank, in its sole discretion, shall elect:

(a) Declare the unpaid portion of the then outstanding principal components of the Installment Payments immediately due and payable, without notice or demand to the Village;

(b) Proceed by appropriate court action to enforce the performance by the Village of the applicable covenants of this Contract or to recover for any breach thereof;

(c) Exercise or direct the Deed of Trust Trustee to exercise all the rights and remedies of a secured party or creditor under the Uniform Commercial Code of the State and the general laws of the State with respect to the enforcement of the security interest granted or reserved hereunder and under the Deed of Trust including, without limitation, to the extent permitted by law, re-enter and take possession of the Mortgaged Property without any court order or other process of law and without liability for entering the premises and to sell, lease, sublease or make other

disposition of the same in a commercially reasonable manner for the account of the Village, and apply the proceeds of any such sale, lease, sublease or other disposition, after deducting all costs and expenses, including court costs and attorneys' fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition, toward the balance due under this Contract and, thereafter, to pay any remaining proceeds to the Village;

(d) Enforce its security interest in the Mortgaged Property or direct the Deed of Trust Trustee to institute foreclosure proceedings under the Deed of Trust and sell the Mortgaged Property; or

(e) Pursue any other remedy available at law or equity to the Bank.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN AND IN THE DEED OF TRUST, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE VILLAGE IN FAVOR OF THE BANK IN VIOLATION OF SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER WHEN THE SALE OF ALL OR ANY PORTION OF THE MORTGAGED PROPERTY IS INSUFFICIENT TO PRODUCE ENOUGH MONEY TO PAY IN FULL ALL REMAINING OBLIGATIONS UNDER THIS CONTRACT AND THE DEED OF TRUST.

**Section 13.3 Further Remedies.** This Contract shall remain in full force and effect and the Village shall be and remain liable for the full performance of all its obligations under this Contract. All remedies of the Bank are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy.

[END OF ARTICLE XIII]

## ARTICLE XIV

### ASSIGNMENT

*Section 14.1 Assignment.* Except pursuant to this Contract and the Deed of Trust, as applicable, the Village will not sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance on or against any interest in this Contract or the Mortgaged Property (except for any other permitted encumbrances under Section 7.2) without the prior written consent of the Bank. The Village's interest in this Contract may not be assigned or transferred by operation of law.

The Bank may, at any time and from time to time, assign all or any part of its interest in the Mortgaged Property, the Project or this Contract, including, without limitation, the Bank's rights to receive Installment Payments payable to the Bank hereunder. Any assignment made by the Bank or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Bank pursuant to this Contract.

The Village agrees that this Contract may become part of a pool of obligations at the Bank's or its assignee's option. The Bank or its assignees may assign or reassign all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract without the consent of the LGC, although the Bank or any assignee shall give written notice to the LGC of any such assignment. Any assignment by the Bank may be only to a bank, insurance company, or similar financial institution or any other entity approved by the LGC. Notwithstanding the foregoing, no assignment or reassignment of the Bank's interest in the Deed of Trust or this Contract shall be effective unless and until the Village shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each such assignee.

The Village further agrees that the Bank's interest in this Contract may be assigned in whole or in part on terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Contract, provided the Village receives a copy of such agency contract and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Contract a written record of each assignment and reassignment of such certificates of participation.

The Village agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the Village and the LGC, and the Village shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the Village shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

[END OF ARTICLE XIV]

## ARTICLE XV

### LIMITED OBLIGATION OF THE VILLAGE

*Section 15.1 Limited Obligation of the Village.* NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE VILLAGE WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE VILLAGE WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE VILLAGE TO MAKE ANY PAYMENTS BEYOND ANY PAYMENTS APPROPRIATED IN THE SOLE DISCRETION OF THE VILLAGE FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; *PROVIDED, HOWEVER,* THAT ANY FAILURE OR REFUSAL BY THE VILLAGE TO APPROPRIATE FUNDS WHICH RESULTS IN ITS FAILURE TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBLIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE VILLAGE IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION HEREUNDER, AND THE TAXING POWER OF THE VILLAGE IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY AMOUNTS DUE HEREUNDER. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE VILLAGE'S FUNDS, NOR SHALL ANY PROVISION OF THIS CONTRACT RESTRICT THE FUTURE ISSUANCE OF ANY OF THE VILLAGE'S BONDS OR OBLIGATIONS PAYABLE FROM ANY CLASS OR SOURCE OF THE VILLAGE'S FUNDS. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE XV AND ANY OTHER PROVISION OF THIS CONTRACT, THIS ARTICLE XV SHALL TAKE PRIORITY.

[END OF ARTICLE XV]



## ARTICLE XVI

### MISCELLANEOUS

**Section 16.1 Notices.** Any and all notices, requests, demands, and other communications given under or in connection with this Contract are only effective if made in writing and delivered either personally or mailed by certified or registered mail, postage prepaid, or return receipt requested, and addressed as follows:

IF TO THE VILLAGE: Village of Marvin, North Carolina  
10004 New Town Road  
Marvin, North Carolina 28173  
Attention: Finance Director

IF TO THE BANK: Truist Bank  
5130 Parkway Plaza Boulevard  
Charlotte, North Carolina 28217  
Attention: Governmental Finance

The Village and the Bank may, by written notice to each other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 16.2 Time.** Time is of the essence of this Contract and each and all of its provisions.

**Section 16.3 If Payment or Performance Date not a Business Day.** If the date for making any payment, or the last date for performance of any act or the exercising of any right, as provided in this Contract, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Contract, and no interest shall accrue for the period after such nominal date.

**Section 16.4 Waiver.** No covenant or condition of this Contract can be waived except by the written consent of the Bank. Any failure of the Bank to require strict performance by the Village or any waiver by the Bank of any terms, covenants or contracts in this Contract shall not be construed as a waiver of any other breach of the same or any other term, covenant or contract in this Contract.

**Section 16.5 Section Headings.** All section headings contained in this Contract are for convenience of reference only and are not intended to define or limit the scope of any provision of this Contract.

**Section 16.6 Entire Contract.** This Contract, together with any schedules and exhibits attached to this Contract and Deed of Trust, constitutes the entire agreement between the parties, and this Contract shall not be modified, amended, altered or changed except as the Village and the Bank may subsequently agree in writing.

**Section 16.7 Binding Effect.** Subject to the specific provisions of this Contract, this Contract is binding on and inures to the benefit of the parties and their respective successors and assigns (including expressly any successor of the Bank).

**Section 16.8 Covenants of Village not Covenants of Officials Individually.** No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or employee of the Village in such person's individual capacity, and neither the members of the Board nor any other officer of the Board or the Village

shall be subject to any personal liability or accountability by reason of the execution and delivery of this Contract. No member of the Board or any agent or employee of the Village shall incur any personal liability in acting or proceeding or if not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Contract.

**Section 16.9 Severability.** If any portion of this Contract is determined to be invalid under any applicable law, such provision is void and the remainder of this Contract continues in full force and effect.

**Section 16.10 Governing Law.** This Contract is to be construed, interpreted and enforced in accordance with, the laws of the State.

**Section 16.11 Execution in Counterparts; Electronic Signatures.** This Contract may be executed in any number of counterparts, by manual, facsimile, digital, electronic, or .pdf signatures, each of which will be deemed an original, but all of which taken together will constitute but one and the same instrument. An executed copy of this Contract delivered by facsimile, email, or other electronic means will be deemed to have the same legal effect as delivery of a manual signed copy of this Contract. This Contract and related documents may be sent and stored by electronic means.

**Section 16.12 E-Verify.** The Bank understands that “E-Verify” is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Bank uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Bank will require that any subcontractor that it uses in connection with the transactions contemplated by this Contract certify to such subcontractor's compliance with E-Verify.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

*IN WITNESS WHEREOF*, the Village and the Bank have caused this Installment Financing Contract to be executed by their duly authorized officers as of the day and year first above written.

VILLAGE OF MARVIN, NORTH CAROLINA

By: \_\_\_\_\_  
Christina Amos  
Village Manager

ATTEST:

\_\_\_\_\_  
Austin W. Yow  
Village Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Director  
Village of Marvin, North Carolina

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT,  
DATED AS OF MAY 13, 2021, BETWEEN TRUIST BANK  
AND THE VILLAGE OF MARVIN, NORTH CAROLINA]

**TRUIST BANK,**  
as Bank

By: \_\_\_\_\_  
Andrew G. Smith  
Senior Vice President

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT,  
DATED AS OF MAY 13, 2021, BETWEEN TRUIST BANK  
AND THE VILLAGE OF MARVIN, NORTH CAROLINA]

This Contract has been approved under the provisions of  
Section 159-152 of the General Statutes of North  
Carolina, as amended.

By: \_\_\_\_\_  
Sharon Edmundson  
Secretary  
Local Government Commission of North Carolina

**PAYMENT SCHEDULE**

Period Ending	Principal	Coupon	Interest	Debt Service
10/01/2021			10,765.53	10,765.53
04/01/2022	78,000	2.380%	14,042.00	92,042.00
06/30/2022				
10/01/2022			13,113.80	13,113.80
04/01/2023	79,000	2.380%	13,113.80	92,113.80
06/30/2023				
10/01/2023			12,173.70	12,173.70
04/01/2024	79,000	2.380%	12,173.70	91,173.70
06/30/2024				
10/01/2024			11,233.60	11,233.60
04/01/2025	79,000	2.380%	11,233.60	90,233.60
06/30/2025				
10/01/2025			10,293.50	10,293.50
04/01/2026	79,000	2.380%	10,293.50	89,293.50
06/30/2026				
10/01/2026			9,353.40	9,353.40
04/01/2027	79,000	2.380%	9,353.40	88,353.40
06/30/2027				
10/01/2027			8,413.30	8,413.30
04/01/2028	79,000	2.380%	8,413.30	87,413.30
06/30/2028				
10/01/2028			7,473.20	7,473.20
04/01/2029	79,000	2.380%	7,473.20	86,473.20
06/30/2029				
10/01/2029			6,533.10	6,533.10
04/01/2030	79,000	2.380%	6,533.10	85,533.10
06/30/2030				
10/01/2030			5,593.00	5,593.00
04/01/2031	79,000	2.380%	5,593.00	84,593.00
06/30/2031				
10/01/2031			4,652.90	4,652.90
04/01/2032	79,000	2.380%	4,652.90	83,652.90
06/30/2032				
10/01/2032			3,712.80	3,712.80
04/01/2033	78,000	2.380%	3,712.80	81,712.80
06/30/2033				
10/01/2033			2,784.60	2,784.60
04/01/2034	78,000	2.380%	2,784.60	80,784.60
06/30/2034				
10/01/2034			1,856.40	1,856.40
04/01/2035	78,000	2.380%	1,856.40	79,856.40
06/30/2035				
10/01/2035			928.20	928.20
04/01/2036	78,000	2.380%	928.20	78,928.20
06/30/2036				
	1,180,000		221,038.53	1,401,038.53

***\$1,180,000***  
***INSTALLMENT FINANCING CONTRACT***  
***BETWEEN TRUIST BANK***  
***AND THE VILLAGE OF MARVIN, NORTH CAROLINA***

DATED  
MAY 13, 2021

**CLOSING INDEX**

**CLOSING:** May 13, 2021 via email & telephone with documents available at the office of Parker Poe Adams & Bernstein LLP, 620 S. Tryon St., Suite 800, Charlotte, North Carolina

**PARTICIPANTS**

<b>VILLAGE</b>	- Village of Marvin, North Carolina
<b>BANK</b>	- Truist Bank
<b>BANK'S COUNSEL</b>	- Pope Flynn, LLC
<b>FINANCIAL ADVISOR</b>	- First Tryon Advisors
<b>VILLAGE ATTORNEY</b>	- Spencer & Spencer, P.A. / W. Chaplin Spencer, Jr., Esq.
<b>SPECIAL COUNSEL</b>	- Parker Poe Adams & Bernstein LLP

## INDEX OF CLOSING DOCUMENTS

The following documents, reports, letters and certificates, executed or conformed, as appropriate, are to be delivered at or before the time of execution and delivery of the Installment Financing Contract.

### **I. BASIC DOCUMENTS**

1. Installment Financing Contract between the Bank and the Village
2. Deed of Trust, Security Agreement and Fixture Filing from the Village to the Deed of Trust Trustee for the benefit of the Bank
3. Project Fund Agreement between the Bank and the Village
4. Wire Transfer Agreement between the Bank and the Village

### **II. DELIVERED BY VILLAGE AT CLOSING**

5. Affidavit of Publication Regarding Notice of Public Hearing
6. Certified Copy of Initial Resolution adopted March 10, 2021
7. Certified Copy of Minutes from Public Hearing held on March 10, 2021
8. Certified Copy of Approving Resolution adopted May 11, 2021
9. Certificate of Officials of the Village Regarding Resolutions, Nonlitigation, Signature Identification, Designation of Village Representatives and Related Matters
10. Tax Certificate
11. Internal Revenue Service Form 8038-G
12. Minutes of the Local Government Commission approving the execution and delivery of the Contract held on May 4, 2021

### **III. DELIVERED BY BANK AT CLOSING**

13. Certificate of the Bank Regarding Bylaws, Organization and Authority, Incumbency, Signatures and Execution of Documents
14. Investment Letter
15. Bank's Receipt for the Proceeds of the Advance

### **IV. LEGAL OPINIONS**

16. Opinion of Village Attorney
17. Opinion of Special Counsel



V. MISCELLANEOUS

18. Closing Memorandum

1. Installment Financing Contract
2. Deed of Trust, Security Agreement and Fixture Filing  
[To be furnished by Special Counsel and the Village at Closing]
3. Project Fund Agreement
4. Wire Transfer Agreement  
[To be furnished by Special Counsel at Closing]
5. Affidavit of Publication Regarding Notice of Public Hearing
6. Certified Copy of Initial Resolution
7. Extract of Minutes of the Public Hearing
8. Approving Resolution  
[To be furnished by the Village at Closing]

**CERTIFICATE OF THE VILLAGE OF MARVIN, NORTH CAROLINA**

The undersigned officials of the Village of Marvin, North Carolina (the "*Village*"), a municipal corporation, validly organized, existing and in good standing under the laws of the State of North Carolina (the "*State*"), do hereby certify as follows:

1. They are the duly appointed, qualified and acting incumbents of their respective offices of the Village, as set forth beside their signatures hereto, and as such are familiar with the books, records, affairs and seal of the Village.

2. The Village is a municipal corporation, validly organized, existing and in good standing under and by virtue of the laws of the State with all requisite power and authority to own its properties and to carry on its business as is now being conducted.

3. Included in the transcript of which this certificate forms a part is a true, correct and complete copy of the resolution duly adopted by the Village Council of the Village on May 11, 2021 (the "*Resolution*"), authorizing, among other things, the appropriate officials of the Village to execute and deliver an Installment Financing Contract dated as of May 13, 2021 (the "*Contract*") between the Village and Truist Bank (the "*Bank*").

4. The Resolution was duly adopted in accordance with all applicable laws, and the Resolution has not been amended or supplemented and is valid and in full force and effect.

5. The Village has authorized by all necessary action, the execution, delivery, receipt, acceptance and due performance of the Instruments (as hereinafter defined) and any and all such other agreements and documents as may be required to be executed, delivered and received by the Village to carry out, give effect to and consummate the transactions contemplated in connection with the execution and delivery of the Contract.

6. Each of the Contract, the Deed of Trust, Security Agreement and Fixture Filing dated as of May 13, 2021 (the "*Deed of Trust*") executed and delivered by the Village to the deed of trust trustee named therein; the Project Fund Agreement dated as of May 13, 2021 (the "*Project Fund Agreement*") between the Village and the Bank; and the Wire Transfer Agreement dated as of May 13, 2021 (the "*Wire Transfer Agreement*," and together with the Contract, the Deed of Trust and the Project Fund Agreement, the "*Instruments*") between the Village and the Bank, has been duly authorized, executed and delivered by the Village, and the Contract constitutes a limited obligation of the Village payable solely from currently budgeted appropriations of the Village and does not constitute a pledge of the faith and credit of the Village within the meaning of any constitutional debt limitation.

7. The Village is not in default under or in violation of (a) any provisions of any applicable law, (b) the Instruments or (c) any indenture, mortgage, lien, agreement, contract, deed, lease, loan agreement, note, order, judgment, decree or other instrument or restriction of any kind or character to which it is a party or by which it or its properties are or may be bound, or to which it or any of its assets is subject, which default would have a material adverse effect on the condition, financial or otherwise, of the Village. Neither the execution and delivery of the Instruments, nor compliance with the terms, conditions and provisions of the Instruments, will conflict in any material respect with or result in a breach of, or constitute a default under, any of the foregoing.

8. Since June 30, 2020, there have not been any material adverse changes in the business, properties, financial position or results of operations of the Village, whether or not arising from transactions in the ordinary course of business, and since such date, except in the ordinary course of business, the Village has not entered into any transaction or incurred any liability material as to the Village.

9. There is no claim, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, or public board or body, pending or, to the best of our knowledge, threatened (a) contesting the corporate existence or powers of the Village or the titles of the officers of the Village to their respective offices, (b) seeking to prohibit, restrain or enjoin the collection of revenues by the Village or the application of the Advance under the Contract wherein an unfavorable decision, ruling or finding would materially adversely affect the financial position of the Village or the operation of its facilities or the validity or enforceability of the Instruments or (c) except as disclosed to the Bank, contesting or affecting the validity of the Instruments or the transactions contemplated thereby.

10. No approval, consent, or withholding of objection on the part of any regulatory body, federal, state or local, that has not already been obtained, is required in connection with the execution or delivery of or compliance by the Village with the terms and conditions of the Instruments.

11. Pursuant to the provisions of the Contract, the Village Manager, the Finance Director, and the Village Clerk are each designated to act on behalf of the Village as a Village Representative, as such term is defined in the Contract, and the signature set forth opposite each of their names as shown in paragraph 12 below is such person's true and genuine signature.

12. Each person named below is the duly appointed and qualified incumbent of the office of the Village set forth opposite his or her name, and the signatures set forth opposite his or her name is such person's genuine signature:

<u>NAME</u>	<u>TITLE</u>	<u>SIGNATURE</u>
Christina Amos	Village Manager	_____
Jamie Privuznak	Finance Director	_____
Austin W. Yow	Village Clerk	_____

*WITNESS* our hands as of the 13th day of May, 2021.

**VILLAGE OF MARVIN, NORTH CAROLINA**

\_\_\_\_\_  
Christina Amos  
Village Manager

\_\_\_\_\_  
Austin W. Yow  
Village Clerk

10. Tax Certificate
11. Internal Revenue Service Form 8038-G

[To be furnished by Special Counsel and the Village at Closing]

12. Minutes of the Local Government Commission approving the execution and delivery of the Contract held on May 4, 2021

[To be furnished by the Local Government Commission at Closing]

**CERTIFICATE OF THE BANK REGARDING BYLAWS,  
ORGANIZATION AND AUTHORITY, INCUMBENCY, SIGNATURES,  
AND EXECUTION OF DOCUMENTS**

The undersigned, TRUIST BANK, a North Carolina corporation (the "*Bank*"), pursuant to an Installment Financing Contract dated as of May 13, 2021 (the "*Contract*") between the Bank and the Village of Marvin, North Carolina (the "*Village*"), hereby certifies with respect to the Contract as follows:

1. The Contract, and the Project Fund Agreement, dated as of May 13, 2021 (the "*Project Fund Agreement*") between the Village and the Bank, and the Wire Transfer Agreement, dated as of May 13, 2021 (the "*Wire Transfer Agreement*") between the Village and the Bank, were executed by a duly authorized officer of the Bank.

2. The Bank is authorized to act as counterparty under the Contract, the Project Fund Agreement and the Wire Transfer Agreement and perform all of its obligations in connection with the transactions contemplated by the Contract, the Project Fund Agreement and the Wire Transfer Agreement, and in so acting is not in violation of any provision of its Articles of Incorporation or Bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.

*IN WITNESS WHEREOF*, the undersigned has hereunto set his or her hand as of the 13th day of May, 2021.

**TRUIST BANK**

By: \_\_\_\_\_  
Andrew G. Smith  
Senior Vice President

May 13, 2021

Village of Marvin, North Carolina  
Marvin, North Carolina

Parker Poe Adams & Bernstein LLP  
Charlotte, North Carolina

**\$1,180,000**  
***Installment Financing Contract***  
***between Truist Bank***  
***and the Village of Marvin, North Carolina***

Ladies and Gentlemen:

In connection with an Installment Financing Contract dated as of May 13, 2021 (the "*Contract*") between Truist Bank, a North Carolina corporation (the "*Bank*"), and the Village of Marvin, North Carolina (the "*Village*"), the undersigned hereby acknowledges and represents that: (1) the Bank is familiar with the Village; (2) the Bank has been furnished certain financial information about the Village; (3) the Village has made available to the Bank the opportunity to obtain additional information to verify the accuracy of the information supplied and to evaluate the merits and risks of entering into the Contract; and (4) the Bank has had the opportunity to ask questions of and receive answers from representatives of the Village concerning the terms and conditions of the Contract and the information supplied to the Bank.

The undersigned acknowledges and represents that (a) it has been advised that the Village's obligation to pay installment payments under the Contract (the "*Installment Payments*") is not registered under the Securities Act of 1933, as amended (the "*1933 Act*") and (b) the Village is not presently required to register such obligation under Section 12 of the Securities and Exchange Act of 1934, as amended (the "*1934 Act*"). The Bank, therefore, understands that if and when the Bank wishes to sell or assign part or all of the Installment Payments that there may not be available current financial information about the Village to such buyer or assignee, and the Bank understands that the Village may, but is not under any obligation to, provide current financial information in the event of the sale or assignment of all or part of the Installment Payments at some subsequent time. Further, the Bank understands that it may need to bear the risks of this investment for an indefinite period of time, since any sale or assignment of the Installment Payments may not be possible or, if possible, may be at a price below that which the Bank is paying for the Installment Payments.

