

**DEVELOPMENT AGREEMENT**

**TOWN OF GROTON**

**AND**

**RESPLER HOMES, LLC**

## **LIST OF SCHEDULES AND EXHIBITS**

### **Schedules**

Schedule A – The Property to be conveyed to the Developer

### **Exhibits**

Exhibit A – Resolution from Town Council authorizing entry into Development Agreement

Exhibit 3.02(c) – Proposed subdivisions of the Property

Exhibit 7.01 – Project Phases

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is made as of the 11<sup>th</sup> day of February, 2020 by and between the TOWN OF GROTON, a Connecticut municipal corporation organized and existing under the laws of the State of Connecticut with a mailing address of 45 Fort Hill Road, Groton, Connecticut, 06340 (the “**Town**”), and RESPLER HOMES, LLC, a Connecticut limited liability company with an address at 833 Glen Drive, Woodmere, New York 11598 (the “**Developer**”) which, together with the Town, are sometimes hereinafter referred to collectively as the “**Parties**” and individually as a “**Party**”.

### RECITALS

A. The State of Connecticut the (“**State**”) owns two adjoining parcels of real property, one of which is a 77.39 acre parcel designated as Map ID 261960386767E located at 240 Oral School Road in Old Mystic Connecticut (the “**240 Oral School Parcel**”), and the other of which is a 7.89 acre parcel designated as Map ID 261906297210E located at 0 Oral School Road in Old Mystic Connecticut (the “**0 Oral School Parcel**”).

B. The State intends to retain an approximately thirty seven (37) acre portion of the 240 Oral School Parcel and sell the remaining portion (approximately 40 acres) of the 240 Oral School Parcel (the “**Remaining Parcel**”) together with the 0 Oral School Parcel to the Developer. The Remaining Parcel and the 0 Oral School Parcel are referred to collectively herein as the “**Property**” and are described on Schedule A attached hereto. The conveyance of the Property will be done in accordance with the terms of a certain Purchase and Sale Agreement between the State and the Developer (the “**PSA**”) which contemplates the conveyance of the Property to the Developer on or before sixty (60) days after all contingencies and conditions precedent contained therein are satisfied (the “**Closing**”).

C. On December 15, 2017 the Town issued Request for Proposals # 18-25 (the “**RFP**”) for a proposed project known as Mystic Education Center Project to be located at the Property.

D. On February 15, 2018 the Developer provided a response to the RFP.

E. On February 4, 2020, the Groton Town Council selected the Developer to develop the Project, approved this Development Agreement for the Project and authorized the Town Manager to take all steps necessary, including signing this Agreement, to effectuate the aforementioned Project sale in accordance herewith. The resolution is attached hereto as Exhibit A.

F. Developer desires to purchase the Property for the Project and the Town believes the proposed development of the Property as part of the Project is in the best interest of Town and its economy.

G. Developer and Town desire to memorialize their various agreements relating to the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1  
DEFINITIONS

Section 1.01. Definitions. For purposes of this Agreement, the following terms shall, unless the context otherwise requires, have the respective meanings assigned to such terms in this Article 1 or the Recital, Article or Section of this Agreement referred to below:

(a) “**Agreement**” shall have the meaning found in the introductory paragraph of the Agreement.

(b) “**Applicable Law**” shall mean any and all judicial decisions, orders, injunctions, writs, statutes, laws, rulings, rules, regulations, permits, licenses, certificates, or ordinances of any courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipal, or otherwise), whether now or hereafter in existence, which have jurisdiction over or affect Town, the Developer, all or any portion of the Project and/or the Property, including, but not limited to, any of the aforesaid dealing with the zoning, subdivision, traffic, wetlands, coastal management, hazardous substances, design, construction, ownership, use, handicapped accessibility or condition of the Project.

(c) “**Business Day**” means any day other than a Saturday, Sunday, legal holiday as recognized in the Town of Groton or the State of Connecticut, or any other day on which, in the State of Connecticut, the United States Post Office has no scheduled deliveries.

(d) “**Closing**” shall mean the consummation of the sale of the Property by the State to the Developer.

(e) “**Commence Construction**” shall mean the building permit has been issued and the Developer and its contractors have fully mobilized at the site and have commenced the construction of the Developer Improvements.

(f) “**Critical Path**” shall have the meaning set forth in Section 3.02(e) of this Agreement.

(g) “**Developer**” shall have the meaning found in the introductory paragraph to this Agreement.

(h) “**Developer Default**” shall have the meaning found in Section 13.01 of this Agreement.

(i) “**Developer Improvements**” shall mean the Private Improvements and the Developer Infrastructure collectively.

(j) “**Developer Infrastructure**” shall have the meaning found in Section 6.04(a) of this Agreement.

(k) “**Development Plan**” shall have the meaning set forth in Section 3.02 of this Agreement.

