

FIXED ASSESSMENT AGREEMENT

THIS FIXED ASSESSMENT AGREEMENT (the “Agreement”) made effective as of _____, 2020, by and between the **Town of Groton**, a municipal corporation organized and existing under the laws of the State of Connecticut (the “Town”), and **DonMar Residential, LLC**, a Connecticut limited liability company having an address at 42 State Street North Haven, CT (the “Developer”).

RECITALS

- A. The Town is the owner of the real property and all improvements thereon, if any, located at 55 Seely School Drive, Groton, Connecticut (Assessor’s Account No. 168915641769 E) (the “Premises”).
- B. On or about April 17, 2020, the Town and Developer entered into an Option to Purchase Agreement (the “Option Agreement”), which granted Developer an option to purchase the Premises for purposes of developing a multifamily development containing approximately 280 apartment units, all as more particularly set forth in the Option Agreement (the “Project”).
- C. Section 22 of the Option Agreement requires the Town and Developer, prior to Developer exercising the purchase option contemplated by the Option Agreement, to use good faith efforts to negotiate a fixed assessment agreement pursuant to Connecticut General Statutes (“C.G.S.”) § 12-65b with respect to the assessment of real property taxes on the improvements and buildings under construction in connection with the Project (as defined in section 1.1.6 below) at the Premises for a specific time period.
- D. C.G.S. § 12-65b provides that, subject to the approval of a municipality’s legislative body, a municipality can enter into an agreement to fix the assessments of real property taxes for a period not to exceed ten years.
- E. The Groton Town Council, as the Town’s legislative body, deems it proper and appropriate to enter into this Agreement to provide tax incentives to the Developer in accordance with C.G.S. § 12-65b, and on November 4, 2020, the Groton Town Council adopted a resolution authorizing the Town to enter into this Agreement.
- F. Town and Developer now desire to enter into this Agreement to stabilize and fix the assessment of certain ad valorem real property taxes that would otherwise be levied on the improvements and buildings under construction in connection with the Project on the Premises pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein, Town and Developer hereby agree as follows:

1. DEFINITIONS

1.1. Capitalized terms used and not defined herein shall have the definitions ascribed to them as set forth below and as set forth in the Option Agreement:

1.1.1. "Assessment Year" shall mean a twelve-month period commencing on October 1st and ending on the following September 30th.

1.1.2. "Closing" shall mean the date a deed is recorded on the Groton Land Records to transfer fee title to the Premises from the Town to Developer pursuant to the Option Agreement.

1.1.3. "Fixed Assessment" shall refer to Town's conferral, under C.G.S. § 12-65b, of a fixed real property tax assessment on the buildings and improvements under construction during the Project on the Premises during the Fixed Assessment Period, as is set forth in Section 2.2.

1.1.4. "Fixed Assessment Period" shall refer to the period of time during which the Fixed Assessment contemplated in this Agreement shall remain in effect, which period of time shall commence as of the Closing consummated pursuant to the Option Agreement is fully executed by the Town and Developer and terminate (a) one year following the issuance of the building permit for the Project, which shall not include any permits issued for demolition, environmental investigation, remediation, abatement work, site work or subterranean work or any foundation related work which can be performed without a building permit(hereinafter the "Building Permit"); or (b) pursuant to section 2.3 hereof in the case of any building(s) or improvement(s) completed during, but prior to completion of all buildings or improvements to be completed during, the Project, the Fixed Assessment shall terminate as to such completed building(s) or improvement(s) per section 2.3 hereof; or (c) immediately upon termination of this Agreement as a result of Material Default of Developer pursuant to section 9.2 hereof

1.1.5. "Material Default" shall mean the failure of a party to perform a material covenant or agreement, or to observe a material term or condition, contained in this Agreement or Option Agreement which after notice to that effect, the party fails substantially to rectify the same within thirty (30) days after receipt of notice and such an additional reasonable time period as is necessary to rectify the matter if the nature of such non-compliance cannot be reasonably cured within said thirty (30) day period provided the party initiates the cure thereof within said thirty (30) day period and thereafter diligently prosecutes such cure.

1.1.6. "Project" shall have the same meaning as "Project" or "Phase I of the Project" set forth in section 13 of the Option Agreement, and shall at a minimum mean a multi-unit apartment complex consisting of approximately 280 multi-family housing units located on the Premises.