It is understood that the Bank has undertaken to verify the accuracy, completeness and truth of any statements made concerning any of the material facts relating to this transaction, including information regarding the financial condition of the Village. The Bank has conducted its own investigation to the extent it deemed necessary. The Bank has been offered an opportunity to have made available to it any and all such information it might request from the Village. On this basis, the Bank hereby acknowledges that the Bank is not relying on any party or person, including W. Chaplin Spencer, Jr., as Village Attorney, or Parker Poe Adams & Bernstein LLP, in its capacity Special Counsel to the Village (except for the matters

addressed in the written opinions of such counsel), other than the Village to furnish or verify information relating to this transaction.

Very truly yours,

**TRUIST BANK**

By: \_\_\_\_\_  
Andrew G. Smith  
Senior Vice President



**ACKNOWLEDGMENT OF DEPOSIT OF  
PROCEEDS OF THE PURCHASE PRICE**

I, ANDREW G. SMITH, Senior Vice President of Truist Bank (the "*Bank*"), ***DO HEREBY CERTIFY*** that \$1,174,100, consisting of the \$1,180,000 amount advanced under an Installment Financing Contract dated as of May 13, 2021 (the "*Contract*") between the Bank and the Village of Marvin, North Carolina (the "*Village*"), less a fee of \$5,900 paid directly by the Bank to its legal counsel, has been deposited in the Project Fund created and established pursuant to a Project Fund Agreement dated as of May 13, 2021 (the "*Project Fund Agreement*") between the Village and the Bank, and money on deposit in such Project Fund will be disbursed by the Bank in accordance with the terms of the Project Fund Agreement. Upon this deposit of the Advance to the Project Fund, the Bank has paid \$5,900 directly to the Bank's legal counsel on behalf of the Village as a cost of the execution and delivery of the Contract in accordance with Section 2.1 of the Project Fund Agreement.

*WITNESS* my hand this 13th day of May, 2021.

**TRUIST BANK**

By: \_\_\_\_\_  
Andrew G. Smith  
Senior Vice President

[To be printed on Village Attorney's letterhead]

May 13, 2021

Truist Bank  
Charlotte, North Carolina

Village of Marvin, North Carolina  
Marvin, North Carolina

Parker Poe Adams & Bernstein LLP  
Charlotte, North Carolina

**\$1,180,000**  
***Installment Financing Contract***  
***between Truist Bank***  
***and the Village of Marvin, North Carolina***

Ladies and Gentlemen:

We have acted as counsel to the Village of Marvin, North Carolina (the "*Village*"), in connection with the Village's authorization, execution and delivery of an Installment Financing Contract dated as of May 13, 2021 (the "*Contract*") between Truist Bank (the "*Bank*") and the Village. I have reviewed (1) the constitution and laws of the State of North Carolina, (2) certain proceedings taken by the Village Council of the Village, (3) an executed copy of the Contract, (4) an executed copy of a Deed of Trust, Security Agreement and Fixture Filing dated as of May 13, 2021 (the "*Deed of Trust*") from the Village to the deed of trust trustee named therein for the benefit of the Bank, (5) an executed copy of a Project Fund Agreement dated as of May 13, 2021 (the "*Project Fund Agreement*") between the Village and the Bank, (6) an executed copy of the Wire Transfer Agreement dated as of May 13, 2021 (the "*Wire Transfer Agreement*," and together with the Contract, the Project Fund Agreement and the Deed of Trust, the "*Financing Documents*") between the Village and the Bank, and (7) such other information and documents as I have deemed relevant in order to render the opinions hereinafter expressed.

Pursuant to the Contract, the Bank will advance funds in an aggregate principal amount of \$1,180,000, representing the Advance under the Contract. The Village has entered into the Contract under the authority of the General Statutes and other laws of North Carolina, as amended, for the purpose of providing funds to finance the costs of constructing a new Village Hall administrative facility (the "*Project*"). To secure its obligations under the Contract, the Village has executed and delivered the Deed of Trust to create a lien on the Village's right, title and interest in and to the real property on which the Project is located and the improvements and fixtures thereon (collectively, as more particularly described in the Deed of Trust, the "*Mortgaged Property*").

Regarding questions of fact material to our opinion, we have relied on the representations of the Village contained in the resolutions and other certifications of public officials and others furnished to us without undertaking to verify the same by independent investigation. We have assumed that all signatures on documents, certificates and instruments examined by us are genuine, all documents, certificates and

instruments submitted to us as originals are authentic and all documents, certificates and instruments submitted to us as copies conform to the originals. In addition, we have assumed that all documents, certificates and instruments relating to the issuance of the Financing Documents have been duly authorized, executed and delivered by all parties thereto other than the Village.

As counsel to the Village, with regard to these matters and opinions, we have been retained solely for the purpose of rendering the specific opinions herein stated and for no other purpose. We have not verified the accuracy, completeness or fairness of any representation or information concerning the business or financial condition of the Village. Accordingly, we express no opinion on the completeness, fairness or adequacy of any such representation or information.

On the basis of the foregoing, we are of the opinion, under existing law, that:

1. The Village is a municipal corporation validly existing under and by virtue of the Constitution, statutes and laws of the State of North Carolina, and has full legal right, power and authority to enter into and perform its obligations under the Financing Documents and to undertake the Project.

2. The Village has duly authorized, executed and delivered each Financing Document. Assuming the due authorization, execution and delivery by the other parties thereto, each Financing Document constitutes a valid and binding agreement of the Village, enforceable against the Village in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect, or by equitable principles.

3. The Village's obligation to make payments under the Contract is a limited obligation of the Village payable solely from currently budgeted appropriations of the Village and does not constitute a pledge of the faith and credit of the Village within the meaning of any constitutional debt limitation, as more particularly described in the Contract.

4. All consents, approvals or authorizations of any governmental entity and all filings required on the part of the Village in connection with the authorization, execution and delivery of the Financing Documents and the consummation of the transactions contemplated thereby in order for the Financing Documents to be valid and enforceable obligations of the Village have been obtained and are in full force and effect.

5. The Village's execution and delivery of the Financing Documents, and the Village's performance of its obligations under the Financing Documents, under the circumstances contemplated thereby, do not and will not in any material respect conflict with, constitute on the part of the Village a breach of or default under, or result in the creation of a lien on any property of the Village (except as contemplated in the Financing Documents) pursuant to, any agreement or other instrument to which the Village is a party, or any existing law, regulation, court order or consent decree to which the Village is subject.

6. To the best of my knowledge, after reasonable investigation, there is no action, suit, proceeding or governmental investigation at law or in equity before or by any court, public board or body, pending of which the Village has been served with a summons, summons and complaint or other direct notice of commencement, or threatened against the Village, challenging the validity of the Financing Documents or contesting the power and authority of the Village to execute and deliver the Financing Documents or to consummate the transactions contemplated therein.

7. The Deed of Trust has been recorded in accordance with North Carolina law and all filings and recordings required to perfect the property interests granted, mortgaged or subjected to a mortgage lien and security interest thereby have been made with the effect that any subsequent grants by the Village of

interests in the Mortgaged Property will be subject and subordinate to the rights of the Bank as beneficiary under the Deed of Trust.

This opinion is rendered solely to the addresses named herein as well as their successors and/or assigns and may not be relied upon by any other party or for any other purpose other than the purposes stated herein. This opinion is limited to the laws as they presently exist, to present judicial interpretations thereof and the fact as they presently exist.

I am authorized to practice law in the State of North Carolina. The opinions expressed herein relate only to the laws of the State of North Carolina and to no other jurisdiction.

SPENCER & SPENCER, P.A.,

Village Attorney

May 13, 2021

Village of Marvin, North Carolina  
Marvin, North Carolina

Truist Bank  
Charlotte, North Carolina

**\$1,180,000**  
***Installment Financing Contract***  
***between Truist Bank***  
***and the Village of Marvin, North Carolina***

Ladies and Gentlemen:

We have acted as Special Counsel in connection with the execution and delivery of an Installment Financing Contract dated as of May 13, 2021 (the "*Contract*") between Truist Bank (the "*Bank*") and the Village of Marvin, North Carolina (the "*Village*"), and have examined the record of proceedings relating thereto.

Pursuant to the Contract, the Bank will advance funds in an aggregate principal amount of \$1,180,000, representing the Advance under the Contract. The Village has entered into the Contract under the authority of the General Statutes and other laws of North Carolina, as amended, for the purpose of providing funds to finance the costs of constructing a new Village Hall administrative facility (the "*Project*"). To secure its obligations under the Contract, the Village has executed and delivered a Deed of Trust, Security Agreement and Fixture Filing dated as of May 13, 2021 (the "*Deed of Trust*"), granting to the deed of trust trustee named therein for the benefit of the Bank a lien on the Village's right, title and interest in and to the real property on which the Project is located and the improvements and fixtures thereon (as more particularly described in the Deed of Trust, the "*Mortgaged Property*").

In such capacity, we have examined executed copies of the Contract, the Deed of Trust, the Project Fund Agreement dated as of May 13, 2021 (the "*Project Fund Agreement*") between the Village and the Bank, and the Wire Transfer Agreement dated as of May 13, 2021 (the "*Wire Transfer Agreement*" and, together with the Contract, the Deed of Trust and the Project Fund Agreement, the "*Financing Documents*") between the Village and the Bank, and such law, certified proceedings, instruments, opinions and other documents as we have deemed necessary to render the opinions hereinafter expressed. As to questions of fact material to the opinions hereinafter expressed, we have relied on representations of the Village contained in the Financing Documents and the related documents thereto, the certified proceedings and other certifications of public officials and others furnished to us, including certifications furnished to us by or on behalf of the Village, without undertaking to verify the same by independent investigation. We have also relied on the opinion of W. Chaplin Spencer, Jr., Esq., as Village Attorney, dated the date hereof, as to the due authorization, execution and delivery of the Financing Documents by the Village and other matters set forth therein, without undertaking to verify the same by independent investigation. We have assumed the accuracy and truthfulness of all public records and of all certifications, documents and other proceedings examined by us that have been executed or certified by public officials acting within the scope of their official capacities and have not verified the accuracy or truthfulness thereof. We have also assumed

the genuineness of the signatures appearing on such public records, certifications, and documents and proceedings.

On the basis of the foregoing, we are of the opinion, under existing law, that:

1. The Financing Documents have been duly authorized, executed and delivered and constitute valid and legally binding obligations of the Village, enforceable against the Village in accordance with their terms.

2. The interest component of the Installment Payments paid under the Contract is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. The opinion set forth in the preceding sentence is subject to the condition that the Village complies with all requirements of the Internal Revenue Code of 1986, as amended (the "Code"), that must be satisfied subsequent to the initial execution and delivery of the Contract in order that the interest component of the Installment Payments paid under the Contract be, or continue to be, excludable from gross income for federal income tax purposes. The Village has covenanted to comply with all such requirements. Failure to comply with certain of such requirements may cause the interest component of the Installment Payments paid under the Contract to be included in gross income for federal income tax purposes retroactive to the date of the initial execution and delivery of the Contract. We express no opinion regarding other federal tax consequences arising with respect to the Contract.

4. The interest component of the Installment Payments paid under the Contract is exempt from all present State of North Carolina income taxation.

The rights of the Bank under the Contract and the enforceability of the Financing Documents may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, liquidation, readjustment of debt, and other similar laws affecting creditors' rights and remedies generally, and by general principles of equity, whether such principles are considered in a proceeding at law or in equity.

Our services as Special Counsel in connection with execution and delivery of the Contract have been limited to rendering the opinions expressed above. We express no opinions herein relating to the financial resources of, or the creditworthiness of, the Village, or any other matters relating to an evaluation of the likelihood or the ability of the Village to make the Installment Payments under the Contract.

We are furnishing the opinions expressed above to you solely for your benefit and no other person, other than permitted successors and assigns of the Bank as a party to the Contract, is entitled to rely on such opinions without our prior written consent. Such opinions are not to be used, circulated, quoted or otherwise referred to for any other purpose without our prior written consent.

Very truly yours,

**PARKER POE ADAMS & BERNSTEIN LLP**

18. Closing Memorandum

[To Be Furnished by Financial Advisor at Closing]

Prepared by: Scott E. Leo, Esq.  
620 South Tryon Street, Suite 800  
Charlotte, North Carolina 28202

Return to: W. Chaplin Spencer, Jr.  
226 East Main Street, Suite 200  
Rock Hill, South Carolina 29731

**STATE OF NORTH CAROLINA**

**COUNTY OF UNION**

**DEED OF TRUST,  
SECURITY AGREEMENT  
AND FIXTURE FILING**

This **DEED OF TRUST AND SECURITY AGREEMENT** is made and entered into as of May 13, 2021 (this "*Deed of Trust*"), from the **VILLAGE OF MARVIN, NORTH CAROLINA** (the "*Grantor*"), 10004 New Town Road, Marvin, North Carolina 28173, to **BB&T COLLATERAL SERVICE CORPORATION**, as trustee (the "*Trustee*"), 5130 Parkway Plaza Boulevard, Charlotte, North Carolina 28217, for the benefit of **TRUIST BANK** (the "*Bank*"), 5130 Parkway Plaza Boulevard, Charlotte, North Carolina 28217 (the Bank and its successors and assigns hereinafter called the "*Beneficiary*").

***PREAMBLES***

***WHEREAS***, the Grantor and the Bank have entered into an Installment Financing Contract dated as of May 13, 2021 (the "*Contract*"), pursuant to which (1) the Bank has agreed to advance funds to enable the Grantor to finance the Project (as defined in the Contract), and (2) the Grantor has agreed to make the Installment Payments (as defined in the Contract) to the Bank;

***WHEREAS***, this Deed of Trust has been executed and delivered to secure (1) the obligations of the Grantor to make the Installment Payments, and (2) the payment and performance of all of the other liabilities and obligations, whether now existing or hereafter arising, of the Grantor to the Bank under the Contract, all such obligations and liabilities described in (1) or (2) above hereinafter collectively called the "*Indebtedness*";



*WHEREAS*, it is intended that this Deed of Trust comply with the provisions of Sections 45-67, *et. seq.* of the General Statutes of North Carolina, as amended; and for purposes of complying with such provisions, the Grantor hereby represents as follows:

(a) This Deed of Trust has been executed and delivered by the Grantor to secure present and future Indebtedness which may be incurred from time to time under the Contract;

(b) The maximum principal amount, including present and future Indebtedness, which may be secured by this Deed of Trust at any one time is \$2,000,000 (exclusive of advances that may be made under the terms of the Contract or this Deed of Trust for the protection of collateral, payment of taxes, impositions and assessments, attorneys' fees and costs and other sums which the Grantor is required by the terms of said instruments to repay), subject to the limitation that any increase must be authorized by the Grantor's governing board and at no time shall the total principal amount of Indebtedness secured hereby exceed said maximum principal sum of \$2,000,000 plus interest, attorneys' fees and costs and other sums for the protection of collateral, payment of taxes, impositions and assessments and similar sums advanced by the Beneficiary which the Grantor is obligated to repay hereunder, under the Contract, or otherwise;

(c) The period within which such future Indebtedness may be incurred shall expire not later than 30 years from the date of this Deed of Trust, and shall be effective without the recordation of an amendment, modification or supplement to this Deed of Trust; and

(d) It shall not be a requirement for any such future Indebtedness to be secured hereby that the Grantor sign an instrument or other notation stipulating that such Indebtedness is secured by this Deed of Trust, as no such future Indebtedness is required, under the Contract or otherwise, to be evidenced by a written instrument or notation; and

*WHEREAS*, the Grantor desires to secure (1) the payment of the Indebtedness and any renewals, modifications or extensions thereof, in whole or in part, and (2) the additional payments hereinafter agreed to be made by or on behalf of the Grantor, by a conveyance of the lands and security interests hereinafter described;

*NOW, THEREFORE*, in consideration of the above preambles and for the purposes aforesaid, and in further consideration of the sum of \$10.00 paid to the Grantor by the Trustee and other valuable consideration, receipt of which is hereby acknowledged, the Grantor has given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the Trustee, its heirs, successors and assigns, the following property (hereinafter collectively referred to as the "*Mortgaged Property*"):

(a) The real property lying and being in the County of Union, North Carolina, and described below and in the legal description attached as Exhibit A hereto (hereinafter referred to as the "*Real Property*"):

SEE EXHIBIT A ATTACHED HERETO FOR THE REAL  
PROPERTY DESCRIPTION, WHICH EXHIBIT A IS  
SPECIFICALLY INCORPORATED HEREBY BY REFERENCE.

(b) All buildings, structures, additions and improvements of every nature whatsoever now or hereafter situated on or about the Real Property (the "*Improvements*").

(c) All gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes and other machinery, equipment or other tangible personal property, which are or shall be so attached to the Improvements, including all extensions, additions, improvements, betterments, renewals, replacements and substitutions, or proceeds from a permitted sale of any of the foregoing, as to be deemed to be fixtures under North Carolina law (collectively, the "Fixtures") and accessions to the Real Property and a part of the Mortgaged Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the Indebtedness. The location of the collateral described in this paragraph is also the location of the Real Property, and the record owner of the Real Property is the Grantor.

(d) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Real Property or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Grantor.

(e) All leases affecting the Mortgaged Property or any part thereof and all income, rents and issues of the Mortgaged Property and the Improvements now or hereafter located thereon from time to time accruing (including without limitation all payments under leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits whether held by the Grantor or in a trust account, and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Grantor of, in and to the same; reserving only the right to the Grantor to collect and apply the same (other than insurance proceeds and condemnation payments) so long as the Grantor is not in Default hereunder.

**TO HAVE AND TO HOLD**, the Mortgaged Property unto the Trustee, its heirs, successors and assigns, in fee simple forever, upon the trusts, terms and conditions and for the uses and purposes hereinafter set out;

And the Grantor covenants with the Trustee that the Grantor is lawfully seized of the Mortgaged Property in fee simple and has the right to convey the same in fee simple; that, except for Permitted Encumbrances (as defined in Exhibit B attached hereto and specifically incorporated herein by reference), the same are free and clear of all encumbrances, and that the Grantor will warrant and defend the title to the same against the claims of all persons whomsoever arising by, under or through the Grantor.

**THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST**, that if the Grantor shall pay the Indebtedness in accordance with the terms of the Contract, together with interest thereon, and any renewals or extensions thereof in whole or in part, and shall comply with all the covenants, terms and conditions of this Deed of Trust, then this conveyance shall be null and void and may be cancelled of record at the request and at the cost of the Grantor.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST**, the Grantor hereby further covenants and agrees as follows:

## ARTICLE I

Section 1.1. *Payment of Indebtedness.* The Grantor will pay the Indebtedness and all other sums now or hereafter secured hereby promptly as the same shall become due.

Section 1.2. *Taxes, Liens and Other Charges.*

(a) The Grantor will pay, or cause to be paid, before the same become delinquent, all taxes, liens, assessments and charges of every character including all utility charges, whether public or private, already levied or assessed or that may hereafter be levied or assessed upon or against the Mortgaged Property; and will furnish the Beneficiary, on or before the final date whereon the same can be paid without penalty, evidence of the due and punctual payment of all such taxes, assessments and other fees and charges. Nothing contained herein shall require the payment or discharge of any such tax, lien, assessment or charge by the Grantor for so long as the Grantor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings provided that such proceedings shall prevent (1) the collection thereof or other realization thereof and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same or (2) the enforcement thereof, against the Grantor, the Trustee, the Beneficiary and the Mortgaged Property and so long as the Grantor first deposits with the Beneficiary in escrow such sums or other security as the Beneficiary may reasonably require to assure Beneficiary of the availability of sufficient monies to pay such tax, lien, assessment or charge if and when the same is finally determined to be due.

(b) The Grantor will not suffer any mechanic's, materialman's, laborer's, statutory or other lien to be created and to remain outstanding upon all or any part of the Mortgaged Property. The Grantor shall be entitled to discharge such liens by bonds or to contest any such liens pursuant to the same procedure as the Grantor is entitled to contest taxes in the preceding Subsection 1.2(a).

Section 1.3. *Insurance.*

(a) The Grantor shall procure for, deliver to and maintain for the benefit of the Beneficiary, and shall deliver to the Beneficiary at the Beneficiary's request, during the term of this Deed of Trust, the insurance coverage required by the Contract.

(b) The Beneficiary is hereby authorized and empowered and, at its option, with participation of the Grantor, to adjust or compromise any loss under any insurance policies maintained pursuant to this Section 1.3, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Grantor and the Beneficiary jointly. The net proceeds from any such policy or policies shall be applied as provided in the Contract. The Beneficiary shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) For the portion of such insurance which is not self-insurance, at least 30 days prior to the expiration date of each policy maintained pursuant to this Section 1.3, a renewal or replacement thereof satisfactory to the Beneficiary shall be delivered by the Grantor to the Beneficiary, if requested. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Mortgaged Property in extinguishment of the Indebtedness secured hereby, all right, title and interest of the Grantor in and to all insurance policies then in force shall pass to the purchaser or Beneficiary, as appropriate.

Section 1.4. *Condemnation.* In the event there hereafter occurs a condemnation (which term when used in this Deed of Trust shall include any damage or taking by any governmental authority or other entity having the power of eminent domain, and any transfer by private sale in lieu thereof), resulting in any damage or taking, either temporarily or permanently, of (1) the entire Mortgaged Property, (2) so much of the Mortgaged Property as causes the remainder of the Mortgaged Property to be in violation of any zoning laws, restrictive covenants or similar laws, regulations or restrictions affecting the Mortgaged Property, and the Grantor fails to cure such violation within 30 days of the condemnation or such violation does not prevent the Grantor's continued use of the Mortgaged Property in the ordinary course of its business or (3) so much of the Mortgaged Property that, in the sole reasonable opinion of the Beneficiary, the value of the Mortgaged Property is materially and adversely affected, then, and in any one of said events, the Grantor shall repay the Indebtedness in accordance with Article VIII of the Contract. To the extent permitted by law, the Beneficiary shall be entitled to receive all compensation, awards and other payments or relief thereof. The Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute, in its own or in the Grantor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Grantor to the Beneficiary. After deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, the Beneficiary shall apply the net proceeds as provided in the Contract, subject to the terms of Article VIII of the Contract. Any balance of such monies then remaining shall be paid to the Grantor. The Grantor hereby agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as the Beneficiary may require.