(l) “**Effective Date**” means the last date, after the approval of this Agreement by the Town Council, upon which each of Town and Developer have executed this Agreement and delivered a fully executed copy to the other Party.

(m) **“Exclusive Developer”** shall have the meaning set forth in Section 3.01 of this Agreement.

(n) **“First Phase of the Developer Improvements”** shall mean the activities and related services and items undertaken initially for the Project including but not limited to the construction and completion of Pratt Building renovations (except for any tenant improvements to be made by the Town), the investigation, remediation and reconstruction (except for any tenant improvements to be made by the retail, office and other commercial tenants) of the Oral School facility, the construction and completion of 250 residential housing units, the parking garage, and so much of the infrastructure improvements, including roads and utilities, required to support the aforementioned buildings and improvements in the First Phase.

(o) **“Force Majeure Event”** shall mean any actual delay in the performance of a Party’s obligations hereunder, without its fault or negligence, to the extent due to strikes, lockouts, or other labor or industrial disturbance, civil disturbance, act of the public enemy, terrorism, war, riot, sabotage, blockade, embargo, lightning, earthquake, fire, casualty, extreme storm, hurricane, tornado, flood, washout, explosion, declaration of national emergency, unusually severe weather which affects the required performance hereunder, or any other cause whatsoever beyond the reasonable control of the Party responsible for performance, including, without limitation: (a) as to the performance of Town’s obligations, the occurrence or continuance of any material default hereunder by Developer, (b) as to the performance of any of the obligations of Developer, the occurrence or continuance of any material default hereunder by Town, and (c) the failure of any construction manager, contractor, subcontractor or supplier to furnish services, materials or equipment in connection with the construction of any Developer Improvement if such failure is caused by a Force Majeure Event, if and to the extent, and only so long as the Developer is not able, after using commercially reasonable efforts, to obtain substitute services, materials or equipment of comparable quality and cost, provided, however, that for purposes of this definition, lack of funds shall not be deemed to be a cause beyond the control of Developer, except that the inability of Town to obtain disbursements of grant proceeds under any public funds agreement shall constitute a cause beyond the reasonable control of Town unless such inability is (i) the result of Town’s failure to use commercially reasonable efforts to obtain the grant proceeds, or (ii) due to Town’s failure to satisfy all conditions for the receipt of the grant proceeds that are within Town’s reasonable control, if such failure is due to Town’s negligence or willful misconduct or due to any default by Town under said public funds agreement which default does not arise out of any default by Developer in the performance of such Developer’s obligations under this Agreement.

(p) **“Governmental Approvals”** means all final federal, state, regional, coastal or local approvals, permits, licenses, certificates and entitlements necessary to construct, develop, and operate the Developer Improvements as contemplated by the Development Plan and this Agreement including but not limited to any final Office of the State Traffic Administration approval, any final OPM approvals and final approval of any required amendment to Groton Zoning Regulations or final approval of subdivision applications and special permit applications as provided for herein. As used in this subsection (p) of Section 1.01, “final approval, permit, license, certificate and entitlement” means an issuance of an approval, permit, license, certificate or entitlement in which all applicable appeals periods have expired, or in the event that an appeal has been taken, a final non-appealable judgment has been entered.

(q) **“Governmental Authority”** shall mean any federal, state or local agency, commission, department, board or other governmental instrumentality (including municipalities, taxing, fire and water districts and other governmental units).

(r) **“Party”** means individually (unless otherwise expressly provided herein) as the

context requires: Developer or Town and “Parties” means, collectively, Developer and Town.

(s) “Person” means any individual, general partnership, limited partnership, limited liability company, limited liability partnership, corporation, joint venture, trust, business trust, cooperative, association or other legal business entity or governmental authority.

(t) “Private Improvements” shall have the meaning set forth in Section 6.02 hereof.

(u) “Project” shall have the meaning set forth in Section 2.01 of this Agreement.

(v) “Property” shall have the meaning set forth in Recital B of this Agreement.

(w) “Substantial Completion” shall mean the stage in the progress of the Developer Improvements when all of the improvements for a particular development phase are sufficiently complete in accordance with this Agreement for occupancy or public utilization for intended use. Substantial Completion for a particular development phase will be achieved when the last of the following occurs:

(i) The Developer Improvements intended to be completed in a particular development phase are finished so they can be used for their intended purposes.

(ii) All permits and approvals needed to occupy or use the Developer Improvements intended to be completed in a particular development phase and for their intended purpose (e.g., Certificates of Occupancy as to any garage and residential units and Certificates of Occupancy as to shell components of the retail/commercial units and the building core in which such retail/commercial units are located) have been issued and copies provided to Town.

(x) “Town” shall have the meaning found in the introductory paragraph of this Agreement.

(y) “Town Default” shall have the meaning found in Section 13.03 of this Agreement.