2. TAX MATTERS

- 2.1. Non-fixed assessments. The Town and Developer agree that except as provided in section 2.2 hereof, this Agreement shall not fix or affect the assessment, levy or collection of taxes applicable to land, personal property, and/or any sewer or water use or connection charges, fire district taxes or other municipal charges applicable to the Property. Except as provided in section 2.2 hereof, on and after the Closing, Developer shall be fully liable for all water and sewer use and connection charges, fire district taxes and other municipal charges, as well as all taxes assessed

against the land and personal property located at the Premises based on the assessed value thereof as established by Town in accordance with applicable law (regardless of whether such value of land increases as a result of any future development, re-zoning, approvals or permits procured in connection with the Premises in connection with the Project). Nothing herein shall excuse Developer from filing personal property declarations with the Town pursuant to applicable law.

- 2.2. Fixed Assessment. Following the Closing, Developer shall demolish the current building located at the Premises in accordance with the Option Agreement. During the Fixed Assessment Period, the Town shall fix the assessment of improvements and buildings under construction in connection with the Project such that all real property and fire district taxes otherwise payable in connection with such buildings or improvements under construction shall be abated during said Fixed Assessment Period. This Agreement shall not fix or affect the assessment, collection or levy of taxes applicable to any building or improvement constructed which is not part of the Project.
- 2.3. Completed Buildings or Improvements. Unless the Fixed Assessment with regard to any particular building or improvement shall terminate earlier pursuant to section 1.1.4 hereof, the Fixed Assessment for any building or improvement constructed in connection with the Project shall terminate as of the earlier of the date of issuance of a certificate of occupancy for such building or improvement, or if sooner, the date such completed building or improvement is first used for the purpose for which same was constructed or within one year of the issuance of the building permit as set forth in Paragraph 1.1.4. Upon termination of the Fixed Assessment the Town shall be entitled to perform an assessment of such newly constructed building or improvement pursuant to C.G.S. § 12-53a and issue a supplemental tax bill to and payable by Developer based on the assessed value of such newly constructed building or improvement.
- 2.4. No Appeals. During the Fixed Assessment Period, Developer shall not apply to the Town's Board of Assessment Appeals to seek any full or partial exemption from municipal real estate taxation, and shall not appeal the assessed values established by the Town thereon to any court.
3. Taxes. All taxes assessed following termination of the Fixed Assessment Period, and/or if sooner, following termination of the Fixed Assessment Period applicable to any particular building or improvement, shall be due and payable as provided by applicable law.
4. Pro Rated. If the Fixed Assessment Period terminates on a date other than the first day of a Tax Year with respect to any particular building or improvement, (i) Developer's tax liability for the period from the effective termination date through the end of the Tax Year with respect to such building or improvement shall be the supplemental taxes due for such Tax Year as contemplated by section 2.3 hereof multiplied by the number of days from the day after the termination date through the end of the Tax Year, divided by three-hundred and sixty-five; and (ii) after the termination date, Developer shall begin making installment payments of property taxes at such times as required by applicable law.
5. No Additional Tax Incentives. During the Fixed Assessment Period, Developer agrees that it will not pursue, nor shall it be entitled to, any additional tax incentives from the Town. Nothing in this Section shall prohibit Developer from seeking additional tax relief and rebates from the State of Connecticut, federal authorities, or authorities other than the Town, provided that no such relief shall reduce the amounts payable by Developer to the Town.

6. Covenants. The Developer covenants and agrees to the following:

- 6.1. Developer will comply with the terms of the Option Agreement as may be amended.
- 6.2. Developer shall use the Property for one or more of the uses enumerated in C.G.S. § 12-65b(b).
- 6.3. Developer shall apply for and receive a building permit for construction of the Project when the following condition precedents are satisfied pursuant to the development schedule set forth in section 13 of the Option Agreement: (1) all land use approvals have been obtained and (2) the appeal period associated with such approvals expires, or if later, when all timely, third party appeals associated with such approvals, if any, are fully and finally adjudicated. Upon satisfaction of such conditions precedent, a full and final complete set of building plans and specifications required for a building permit application shall be submitted to the Town's inspection services division in conjunction with Developer's building permit application.
- 6.4. Subject to the force majeure provisions of Section 24 of the Option Agreement, and subject to extensions set forth in this section 6.4, Developer shall submit an application for a building permit for the Project on or before July 1, 2021 (the "Building Permit Application Deadline"). In the event Developer is unable to apply for and/or receive a building permit prior to July 1, 2021 due to delays solely caused by the Town, then Developer shall be granted a three (3) month extension up to and including October 1, 2021 to apply for and receive the building permit for construction of the Project. If a delay in the submission of the building permit is contributed to or caused by the Developer, then the Town may, at its sole discretion, terminate this Agreement on or after July 2, 2021. In the event Developer is unable to apply for and/or receive a building permit prior to July 1, 2021 due to delays not caused by the Town or the Developer resulting from a third party administrative appeal or Force Majeure event (as defined in the Option Agreement), then the time for the Developer to apply for and/or receive a building permit shall be extended to such time (a) as the Force Majeure has been fully resolved to the sole and absolute satisfaction of the Developer and the Town, or (b) in the event of a third party appeal, such appeal has been fully and finally adjudicated.
- 6.5. Developer, at the request of Town, shall furnish Town with information substantiating the satisfaction of the above covenants.