Section 1.5. *Care of Mortgaged Property.*

(a) The Grantor will keep the buildings, parking areas, roads and walkways, recreational facilities, landscaping and all other improvements of any kind now or hereafter erected on the Real Property or any part thereof in good condition and repair, will not commit or suffer any waste, and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except for structures existing on the date of this Deed of Trust, the Grantor will not remove or demolish nor alter the structural character of any improvement located on the Real Property without the prior written consent of the Beneficiary.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Grantor will give immediate written notice thereof to the Beneficiary and the Trustee.

(d) Upon reasonable notice to the Grantor, the Beneficiary or its representative is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours. The Beneficiary agrees that any confidential information about the Grantor obtained in the exercise of its rights under this subparagraph (d) shall, except as otherwise required by law or regulation applicable to the Beneficiary, be maintained in a confidential manner and shall be used by the Beneficiary only for the protection of its rights and interests hereunder.

(e) The Grantor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority (including, but not limited to, all environmental and ecological laws and regulations) affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged or destroyed as described in Section 8.1 of the Contract, the Grantor will promptly repair, restore, modify, improve

or replace the Mortgaged Property or any remaining portions in accordance with Section 8.2 of the Contract or, under certain circumstances described in Section 8.3 of the Contract, apply any Net Proceeds (as defined in the Contract) as provided for in Section 8.3 of the Contract.

Section 1.6. *Leases and Other Agreements Affecting Property.* The Grantor will duly and punctually perform all terms, covenants, conditions and agreements binding upon the Grantor under any lease or any other agreement of any nature whatsoever which involves or affects the Mortgaged Property or any part thereof. The Grantor will furnish the Beneficiary with executed copies of all leases now or hereafter created upon the Mortgaged Property or any part thereof, and all leases now or hereafter entered into will be in form and substance subject to the prior written approval of the Beneficiary. The Grantor will not, without the express written approval of the Beneficiary (which approval will not be unreasonably withheld or delayed), modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter created upon the Mortgaged Property or any part thereof, nor will the Grantor permit an assignment or a subletting by any tenant without the prior express written approval of the Beneficiary.

Section 1.7. *Security Agreement and Fixture Filing.* With respect to the Fixtures, this Deed of Trust is hereby made and declared to be a security agreement in favor of the Beneficiary encumbering each and every item of such property included herein as a part of the Mortgaged Property, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of North Carolina (the "State"), and the Grantor hereby grants a security interest to the Beneficiary in and to all of such Fixtures. This Deed of Trust shall constitute a financing statement filed as a fixture filing in accordance with N.C. Gen. Stat. §25-9-502 (or any amendment thereto). For purposes of complying with the requirements of N.C. Gen. Stat. §25-9-502, the name of Grantor, as Debtor, and Beneficiary, as Secured Party, and the respective addresses of Grantor, as Debtor, and Beneficiary, as Secured Party, are set forth on the first page of this Deed of Trust. Grantor authorizes Beneficiary to effect any filing or recording of any additional financing statements relating to the Fixtures or amendments thereto where appropriate to perfect and continue the security interest in, and to protect and preserve, the Fixtures. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Deed of Trust shall be (1) as prescribed herein, or (2) as prescribed by general law, or (3) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at the Beneficiary's sole election. The mention in any such financing statement or statements of the rights in and to (a) the proceeds of any fire and/or hazard insurance policy, (b) any award in eminent domain proceedings for a taking or for loss of value, or (c) the Grantor's interest as lessor in any present or future lease or rights to rents, issues or awards growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of the Beneficiary as determined by this Deed of Trust or affect the priority of the Beneficiary's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of the Beneficiary in the event any court shall at any time hold with respect to the foregoing clauses (a), (b) or (c) of this sentence, that notice of the Beneficiary's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

Section 1.8. *Further Assurances; After Acquired Property.* At any time, and from time to time, upon request by the Beneficiary, the Grantor will make, execute and deliver or cause to be made, executed and delivered, to the Beneficiary and/or the Trustee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Beneficiary, any and all such other and further deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of the Beneficiary, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (1) the obligations of the Grantor under

the Contract or this Deed of Trust and (2) the security interest created under this Deed of Trust as a first and prior lien upon and security title in and to all of the Mortgaged Property, subject to Permitted Encumbrances, whether now owned or hereafter acquired by the Grantor.

Section 1.9. **Expenses.** The Grantor will pay or reimburse the Beneficiary and the Trustee, upon demand therefor, for all reasonable attorneys' fees, costs and expenses actually incurred by the Beneficiary and the Trustee in any suit, action, legal proceeding or dispute of any kind in which the Beneficiary and/or the Trustee is made a party or appears as party plaintiff or defendant, affecting the Indebtedness secured hereby, this Deed of Trust or the interest created herein, or the Mortgaged Property, including, but not limited to, the exercise of the power of sale contained in this Deed of Trust, any condemnation action involving the Mortgaged Property or any action to protect the security hereof, but excepting therefrom any negligence or willful misconduct by the Beneficiary or any breach of this Deed of Trust by the Beneficiary; and all such amounts paid by the Beneficiary shall be added to the Indebtedness.

Section 1.10. **Estoppel Affidavits.** The Grantor, upon 10 days' prior written notice, shall furnish the Beneficiary a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Indebtedness and whether or not any offsets or defenses exist against such principal and interest.

Section 1.11. **Subrogation.** The Beneficiary shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Indebtedness.

Section 1.12. **Books, Records, Accounts and Annual Reports.** The Grantor will keep and maintain or will cause to be kept and maintained proper and accurate books, records and accounts relating to the Mortgaged Property. The Beneficiary shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of the Grantor or such other person or entity maintaining such books, records and accounts and to make copies or extracts thereof as the Beneficiary shall desire.

Section 1.13. **Limit of Validity.** If from any circumstances whatsoever fulfillment of any provision of this Deed of Trust or the Contract at the time performance of such provision shall be due shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then *ipso facto* the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Deed of Trust or the Contract that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity.

Section 1.14. **Changes in Ownership.** The Grantor hereby acknowledges to the Beneficiary that (1) the identity and expertise of the Grantor were and continue to be material circumstances upon which the Beneficiary has relied in connection with, and which constitute valuable consideration to the Beneficiary for, the extending to the Grantor of the Indebtedness and (2) any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Indebtedness granted to the Beneficiary by this Deed of Trust. The Grantor therefore covenants and agrees with the Beneficiary, as part of the consideration for the extending to the Grantor of the Indebtedness, that the entire Indebtedness shall, at the option of the Beneficiary, become immediately due and payable, should the Grantor further encumber, pledge, convey, transfer or assign any or all of its interest in the Mortgaged Property or any portion thereof without the prior written consent of the Beneficiary or except as otherwise permitted herein.

Section 1.15. **Use and Management of the Mortgaged Property.** The Grantor shall not abandon the Mortgaged Property without the prior written consent of the Beneficiary.

Section 1.16. *Acquisition of Collateral.* The Grantor shall not acquire any portion of the personal property, if any, covered by this Deed of Trust, subject to any security interest, conditional sales contract, title retention arrangement or other charge or lien taking precedence over the security title and lien of this Deed of Trust without the prior written consent of the Beneficiary.

Section 1.17. *Hazardous Material.*

(a) The Grantor represents, warrants and agrees that, except as previously disclosed to the Bank in writing: (1) the Grantor has not used or installed any Hazardous Material (as hereinafter defined) in violation of applicable Environmental Laws on, from or in the Mortgaged Property and to the Grantor's actual knowledge no other person has used or installed any Hazardous Material on, from or in the Mortgaged Property; (2) to the Grantor's knowledge, no other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Mortgaged Property or any other property owned by the Grantor except as previously disclosed to the Beneficiary; (3) to the best of the Grantor's knowledge the Mortgaged Property is presently in compliance with all applicable Environmental Laws, and there are no facts or circumstances presently existing upon or under the Mortgaged Property, or relating to the Mortgaged Property, which may violate any applicable Environmental Laws, and there is not now pending or, to the best knowledge of the Grantor, threatened any action, suit, investigation or proceeding against the Grantor or the Mortgaged Property (or against any other party relating to the Mortgaged Property) seeking to enforce any right or remedy against the Grantor or the Mortgaged Property under any of the Environmental Laws; (4) the Mortgaged Property shall be kept free of Hazardous Materials to the extent required by applicable Environmental Laws, and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Materials other than the processing of materials in the ordinary course of the Grantor's business as of the date hereof; (5) the Grantor shall not cause or permit the installation of Hazardous Materials in, on, over or under the Mortgaged Property or a Release (as hereinafter defined) of Hazardous Materials unto or from the Mortgaged Property or suffer the presence of Hazardous Materials in, on, over or under the Mortgaged Property in violation of applicable Environmental Laws; (6) the Grantor shall comply with Environmental Laws applicable to the Mortgaged Property, all at no cost or expense to the Beneficiary or the Trustee; (7) the Grantor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary for the Mortgaged Property to comply with applicable Environmental Laws (the "Permits") and the Grantor will be and at all times remain in full compliance with the terms and provisions of the Permits; (8) to the best of the Grantor's knowledge there has been no Release of any Hazardous Materials on or from the Mortgaged Property in violation of applicable Environmental Laws, whether or not such Release emanated from the Mortgaged Property or any contiguous real estate which has not been abated and any resulting violation of applicable Environmental Laws abates; (9) the Grantor shall immediately give the Beneficiary oral and written notice in the event that the Grantor receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Mortgaged Property and the Grantor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Mortgaged Property in accordance with all applicable Environmental Laws.

(b) To the fullest extent permitted by applicable law, the Grantor hereby agrees to indemnify the Beneficiary and the Trustee and hold the Beneficiary and the Trustee harmless from and against any and all liens, demands, defenses, suits, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including,

without limitation, attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against the Beneficiary, the Trustee and/or the Mortgaged Property for, with respect to, or as a direct or indirect result of: (1) the presence of Hazardous Materials in, on or under the Mortgaged Property, or the escape, seepage, leakage, spillage, discharge, emission or Release on or from the Mortgaged Property of any Hazardous Materials regardless of whether or not caused by or within the control of the Grantor; (2) the violation of any Environmental Laws applicable to the Mortgaged Property or the Grantor, whether or not caused by or within the control of the Grantor; (3) the failure by the Grantor to comply fully with the terms and provisions of this Section 1.17; (4) the violation of any of the Environmental Laws in connection with any other property owned by the Grantor, which violation gives or may give rise to any rights whatsoever in any party with respect to the Mortgaged Property by virtue of any of the Environmental Laws, whether or not such violation is caused by or within the control of the Grantor; or (5) any warranty or representation made by the Grantor in subparagraph (a) of Section 1.17 being false or untrue in any material respect.

(c) In the event the Beneficiary has a reasonable basis to suspect that the Grantor has violated any of the covenants, warranties, or representations contained in this Section 1.17, or that the Mortgaged Property is not in compliance with the applicable Environmental Laws for any reason, the Grantor shall take such steps as the Beneficiary reasonably requires by written notice to the Grantor in order to confirm or deny such occurrences, including, without limitation, the preparation of environmental studies, surveys or reports. In the event that the Grantor fails to take such action, the Beneficiary may take such action as the Beneficiary reasonably believes necessary to protect its interest, and the cost and expenses of all such actions taken by the Beneficiary, including, without limitation, the Beneficiary's reasonable attorneys' fees, shall be added to the Indebtedness.

(d) For purposes of this Deed of Trust: (1) "*Hazardous Material*" or "*Hazardous Materials*" means and includes, without limitation, (A) solid or hazardous waste, as defined in the Resource Conservation and Recovery Act of 1980, as amended, or in any applicable state or local law or regulation, (B) hazardous substances, as defined in CERCLA, or in any applicable state or local law or regulation, (C) gasoline, or any other petroleum product or by-product, (D) toxic substances, as defined in the Toxic Substances Control Act of 1976, as amended, or in any applicable state or local law or regulation or (E) insecticides, fungicides, or rodenticides, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act of 1975, as amended, or in any applicable state or local law or regulation, as each such Act, statute or regulation may be amended from time to time; (2) "*Release*" shall have the meaning given such term, in the Environmental Laws, including, without limitation, Section 101(22) of CERCLA; and (3) "*Environmental Law*" or "*Environmental Laws*" shall mean any "*Super Fund*" or "*Super Lien*" law, or any other federal, state or local statute, law, ordinance or code, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be legally in effect, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated and officially adopted thereunder or in connection therewith: the Super Fund Amendments and Reauthorization Act of 1986, as amended ("*SARA*"); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("*CERCLA*"); The Clean Air Act, as amended ("*CAA*"); the Clean Water Act, as amended ("*CWA*"); The Toxic Substance Control Act, as amended ("*TSCA*"); the Solid Waste Disposal Act, as amended ("*SWDA*"), as amended by the Resource Conservation and Recovery Act, as amended ("*RCRA*"); the Hazardous Waste Management System; and the Occupational Safety and Health Act of 1970, as amended ("*OSHA*"). The obligations and liabilities of the Grantor under this Section 1.17 which arise out of events or actions occurring prior to the



satisfaction of this Deed of Trust shall survive the exercise of the power of sale under or foreclosure of this Deed of Trust, the delivery of a deed in lieu of foreclosure of this Deed of Trust, the cancellation or release of record of this Deed of Trust, and/or the payment in full of the Indebtedness.

(e) The parties expressly agree that an event under the provisions of Section 1.17 which may be deemed to be a default under this Deed of Trust shall not be a default until the Grantor has received notice of such event. Further, in terms of compliance with future governmental laws, regulations or rulings applicable to environmental conditions, the Grantor shall be permitted to afford itself of any defense or other protection against the application or enforcement of any such law, regulation or ruling.

## ARTICLE II

Section 2.1. *Events of Default.* The terms “*Default*”, “*Event of Default*” or “*Events of Default*,” wherever used in this Deed of Trust, shall mean any one or more of the following events:

(a) Failure by the Grantor to pay any principal component or interest component of the Installment Payments when due within 10 days after written notice specifying such failure and requesting that it be remedied has been given to the Grantor by the Beneficiary as required by the Contract or by this Deed of Trust; or

(b) Failure by the Grantor to duly observe or perform after notice and lapse of any applicable grace period any other term, covenant, condition or agreement of this Deed of Trust; or

(c) Any warranty of the Grantor contained in this Deed of Trust, proves to be untrue or misleading in any material respect; or

(d) The occurrence of any “*Event of Default*” under the Contract.

Section 2.2. *Acceleration upon Default, Additional Remedies.* In the event an Event of Default shall have occurred and is continuing, the Beneficiary may declare all Indebtedness to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name or in the name of the Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof, and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the rents and issues thereof, including those rents and issues past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorney’s fees, upon any Indebtedness, all in such order as the Beneficiary may determine. The entering upon and taking possession of the Mortgaged Property, the collection of such rents and issues and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Default or pursuant to such notice of Default and notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of rents and issues, the Trustee or the Beneficiary shall be entitled to exercise every right provided for in any instrument securing or

relating to the Indebtedness or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, specially enforce any of the covenants hereof, or cause the Trustee to foreclose this Deed of Trust by power of sale; and

(c) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of North Carolina or under any other applicable laws.

Notwithstanding any provision to the contrary in this Deed of Trust, no deficiency judgment may be rendered against the Grantor in any action to collect any of the Indebtedness secured by this Deed of Trust and the taxing power of the Grantor is not and may not be pledged directly or indirectly or contingently to secure any monies due or secured under this Deed of Trust.

Section 2.3. **Foreclosure by Power of Sale.** Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall notify the Trustee and shall deposit with the Trustee this Deed of Trust and such receipts and evidence of expenditures made and secured hereby as the Trustee may require.

Upon application of the Beneficiary, it shall be lawful for and the duty of the Trustee, and the Trustee is hereby authorized and empowered to expose to sale and to sell the Mortgaged Property at public auction for cash, after having first complied with all applicable requirements of North Carolina law with respect to the exercise of powers of sale contained in deeds of trust and upon such sale, the Trustee shall convey title to the purchaser in fee simple. After retaining from the proceeds of such sale just compensation for the Trustee's services and all expenses incurred by the Trustee, including the Trustee's commission not exceeding 1% of the bid and reasonable attorneys' fees for legal services actually performed, the Trustee shall apply the residue of the proceeds first to the payment of all sums expended by the Beneficiary under the terms of this Deed of Trust; second, to the payment of the Indebtedness and interest thereon secured hereby; and the balance, if any, shall be paid to the Grantor. The Grantor agrees that in the event of sale hereunder, the Beneficiary shall have the right to bid thereat. The Trustee may require the successful bidder at any sale to deposit immediately with the Trustee cash or certified check in an amount not to exceed 25% of the bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made and thereupon the next highest bidder may be declared to be the purchaser. Such deposit shall be refunded in case a resale is had; otherwise, it shall be applied to the purchase price.

Section 2.4. **Performance by the Beneficiary on Defaults by the Grantor.** If the Grantor shall Default in the payment, performance or observance of any term, covenant or condition of this Deed of Trust, the Beneficiary may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by the Beneficiary in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Grantor to the Beneficiary with interest thereon at the rate provided in the Contract. The Beneficiary shall be the sole judge of the necessity for any such actions and of the amounts to be paid. The Beneficiary is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to the Grantor or any person in possession holding under the Grantor.

Section 2.5. **Receiver.** If an Event of Default shall have occurred and is continuing and as to Events of Default occurring under Subsections 2.1(b), (c) and (d) hereof continues uncured for a period of

30 days or more after written notice of such Event of Default is given by the Beneficiary to the Grantor, the Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the adequacy or value of any security for the Indebtedness secured hereby or the solvency of any party bound for its payment, to the appointment of a receiver or receivers to take possession of and to operate the Mortgaged Property and to collect and apply the rents and issues thereof. The Grantor hereby irrevocably consents to such appointment, provided the Grantor receives notice of any application therefor. Any such receiver or receivers shall have all of the rights and powers permitted under the laws of the State and all the powers and duties of the Beneficiary in case of entry as provided in Section 2.2(a), and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Property unless such receivership is sooner terminated. The Grantor will pay to the Beneficiary upon demand all reasonable expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section; and all such expenses shall be secured by this Deed of Trust.

Section 2.6. *Waiver of Appraisalment, Valuation, Stay, Extension and Redemption Laws.* The Grantor agrees to the full extent permitted by law, that in case of a Default hereunder, neither the Grantor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, or the absolute sale of the Mortgaged Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and the Grantor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

Section 2.7. *Leases.* The Beneficiary and the Trustee, or either of them, at their option and to the extent permitted by law, are authorized to foreclose this Deed of Trust and such right supersedes any rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by the Grantor, a defense to any proceedings instituted by the Beneficiary and the Trustee to collect the sums secured hereby.

Section 2.8. *Discontinuance of Proceedings and Restoration of the Parties.* In case the Beneficiary and the Trustee, or either of them, shall have proceeded to enforce any right, power or remedy under this Deed of Trust by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Beneficiary and the Trustee, or either of them, then and in every such case the Grantor and the Beneficiary and the Trustee, and each of them, shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Beneficiary and the Trustee, and each of them, shall continue as if no such proceeding had been taken.

Section 2.9. *Remedies Not Exclusive.* Subject to Article XIII of the Contract, the Trustee and the Beneficiary, and each of them, shall be entitled to enforce payment and performance of any Indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or any other agreement securing or relating to the Indebtedness secured hereby or any laws now or hereafter in force, notwithstanding some of the Indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Trustee's or the Beneficiary's right to realize upon or enforce any other security now or hereafter held by the Trustee or the

Beneficiary, it being agreed that the Trustee and the Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by the Beneficiary or the Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to the Trustee or the Beneficiary is intended to be exclusive of any other remedy herein or by law provided or preclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any instrument securing or relating to the Indebtedness secured hereby to the Trustee or the Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Trustee or the Beneficiary and either of them may pursue inconsistent remedies.

Section 2.10. *Waiver.* No delay or omission of the Beneficiary or the Trustee to exercise any right, power or remedy accruing upon any Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Default, or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary and the Trustee, and each of them, may be exercised from time to time and as often as may be deemed expedient by the Beneficiary and the Trustee, and each of them. No consent or waiver, expressed or implied, by the Beneficiary to or of any breach or Default by the Grantor in the performance of the obligations thereof hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Default in the performance of the same or any other obligations of the Grantor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its rights hereunder or impair any rights, powers or remedies consequent on any breach or Default by the Grantor.

Section 2.11. *Suits to Protect the Mortgaged Property.* The Beneficiary and the Trustee, and each of them, shall have the power (a) to institute and maintain such suits and proceedings as they may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Deed of Trust, with notice of commencement of such suits and proceedings to be given to the Grantor, (b) to preserve or protect their interest in the Mortgaged Property and in the rents and issues arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Beneficiary.

Section 2.12. *Beneficiary May File Proofs of Claim.* In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Grantor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings for the entire amount due and payable by the Grantor under this Deed of Trust at the date of the institution of such proceedings and for any additional amount which may become due and payable by the Grantor hereunder after such date.

### ARTICLE III

Section 3.1. *Successors and Assigns.* This Deed of Trust shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Deed of Trust to the Grantor, the Trustee or the Beneficiary such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of the Grantor, the Trustee or the Beneficiary, respectively.

Section 3.2. **Terminology.** All personal pronouns used in this Deed of Trust whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Deed of Trust itself, and all references herein to Articles, Sections or subsections thereof, shall refer to the corresponding Articles, Sections or subsections thereof, of this Deed of Trust unless specific reference is made to such Articles, Sections or subsections thereof of another document or instrument.