## ARTICLE 2 THE PROJECT

Section 2.01. The Project. The Project shall consist of the construction of 700 to 850 multifamily living units, the redevelopment of the Oral School Building into a multi-use commercial building with about 100,000 square feet of rentable space providing amenities and services for residents and visitors, construction of roadway infrastructure and construction of waterfront improvements contemplated and permitted in section 3.02(f), rehabilitation and reconstruction of the Pratt Building Recreation Center as agreed to by the Developer and Town under the Pratt Building Lease (defined in Section 6.03(b)), and other amenities. The Project will include recreational and retail space and parking for residents and visitors. The existing Pratt Building Recreation Center will be rehabilitated for use by Town residents in accordance with a mutually agreeable lease which the Parties desire to negotiate and enter into prior to Closing. Additional recreational areas will be created in accordance with state and local standards and requirements including active and passive recreation features in appropriate areas. The design of buildings will incorporate certain energy efficient features that are environmentally responsible and resource-efficient. Access and roadway improvements will be constructed as set forth in the Development Plan. The Project may be modified as a result of Governmental Approvals to the extent agreed to by the Developer in writing. To the extent additional property is acquired by the Developer in

connection with the development of the Project, the Developer reserves the right to seek Governmental Approval for construction of additional units thereon.

Section 2.02. Project Requirements. In addition to any other Project requirements contained in this Agreement or that are otherwise legally applicable, development and use shall be consistent with all State of Connecticut requirements associated with the Property as recorded or as are otherwise legally enforceable and all Groton land use and zoning regulations, as may be amended.

Section 2.03. Additional Properties. The Developer shall have the right to, at its sole discretion, acquire additional properties, including but not limited to properties abutting the Property, to include in the Project. Any such additional properties will be shown in the Development Plan as provided for in Article 3 to this Agreement and all provisions, actions, rights and obligations contained in this Agreement shall have full applicability to any such additional properties unless otherwise specified herein or by written amendment hereto.

Section 2.04. Developer's Right to Terminate. The Developer, at its sole option, may terminate this Agreement by providing written notice to the Town upon the occurrence of any of the following events: (i) the State or the Developer terminates the PSA pursuant to the terms of the PSA; (ii) the State informs the Developer that it will not convey the Property to the Developer; or (iii) the State fails to convey the Property to the Developer in accordance with the terms of the PSA. Upon such termination all rights and obligations of the Parties to each other under this Agreement shall be terminated. Termination pursuant to this subsection shall not be deemed a default.

### ARTICLE 3 DEVELOPMENT PLAN

Section 3.01. Exclusive Developer. Respler Homes, LLC, is hereby named as the Exclusive Developer of the Project, pursuant to the terms set forth in this Agreement and in accord with all local approvals and resolutions as may be amended. Respler Homes, LLC may, on or before Closing, create a single purpose entity to act as the Exclusive Developer of the Project so long as Respler Homes, LLC retains the controlling voting interest in said single purpose entity.

Section 3.02. Development Plan. Developer shall prepare a development plan for the development and construction of the Project (the "**Development Plan**"). The Development Plan shall include, but not be limited to, the following elements:

- (a) A site plan for the Project identifying:
  - (i) the proposed locations of each type of land use;
  - (ii) proposed locations of buildings, parking areas, public spaces and sidewalks;
  - (iii) approximate locations of storm drainage improvements for the Project;
  - (iv) approximate locations of utilities necessary for the construction and operation of the Developer Improvements and the Project;
  - (v) construction of new public roads and improvements to existing roads required for safe ingress and egress to the Project; and

(vi) approximate locations and terms of temporary and permanent easements required for the Development as described in Section 5.03 of this Agreement as the Parties may mutually agree upon.

(b) Architectural renderings of all improvements and design features.

(c) All proposed subdivisions of the Property that Developer requires to facilitate the construction of the Project including but not limited to those shown on Exhibit 3.02(c) to this Agreement.

(d) A list of all known Governmental Approvals that will be required to complete the Project.

(e) A critical path chart or similar timeline outlining the anticipated sequence and phasing of development of the Project (the “**Critical Path**”). The Critical Path shall require that Developer commence construction on the First Phase of the Developer Improvements no later than twelve (12) months after the Closing or ninety (90) days following receipt of all Governmental Approvals whichever occurs later (the “**Construction Commencement Date**”). Developer shall provide the Critical Path to the Town for its review and comment upon completion.

(f) Waterfront improvements as may be permitted by the Connecticut Department of Energy and Environmental Protection (“DEEP”) and, if applicable any other Governmental Authority having jurisdiction over such improvements, including parking, hiking and/or walking trails, a kayak/small watercraft launch area and other waterfront amenities.

(g) A boundary survey of the Property, which will be recorded on the land records of the Town of Groton at the time of conveyance of the Property by the State to the Developer.