7. Representations and Warranties. Developer hereby represents and warrants to Town as follows:

- 7.1. Developer is a limited liability company organized under the laws of the State of Connecticut and is in good standing with the Secretary of the State of Connecticut and is qualified to transact business in the State of Connecticut.
- 7.2. Developer has the power to enter into this Agreement to carry out its obligations hereunder.

- 7.3. The execution and delivery of this Agreement, the performance of the obligations of Developer contained in this Agreement, the consummation of the other transactions contemplated hereby, and the fulfillment of the compliance with the terms and conditions of this Agreement by Developer are not prevented by or result in a breach of, the terms, conditions or provisions of any statute, law, ordinance or regulation by which Developer is bound, or any contractual restriction, financing, agreement or instrument of whatever nature to which Developer is now a party by which it is bound, nor do they constitute default under any of the foregoing.
- 7.4. This Agreement has been duly authorized by Developer, and is a valid and binding obligation of Developer and is enforceable in accordance with its terms against Developer.
- 7.5. The member or manager of Developer executing this Agreement is authorized to execute and deliver this Agreement, in such capacity.
- 7.6. There is no claim or litigation, or to the best of Developer's knowledge, threat of any claim or litigation, against Developer with respect to its execution and delivery of this Agreement, the conferral of the Fixed Assessment or any other matter contained in this Agreement.
- 7.7. There are no actions, suits or proceedings pending or, to the best of Developer's knowledge, threatened against or affecting the Developer or before any arbitrator or any governmental body in which there is a reasonable possibility of an adverse decision which could materially affect the ability of Developer to perform its obligations under this Agreement.

8. Representations, Warranties and Covenants. Town hereby represents and warrants to Developer as follows (each of such covenants, representations and warranties being true and correct as of the date of the Agreement and shall be true and correct on the date of Closing:

- 8.1 Presently the Property is not, and at the time of the Closing the Premises shall not be, subject to any lease, option, right of first refusal or agreement of sale, other than this Agreement. Town has the full power and authority to execute, deliver and perform this Agreement and all agreements and documents referred to in this Agreement. The person who has executed this Agreement on behalf of Town has the authority to do so.
- 8.2 There is no action, suit or proceeding pending or threatened against or affecting Town or the Premises or relating to or arising out of the ownership of the Premises, including without limitation, general or special assessment proceedings of any kind, or condemnation or eminent domain actions or proceedings of any kind.
- 8.3 Neither the entering into of this Agreement, the consummation of the sale, nor the conveyance of the Premises to Developer, has or will constitute a violation or breach of any of the terms of any contract or other instrument to which Town is a

party or to which Town is subject.

- 8.4. Intentionally omitted.
- 8.5 No notice by any governmental or other public authority has been served upon Town, or anyone on Town's behalf, with respect to the Premises, relating to violations of any applicable housing, building, safety, fire or other ordinances or any of the Applicable Laws.
9. Termination; Default
- 9.1 Town Default. In the event of Town's Material Default of any of provisions of this Agreement (after notice and a thirty (30) day opportunity to cure), Developer shall be entitled to terminate this Agreement and shall have all rights and remedies at law or in equity.
- 9.2 Developer Default. In the event of a Material Default arising from the Developer's violation of any provision of this Agreement (after notice and a thirty (30) day opportunity to cure), then the Town shall be entitled to terminate this Agreement and shall be entitled to all rights and remedies at law or in equity. Without limitation of the generality of the foregoing sentence, in the event that the Town terminates this Agreement pursuant to this section 9.2 hereof, all benefits conferred upon Developer under this Agreement shall be deemed null and void. In addition to and not in limitation of any other right or remedy the Town may have under this Agreement and/or at law or in equity, the Town shall have the right to charge Developer retroactively the tax payments which would have been payable on the buildings and improvements under construction during the Project had such assessments not been fixed and/or abated pursuant to section 2.2 of this Agreement, commencing retroactively to the commencement date of the Fixed Assessment Period. In such event, the Town may send a notice of the adjusted assessment together with a revised or adjusted real estate tax bill, which shall due and owing in the time and manner provided by law. Such amount shall be paid by the Developer within thirty (30) days of billing.
- 9.3 The Town's remedies under this Agreement shall be inclusive of all common law and statutory remedies. Except as set forth in section 2.3 and 2.4, nothing in this Agreement shall be construed to be a waiver by the Town of any of its statutory rights to collect taxes, including the power to perfect liens, issue warrants, foreclose, seek legal or equitable relief, and seek costs and reasonable attorney fees. Should either party prevail in any litigation arising from any dispute concerning or breach of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs.
- 9.4 The rights and remedies of either party under this Agreement shall be cumulative and not exclusive of any rights or remedies which it would otherwise have, and no failure or delay by either party in exercising any right shall operate as a waiver of such right,

nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.