Section 3.3. **Severability.** If any provision of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 3.4. **Applicable Law and Jurisdiction.** This Deed of Trust shall be interpreted, construed and enforced according to the laws of the State. The exclusive forum and venue for all actions arising out of this Deed of Trust are with the North Carolina General Court of Justice in Union County, North Carolina or the U.S. District Court for the Western District of North Carolina.

Section 3.5. **Notices, Demands and Request.** All notices, demands or requests provided for or permitted to be given pursuant to this Deed of Trust must be in writing and shall be deemed to have been properly given or served by personal delivery or by depositing in the United States Mail, postpaid and registered or certified return receipt requested, and addressed to the addresses set forth in the first paragraph of this Deed of Trust. All notices, demands and requests shall be effective upon personal delivery or upon being deposited in the United States Mail. However, the time period in which a response to any notice, demand or request must be given, if any, shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving at least 30 days written notice thereof, the Grantor, the Trustee or the Beneficiary shall have the right from time to time and at any time during the term of this Deed of Trust to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

Section 3.6. **Appointment of Successor to the Trustee.** The Beneficiary shall at any time have the irrevocable right to remove the Trustee herein named without notice or cause and to appoint a successor thereto by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in this State, and in the event of the death or resignation of the Trustee named herein, the Beneficiary shall have the right to appoint a successor thereto by such written instrument, and any the Trustee so appointed shall be vested with the title to the Mortgaged Property and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though such were named herein as the Trustee.

Section 3.7. **Trustee's Powers.** At any time, or from time to time, without liability therefor and without notice, upon written request of the Beneficiary and presentation of this Deed of Trust, and without affecting the personal liability of any person for payment of the Indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Mortgaged Property, the Trustee may (1) reconvey any part of the Mortgaged Property, (2) consent in writing to the making of any map or plat thereof, (3) join in granting any easement therein, or (4) join in any extension agreement or any agreement subordinating the lien or charge hereof.

Section 3.8. **Beneficiary's Powers.** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of

Trust upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all unpaid obligations, the Beneficiary may, from time to time and without notice (1) release any person so liable, (2) extend the maturity or alter any of the terms of any such obligation, (3) grant other indulgences, (4) cause to be released or reconveyed at any time at the Beneficiary's option, any parcel, portion or all of the Mortgaged Property, (5) take or release any other or additional security for any obligation herein mentioned, or (6) make compositions or other arrangements with debtor in relation thereto. The provisions of Section 45-45.1 of the General Statutes of North Carolina, as amended, or any similar statute hereafter enacted in replacement or in substitution thereof shall be inapplicable to this Deed of Trust.

Section 3.9. *Acceptance by Trustee.* The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made of public record as provided by law.

Section 3.10. *Miscellaneous.* The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the term "**Beneficiary**" shall include any payee of the indebtedness hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise.

Section 3.11. *Waiver of Rights.* By execution of this Deed of Trust and to the extent permitted by law, the Grantor expressly: (1) acknowledges the right to accelerate the Indebtedness and the power of sale given herein to the Trustee to sell the Mortgaged Property by non-judicial foreclosure upon default by the Grantor and without any notice other than such notice (if any) as is specifically required to be given by law or under the provisions of this Deed of Trust; (2) waives any and all rights of the Grantor to appraisal, dower, curtesy and homestead rights to the extent permitted by applicable law; (3) acknowledges that the Grantor has read this Deed of Trust and any and all questions regarding the legal effect of this Deed of Trust and its provisions have been explained fully to the Grantor and the Grantor has consulted with counsel of its choice prior to executing this Deed of Trust; and (4) acknowledges that all waivers of the aforesaid rights of the Grantor have been made knowingly, intentionally and willingly by the Grantor as part of a bargained for transaction.

[SIGNATURE PAGE BEGINS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Grantor has caused this Deed of Trust to be executed under seal the day and year first above written.

VILLAGE OF MARVIN, NORTH CAROLINA

[SEAL]

By: \_\_\_\_\_  
Christina Amos  
Village Manager

ATTEST:

\_\_\_\_\_  
Austin W. Yow  
Village Clerk

STATE OF NORTH CAROLINA )  
 )  
COUNTY OF \_\_\_\_\_ )

I, a Notary Public of the County of \_\_\_\_\_ and State of North Carolina, certify that Austin W. Yow (the "Signatory") personally came before me this day and acknowledged that he is the Village Clerk of the Village of Marvin, North Carolina (the "Village") and that by authority duly given and as the act of the Village, the foregoing instrument was signed in its name by the Village Manager of the Village and attested by him as Village Clerk.

I certify that the Signatory personally appeared before me this day, and  
(check one of the following)  
\_\_\_\_\_(I have personal knowledge of the identity of the Signatory); or  
\_\_\_\_\_(I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:  
(check one of the following)  
\_\_\_ a driver's license or  
\_\_\_ in the form of \_\_\_\_\_); or  
\_\_\_\_\_(a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the \_\_\_\_\_ day of May, 2021.

\_\_\_\_\_  
Notary Public  
Print: Name: \_\_\_\_\_  
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: \_\_\_\_\_  
☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

EXHIBIT A  
REAL PROPERTY DESCRIPTION



BEGINNING at a #4 rebar found located on the westerly margin of Marvin School Road and a southeasterly corner of that certain property owned (now or formerly) by Maheeja Kotareddy as described in that instrument recorded in Deed Book 5698, page 655 Union County Public Registry (the "Kotareddy Property"); running thence from said POINT AND PLACE OF BEGINNING along the common boundary line with the Kotareddy Property N. 86-15-00W 252.66 feet to a #4 rebar found, said #4 rebar found being also located on a common southerly corner of the Kotareddy Property and that property known as The Preserve at Marvin subdivision (The "Preserve Property"); thence along the common boundary line of the Preserve Property, N. 89-27-24 W. 224.12 feet to a stone found in a common southerly corner of the Preserve Property and that certain property owned (now or formerly) by Louise C. Payne as described in that instrument recorded in Deed Book 4561, Page 233 (the "Payne Property"); thence with a boundary line of the Payne Property and certain property owned by the Village of Marvin, S. 23-26-43 W. 376.06 feet total to a point in the northerly margin of New Town Road, passing a #4 rebar found at 368.31 feet; thence with the northerly margin of New Town Road the following four courses and distances: (1) with the arc of a circular curve to the left having a radius of 370 feet and an arc length of 87.35 feet; said arc being subtended by a chord having a bearing and distance of S. 83-27-25 E. 87.15 feet to a point; (2) with the arc of a circular curve to the left having a radius of 803.83 feet and an arc length of 153.16 feet, said arc being subtended by a chord having a bearing and distance of N. 84-19-16 E. 152.92 feet to a point; (3) N. 78-51-46 E. 137.17 feet to a point; (4) N. 78-35-30 E. 101.50 feet to a point; thence with the arc of a circular curve to the left having a radius of 30 feet and an arc length of 26.98 feet, said arc being subtended by a chord having a bearing and distance of N. 52-49-40 E. 26.08 to a point in the margin of the right of way of Marvin School Road; then with the margin of the right of way of Marvin School Road N 27-03-49 E. 290.65 feet to the POINT AND PLACE OF BEGINNING, containing 3.551 acre, more or less, as shown on a survey prepared by Yarborough, Williams & Houle dated August 31, 2015.

BEING all that certain tract or parcel of land located in Sandy Ridge Township, Union County, North Carolina, and fronting on Marvin School Road and New Town Road as shown on that certain plat recorded in Cabinet M, File 910, Instrument 32739 of the Union County Public Registry (a copy of which is attached hereto as Exhibit A-1 for ease of reference), and being more particularly described as follows:

BEGINNING at a #4 rebar found located on the westerly margin of Marvin School Road and a southeasterly corner of that certain property owned (now or formerly) by Maheeja Kotareddy as described in that instrument recorded in Deed Book 5698, page 655 Union County Public Registry (the "Kotareddy Property"); running thence from said POINT AND PLACE OF BEGINNING along the common boundary line with the Kotareddy Property N. 86-15-00W 252.66 feet to a #4 rebar found, said #4 rebar found being also located on a common southerly corner of the Kotareddy Property and that property known as The Preserve at Marvin subdivision (The "Preserve Property"); thence along the common boundary line of the Preserve Property, N. 89-27-24 W. 224.12 feet to a stone found in a common southerly corner of the Preserve Property and that certain property owned (now or formerly) by Louise C. Payne as described in that instrument recorded in Deed Book 4561, Page 233 (the "Payne Property"); thence with a boundary line of the Payne Property and certain property owned by the Village of Marvin, S. 23-26-43 W. 376.06 feet total to a point in the northerly margin of New Town Road, passing a #4 rebar found at 368.31 feet; thence with the northerly margin of New Town Road the following four courses and distances: (1) with the arc of a circular curve to the left having a radius of 370 feet and an arc length of 87.35 feet; said arc being subtended by a chord having a bearing and distance of S. 83-27-25 E. 87.15 feet to a point; (2) with the arc of a circular curve to the left having a radius of 803.83 feet and an arc length of 153.16 feet, said arc being subtended by a chord having a bearing and distance of N. 84-19-16 E. 152.92 feet to a point; (3) N. 78-51-46 E. 137.17 feet to a point; (4) N. 78-35-30 E. 101.50 feet to a point; thence with the arc of a circular curve to the left having a radius of 30 feet and an arc length of 26.98 feet, said arc being subtended by a chord having a bearing and distance of N. 52-49-40 E. 26.08 to a point in the margin of the right of way of Marvin School Road; then with the margin of the right of way of Marvin School Road N 27-03-49 E. 290.65 feet to the POINT AND PLACE OF BEGINNING, containing 3.551 acre, more or less, as shown on a survey prepared by Yarborough, Williams & Houle dated August 31, 2015.

## EXHIBIT B

### PERMITTED ENCUMBRANCES

Permitted Encumbrances shall include (a) all matters shown on record at the Union County Register of Deeds affecting the Mortgaged Property as of the date hereof, (b) liens for taxes and assessments not then delinquent, (c) the Contract and as permitted by the Contract and (d) easements, rights-of-way and other such minor defects or restrictions as normally exist with respect to property of the same general character as the Mortgaged Property which will not impair the Grantor's intended use of the Mortgaged Property.

## PROJECT FUND AGREEMENT

This PROJECT FUND AGREEMENT is dated as of May 13, 2021 (the "Project Fund Agreement"), and is by and between the VILLAGE OF MARVIN, NORTH CAROLINA (the "Borrower"), a municipal corporation duly organized under the laws of the State of North Carolina, and TRUIST BANK ("Truist").

### RECITALS

The Borrower is, simultaneously with the execution and delivery of this Project Fund Agreement, executing and delivering an Installment Financing Contract, dated as of the date hereof (the "Contract"), between the Borrower and Truist. The purpose of the Contract is to provide for Truist's advance of \$1,180,000 to the Borrower to pay a portion of the costs of constructing a new Village Hall administrative facility (the "Project") and to pay related financing costs. In partial consideration for Truist's entering into the Contract, the Borrower has agreed to provide for financing proceeds to be deposited and disbursed pursuant to this Project Fund Agreement.

**NOW, THEREFORE**, the parties agree as follows:

### **SECTION 1. DEFINITIONS.**

In this Project Fund Agreement, the term "Project Costs" means all costs of the Project as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments payable by the Borrower under the Contract, including (a) sums required to reimburse the Borrower or its agents for advances made for any such costs, and (b) all closing costs or other costs related to the financing of the Project through the Contract and all related transactions.

In addition, any capitalized terms used in this Project Fund Agreement and not otherwise defined shall have the meanings assigned thereto in the Contract.

### **SECTION 2. PROJECT FUND.**

**2.1. Project Fund.** On the date hereof (the "Closing Date"), Truist shall deposit \$1,174,100 (consisting of the \$1,180,000 amount advanced under the Contract less a fee of \$5,900 to be paid directly by Truist to its legal counsel) into a special account of the Borrower at Truist Bank to be designated "[Account Number] Village of Marvin, North Carolina Project Fund" (the "Project Fund"). The Project Fund shall be held separate and apart from all other funds or accounts of the Borrower. The Project Fund is the Borrower's property, but the Borrower may withdraw amounts on deposit in the Project Fund only as provided in this Project Fund Agreement and only for application from time to time to the payment of Project Costs or otherwise as permitted by Section 2.3 hereof. Pending such application, such amounts shall be subject to a lien and charge in favor of Truist to secure the Borrower's obligations under the Contract.

**2.2. Requisitions from Project Fund.** The Borrower may withdraw funds from the Project Fund only after authorization from Truist. Truist shall authorize the disbursement of funds from the Project Fund only to the Borrower and only upon its receipt of one or more written requisitions in the form set forth in Exhibit A attached hereto signed by one of the designated Borrower Representatives named in Section 3.11 hereof. The Borrower shall submit its signed requisitions in pdf format by electronic transmission at the email address contained in the requisition form.

Upon receipt of a requisition from the Borrower, Truist shall undertake such review of the matters referred to in such requisition as it shall deem appropriate, and within seven (7) business days after such receipt shall notify the Borrower if it does not approve the requisition with the reasons for its disapproval. Truist has no obligation to make a review, and any review by Truist is only for Truist's benefit. Truist shall not unreasonably withhold payment of any requisition.

### **2.3. Disposition of Project Fund Balance.**

(a) *Upon completion* - Promptly after the Project has been completed to the point that the Project is suitable for carrying out substantially all the purposes it is to serve for the Borrower, and the Borrower has withdrawn from the Project Fund all of the funds needed to complete the Project, the Borrower shall deliver to Truist a written certificate of completion executed by a Borrower Representative stating that (i) the Project has been completed, (ii) there are no mechanic's or other liens against the Project for labor or materials furnished in connection with the Project, and (iii) no further funds will be requisitioned from the Project Fund to pay Project Costs. Truist may then withdraw any balance remaining in the Project Fund (and not required to be retained to pay Project Costs incurred but not yet paid) and apply such amounts as provided in subsection (d) of this Section.

(b) *Upon default* - Upon the occurrence of an Event of Default, Truist may withdraw any balance remaining in the Project Fund and apply such amounts as provided in subsection (d) of this Section.

(c) *After delay or inactivity* - If (i) more than three years have elapsed from the Closing Date or (ii) at least six months have elapsed from Truist's most recent receipt of a requisition for Project Costs, then Truist, upon 30 days' notice from Truist to the Borrower, may withdraw any balance remaining in the Project Fund and apply such amount as provided in subsection (d) of this Section.

(d) *Application of Project Fund balance* - Truist may apply any amounts withdrawn from the Project Fund pursuant to this Section in the following order: (i) to the payment of any Additional Payments then due to Truist under the Contract, (ii) to the payment of any interest accrued to the Project Fund disposition date that is then due and payable, (iii) to the payment of any principal amount then due and payable, (iv) to the prepayment of principal and accrued interest in accordance with the prepayment provisions of the Contract; and (v) to the payment of future Installment Payments in inverse order of maturity; provided, however, that (1) at the option of Truist, Truist may deliver funds held under this Project Fund Agreement to the Borrower to be applied to additional Project Costs or future debt service payments, and (2) in no event will Truist apply any funds in the manner set forth herein if it is advised in an opinion of bond counsel provided by the Borrower that such a use of funds could adversely affect the exclusion from gross income for federal income tax purposes of the interest component of Installment Payments. Any prepayment hereunder shall not affect any other Borrower payment obligation under the Contract. Truist shall notify the Borrower of any withdrawal from the Project Fund made under this Section, and in the notice shall describe its application of the funds so withdrawn.

### **2.4. Investment.**

(a) The Borrower and Truist agree that money in the Project Fund will be continuously invested and reinvested in a public funds money rate savings account, as directed by Truist, that meets the requirements of Section 159-30 of the General Statutes of North Carolina, as amended.

(b) From and after the date that is three years from the Closing Date, the Borrower and Truist agree that money in the Project Fund will not be invested at a "yield," as determined under the Code, in excess of the "yield" on the Borrower's obligations under the Contract, unless the Borrower has supplied Truist with an opinion of bond counsel to the effect that such investment will not adversely affect the

exclusion from gross income for federal income tax purposes to which the interest components of Installment Payments would otherwise be entitled.

(c) Investment obligations acquired with money in the Project Fund shall be deemed at all times to be part of the Project Fund. The interest accruing thereon and any profit or loss realized upon the disposition or maturity of any such investment shall be credited to or charged against the Project Fund.

(d) All earnings on money in the Project Fund shall be used for Project Costs or otherwise applied in accordance with Section 2.3 hereof.

### **SECTION 3. MISCELLANEOUS.**

**3.1. Notices.** Except as set forth in Section 2.2 hereof with respect to the delivery of requisitions to Truist, any notice or other communication required or contemplated by this Project Fund Agreement shall be deemed to be delivered so long as it is delivered by hand or on the date shown on a certified mail receipt, or a delivery receipt (or similar evidence) from a national commercial package delivery service, if addressed as follows:

(a) If intended for the Borrower, addressed to it at the following address: Village of Marvin, North Carolina, 10004 New Town Road, Marvin, North Carolina 28173, Attention: Finance Director.

(b) If intended for Truist, addressed to it at the following address: Truist Bank, 5130 Parkway Plaza Boulevard, Charlotte, North Carolina 28217, Attention: Governmental Finance.

Any party may designate a different or alternate address for notices by notice given under this Project Fund Agreement.

**3.2. Survival of Covenants and Representations.** All covenants, representations and warranties made by the Borrower in this Project Fund Agreement and in any certificates delivered pursuant to this Project Fund Agreement shall survive the delivery of this Project Fund Agreement.

**3.3. Choice of Law.** The parties intend that North Carolina law shall govern this Project Fund Agreement.

**3.4. Amendments.** This Project Fund Agreement may not be modified or amended unless such amendment is in writing and signed by Truist and the Borrower.

**3.5. No Third-Party Beneficiaries.** There are no parties intended to be or which shall be deemed to be third-party beneficiaries of this Project Fund Agreement.

**3.6. Successors and Assigns.** All of the covenants and conditions of this Project Fund Agreement shall be binding upon and inure to the benefit of the parties to this Project Fund Agreement and their respective successors and assigns.

**3.7. Severability.** If any court of competent jurisdiction shall hold any provision of this Project Fund Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Project Fund Agreement.

**3.8. Counterparts.** This Project Fund Agreement may be executed in any number of counterparts, including separate counterparts, each executed counterpart constituting an original but all

together only one agreement. An executed copy of this Project Fund Agreement delivered by facsimile, email, or other electronic means will be deemed to have the same legal effect as delivery of a manual signed copy of this Project Fund Agreement. This Project Fund Agreement and related documents may be sent and stored by electronic means.

**3.9. Termination.** Except as otherwise provided in this Project Fund Agreement, this Project Fund Agreement shall cease and terminate upon payment of all funds (including investment proceeds) from the Project Fund.

**3.10. E-Verify.** Truist understands that “E-Verify” is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. Truist uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. Truist will require that any subcontractor that it uses in connection with the transactions contemplated by this Project Fund Agreement certify to such subcontractor’s compliance with E-Verify.

[Remainder of page intentionally left blank]

**3.11. Designation of Borrower Representatives and Official Custodian.** In accordance with the terms herein, the Borrower hereby designates the following persons as Borrower Representatives authorized to sign requisitions to withdraw funds from the Project Fund account:

Printed Name:	Signature:
_____	_____
_____	_____
_____	_____
_____	_____

The Borrower may designate additional Borrower Representatives to sign requisitions upon written notification to Truist.

The Borrower designates the person listed below an "Official Custodian" for the purposes of the Federal Deposit Insurance Corporation. The person listed below is an officer, employee or agent of the Borrower who has plenary authority, including control, over funds owned by the Borrower. Control of public funds includes possession of, as well as the authority to establish, accounts in an insured depository institution and to make deposits, withdrawals and disbursements. The Official Custodian on the account is considered the insured depositor.

Printed Name:	Signature:	Last 4 Numbers of SSN <sup>1</sup> :	Date of Birth:
_____	_____	_____	_____

Upon written notification to Truist, the Borrower may update the Official Custodian.

*Note: The Official Custodian must provide a copy of his/her driver's license.*

<sup>1</sup> The last 4 digits of the official custodian's social security number will be used only to differentiate the official custodian from other Truist account holders with the same name.

[Signatures continued on following page]



IN WITNESS WHEREOF, each of the parties has caused this Project Fund Agreement to be signed and delivered by a duly authorized officer, all as of the date first above written.

**VILLAGE OF MARVIN, NORTH CAROLINA**

By: \_\_\_\_\_  
Christina Amos  
Village Manager

ATTEST:

\_\_\_\_\_  
Austin W. Yow  
Village Clerk

**TRUIST BANK**

By: \_\_\_\_\_  
Andrew G. Smith  
Senior Vice President

[PROJECT FUND AGREEMENT, DATED AS OF MAY 13, 2021]

**EXHIBIT A**

[TO BE PREPARED ON BORROWER'S LETTERHEAD FOR SUBMISSION]

**PROJECT FUND REQUISITION**

[Date] \_\_\_\_\_

Email requisitions to: GFFProjectfunds@bbandt.com

Requisition Team

Truist Bank

Direct Dial: (252) 296-0452 or (252) 296-0653

RE: Request for disbursement of funds from the Project Fund related to Contract No. [Account Number] with the Village of Marvin, North Carolina, dated as of May 13, 2021

To Whom It May Concern,

Pursuant to the terms and conditions of the Project Fund Agreement, dated as of May 13, 2021, the Village of Marvin, North Carolina (the "Borrower"), requests the disbursement of funds from the Project Fund established under the Project Fund Agreement for the following Project Costs:

This is requisition number \_\_\_\_ from the Project Fund.

**Disbursements will be to the Village of Marvin, North Carolina.**

Amount: \$ \_\_\_\_\_

Attach copies of applicable vendor invoices or spreadsheet of expenditures to requisition when submitting.

Project Description:

Physical Address of Project:

To receive funds via wire transfer please include:

ABA Routing Number:

Account Number:

Physical address of Borrower: Village of Marvin, North Carolina, 10004 New Town Road, Marvin, North Carolina 28173, Attention: Finance Director

The Borrower makes this requisition pursuant to the following representations:

1. The Borrower has appropriated in its current fiscal year funds sufficient to pay the Installment Payments and estimated Additional Payments due in the current Fiscal Year.

2. The purpose of this disbursement is for partial payment of the cost of the Project provided for under the Contract referenced above.
3. The requested disbursement has not been subject to any previous requisition.
4. No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the money payable herein to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this requisition.
5. This requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.
6. No Event of Default is continuing under the Contract, and no event or condition is existing which, with notice or lapse of time or both, would become an Event of Default.
7. The Borrower shall allow Truist to deliver and file, or cause to be filed, any Uniform Commercial Code financing statements with respect to the Project or portion of the Project that Truist may request to evidence its security interest.
8. The Borrower has in place insurance on this portion of the Project that complies with the insurance provisions of the Contract.
9. Each amount requested for payment in this requisition either (a) represents a reimbursement to the Borrower for a Project Cost expenditure previously made, and such reimbursement complies with the provisions of the Code (generally, an issuer may reimburse a prior expenditure out of tax-exempt bond proceeds if (i) the issuer has declared its "official intent" to reimburse the expenditure no later than 60 days after the date the expenditure is paid *and* (ii) the expenditure is being reimbursed no later than the end of the permitted "reimbursement period" of at least 18 months, and at most 3 years, from the date the expenditure was paid), or (b) will be used by the Borrower promptly upon the receipt of funds from Truist to make payments for Project Costs to third parties described in this requisition.

Capitalized terms used in this requisition have the meanings ascribed in the Project Fund Agreement.

Attached is evidence that the amounts shown in this requisition are properly payable at this time, such as bills, receipts, invoices, architects' payment certifications or other appropriate documents.

IF REQUEST IS FINAL REQUEST, CHECK HERE .

VILLAGE OF MARVIN, NORTH CAROLINA

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Wire Transfer Agreement

This Wire Transfer Agreement is dated as of May 13, 2021 (this "Agreement") and is by and between the VILLAGE OF MARVIN, NORTH CAROLINA (the "Borrower"), a municipal corporation validly existing under and by virtue of the Constitution, statutes and laws of the State of North Carolina, and TRUIST BANK ("Truist").

### RECITALS

The Borrower is, simultaneously with the execution and delivery of this Agreement, executing and delivering (a) an Installment Financing Contract, dated as of the date hereof (the "Contract"), between the Borrower and Truist, and (b) a Project Fund Agreement, dated as of the date hereof (the "Project Fund Agreement"), between the Borrower and Truist. The purpose of the Contract is to provide for Truist's advance of \$1,180,000 to the Borrower to enable the Borrower to finance a portion of the cost of constructing a new Village Hall administrative facility, and to pay related financing costs. In partial consideration for Truist entering into the Contract, the Borrower has agreed to provide for financing proceeds to be deposited and disbursed pursuant to the Project Fund Agreement.

In order to prevent unauthorized or fraudulent wire transfers through cyber fraud and other means, Truist and the Borrower hereby agree to the following:

**Section 1. Wire Transfer Requirements.** In the event a wire transfer is made by Truist to disburse funds as contemplated by the Contract or the Project Fund Agreement (a "Disbursement"), said wire transfer shall be delivered as directed in a written "Disbursement Authorization" provided to Truist by a representative of the Borrower, subject to the terms and conditions set forth herein. For the purposes of this Agreement, a representative of the Borrower shall include only the Village Manager Finance Director and Mayor of the Borrower.

**Section 2. Verification Procedures.** Prior to making any Disbursement pursuant to a Disbursement Authorization not delivered to Truist in person by a representative of the Borrower, Truist shall verify such Disbursement Authorization verbally via telephone communication with a representative of the Borrower. The Borrower shall ensure that a representative of the Borrower will provide such verification to Truist. The Borrower shall not disclose, or allow to be disclosed, such Truist verification procedures to any third party unless there is a legitimate business need to make such disclosure or such disclosure is required by law, and the Borrower accepts the risk of such third party knowledge of the security procedures. If the Borrower has reason to believe that a security procedure has been obtained by or disclosed to an unauthorized person or learns of any unauthorized transfer or of any discrepancy in a transfer request, then the Borrower shall notify Truist immediately.

**Section 3. Payee Identification.** The Borrower is solely responsible for accurately identifying the wire transfer information contained in the Disbursement Authorization delivered to Truist by a representative of the Borrower, including but not limited to the bank name and its ABA number, beneficiary's account name and account number and beneficiary's physical address, together with other information requested by Truist (collectively, "Remittance Instructions"). If the Remittance Instructions describe a beneficiary inconsistently by name and account number, the Borrower acknowledges that Truist may make payment on the basis of the account number alone, that Truist is not obligated to detect such errors, and that the Borrower assumes the risk of any loss resulting therefrom.

**Section 4. Duty to Reconcile Written Confirmation.** Upon request from a representative of the Borrower, Truist shall promptly send a representative of the Borrower written confirmation of the

Disbursement in the form of a reference number, beneficiary name and wire amount. A representative of the Borrower shall promptly review and reconcile the written confirmation of the Disbursement sent by Truist, and shall report to Truist in writing, promptly, but in no event later than ten (10) business days after the date of such written confirmation, any unauthorized, erroneous, unreceived or improperly executed payment. Truist and the Borrower agree that ten (10) business days is a reasonable time for the detection and reporting to Truist of such information. After that time, all items on the written confirmation will be considered correct and the Borrower will be precluded from recovering from Truist if such wire transfer identified in the written confirmation was actually made by Truist. For the avoidance of doubt, any such writings can be provided electronically.

**Section 5. Unauthorized Payments.** Notwithstanding any other provision herein, if a Disbursement has been verified by a representative of the Borrower pursuant to Section 2, it shall be binding on the Borrower if Truist acted in good faith in making such Disbursement. Truist shall be responsible for any unauthorized payment caused by Truist's failure to comply with the terms and conditions of this Agreement and applicable law.

**Section 6. Recordation.** Truist may record any telephone conversation between Truist and a representative of the Borrower in order to reduce the risk of unauthorized or erroneous transfers. Truist may retain such recordings for as long as Truist may deem necessary.

**Section 7. Indemnification and Hold Harmless.** If Truist complies with the provisions of this Agreement, the Borrower agrees that Truist shall not be responsible for any communication or miscommunication by a representative of the Borrower, and the Borrower further agrees to indemnify, to the extent allowed by law, Truist and hold Truist harmless from and against any and all losses, claims, expenses, suits, costs or damages, demands or liabilities of whatever kind or nature, whether now existing or hereafter relating in any way to a wire transfer made pursuant to the Contract or the Project Fund Agreement.

**Section 8. Applicable Law.** All wire transfer orders are governed by Article 4A of the Uniform Commercial Code, except as any provisions thereof that may be and are modified by the terms hereof. If any part of the applicable wire transfer order involves the use of the Fedwire, the rights and obligations of Truist and the Borrower regarding that wire transfer order are governed by Regulation J of the Federal Reserve Board.

**Section 9. Choice of Law.** The parties intend that North Carolina law shall govern this Agreement.

**Section 10. Amendments.** This Agreement may not be modified or amended unless such amendment is in writing and signed by Truist and the Borrower.

**Section 11. No Third-Party Beneficiaries.** There are no parties intended to be or which shall be deemed to be third-party beneficiaries of this Agreement.

**Section 12. Successors and Assigns.** All of the covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns.

**Section 13. Severability.** If any court of competent jurisdiction shall hold any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

**Section 14. Counterparts.** This Agreement may be executed in any number of counterparts,

including separate counterparts, each executed counterpart constituting an original but all together only one agreement. An executed copy of this Agreement delivered by facsimile, email, or other electronic means will be deemed to have the same legal effect as delivery of a manual signed copy of this Agreement. This Agreement and related documents may be sent and stored by electronic means.

**Section 15. Termination.** This Agreement shall cease and terminate upon termination of the Contract and the Project Fund Agreement.

**Section 16. E-Verify.** Truist understands that “E-Verify” is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. Truist uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. Truist will require that any subcontractor that it uses in connection with the transactions contemplated by this Agreement certify to such subcontractor’s compliance with E-Verify.

[Signatures continued on following page]

**IN WITNESS WHEREOF**, each of the parties has caused this Wire Transfer Agreement to be signed and delivered by a duly authorized officer, all as of the date first above written.

**VILLAGE OF MARVIN, NORTH CAROLINA**

By: \_\_\_\_\_  
Christina Amos  
Village Manager

ATTEST:

\_\_\_\_\_  
Austin W. Yow  
Village Clerk

**TRUIST BANK**

By: \_\_\_\_\_  
Andrew G. Smith  
Senior Vice President





# VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | [www.marvinncc.org](http://www.marvinncc.org)

## Memorandum

**TO:** Mayor and Village Council  
**FROM:** Jamie Privuznak, Finance Officer  
**SUBJECT:** Requests for Proposals for an Accounting Firm  
**DATE:** May 11, 2021

### Background:

One of the long-term goals of the Village's Finance team is to build upon and improve our system of internal controls. A sound system of internal controls protects the Village against fraud and any misuse of public funds. In recent months, the Finance team experienced retirements and staff turnover. In light of this, we have lost a significant portion of institutional knowledge and organizational history. To increase our efficiency and effectiveness, the Finance team seeks to retain an accounting firm with subject matter expertise in public accounting particularly with experience with municipalities and Generally Accepted Accounting Principles (GAAP). The Finance team will expect the firm to participate in checks and balances (i.e., segregation of duties) of our monthly tasks, which will improve our current system of internal controls. Finally, the Finance team seeks a firm with knowledge in upcoming GASB statements and experience in developing the required basic financial statements and notes for the purposes of the year-end audit.

### Current:

The Village of Marvin released a Request for Proposals to approved Local Government Commission accounting firms on Wednesday, April 14. Village staff received specific questions related to the RFP and released an Addendum to the RFP on Wednesday, April 21.

On Wednesday, May 5, Village staff received two responses to the bid invitation. Attached is a bid summary for your review. After review of the bids, Village staff proposes SharpePatel CPA due to the descriptive quality of its proposal particularly the cost estimates and the tasks performed sections of the firm's response. Although the firm is new and has not received a peer review to date, the firm is slated to have its peer review conducted this calendar year.

Finally, the Village Manager recommends an amount not to exceed \$20,000 as part of her FY22 Recommended Budget for professional accounting services. The proposed contract start date is July 1, 2021, and most of the body of work performed will be preparing the basic financial statements and notes for the FY21 audit, which will be conducted while the Finance Officer is on leave. The annual fee for SharpePatel CPA firm is \$20,400 for three staff to perform 205 hours of work.



# VILLAGE OF MARVIN

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10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | [www.marvinnc.org](http://www.marvinnc.org)

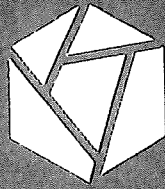
Village staff respectfully asks that you review, discuss, and make an award to a professional public accounting firm AND authorize the Village Manager to execute an agreement contingent upon attorney review.

***Suggested Motion:** Award a bid to a professional public accounting firm AND authorize the Village Manager to execute an agreement contingent upon attorney review.*

Table 1: Bid Tabulation for CPA Firm RFPs

Ref #	Accounting Firm Name	Contact Name	Estimated Cost	Total Estimated Hours	Staff Team	Services provided	Notes
1	Sharpe Patel PLLC	Jay E. Sharpe	\$20,400	205	3	Year-end close-out, monthly services, preparing the basic financial statements including notes and MDA, AFIR	New firm, does not have a peer review
2	Martin Starnes & Associates	Amber Y. McGi	\$30,000	Did not include	3 to 4	Year-end close-out, monthly services, preparing the basic financial statements including notes and AFIR	Performed prior year audits for Village; Fee increase of <del>3%</del> 3- percent/yr
3	Carr, Riggs & Ingram, LLC	Chris Davis	Did not submit				

OPS 3/4/21



SHARPE  
PATEL CPA

## VILLAGE OF MARVIN

RESPONSE TO RFP FOR CPA SERVICES

Responsible Office and Contact Information:

Jay E. Sharpe, CPA, CFE

Director of Audit Services

5510 Six Forks Road, Suite 280

Raleigh, NC 27609

919-961-7496

[jay@sharpepatelcpa.com](mailto:jay@sharpepatelcpa.com)

[www.sp.cpa](http://www.sp.cpa)

BEYOND THE NUMBERS  
[sharpepatel.com](http://sharpepatel.com)

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# Profile

## FIRM PROFILE

While Sharpe Patel PLLC is a new CPA firm, its team is not. Jay Sharpe and Aaron Patel formed the Firm to give better service to clients across all industries including the governmental sector. Our key objective is to provide superior client service in a timely and efficient manner.

Our Governmental audit team is key to providing great services. The team is made up of a number of seasoned staff at all levels that have experience with a variety of types of clients within the not-for-profit and governmental sectors.

## EXPERIENCE

Sharpe Patel PLLC initiated its practice in the governmental service industries in response to our observation that larger firms were devoting fewer and fewer resources to their smaller and mid-size clients. We have seen more and more firms lessening their work or completely getting out of the governmental sectors. We are quite the opposite; we see this as a growth sector for the Firm. Ever-changing accounting standards, economic conditions and the continued rise in operating costs have propelled our Governmental Audit Team to help entities alleviate the pressures facing the industries. Our commitment to the governmental sector is reflected in the significant growth of our practice, the retention of those clients and the low turnover of our employees.

The experience and capabilities of our Not-for-Profit and Governmental Audit Team include:

- Financial Audits, reviews and compilations
- Single Audits, under both Federal and North Carolina requirements.
- Program Specific Audits
- Agreed-upon Procedures
- Forensic Audits
- Performance Audits
- Risk Assessment
- Staff Training Seminars
- Internal Control Studies
- **Financial Statement Preparation**
- Forecasted Financial Statements

## STAFFING

The staffing needs are based on the complexity and nature of the organization, timing, the extent of procedures which must be performed to meet the audit objective, and the travel involved. We have designated specific audit associates to the engagement however, our audit associates are interchangeable between our offices and their assignments may change. There will be a minimum of two audit associates, one audit manager, and one partner designated to the engagement at all times. It is very common for two managers to be assigned to an engagement as one will act as an associate. Each member of this team will be fully available to satisfy the needs of the engagement.

We understand that professionals who have gained specific governmental knowledge through on site experience are best equipped to serve our clients, so we are committed to returning team members to the same engagements each year. This continuity helps control costs and saves time, by making sure you are working with trusted professionals who have a clear understanding of your goals and strategies.

Our partners and managers maintain a high degree of client involvement which minimizes the overhead and reduces the audit costs. This also provides the client a higher level of expertise that is always available. The following indicates the individuals by level and location that will handle the audit:

The Village's engagement will be staffed by the Firm as follows:

Partner (and in charge)	Raleigh
Manager	Raleigh
Senior staff	Raleigh

## ADDITIONAL SERVICES

The firm from time to time provides other services for governmental agencies. A couple of example of these services includes the following:

- Jay Sharpe, CPA, CFE conducted a three-year forensic audit for the Lumberton Housing Authority.
- Jay Sharpe consulted on the presentation of Foundations related to Cape Fear Community College and Carteret Community College when GASB 61 was introduced. This consultation included the determination of the Foundations as component units and their presentation on the financial statements if they were determined to be component units.
- Jay Sharpe and Jacob Allen have conducted pension testing for several school systems.
- Jay Sharpe conducted a vendor audit for a School System.
- Jay Sharpe has prepared forecasted financial statement services for several Towns regarding USDA loan applications.

## Education

It is a policy of the Firm that all audit staff maintain at a minimum of 40 hours of CPE on an annual basis, rather or not that they have at their CPA license. This continuing professional education is accomplished through a combination of conferences, seminars, webinars, self-study course and internal CPE courses. Every staff assigned to the Village's engagements will have sufficient CPE and Yellow Book credit hours on an ongoing basis.

## PEER REVIEW

Sharpe Patel PLLC is a member of the American Institute of Certified Public Accountants (AICPA) and participants in the AICPA Peer Review Program. The AICPA Peer Review Program, - administered by the North Carolina Association of Certified Public Accountants in North Carolina, requires enrolled firms to have a peer review conducted by an independent evaluator, once every three years, of their accounting and auditing practice. Such review assures that the services we provide to our clients meet the highest level of standards in the accounting profession.

It is the policy of our Firm that our quality control system be monitored on an ongoing basis to provide the Firm with reasonable assurance that the policies and procedures established by the Firm for each of the other quality control elements (including quality control elements and activities not formalized in writing) of quality control are suitably designed and are being effectively applied. The adequacy and effectiveness of the Firm's quality control system is monitored on an ongoing basis by the Firm's quality control partner. As an integral part of the monitoring process, our quality control system is inspected annually to determine whether the Firm has complied with its stated quality control policies.

Because we are a **new firm, we have not had our first peer review.** That is slated sometime in 2021. However, **we have enrolled in the peer review program.**



## GOVERNMENTAL CLIENTS

Below is a sample of not-for-profit and governmental entities our team has worked on throughout the years:

<u>Client</u>	<u>Services</u>	<u>Years</u>
Town of Benson	Financial statement audit	5
Town of Goldston	Financial statement audit	5
Town of Pittsboro	Financial statement audit	7
City of Clinton	Financial statement audit	1
Town of Wilson's Mills	Financial statement audit	1
Town of Holden Beach	Financial statement audit	2
City of Kinston	Financial statement audit	1
Wake County School System	Financial statement audit and Single audit	6
NC Office of the State Auditor	Financial statement audit	1
North Carolina Agriculture Finance Authority	Financial statement audit	2
Cape Fear Community College Foundation	Financial statement audit	7
Fayetteville State University Foundation	Financial statement audit	1
Fayetteville State University Housing Foundation	Financial statement audit	1
Durham Tech Community College Foundation	Financial statement audit	4
Johnston Community College Foundation	Financial statement audit	5
Beaufort Community College Foundation	Financial statement audit	2
Capitol Encore Academy	Financial statement audit and Single audit	5
Cape Fear Center for Inquiry	Financial statement audit and Single audit	18
Academy of Moore County	Financial statement audit and Single audit	4
Cary Area EMS	Financial statement audit	7
Eastern Wake EMS	Financial statement audit	7
Durham Convention and Visitors Bureau	Financial statement audit	2
Healthy Start Academy	Financial statement audit and Single audit	5
Bethany Community Middle School	Financial statement audit and Single audit	13
Central Wake High School	Financial statement audit and Single audit	3
Neuse Charter School	Financial statement audit and Single audit	5
Town of Enfield	Preparing Financial Statements	1

## STAFF EXPERIENCE

All staff assigned to the Village's service will have previous governmental audit experience. All staff also have experience preparing financial statements under the GASB 34 reporting model.

The Village's services will be staffed by the Firm as follows:

Partner in Charge	Jay E. Sharpe, CPA, CFE	Raleigh
Audit Manager	Jacob Allen, CPA	Raleigh
Senior Staff	Erica Fulcher	Raleigh



## TEAM BIOGRAPHIES

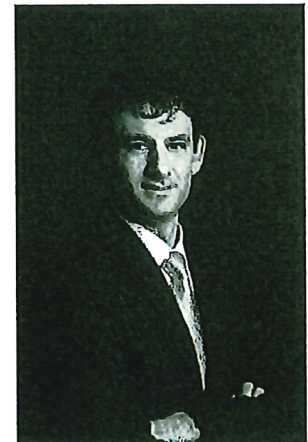
Jay E. Sharpe will be the partner in charge for the Village's services. Additional information for each staff is as follows:

### Jay E. Sharpe, Partner – Audit Partner

Jay E. Sharpe, CPA, CFE is the Raleigh office's partner and serves as the firm's Director of Auditor Services. Jay has over 20 years of experience in governmental and not-for-profit organizations. His work experience includes working with a variety of Foundations, Towns, Boards of Education, Community Colleges, various types not-for-profits, charter schools, EMS Units and HUD properties. Jay previously worked for the Office of the State Auditor.

Jay previously worked at the NC Office of the State Auditor and was involved in a variety of community college audits.

In addition to his auditing experience, Jay performs forensic and fraud investigative services. He has led seminars in the past on preventing fraud and is the past President of the Board of Directors for the Central Carolina Chapter of the Association of Certified Fraud Examiners.



### Community Involvement

- Former Treasurer on the Board for the SPCA of Wake County.
- Jay teaches accounting and auditing classes at Wake Tech

*Jay is a volunteer reviewer for the GFOA.*

#### **Education and Licenses**

- Bachelor of Science in Accountancy – The University of North Carolina at Wilmington
- Master's in science in Accountancy – The University of North Carolina at Wilmington
- Licensed as a Certified Public Accountant in North Carolina (license # 27818)
- Licensed as a Certified Fraud Examiner

#### **Professional Affiliations**

- American Institute of Certified Public Accountants (AICPA)
- North Carolina Association of Certified Public Accountants (NCACPA)
- Association of Certified Fraud Examiners (ACFE)

#### **Continuing Professional Education**

Jay has maintained required CPE levels over the past twenty years. He has taken over 40 credit hours per year including annual ethics requirements, annual audit updates, fraud seminars and attended the local government and not-for-profit conferences held by the NCACPA. Jay has also led seminars on fraud and auditing techniques during the past three years.

### **Jacob Allen, Audit Manager**

Jacob Allen, CPA, is an Audit Manager in the Raleigh office of Sharpe Patel PLLC. Jacob practices in the areas of auditing and attestation. He has over ten years of experience in public accounting and his areas of expertise including towns, boards of education, charter schools, HUD properties and other government agencies

#### **Continuing Professional Education**

His continuing education includes attendance at courses concentrating on audit services for governmental industry clients.