- 9.5 In the event the Option Agreement is terminated by the Town as a result of Developer's default under the Option Agreement, such termination shall automatically terminate this Agreement. Notwithstanding anything as may be set forth in this Agreement to the contrary, in the event this Agreement is terminated by the Town as a result of any Material Default by Developer, the termination of this Agreement shall not automatically terminate the Option Agreement unless the Option Agreement contains a provision allowing for termination of the Option a result of the same act or omission which constituted the Material Default hereunder.

10. Miscellaneous.

10.1. Notices. All notices and requests required pursuant to this Agreement shall be sent by personal delivery, overnight courier, or certified mail as follows:

To Town:

Town of Groton
45 Fort Hill Road
Groton, CT 06340
Attn: Town Manager
Phone: 860-441-6633
Email: jburt@groton-ct.gov

With copies at the same time to:

Suisman Shapiro
2 Union Plaza, Suite 200, P.O. Box 1591
New London, CT 06320
Attn: Eric W. Callahan, Esq.
Phone: (860) 442-4416
Facsimile: (860) 442-0495
Email: ecallahan@sswbagg.com

To Developer:

DonMar Residential, LLC
42 State Street
North Haven, CT 06473

Attn: Mario Di Gioia
Facsimile:
Email:

With copies at the same time to:

Timothy M. Herbst
Dennis J. Kokenos
Marino, Zabel & Schellenberg, PLLC
657 Orange Center Road
Orange, CT 06477
Email: therbst@mzslaw.com
dkokenos@mzslaw.com
Phone: (203) 864-4611

or at such other addresses as the parties may indicate in writing to the other by personal delivery, overnight courier, or certified or registered mail, return receipt requested, with proof of delivery thereof. Notices and requirements shall be deemed delivered to the address set forth above (a) when delivered in person on a business day, (b) on the same business day received if delivered by overnight courier, or (c) on the third business day after being deposited in any main or branch United States Post Office when sent by registered mail, return receipt requested.

11. Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions, and understandings between Developer and Town relative to the fixing of the assessments on the Property and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between them related thereto, other than as herein set forth. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding on the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

12. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby; provided that the invalid or unenforceable provisions are not material to the overall purposes or operation of the Agreement, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. Jurisdiction. In the event a legal action is brought to enforce any provision of this Agreement, the jurisdiction shall be a court of competent jurisdiction located in the State of Connecticut. The prevailing party in any such legal action shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

14. Project requirements. Nothing herein shall relieve or release, or be construed to relieve or release, Developer of any obligation to comply with any state, federal or local statute, law, ordinance, regulation or guideline regarding the Project.



15. Governing Law. All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the substantive law of the State of Connecticut, and not the conflicts laws thereof.

16. No Partnership. Nothing in this Agreement is intended, or shall be deemed, to establish a joint venture or partnership between the Town and Developer.


17. Conflict. If any terms of this Agreement conflict with any terms or provisions of the Option Agreement, then the terms and provision of this Agreement shall prevail.

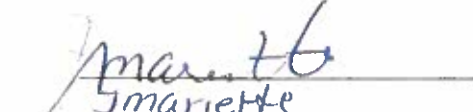
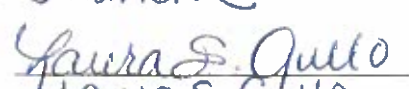
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IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

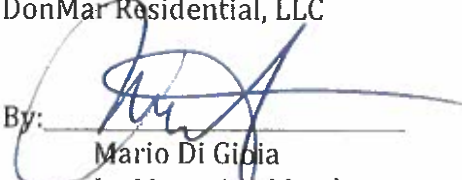

Eileen Cardillo

Michelle Marceay

TOWN OF GROTON

By: 
John Burt
Its Town Manager
Duly Authorized
Date: 4/17/20


Mariette

Laura S. Gullo

DonMar Residential, LLC

By: 
Mario Di Gioia
Its Managing Member
Duly Authorized
Date: 4/15/20