#### **Education**

- Bachelor of Business Administration in Accounting – Campbell University
- Master of Accountancy – North Carolina State University

#### **Professional Affiliations**

- American Institute of Certified Public Accountants (AICPA)
- North Carolina Association of Certified Public Accountants (NCACPA)

#### **Accreditations and Licenses**

Jacob is licensed as a Certified Public Accountant in the State of North Carolina (#37400).



## Staff Commitment

The Firm is fully committed to having the having the same staff on an annual basis on the Village's engagement. We fully understand from previous experience with clients that staff continuity is one of the major reasons organizations become dissatisfied with their CPAs. It is beneficial to the Firm to have the same staff on an engagement on an annual basis as they will have previous knowledge with the client and will be more efficient.

## GOVERNMENTAL EXPERIENCE

As noted under our Firm Profile, the Firm has vast experience in auditing various governmental agencies. Our governmental experience includes:

- Towns and Cities
- Boards of Education
- Charter Schools
- Affordable housing (HUD)
- EMS units
- State agencies
- Community Colleges
- Component Units (University and Community College Foundations)

## REFERENCES

We invite you to contact the below personnel we currently provide services to:

### **Town of Benson**

303 E. Church Street  
Benson, NC 27504  
Kim Pickett – Finance Director  
[kpickett@townofbenson.com](mailto:kpickett@townofbenson.com)  
(919) 894-3553

### **Town of Wilson's Mills**

100 Railroad Street  
Wilson's Mills, NC 27593  
Sherry Hudson – Finance Officer  
[shudson@wilsonsmillsnc.org](mailto:shudson@wilsonsmillsnc.org)  
919-938-3885

### **Town of Enfield**

PO Box 588  
Enfield, NC 27823  
Patricia Whitaker – Finance Director  
[pwhitaker@enfieldnc.org](mailto:pwhitaker@enfieldnc.org)  
(252) 445-3146 ext. 26

*Additional references available upon request.*

## EQUAL OPPORTUNITY EMPLOYER

Sharpe Patel PLLC is an equal opportunity employer.

## REGULATORY ACTIONS

No regulatory action has been taken against the Firm or any staff members that will be assigned to the Village's services.

## INDEPENDENCE

In accordance with the quality control document of the Firm all professional personnel must be familiar with and adhere to the independence, confidentiality integrity, and objectivity rules, regulations, interpretations, and Rulings of the AICPA, the State of North Carolina Board of Accounting, the State of North Carolina CPA Society, state statutes, and other State or regulatory agencies where applicable. Independence, Confidentiality, Integrity, and Objectivity Representation is required by all personnel when hired and annually thereafter.

The Standards for independence have become even more strict under the 2018 revised Yellowbook and *Government Auditing Standards*. Because the services being requested by the Village are not considered to be audit services, we are not required to be independent regarding these services.

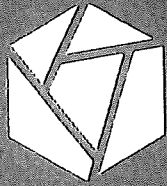
## INSURANCE COVERAGE

The Firm presently carries the following insurance policies:

1. Worker's Compensation - The Firm maintains Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage.
2. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis.
3. Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract.
4. Professional Liability - Professional Liability Coverage on a Comprehensive Broad Form on an occurrence basis.

All insurance meets the laws of the State of North Carolina. Insurance coverage is obtained from companies that are authorized to provide such coverage and are authorized by the Commissioner of Insurance to do business in North Carolina. The Firm shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Firm shall not be interpreted as limiting the contractor's liability and obligations under the contract.

If awarded the contract, we will be glad to provide a COI.



SHARPE  
PATELCPA

## VILLAGE OF MARVIN

RESPONSE TO RFP FOR CPA SERVICES

Responsible Office and Contact Information:

Jay E. Sharpe, CPA, CFE

Director of Audit Services

5510 Six Forks Road, Suite 280

Raleigh, NC 27609

919-961-7496

[jay@sharpepatelcpa.com](mailto:jay@sharpepatelcpa.com)

[www.sp.cpa](http://www.sp.cpa)

BEYOND THE NUMBERS  
[sharpepatel.com](http://sharpepatel.com)

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Attachment A – Cost Proposal Breakdown

## SECOND SECTION

### COST

Our estimated fees are detailed out in Attachment A. Our fees are based on hourly rates (with government discount applied). These are estimates. If the amount of work is less than estimated, the Village will be charged the lesser amount. If the amount of work is determined to be more than estimated, we will discuss the additional costs before proceeding with the work.

### SERVICES TO BE PROVIDED

The Anticipated services to be provided to the Village are as follows:

#### *Monthly Services:*

- Conduct general review of Village's financials – we will receive and review monthly files from QuickBooks including the general ledger detail and account reconciliations and any other required supporting documentation from the Village. We will answer any questions the Village may have.

#### *Annual Services:*

- Assist Village with year-end closeout
- Prepare the financial statements of the Village including the **basic financial statements, notes and supplementary information including the MD&A** – We will prepare a compliant set of financial statements **under GASB 34** using updated templates from the **NC LGC**. We will utilize the Village's trial balances to prepare the financial statements. We will make inquire and review certain supporting documentation in order to confirm certain account balances and disclosures. We will review final balances for reasonableness based on prior year balances and supporting documentation provided by the Village. We will review and / or assist with close out entries. We will work with the Village's auditors to ensure a compliant and timely filing of the audit. We will **assist with the filing of the AFIR**. We will prepare and / or review depreciation schedules.

### ENGAGEMENT TEAM

Our engagement team was identified in the First Section of the proposal. Additional information as follows:

- **Erica Fulcher – will be main point of contact** and will be in charge or majority of the services including **monthly services and preparation of the financial statements.**
- Jacob Allen – will provide support services for monthly and annual services
- Jay Sharpe – will provide support services for monthly and annual services. Will provide technical review services for the financial statements.



## CLIENT ASSISTANCE METHODOLOGY

We expect the Village to provide any information we require to complete the monthly and annual services. We expect the Village to communicate ongoing needs and questions / concerns so that we may be able to provide the best service possible and assist the Village with having accurate financial reporting.

### FEES

The fees for services requested are estimated as:

Monthly services	\$ 11,730
Annual services	<u>\$ 8,670</u>
Total	<u>\$ 20,400</u>

Please see Attachment A for a cost proposal breakdown for various costs, rates and timing of hours.

This fee includes:

- **Preparation of the financial statement of the Village**
- **Preparation of the AFIR**
- **Assistance with year-end close out.**
- **Assistance with monthly close outs.**
- **Review of monthly financial information.**

*\* This fee is an estimate based on our expectation of the amount of worked needed for said services.*

ATTACHMENT A  
Cost Proposal Breakdown

Village of Marvin  
 Cost Proposal  
 CPA Services

The following is a summary of our cost proposal for the CPA services of the Village for the year ended June 30, 2021 and 2022. This cost proposal is on a "estimated" basis.

**Personnel Costs**

	<u>Partner</u>	<u>Manager</u>	<u>Senior Staff</u>	<u>Total</u>
Monthly services	1	1	8	10
Total estimated hours	12	12	96	120
Annual services:				
Year-end close out	4	4	30	38
Preparing financial statements	8	4	30	42
AFIR	1	-	4	5
Total estimated hours	13	8	64	85
 Total Hours	 25	 20	 160	 205

**Rates**

\$	200	\$	150	\$	100	
<hr/>						
\$	5,000	\$	3,000	\$	16,000	
\$						24,000

Travel	\$	-
Cost of supplies and materials	\$	-
Other costs	\$	-
 TOTAL COSTS	 \$	 24,000

Government discount 15% \$ (3,600)

\$ 20,400

Monthly Services	\$	11,730
Annual Services	\$	8,670

\$ 20,400

\* This is an estimate. If the costs are less than the quoted amount, the Village will be charged the lesser amount. If the costs are more, we will discuss before incurring additional hours.



VILLAGE OF MARVIN  
PERSONNEL POLICY

*Adopted January 3, 2008*  
*Amended May 25, 2010*  
*Amended May 10, 2011*  
*Amended by the Village Council September 13, 2011*  
*Amended November 29, 2011*  
*Amended January 10, 2012*  
*Amended September 10, 2013*  
*Amended: October 8, 2019*  
*Amended: February 9, 2021*  
*Amended: March 9, 2021*  
*Amended: May 11, 2021*

**Important Notice/Employee Acknowledgment**

I understand that the policies contained in this Personnel Policy supersede and replace any and all prior policies or practices of the Village. I understand that it is my responsibility to read and comply with the provisions of the Personnel Policy.

I acknowledge that I have received and reviewed a copy of the Village of Marvin's ("The Village") Personnel Policy ("Policy") and the Village's Code of Ethics. I understand that the most recently adopted Personnel Policy, and the most recently adopted version of any other policy referenced herein, supersede and replace any and all prior Personnel Policies in circulation. I understand that it is my responsibility to read and comply with the provisions of the Personnel Policy and the principles of the Village's Code of Ethics.

I acknowledge that I have reviewed the Village's anti-harassment policy. I further acknowledge that the policy has been explained to me, that I have been given an opportunity to ask any questions I may have, and that I understand its terms and provisions.

**I acknowledge that this Personnel Policy is merely a statement of policies and does not constitute a contract of employment, express or implied, between myself and the Village. I understand that nothing contained in the Policy may be construed as creating a promise of future benefits or a binding contract with the Village for benefits or for any other purpose. I understand that the Village is an 'at-will' employer and as such employment with the Village is not for a fixed term or definite period and either I or the Village can terminate the employment relationship at any time, for any reason not prohibited by law with or without prior notice.** No supervisor or other representative of the Village has the authority to enter into any agreement for employment for any specified period, or to make any agreement contrary to the above, unless expressed in writing, with the understanding specifically set forth and signed by myself and the Village Council.

I agree that if there is any policy or provision in the Policy that I do not understand, I will seek clarification from my supervisor or the Village Manager. I understand that this Policy is a general guide to the Village's policies and practices. I also understand that these policies and procedures may be evaluated, and that the Village reserves the right to interpret, amend, modify or terminate them at any time, with or without notice.

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Employee Name (Please Print)*

\_\_\_\_\_  
*Employee Signature*

*A copy of this signed acknowledgement will be kept in each employee's personnel file.*

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## Section 1 Purpose

The purpose of this Personnel Policy (“Policy”) is to give each employee basic procedures and policies from which to meet the expectations of the Village of Marvin “The Village.” This Policy contains the basic rules that the Village expects its employees to abide by in order to create a safe, productive work environment. Finally, this Policy will define the standards each employee will be expected to demonstrate when representing the Village. This Policy is established under the authority of G.S. 160A-164 of the General Statutes of North Carolina.

## Section 2 Coverage

All full-time and part-time employees in the Village’s service are subject to this Policy, except elected officials, the Village Attorney and contract/consultant individuals. Temporary employees shall be subject to all articles except Article V and some policies in Article IV, unless otherwise noted. All employees shall review this Policy as part of the annual performance evaluation process, at a minimum.

## ARTICLE II EMPLOYMENT

### Section 1 Equal Employment Opportunity

The Village is committed to the principles and spirit of equal employment opportunity. Our employment policy and practice are to recruit and employ the most qualified applicants available and to give equal employment opportunity to all qualified persons without regard to race, color, religion, sex, gender identity, sexual orientation, gender expression, marital status, national origin, age, disability, veteran status, membership in the uniformed services, genetic information, or any other characteristic protected by federal, state, or local law.

This policy of equal employment opportunity extends to all aspects of employment, including, but not limited to, recruitment, hiring, training, promotion, transfer, reassignment, demotion, discipline, discharge, performance evaluation, compensation and benefits. In addition, it is the policy of the Village to provide a work environment that is free from unlawful harassment and discrimination. In accordance with this policy, anyone found to be engaging in any type of unlawful harassment or discrimination may be subject to disciplinary action, up to and including termination.

#### 1.1. Employment-At-Will

All employees, regardless of their classification or position, are employed on an at-will basis. This means that your employment can be terminated at your will or the Village’s will at any time, with or without cause and with or without notice. Only Village of Marvin Village Council has any authority to enter into any agreement with an employee or applicant for employment on other than an at-will basis. **This Employee Handbook is not a contract.** It does not create any agreement, express nor implied, guaranteeing you any specific terms or conditions of employment. Nothing contained in this Policy should be construed as creating a contract guaranteeing employment for any specific duration, nor does the Policy obligate you to continue your employment for a specific period of time. Unless you have entered into an employment agreement which supersedes this document, either you or the Village may terminate the employment relationship at any time. The Policy does not guarantee any prescribed process for discipline and discharge.

The Village of Marvin reserves the right to modify any of our policies and procedures, including those covered in this Policy, at any time. We will seek to notify you of such changes by email and other appropriate means. However, such a notice is not required for changes to be effective and each employee is responsible to become aware of changes and comply with this Policy, as amended.

#### 1.2 Religious Accommodations

Federal and state equal opportunity laws generally require employers to reasonably accommodate the religious beliefs and practices of employees unless doing so would cause more than a minimal burden on the operations of the employer's business. The Village respects your religious beliefs and will make an effort to accommodate requests for accommodations for religious reasons.

#### 1.3. Health Insurance Portability and Accountability Act (HIPAA)

We are committed to complying with applicable legislation outlined in the Health Insurance Portability and Accountability Act of 1986 (HIPAA), as amended and implemented. The use and disclosure of Protected Health Information (PHI) is regulated by HIPAA. The Village is committed to protecting the privacy of its employees and to complying with all



relationship. Any employee in violation of the HIPAA policy may be subject to disciplinary action, up to and including termination.

#### **1.4. Genetic Information Nondiscrimination Act (GINA)**

The Village does not collect, consider or make employment or benefit decisions based on genetic information. Nor does the Village use genetic information or genetic testing to identify individuals (applicants or employees) who are especially susceptible to general workplace risks, who may become unable to work or who are likely to incur significant health care costs for either themselves or their dependents. Accordingly, applicants for employment or employees of the Village of Marvin will not be required to undergo any genetic testing or reveal genetic information to the Village.

#### **1.5. Americans with Disabilities Act Amendments Act (ADAAA)**

The Americans with Disabilities Act of 1990, as amended (ADA) prohibits discrimination against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, fringe benefits, job training and other terms, conditions and privileges of employment. The ADA does not alter the Village's right to hire the best-qualified applicant, but it does prohibit discrimination against a qualified applicant or employee because of his or her disability, or because of a perceived disability. As a matter of Village policy, the Village prohibits discrimination of any kind against people with disabilities. Qualified applicants or employees who are disabled should request reasonable accommodation from the Village in order to allow them to perform the essential functions of a particular job. If you are disabled and you desire such reasonable accommodation, contact the Village Manager.

#### **1.7. Immigration Law (I-9/E-Verify)**

In compliance with the Immigration Reform and Control Act of 1986, each new Employee, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility within three (3) days of beginning work. The Village uses E-Verify, an automated verification system which validates work authorization immediately upon hire. Former Employees who are re-hired must also complete the form if they have not completed an I-9 with the Village within the past three years, or if their previous I-9 is no longer retained or valid.

In addition, applicants must be of legal hiring age and must satisfy Village-approved screening and selection procedures.

### **Section 2 Open Door Policy**

Policies, rules and procedures are designed with the benefit of both the employee and the Village in mind. Employees who believe they have been treated unfairly or in a manner inconsistent with established policies are encouraged to communicate this to the Village Manager.

Management will protect each employee's right to discuss a problem or concern without fear of reprisal on any issue related to pay, hours, working conditions, working relationships, and Village policy and procedure.

### **Section 3 Anti-Harassment; Bullying**

It is the Village's policy to provide an environment that is free from unlawful harassment. Therefore, all forms of harassment related to an employee's race, color, religion, sex, national origin, age, disability, veteran status, or any other characteristic protected by law constitute violations of this policy.

Harassment includes, but is not limited to remarks, jokes, written materials, symbols, paraphernalia, clothing or other verbal or physical conduct which may intimidate, ridicule, demean or belittle a person because of their race, color, religion, sex, national origin, age, disability, veteran status, or any other characteristic protected by law.

Sexual harassment includes unwelcome sexual advances; requests for sexual favors; and other verbal or physical conduct of a sexual nature, as well as behavior, remarks, jokes or innuendos that intimidate, ridicule, demean or belittle a person on the basis of their gender (regardless of whether the remarks are sexually provocative or suggestive of sexual acts).

Harassment occurs when:

- Submission to and/or tolerance of the unwelcome conduct is explicitly or implicitly made a term or condition of a person's employment;
- An employee's submission to, tolerance of, and/or rejection of such unwelcome conduct is used as the basis of employment decisions that affect the employee; or

an intimidating, hostile or offensive work environment.

It is important to remember that behavior which one individual considers innocent or harmless may be regarded as unlawful harassment by another person. Beyond being in violation of the Village's policy, harassment of a sexual nature or based on some other protected characteristic is against the law, and the Village will not tolerate such harassment of its employees by anyone, including officials of the Village, other employees or individuals conducting business with the Village. Any employee who violates this harassment policy or the Village's commitment to equal employment opportunity will be subject to disciplinary action, up to and including termination of employment.

The Village encourages reporting of all perceived incidents of discrimination or harassment. It is the policy of the Village to promptly and thoroughly investigate such reports. The Village prohibits retaliation against any individual who reports discrimination or harassment or who participates in an investigation of such reports. Supervisors who become aware of harassment shall report it **immediately** to the Village Manager, even if the Supervisor did not receive a formal complaint or believes that the complaint has no merit. If at any time an employee feels that he/she has been subjected to or has observed verbal or physical harassment, of a sexual nature or otherwise, the employee should report such conduct to his or her immediate supervisor immediately so that an investigation can be initiated and appropriate action can be taken. If for any reason the employee does not feel comfortable contacting immediate supervisor about the matter, the employee must report the matter to the Village Manager or Village Council if involving the Village Manager. The confidentiality of all such inquiries and reports will be respected to the fullest extent possible.

For the purpose of this Policy, bullying is defined as "repeated inappropriate behavior, either direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment." The purpose of this policy is to communicate to all employees, including supervisors, that the Village will not tolerate bullying behavior. Employees found in violation of this policy will be disciplined up to and including termination.

Bullying may be intentional or unintentional. However, it must be noted that where an allegation of bullying is made, the intention of the alleged bully is irrelevant and will not be given consideration when meting out discipline. As in sexual harassment, it is the effect of the behavior upon the individual that is important. The Village considers the following types of behavior examples of bullying: verbal, physical, gesture and exclusion.

Retaliation against employees who make complaints under this policy is expressly prohibited.

#### **Section 4 Probationary Period of Employment**

An employee appointed or hired to a position shall serve a probationary period of six (6) months. During this probationary period and at any time thereafter, the Village reserves the right to terminate the employment relationship for any reason. Unsatisfactory attendance, conduct, and/or poor performance during this period and at any time thereafter may result in immediate termination. The probationary period does not alter the "at-will" employment relationship. Any benefits to which the employee may be entitled will begin accruing the first full month of employment, unless otherwise restricted by applicable plan documents (i.e., health benefits).

#### **Section 5 Performance Evaluation**

Feedback and evaluations of performance, attendance, teamwork and general attitude are ongoing throughout employment. A formal, written evaluation may be conducted following the completion of a probationary period. Annual performance evaluations should be conducted by the employee's supervisor or Manager. Any changes in compensation should not be expected to coincide with a formal, written evaluation. Changes in compensation may be made when Village Council appropriates funding or in accordance with approved ranges in the Classification and Compensation Schedule described in Article III, Section 3 of this Policy.

#### **Section 6 Hiring and Promotion**

Candidates selected for a position or promotion shall be chosen on the basis of their qualifications and current performance with the Village. First consideration for filling positions shall be given to qualified employees already in service with the Village. If a current employee is chosen for promotion, the supervisor or Village Manager. After considering all factors, the Manager shall confirm or reject the appointment.

An employee whose work is unsatisfactory may be demoted. The employee shall be provided with written notice citing the recommended effective date of the demotion, the reasons for the demotion, and the appeal rights available to the employee as stated in Article VI of this policy.

An employee who wishes to accept a position with less complex duties and reduced responsibilities may request a voluntary demotion. A voluntary demotion is not a disciplinary action and is made without using the procedures in Article VI of this policy. After considering any supervisor's recommendation, the Village Manager shall confirm or reject the demotion.

## **Section 8            Transfer**

If a vacancy occurs and an employee eligible for transfer from another department wishes to be considered for the position, a written request and application must be forwarded to the employee's supervisor or Village Manager during the recruitment period for the position. The request for transfer shall be subject to approval of the Village Manager or the Supervisor. Any employee transferred without his or her having requested it may appeal the action in accordance with the grievance procedure in Article VI.

Any employee who has successfully completed a probationary period may be transferred to any other position without serving another probationary period.

## **Section 9            Change of Personal Data**

Employees are responsible to make certain that their personal information is current and correct. Should the employee change their personal data, including but not limited to, their address, phone number, marital status, dependents, etc., they should notify the Village in writing within two (2) weeks of any such change.

Failure to notify the Village of a change in status may result in an employee not receiving information which may affect their pay, benefits or employment status. It is always in an employee's best interest to keep their employer aware of all changes in status.

## **Section 10          Personnel Records**

Personnel records will be kept by the Village Manager. The Village shall maintain in personnel records information that is necessary and relevant to accomplishing legitimate personnel administration needs or as otherwise required by law.

Public records request for personnel records shall be subject to provisions set forth in N.C.G.S. Section 160A-168.

## **Section 11          Destruction of Records**

No employee may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with N.C.G.S. 121-5(b).

## **Section 12          Village Property**

Particular job responsibilities may require the Village to issue items such as keys, laptops, etc. to an employee. Upon acceptance of these items, the employee will take personal responsibility for them and the employee will return them immediately if his or her employment with the Village is terminated, either voluntarily or involuntarily.

All property, including but not limited to, desks, telephones, computers, training materials and other items issued to or used by employees shall remain the property of the Village and shall be subject to inspection at any time by the employee's supervisor or Village Manager.

Village employees may be issued a credit card which is intended to be used only for official Village business, primarily for the purchase of general office supplies for the Village as well as to facilitate travel arrangements. Village credit cards may be cancelled or revoked at any time. Lost or stolen credit cards should be reported immediately to the Village Manager. Use of Village credit cards for personal purposes may be subject to disciplinary actions.

All employees are required to present themselves professionally at all times. Attention to neatness, cleanliness, and personal hygiene is encouraged in order to promote professionalism and ensure confidence in the employee's ability to perform the assignment.

#### Section 14 Employment Status

All employment with the Village is "at-will." This means that either the employee or the Village can terminate the employment relationship at any time, with or without notice, and for any reasons not prohibited by law. The Village provides definitions of employment classifications so that you can understand your employment classification and benefits eligibility. The Village will comply with the Fair Labor Standards Act (FLSA).

Employees are designated as either exempt or nonexempt in accordance with applicable federal and state wage and hour laws.

The following employment status terms are defined further under the FLSA for the purpose of benefits but are generally as follows:

1. **Exempt Employee.** Exempt employees are compensated not for the amount of time spent on the job, but rather for the value of services performed and may require work beyond the normal work schedule.
2. **Non-Exempt Employee.** Non-exempt employees are entitled to overtime pay under specific provisions of federal and state laws. Employees who are classified as non-exempt are required to keep a time sheet or time card. Hours of work should be reported according to the procedures explained to you at the time of hire.

All employees are required to keep an accurate time sheet or time card.

In addition to belonging to one of the above categories, an employee will also belong to one of the following employment categories:

**Full-Time Employee.** An employee appointed or hired to work a full-time budgeted position who is regularly scheduled to work thirty-seven and one half (37 ½) hours or more per work-week. Full-time employees are eligible to participate in the Village's employee benefit programs in accordance with the provisions of each plan.

**Part-Time Employee.** An employee appointed or hired to a part-time budgeted position who is regularly scheduled to work less than thirty (30) hours per workweek. Part-time employees are eligible to participate in the certain Village's employee benefits programs in accordance with the provisions of each plan (see Benefits Section).

**Temporary Employee.** An individual appointed or hired to serve in a position not to exceed six (6) months. Temporary employees are not eligible to participate in the Village's employee benefits programs.

#### Section 15 Absences and Tardiness

Attendance should be dependable, reliable and in accordance with set schedules. Any non-compliance with an assigned work schedule could result in disciplinary action up to and including termination of employment because it disrupts the operation of the Village and poses a hardship on co-workers. Should an employee fail to report to a scheduled work assignment ("no-show") or incur an 'unexcused' absence in which he/she did not speak directly with his or her immediate supervisor, the employee may receive disciplinary action up to and including immediate termination; Employees who are absent for three (3) consecutive scheduled work days and fail to notify their immediate supervisor or the Village Manager may be terminated from employment and classified as having resigned without notice.

An employee who is sick is expected to contact his or her supervisor each morning and advise him/her of the condition and status of returning to work. Doctor's statements may be required. The responsibility for determining whether an absence is excused or unexcused rests with the employee's supervisor.

If the employee will be late/tardy, they should make every effort to phone and advise their supervisor in advance of the shift. Excessive tardiness is grounds for disciplinary action up to and including termination.

All employees of the Village are expected to act with good common sense and in a completely professional manner. To ensure orderly operations and provide the safest possible work environment, the Village expects all employees to abide by certain rules of conduct. All employees are expected to abide by the following:

- Act in a professional and respectful manner toward visitors, employees, and colleagues.
- Avoid the use of language that is abusive, demeaning, threatening, or otherwise inappropriate;
- Express criticism in a tone that is mature, constructive, and non-personal;
- Be responsive to reasonable requests for assistance; and
- Maintain competence in his or her area of expertise.

While it is not possible to list all the forms of behavior that are considered unacceptable in the workplace, the following are examples of conduct for which the Village Manager, may impose disciplinary action in his/her respective discretion, subject to the limitation that solely the Village Council may terminate the Village Manager in accordance with any employee agreement

1. Theft or concealment of Village property.
2. Insubordination.
3. Unsatisfactory work or performance.
4. Violation of safety policies and procedures, which cause hazardous or dangerous situations, or failing to report, and where appropriate, correct such situations.
5. Making physical threats while representing the Village
6. Harassment of any kind towards employees, vendors, visitors or anyone during the course of employment.
7. Discrimination towards employees, vendors, visitors or anyone during the course of employment on the basis of race, color, religion, sex, national origin, age, disability, veteran status, or any other characteristic protected by law.
8. Solicitation and/or distribution on work-site premises (unless for the Village) during any time without written authorization.
9. Use, possession, or distribution of alcohol or illegal drugs while on duty or on Village property.
10. Falsification of time or any Village records or recording the time of an employee other than yourself.
11. Violation of the Village's Gifts and Favors policy (See Article II, Section 25).
12. Violation of the Village's Code of Ethics Policy, as amended. (See Appendix,-Section A).
13. Failing to properly disclose potential conflicts of interest to their immediate supervisor or any governing or advisory board (See Article II, Section 25)
14. Improper use or disclosure of Confidential Information (See Article II, Section 25)
15. Gambling or conducting illegal activities on Village property or using Village equipment to do so.
16. Unauthorized use, damaging, tampering, or negligent use of Village equipment.
17. Smoking or using smokeless tobacco while operating any Village vehicle.
18. Unauthorized carrying of concealed weapons.
19. Violation of any policies and procedures set forth in this Policy and/or any policies and procedures adopted by the Village from time to time.
20. Conduct unbecoming of an employee of the Village, to include but not limited to major criminal activity or public remarks that are offensive, unprofessional, or disrespectful towards or about the Village Council.

These acts of misconduct are by no means complete but are intended to serve as a general framework for employee conduct. **Nothing contained herein creates a contract or employment or alters the at-will status of employment.**

## **Section 17      Reduction in Force**

In the event that a reduction in force becomes necessary, some consideration may be given to the quality of each employee's performance as documented by performance appraisals, organizational needs, and seniority, in determining the employees to be retained. This is not an all-inclusive list. No full-time or part-time employee shall be separated while there are temporary employees serving in the same position in the department unless the employee is not willing to transfer to the position held by the temporary employee or not qualified to hold the position.

## **Section 18      Corrective Action Procedure**

The Village intends to follow the Corrective Action Procedure set forth below, as a positive series of steps to correct performance issues to be applied by the Village Manager. **Nothing contained herein creates a contract or employment or alters the at-will status of employment. The Village reserves the right to terminate an employee at any time when, in the sole discretion of the Village Manager, termination is in the Village's best interest.**

### **Verbal Warning**

The supervisor is encouraged to conduct a verbal warning as follows:

- Identify the problem, provide specific examples and explain what the employee must do to correct the problem.
- Refer to any previous problems or discussions about the performance in question.
- Explain the performance improvement process and the consequences if the problem is not corrected in a timely manner.
- Create goals, detailed steps and a timeline for correcting the problem.
- The supervisor must document this verbal warning. This document will become a part of the employee's personnel file.

### **Formal Written Warning**

If a performance problem continues or the seriousness of the situation warrants, an employee may be placed on formal warning which should contain the following:

- A definition of the problem with specific examples;
- A reference to previous verbal and written reviews, goals set and whether or not they were met, etc.
- How much time will be allowed to correct the problem; and
- An action plan to correct the problem.

The employee should sign the Corrective Action Form to indicate that he or she has reviewed the document. If the employee refuses to sign, the supervisor (which may be the Village Manager) should make a notation on the form including the employee's reason(s) for not signing. The supervisor shall have another witness acknowledge the employee's refusal to sign. Should the employee refuse to sign the Corrective Action Form upon request, he/she risks disciplinary action up to and including termination. Employees should be advised that if the problem is not corrected, the consequences could be termination of employment.

### **Suspension**

Suspension may occur while the Village investigates matters, evaluates the scope of discipline or as a means of discipline. Suspension may be with or without pay. The employee shall be required to leave the property at once and remain away until further notice. Upon suspension, the Village Manager shall notify the Village Council immediately.

### **Termination**

Generally, before terminating employment, the employee should receive a formal written warning, unless the employee is in the probationary period or the seriousness of the offense warrants bypassing the steps of the improvement process. After considering any supervisor's recommendation, the Village Manager shall confirm or reject the termination. Upon termination, the Village Manager shall notify the Village Council immediately.

An employee wishing to appeal a corrective action may present the matter using the grievance procedure prescribed in Article VI of this Policy.

**It is emphasized again that the Village Manager is not required to go through the entire steps involved in this disciplinary procedure.** Discipline may begin at any step in the procedure depending on the seriousness of the offense committed. In addition, the Village Manager may repeat any of the steps of this procedure when she feels it is necessary.

## **Section 19 Drug/Alcohol Policy**

The Village of Marvin has a longstanding commitment to provide a safe and productive work environment. Alcohol and drug abuse pose a threat to the health and safety of employees and to the security of our equipment and facilities. For these reasons, the Village is committed to the elimination of drug and/or alcohol use and abuse in the workplace. The purpose of this policy is to maintain a drug and alcohol-free workplace and to provide procedures for conducting screenings of job applicants for all full-time employees and all part-time or seasonal employees. This includes screening for the use of illegal drugs, the improper use of prescription drugs, and alcohol intoxication during work hours.

### **Employee Assistance and Drug-Free Awareness**

Illegal drug use and alcohol misuse have a number of adverse health and safety consequences. The Village will assist and support employees who voluntarily seek help for such problems before becoming subject to discipline and/or termination under this or other policies. Such employees may be allowed to use accrued paid time off, placed on leaves of absence, referred to treatment providers and otherwise accommodated as required by law. Such employees may be required

that are safety sensitive or that require driving or if they have violated this policy previously.

Employees should report to work fit for duty and free of any adverse effects of illegal drugs or alcohol. This policy does not prohibit employees from the lawful use and possession of prescribed medications. Employees must, however, consult with their doctors about the medications' effect on their fitness for duty and ability to work safely and promptly disclose any work restrictions to their supervisor. Employees should not, however, disclose underlying medical conditions unless directed to do so.

**Drug testing may be required under any of the following circumstances:**

- **Pre-employment Testing:** All applicants with an offer of employment and employees being considered for, or currently performing safety sensitive duties are subject to testing. This applies to every person who operates a Village-owned motor vehicle.

**Post-Accident Testing:** Employees may be required to submit to an alcohol and controlled substance test following an accident. This will be determined on a case-by-case basis.

- **Random Testing:** Random testing is conducted to identify employees who are using drugs or misusing alcohol. All employees of the Village may be subject to random testing for alcohol and controlled substances.

The Village Manager, upon reasonable suspicion, may require any employee or group of employees to submit to drug testing, at the Village's expense, as a condition of employment. Refusal to comply with a directive to be tested will result in disciplinary action up to and including termination.

All testing will be conducted in a manner that will protect the rights of employees and applicants subject to testing. Therefore, the Village will take all necessary steps to safeguard the dignity and self-esteem of those being tested, and will ensure adherence to all procedures pertaining to the implementation of this Policy. The Village will adhere strictly to all standards of confidentiality and assure all employees that testing records and results will be released only to those authorized to receive such information, i.e., supervisors and the Village Manager.

**Section 20 Smoking/Tobacco Policy**

Smoking and smokeless tobacco use is prohibited while working inside any enclosed Village facility or in Village vehicles.

**Section 21 Weapon-Free Workplace Policy**

To ensure that the Village maintains a workplace safe and free of violence for all employees, the Village prohibits the possession or use of dangerous weapons on Village property. A license to carry the weapon on Village property does not supersede Village policy. Any employee in violation of this policy will be subject to prompt disciplinary action, up to and including termination. All Village employees are subject to this provision, including contract and temporary employees, on Village property (with the exception of law enforcement officers). Only the Village Council can grant permission for an employee to have a weapon on Village property, and such permission must be in writing. Notwithstanding the above, nothing contained herein shall prohibit a law enforcement officer from carrying a weapon on Village property.

“Village property” is defined as all Village-owned or leased buildings, land and surrounding areas such as sidewalks, walkways, driveways, parking lots, and any real property under the Village's ownership or control. This policy applies to all Village-owned or leased vehicles and all vehicles that come onto Village property.

“Dangerous weapons” include, but are not limited to, firearms, explosives, knives and other weapons that might be considered dangerous or that could cause harm. Employees are responsible for making sure that any item possessed by the employee is not prohibited by this policy.

The Village reserves the right at any time and at its discretion to search all Village-owned property.

**Section 22 Telephone Policy**

The Village recognizes that employees must occasionally place or receive personal calls on Village telephones. However, the telephone system is intended primarily to serve the needs of the business, and it is essential that personal use

personal cell phones as is expected for the use of Village phones.

Excessive personal calls during the workday, regardless of phone used, can interfere with employee productivity and can be distracting to others. The Village encourages employees to limit personal calls to break times for non-emergency phone calls. Employees are therefore asked to make any non-emergency personal calls during non-work time and in non-work areas where possible, and to ensure that friends and family members are aware of the Village's policy. Flexibility may be provided in circumstances demanding immediate attention.

The Village reserves the right to restrict telephone (personal cell phone or Village phone) use that may interfere with its operations or an employee's job performance in any manner. Any violation of this policy may result in disciplinary action, up to and including termination.

The Village will not be liable for the loss of personal cellular phones brought into the workplace.

### **Section 23 E-mail, Internet, Computer and Voicemail Communications**

The computer and other electronic communications and information systems of the Village, including voice mail, electronic mail and access to the Internet, are property of the Village and should be used for business purposes only. Although employees have passwords that restrict access to their voice mail and computers, the Village may access any files, voice mail, or e-mail messages stored on or deleted from the computer system or voice mail system. The Village reserves the right to access such information and to monitor on-line activities for business purposes. Employees should not have any expectation of provision using the Village's systems.

Although the Village reserves the right to access such information, employees are strictly prohibited from accessing another employee's personal voice mail or e-mail messages without the latter's express permission. In addition, Internet, voice mail and e-mail systems are not to be used in a way that may be disruptive, offensive to others, or harmful to morale. For example, the Village prohibits the display or transmission of sexually explicit images, messages, or cartoons, or any transmission or use of voice mail, e-mail or Internet communications that contain ethnic slurs, racial epithets, or anything that may be construed as harassment or disparagement of others based on their race, color, religion, sex, national origin, age, disability, veteran status, or any other characteristic protected by law. Nor may employees use the Internet, voice mail or e-mail system to solicit or proselytize others for commercial ventures, religious or political causes, outside organizations, or other non-job-related solicitations.

Employees are responsible for maintaining the confidentiality of material on the Village's systems. Employees may not remove from the premises any hardware, software, files or data without written permission from their supervisor or the Village Manager. Copyrights and restrictions that pertain to outside materials and trade secrets shall be respected, and employees are prohibited from the unauthorized downloading of music, software or other copyright materials.

Employees are prohibited from installing any software, program, or other executable file not included in the Village approved software list. If any user has a need for a program not included in the approved software list, that employee is required to gain approval from the Village Manager prior to installing the software, program, or other executable file.

Failure to adhere to these rules may result in discipline, up to and including termination.

### **Section 24 Gifts and Favors**

No employee of the Village shall accept any gift or favor of value worth more than fifty dollars (\$50.00), whether in the form of service, loan, item, or promise from any person who, to the employee's knowledge, is providing such gift or favor with the intent to influence, directly or indirectly in any manner whatsoever in business dealings with the Village. The following serve as exceptions, but employees should consult with the Village Manager when in doubt as to the propriety:

1. Advertising items or souvenirs of nominal value;
2. Meals furnished at banquets;
3. Honorariums for participating in meetings; and
4. Consumable gifts offered to an entire work group where rejection would damage the spirit in which the gifts were offered.



Employees of the public are held to higher standards and their actions shall not impact the Village negatively. No employee shall use information, confidential or otherwise, acquired during their employment with the Village for their personal gain, the gain of a family member, or associate.

Employees are required to promptly disclose any potential or perceived conflict to their supervisor, governing board, and/or advisory board including any prior employment, which might arise while performing one's duties of employment. All employees of the Village of Marvin are required to complete the Employee Statement of Interest form prior to beginning a term of employment and on an annual basis (See Appendix, Section A). Failure to disclose a potential or perceived conflict of interest, and/or update the Employee Statement of Interest Form; during the annual update period, or within 60 days of a relevant change in one's circumstance, shall be considered a violation of this Personnel Policy and shall result in disciplinary action, up to and including immediate termination.

## **Section 26      Serving on Village Board or Committee**

To avoid possible conflicts of interest, any person employed by the Village of Marvin, having the power to create and/or enforce policy through their position of employment, shall be prohibited from serving on any board or committee of the Village.

## **Section 27      Political Activity Restricted**

Every employee of the Village has a civic responsibility to support good government by every available means and in every appropriate manner. Any employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, and may advocate and support the principles or policies of civic or political organizations in accordance with the constitution and the laws of the State of North Carolina and the constitution and the laws of the United States of America. However, while on duty, no employee of the Village shall:

1. Engage in any political or partisan activity;
2. Use official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
3. Be required as a duty or a condition of employment, promotion, or tenure of office to contribute funds for political or partisan purposes;
4. Coerce or compel contributions for political or partisan purposes by another employee of the Village; or
5. Use funds, supplies, or equipment of the Village for political or partisan purposes.

Any violation of this section shall subject the employee to dismissal or other disciplinary action.

## **Section 28      Outside Employment**

The work of the Village takes priority over other employment interests of employees. All outside employment for salaries, wages, or commission and all self-employment must be reported to the Village Manager or the appropriate Supervisor as detailed in the appropriate job description, before such work is to begin. The Village Manager will determine whether the outside work would create a conflict of interest or otherwise be incompatible with Village service. The assumption of outside employment without prior approval by the Village Manager, or Supervisor, may be deemed improper conduct and subject the employee to disciplinary action, up to and including termination.

## **Section 29      Employment of Relatives and Significant Others**

Relatives of and those in dating relationships with Village employees or Village Council members shall not be employed as Village employees. The term relative means an employee's or Councilmember's wife, husband, mother, father, guardian, son, daughter, brother, sister, grandchild, and grandparent, as well as the various combinations of half, step, in-law, and adopted relationships that can be derived from the family members named herein. Nothing in this section shall prohibit hiring of independent contractors or awards of bids that may be relatives as long as such hiring or award complies with N.C. Gen. Stat. § 14-234 regarding conflicts of interest.

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<sup>1</sup> Refer Public Records Act in NCGS 132-1, *etseq.* .

It is the intent of the Village to remain open whenever possible. However, the Village does not encourage employees to travel to work when hazardous weather conditions or unsafe work environments exist. In the event of such conditions, employees will be notified by their supervisor or the Village Manager of a cancellation or schedule change. The Village Manager will consider the hazard of driving conditions and other relevant emergency factors (such as loss of power or water), in determining whether to close Village Hall. If the Village closes, employees normally scheduled to work will be compensated for missed time. If the Village is not closed and weather conditions prevent employees from attending work, the employee must contact their supervisor or the Village Manager immediately. If the Village is not closed and an employee misses work, the employee will not be paid; however, employees may elect to use earned annual leave for any missed work due to inclement weather.

### **Section 31 Travel Expense and Reimbursement**

All travel on official Village business must adhere to the Village's most recent Travel Policy, as maintained by the Village Council and Village Manager.

### **Section 32 Workers' Compensation**

All employees of the Village (full-time, part-time, and temporary) are covered by the North Carolina Workers' Compensation Act and are required to report all injuries arising out of and in the course of employment to their immediate supervisors at the time of the injury in order that appropriate action may be taken at once. Responsibility for claiming compensation under the Workers' Compensation Act is on the injured employee, and such claims must be filed by the employee with the North Carolina Industrial Commission within two years from date of injury. The Village Manager will assist the employee in filing the claim.

An employee absent from duty because of sickness or disability covered by the North Carolina Workers' Compensation Act may elect to use accrued sick leave, vacation, or compensatory time during the first waiting period of seven days. The employee will not be required to reimburse the Village for this paid leave in the event the absence extends beyond twenty-one days and the first seven days is paid by workers' compensation.

Once the waiting period is over, workers' compensation covers two thirds of regular pay. An employee may elect to use sick leave, vacation or compensatory time to supplement the other one third of time not to exceed regular gross pay. While on paid leave, an employee continues to receive paid health insurance.

Any worker's compensation disability that qualifies under the requirements of FMLA shall run concurrently with FMLA. An employee on worker's compensation leave will be permitted to continue to be eligible for benefits under the Village's group insurance plans. Other insurance and payroll deductions are the responsibility of the employee and the employee must make those payments for continued coverage of that benefit. Any amounts owed are due and payable by the first of the month.

An employee shall retain all unused vacation and sick leave while on Worker's Compensation Leave Without Pay. An employee ceases to earn holiday or leave credits on the date Worker's Compensation Leave without Pay begins.

## **ARTICLE III HOURS, COMPENSATION AND BENEFITS**

### **Section 1 Work Hours and Pay for Hours Worked**

The standard workweek for each employee coincides with open office or park hours of the Village unless otherwise indicated or approved by such conditions the Village Manager. When the activities of a particular department or employee require some other schedule to meet work needs, the Village Manager or the Supervisor detailed in the appropriate Village job description, may authorize a deviation from the normal schedule.

Employees are expected to work during all assigned periods exclusive of breaks or mealtimes. Employees are not to perform work during breaks or at any time that they are not scheduled to work unless they receive approval from their Supervisor or the Village Manager, except in cases of Village emergencies. A Village emergency exists if a condition arises that could reasonably result in damage to property or persons or that requires the immediate attention of the employee.

Manager of the time worked as soon as practical following completion of the work.

When operating requirements or other business needs cannot be met during scheduled working hours, employees may be required to work overtime hours. When possible, advance notification of these mandatory assignments may be provided. All overtime work must receive the supervisor's prior authorization. Overtime assignments will be distributed as equitably as practical to employees qualified to perform the work required.

Pay dates are twice a month (15th and last day of the month). Employees are required to participate in the Village's direct deposit program.

### **Overtime/Compensatory Time**

Employees of the Village may be required to work in excess of their regularly scheduled hours as necessitated by the needs of the Village. Overtime compensation is paid to all non-exempt employees in accordance with federal and state wage and hour restrictions. As required by law, overtime pay is based on actual hours worked. Time off for sick leave, vacation, holidays or any leave of absence will not be considered hours worked for purposes of performing overtime calculations. Failure to work scheduled overtime or overtime worked without prior authorization from the employee's supervisor may result in disciplinary action, up to and including possible termination of employment. Prior to commencing overtime hours, the nonexempt employee and supervisor shall agree in writing if overtime will be compensated through overtime pay or compensatory time off. Unless expressly agreed upon, compensatory time will be used for overtime hours worked.

**Overtime Rate:** Overtime rate for non-exempt employees, when allowed, shall be at one and a half (1.5) times the employee's hourly rate of pay.

**Compensatory Time:** For nonexempt employees, official compensatory time records shall reflect the product of *actual hours worked* multiplied by one and a half (1.5). Exempt employees are eligible for compensatory time off at an hour for hour rate of time worked.

**Accumulation Maximum; Use of Comp Time:** No employee shall accumulate more than 80 compensatory hours during any time and shall be used within 12 months of accrual. It is the employee's responsibility to monitor compensatory time balances. The Village will allow employees to sue accrued paid time off within a reasonable period after making a request provided that the use of compensatory time does not unduly disrupt the operations of the public agency.

If an unexpected increase in hours occurs due to an increase in workload or responsibilities, or if an unusual or unexpected circumstance arises; an alternative for the redemption of compensation hours may be arranged. The arrangement must be reviewed and approved by the Village Manager.

### **Break Time for Nursing Mothers**

The federal Fair Labor Standards Act (FLSA) allows employees to take reasonable break time to express breast milk as needed for up to one (1) year after the birth of a child. The Village will provide a place for the employee to express breast milk, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public. Employees will not be discharged or in any other manner discriminated against in exercising their rights under this policy. Employees with further questions or concerns regarding this policy should contact the Village Manager.

### **Telework**

This policy provides for a consistent application of telework practices across the organization to ensure the security of Village information and systems, to manage Continuity of Operations, to reduce the environmental impact of commuting and to increase employee morale and satisfaction which will lead to increased work productivity. Telework is defined as allowing employees to work at an alternate location. Employees perform essentially the same work that they would in the central work place in accordance with their same performance expectations and other agreed upon terms. Telework arrangements may be established for long-term or short-term periods. Although many of the Village's services are normally performed in Village office facilities and require the presence of employees at a central work place, the Village Manager has the authority to designate employees eligible for telework or alternative work arrangements.

Work performed in an alternative work location is considered official Village business; therefore, all employees shall maintain specific conditions that apply to employees engaged in telework, including but not limited to confidentiality and communications systems' requirements. Prior to beginning a telework arrangement, a telework agreement must be approved by the Village Manager prior to the start of a telework arrangement.

The Finance Department will validate each time record per pay period, which records shall be approved by the Village Manager or the supervisor. It is the employee's responsibility to ensure that time records are reported accurately and completely. Any falsification of time records could result in disciplinary action up to and including termination and/or criminal prosecution.

All employees are required to keep a time sheet, which may be obtained from the Village Manager. Hours of work should be reported according to the procedures explained at the time of hire. Where appropriate, exempt employees who are absent from work will receive deductions from their salary in no less than full day increments when no paid leave is available. For example, if an exempt employee is absent from work for one and one-half days and has no paid leave available, the Village will only deduct for the one full-day absence. If the Village makes an improper deduction from an exempt employee's paycheck and such error is brought to the attention of the Village Manager, the Village will immediately reimburse the employee for such improper deduction.

Should an employee feel their pay is in error, they are required to report the discrepancy within 48 business hours within receipt of pay. All discrepancies will be investigated and if necessary, changes will be reflected in the next scheduled paycheck.

Accurately recording time worked is the responsibility of every employee. No employee shall ever fill out another employee's time record.

### **Section 3      Classification and Compensation Schedule**

The Classification and Compensation schedule may be recommended by the Village Manager but will receive final adoption by the Village Council.

The Village Manager shall be responsible for the administration and maintenance of the Classification and Compensation schedule. The Classification and Compensation schedule is intended to provide equitable compensation for all positions when considered in relation to each other, to general rates of pay for similar employment in the private and public sector in the area, to changes in the cost of living, to financial conditions of the Village, and to other factors and will be updated periodically. To this end the Village Manager shall, from time to time, make comparative studies of all factors affecting the level of salary ranges and shall recommend to the Village Council such changes in salary ranges as are warranted.

Employees covered by the Classification and Compensation shall be paid at a rate within the salary ranges established for their respective job title except for employees in a trainee status or employees whose present salaries are above the established maximum rate following transition to a new salary schedule. Pending budget authority, the Village Manager shall be authorized to hire and/or promote employees within the approved Classification and Compensation schedule.

### **Section 4      Cost of Living Adjustment**

Cost of living adjustments may be made from time to time at the discretion of the Village Council.

### **Section 5      Merit Increases**

Merit increases are not automatic but may be awarded for the following reasons:

- Exceptional work achievements
- Excellence in work performance
- Special contribution to productivity
- Based on Business Conditions

Such merit increases must be recommended by the employee's supervisor and approved by the Village Manager. Only those employees who exceed the standard and/or expected performance may receive a merit increase.

When an employee is promoted, demoted, transferred, or reclassified, the rate of pay for the new position shall be established as follows:

1. When a promotion occurs, if the employee's salary is below the new minimum, it shall be increased to the minimum rate of the salary range assigned to the position to which he or she is promoted. If an employee's current salary is already above the new minimum salary rate, his or her salary may be increased provided that the adjusted salary does not exceed the maximum of the assigned salary range.
2. If an employee is demoted, the employee's salary will be reduced to the lower salary range as long as the reduced salary does not fall below the minimum salary rate of that range.
3. When an employee's position is changed to a position having a higher salary range, the employee's salary shall be increased to the minimum of the new pay range. If the employee's current salary is already above the minimum salary rate, his or her salary may be increased or left unchanged, provided that the adjusted salary does not exceed the maximum of the assigned salary range.
4. When an employee holds multiple positions, the salary should be pro-rated based on the positions.

## **Section 7 Effective Date of Salary Adjustments**

In accordance with Article II, Section 5 (Performance Evaluation), salary adjustments may be made at any time during the year.

## **Section 8 Pay for Interim Assignments**

An employee who is formally designated, for a period of at least one month, by the Village Manager (or the Village Council should duties be absorbed by the Village Manager) to perform the duties of another position shall receive a salary increase for the duration of the interim assignment. The employee shall receive a salary adjustment to the minimum level of the job in which the employee is acting or an increase of 5%, whichever is greater. Criteria involved in determining the amount of the compensation will include:

- a) The difference between the existing job and that being filled on a temporary basis, and
- b) The degree to which the employee is expected to fulfill all the duties of the temporary assignment, and
- c) The amount of available funds in the budget.

The salary increase shall be temporary and upon completion of the assignment, the employee shall go back to the salary he or she would have had if not assigned in the interim role, taking into account any increase the employee would have received if not placed in the interim role.

## **ARTICLE IV LEAVE PROGRAM**

### **Section 1 Paid Holidays Observed**

The Village Council may adopt a holiday schedule in December of each year. Unless modified by Village Council, the Village will follow the holiday schedule as published by the State of North Carolina for state employees.

All full-time employees appointed or hired to a position, and all temporary or part-time employees who are normally scheduled to work on the day on which the holiday falls, shall receive these holidays with pay for the hours they are scheduled to work.

Regular holidays that occur during vacation, sick, or other paid leave period shall not be charged as vacation, sick, or other paid leave. Employees will still be paid for the holiday while on these types of leaves.

Employees required by the Village Manager or their supervisor to perform work on regularly scheduled holidays will be paid at the rate of one (1) hour for each hour worked on a holiday in addition to being paid for the holiday.

**Section 2          Vacation Leave**

For the purpose of earning and accruing vacation leave, the period of twelve (12) calendar months between January 1 and December 31 is established as the leave year.

Each employee occupying a full-time position shall earn vacation leave on a semi-monthly (15th and 30th of each month) basis in accordance with the following schedule of total service:

Years of Service	Days per Year	Accrual Rate
Less than 5 years	10	3.33
5- 9 years	15	5
10 or more years	20	6.6

For example: an employee who works forty (40) hours per week, eight (8) hours a day will earn eighty (80) hours of vacation leave per year divided by twenty-four (24) pay periods, equals 3.33 hours per pay period.

Part-Time Employees working over 25 hours a week will accrue vacation at 75% of the accrual rate as full time employees as follows which equates to 2.5 per pay period.

Years of Service	Days per Year	Accrual Rate
Less than 5 years	7.5	2.5
5- 9 years	11.25	3.75
10 or more years	15	5

Vacation leave can only be taken with the prior pre-approval of the employee’s supervisor or the Village Manager. Your request will be considered in light of the Village’s business volume and workloads. Any employee wishing to take vacation leave in excess of one day must make a request at least two weeks in advance of the proposed vacation leave. Any time taken without prior notice will be deducted from compensatory time, if any is available, or will be noted as unpaid leave.

Any unused, accrued vacation exceeding 200 hours at the end of the calendar year will not be carried over to the next calendar year and will not be paid to the employee. Employees may have the excess vacation leave (over the maximum) converted to sick leave provided that they have taken five (5) days of vacation in the calendar year.

An employee, who resigns or is terminated, will be paid for unused, accrued vacation, not to exceed 200 hours. The estate of an employee who dies while employed by the Village shall be entitled to payment for all of the unused, accrued vacation leave available to the employee, not to exceed 200 hours.

**Section 3          Sick Leave**

Each employee occupying a full-time position shall earn sick leave at the rate of ten (10) days per year. Each employee occupying a part-time position, who is scheduled to work 25 hours or more per week, shall earn sick leave at the rate of five (5) days per year. Accrual is at the end of each pay period (15th and 30th) and based on a pro rata basis. For example: an employee who works forty (40) hours per week, eight (8) hours a day will earn eighty (80) hours of sick leave per year divided by twenty-four (24) pay periods, equals 3.33 hours per pay period. Sick leave will be cumulative for an unlimited number of days. At the time of separation any sick leave used but not yet earned will be deducted from the employee’s final paycheck. Employees will not be paid for accumulated unused sick leave at the time of separation.

Part-Time Employees working over 25 hours a week will accrue sick at 75% of the accrual rate as full time employees as follows which equates to 2.5 per pay period.

Years of Service	Days per Year	Accrual Rate
Less than 5 years	7.5	2.5
5- 9 years	11.25	3.75
10 or more years	15	5

Employees must notify their immediate supervisor or Village Manager of all requests for sick leave before the leave is taken, or no later than two (2) hours after the beginning of a scheduled working day. Sick leave may be taken only with the approval of the immediate supervisor or Village Manager. A doctor’s excuse will be required for employees missing

sick leave period, the employee's supervisor or the Village Manager may require a doctor's certification, at the Village's expense and by a physician of its choice, to determine if the employee is able to resume his or her normal duties.

Sick leave will be cumulative for an indefinite period of time and may be converted upon retirement for service credit consistent with the provisions of the North Carolina Local Government Employees' Retirement System. The Village may accept sick leave balances on a case-by-case basis when documented by a previous employer when the employee worked for a previous employer covered by the North Carolina State or Local Government Retirement Systems and the employee did not withdraw accumulated retirement contributions from that employer when leaving employment. The sick leave will be treated as though it were earned with the Village of Marvin and may be used as any other accrued sick leave by the employee. The sick leave amount must be certified by the previous employer and it is the employee's responsibility to provide documentation from his or her previous employer within three (3) months of employment. Transferred sick leave will be credited to the employee upon successful completion of the six months of employment.

#### **Section 4 Medical Leave of Absence without Pay**

The Village of Marvin will comply with the Family and Medical Leave Act of 1993 (FMLA) (29 USC §2601 et seq.; 29 CFR Part 825).

#### **Section 5 Military Leave**

Regular employees who are members of a military reserve unit or the National Guard shall be granted two calendar weeks per twelve-month period for military leave. Employees may elect to use any combination of accrued vacation or holiday leave, accumulated compensatory time or leave without pay during their absence for military service. While taking military leave, the employee's leave credits and other benefits shall continue to accrue as if the employee physically remained with the Village during this period.

#### **Section 6 Bereavement Leave**

The Village may grant full-time and part-time employees normally scheduled to work up to three (3) days off with pay to attend a funeral, to arrange funeral services, or attend to family business as relates to the loss of a member of an employee's immediate family. Bereavement leave will be based upon scheduled work days and hours. Immediate family is defined as the employee's spouse, child, step-child, parent, step-parent, parent-in-law, sibling, step-sibling, grandparent, or grandchild. Additional time may be granted without pay by an employee's supervisor upon request of the employee.

#### **Section 7 Jury Duty**

The Village recognizes the responsibility placed on citizens to serve in the judicial system. If an employee is summoned for jury duty, the employee if normally scheduled to work during this time will be granted leave to attend. Upon receipt of jury notification, the employee is required to advise their supervisor, in writing, with a copy of the summons.

If released from Jury Duty before the end of the normal work day, the employee is expected to call their supervisor immediately. If the employee is needed, they are expected to return to work. The Village will pay employees during jury duty leave, up to a maximum of ten (10) days in a calendar year.

#### **Section 8 Parental Leave**

Under North Carolina law, an employee who is a parent, guardian, or person standing *in loco parentis* of a school-aged child will be granted a minimum of four (4) hours of unpaid leave per year to attend or otherwise be involved in that child's school. Leave is subject to the following conditions:

- the Village and the employee must mutually agree upon the time for the leave
- the Village may require a written request for the leave at least forty-eight (48) hours prior to the leave
- the Village may require written verification from the school that the employee attended or was otherwise involved at that school during the time of the leave.

**Section 1 Insurance Benefits**

The Village provides group health, dental and vision insurance programs for employees and their families as specified under the terms of the group insurance contract decided on a year-by-year basis with the annual budget process. The Village pays the entire cost of health insurance, life insurance, and short-term disability for full-time employees within the first full month of employment. All employees are eligible for dental and vision coverage at a specified rate. The Village will comply with the Affordable Care Act by providing health insurance for all employees expected to work 30 or more hours per week for three or more months when required. Full-time employees may, if they so desire, purchase available group health, dental and/or vision coverage through the Village for qualified dependents within the stipulations of the insurance contract. Employees will pay the amount stipulated by the Village for their qualified dependents. Employees may be enrolled in the programs in accordance with the applicable plan documents.

**Continuation of Benefits (COBRA)**

The Consolidated Omnibus Budget Reconciliation Act (COBRA) provides the opportunity for eligible employees and their beneficiaries to continue health insurance coverage under the Village health plan when a "qualifying event" could result in the loss of eligibility. Qualifying events include resignation, termination of employment, death of an employee, reduction in hours, a leave of absence, divorce or legal separation, entitlement to Medicare, or where a dependent child no longer meets eligibility requirements. Please contact the Village Manager to ask about COBRA.

**Section 2 Retirement Benefits**

Each employee who is expected to work for the Village more than 1,000 hours annually shall join the North Carolina Local Governmental Employees' Retirement System after 30 days of employment as a condition of employment. Employees contribute a designated percent of salary each payroll with an actuarial match by the Village as determined by the North Carolina Local Governmental Employee's Retirement System. An employee who meets the conditions set forth under the provisions of the North Carolina Local Governmental Employee's Retirement System may elect to retire and receive all benefits earned under the retirement plan.

The Village may offer an employer matching contribution to eligible employees. The Village may, at any time and in its sole discretion, determine the matching contribution to be provided, if any. For more information about the Village's matching contribution, contact the Village Manager.

**Supplemental Retirement Benefits**

All full-time employees may make voluntary contributions to the 457b deferred compensation up to the limits established by law and the 401-K provider.

**Section 3 Longevity Pay**

The Village provides a lump sum payment to all full-time employees in recognition of their service to the Village and to encourage further service. Longevity pay is discretionary and is subject to the availability of funds, budgetary constraints and the approval of the Village Council.

Years of Service Longevity Amounts are as follows: 5 to 9 years	2%
10 to 14 years	3%
15 to 19 years	4%
20 and over	5%

**Section 4 Tuition Assistance**

Full-time employees who have completed the initial introductory period may apply for tuition reimbursement for courses taken on their own time, which will improve their skills for their current job or prepare them for promotional opportunities within the Village service. Tuition, registration, fees, laboratory fees, and student fees are eligible expenses. Satisfactory completion of the courses will be required for reimbursement. Requests for tuition assistance shall be submitted to the Village Manager prior to course registration and are subject to the review and approval of Village Manager, subject to



tuition assistance program, 100% of all funds paid during that year must be paid in full or will be deducted from employee's final paycheck.

## ARTICLE VI GRIEVANCE PROCEDURE

### Section 1 Purpose

The grievance procedure provides an adequate and fair means for hearing matters of concern to employees.

### Section 2 Coverage

This grievance procedure applies to all departments and all employees of the Village. A grievance is defined as any matter of concern or dissatisfaction arising from the working conditions of an employee, subject to the control of the Village.

### Section 3 Policy

Every employee shall have the right to present a grievance in accordance with these procedures, free from interference, coercion, restraint, discrimination, penalty, or reprisal.

### Section 4 Procedure

**Step One.** An employee must file a grievance in writing with the immediate supervisor or Village Manager within thirty (30) days of the date of the incident giving rise to the grievance. If the employee's grievance involves the Village Manager, the employee may file the complaint with the Village Council, as set forth in Article VI, Section 4. If the grievance concerns an appeal of a termination, it shall be filed directly with the Village Council at Step Two. The employee's immediate supervisor or Village Manager shall meet with the employee within five (5) days of receipt of the grievance and attempt to resolve the grievance informally. If informal resolution efforts fail, the Village Manager shall issue a written decision on the grievance no later than five (5) days following the meeting.

**Step Two.** If the employee is dissatisfied with the response at Step One, the employee may forward the written grievance to the Village Council within five (5) days of receipt of the Step One decision. The employee may request a decision from the Village Council directly. The Village Council will speak with the employee and the Village Manager separately to hear and consider all facts pertinent to the issue. The Village Council will then render a decision within fifteen (15) days of receipt of the grievance. These discussions by the Village Council shall be conducted in closed session under N.C.G.S. 143-318.11.

### Section 5 Time Limitations

It is important that grievances be initiated and processed as rapidly as possible. Every effort will be made by all parties to expedite the process. The time limitations specified above do not include holidays or days when the Village is closed. Time limits may be extended by written mutual agreement.

If there is no written mutual agreement to extend the time limits set forth herein and if the employee does utilize the next level of the procedure within the time limit specified, the matter shall be determined settled on the basis of the last decision rendered.

### Section 6 General Provisions

All written grievances shall include the name and position of the employee filing the grievance, a brief statement of the nature of the grievance, and the resolution sought by the employee. In pursuing the provisions of this procedure, every effort will be made to avoid interruption of work activity. Employees are not permitted to have an attorney present during any meetings held pursuant to the grievance procedure.

All documentation, records, and reports will be retained, in accordance with the North Carolina Department of Cultural Resources Records Retention and Disposition Schedule adopted by the Village, unless required differently by federal, state or local law, and shall be held by the Village Manager. These records will be subject to review by the grievant, the employee's supervisor or Village Manager, and the Village Council upon submission of a written request.

*Adopted this the 3<sup>rd</sup> day of January, 2008, pursuant to Resolution No.RS-2008-01-01.*

*Amended by the Village Council May 25, 2010.*

*Amended by the Village Council May 10, 2011.*

*Amended by the Village Council September 13, 2011*

*Amended by the Village Council November 29, 2011*

*Amended by the Village Council January 10, 2012*

*Amended September 10, 2013*

*Amended October 8, 2019*

*Amended: February 9, 2021*

*Amended: March 9, 2021*

*[Amended: May 11, 2021](#)*

**VILLAGE CODE OF ETHICS, AS AMENDED**

*(The most recently adopted and revised version of the document indicated above, supersedes any document displayed herein for reference purposes)*

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~ INSERT CODE OF ETHICS HERE ~

**EMPLOYEE STATEMENT OF INTEREST FORM, AS AMENDED**

*(The most recently adopted and revised version of the document indicated above, supersedes any document displayed herein for reference purposes)*

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~ INSERT ESI FORM HERE ~

Village of Marvin  
Cost Proposal - Additional Services  
CPA Services

The following is a summary of our cost proposal for the CPA services of the Village from May 12 to June 30, 2021. This cost proposal is on a "estimated" basis.

Personnel Costs	<u>Partner</u>	<u>Manager</u>	<u>Senior Staff</u>	<u>Total</u>
Monthly services	2	2	36	40
Total estimated hours	<u>2</u>	<u>2</u>	<u>36</u>	<u>40</u>
Total Hours	2	2	36	40
Rates	<u>\$ 200</u>	<u>\$ 150</u>	<u>\$ 100</u>	
	\$ 400	\$ 300	\$ 3,600	\$ 4,300
Travel				\$ -
Cost of supplies and materials				\$ -
Other costs				<u>\$ -</u>
TOTAL COSTS				\$ 4,300
Government discount			10%	<u>\$ (430)</u>
				<b>\$ 3,870</b>

\* This is an estimate. If the costs are less than the quoted amount, the Village will be charged the lesser amount. If the costs are more, we will discuss before incurring additional hours.