Section 3.03. Timing of Development Plan Completion. The Development Plan shall be completed in two phases. First, Developer shall prepare a preliminary and conceptual draft of the Development Plan incorporating as many of the above elements as is commercially reasonable, taking into consideration the need for additional due diligence and Governmental Approvals, within ninety (90) days of the execution of this Agreement and provide to the Town for its review and comment. Second, Developer shall prepare a final draft of the Development Plan. Given that implementation of the Development Plan will depend upon receipt of all Governmental Approvals, the final draft of the Development Plan shall be completed no later than sixty (60) days following receipt of all Governmental Approvals required for the First Phase of the Developer Improvements and all Governmental Approvals of a zoning master plan for the development of the Project.

Section 3.04. Flexibility. The Parties acknowledge that the viability of the Project depends upon the Development Plan being flexible enough to adapt to the requirements of any Governmental Authority and changing circumstances, including changes in economic and real estate market conditions. Therefore, the Development Plan may be modified from time to time by Developer.

#### ARTICLE 4 REPRESENTATIONS AND WARRANTIES

Section 4.01. Representations and Warranties of Developer. Developer represents, warrants, covenants and acknowledges to Town as of the date hereof and at the time of Closing as follows:

(a) Developer has full right, power and authority and is duly authorized to enter into this Agreement, to perform each of the covenants on its part to be performed hereunder and to execute



and deliver, and to perform its obligations under all documents required to be executed and delivered by it pursuant to this Agreement;

(b) Each Person signing this Agreement on behalf of the Developer is authorized to do so. Developer shall furnish to Town any and all documents to evidence such authority as Town shall reasonably request;

(c) Neither the execution, delivery, nor performance of this Agreement by Developer, nor any action or omission on the part of Developer required pursuant hereto, nor the consummation of the transactions contemplated by this Agreement will (i) result in a breach or violation of, or constitute a default under, any legal requirement, (ii) result in a breach of any term or provision of the operating agreement, articles of organization, by-laws, certificate of incorporation or charter of Developer, or (iii) constitute a default or result in the cancellation, termination, acceleration of, any obligation, or other breach or violation of any loan or other agreement, instrument, indenture, lease, or other material document to which Developer is a party or by which any of the properties of Developer is bound, or give any person or entity the right to declare any such default, cancellation, termination, acceleration, breach or violation or to exercise any remedy or obtain any other relief under any such loan or other agreement, instrument, indenture, lease, or other material document. Developer is not or will not be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement which has not already been given or obtained;

(d) All representations and warranties made by Developer in this Agreement, and all information contained in any statement, document or certificate furnished to Town in connection with this transaction, are free from any untrue or inaccurate statement of material fact and do not omit to state any material facts necessary to make the statements contained herein or therein false or misleading;

(e) Developer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of its assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally;

(f) Developer is not involved in any legal proceeding which would prevent or materially impair the ability of Developer to perform its duties and obligations under this Agreement and no event has occurred which, with due notice or lapse of time or both, could constitute a material breach of any Applicable Law which could prevent or materially impair the ability of Developer to perform its duties and obligations under this Agreement; and

(g) Whenever a representation is qualified by the phrase “to the Developer’s knowledge” or by words of similar import, the accuracy of such representation shall be based solely on the actual knowledge (as opposed to constructive or imputed) of the principals and managers of Respler Homes, LLC without independent investigation or inquiry other than review of the Developer’s files. Town acknowledges that the foregoing are identified for the purpose of defining the scope of Developer’s knowledge and not for the purpose of imposing any liability on or creating any duties running from such individuals to Town and Town agrees that such individuals have no liability under this Agreement or in connection with the transactions contemplated hereby.

Section 4.02. Representations and Warranties of Town. Town represents to Developer to the best of Town’s knowledge and belief as follows:

(a) The Town is a Connecticut municipal corporation, acting by and through its Town Manager, and is duly qualified to do all things required of it under this Agreement;

(b) Town has full right, power and authority and is duly authorized to enter into this Agreement, and all documents related hereto and thereto and to perform each of the covenants on its part to be performed hereunder and thereunder;

(c) Each Person signing this Agreement on behalf of Town is authorized to do so and Town shall furnish to Developer any and all documents to evidence such authority as Developer shall reasonably request;

(d) This Agreement constitutes the valid and legally binding obligation of Town, enforceable against Town in accordance with its terms;

(e) Neither the execution, delivery or performance of this Agreement nor compliance herewith: (i) conflicts or will conflict with or will result in a breach of or constitutes or will constitute a default under any law, regulation or ordinance, or under any order, writ, injunction or decree of any court or governmental authority to which Town or the Property are subject or under any agreement or instrument to which Town is a party or by which it or any of the Property are bound or (ii) will result in the creation or imposition of any lien, charge or encumbrance upon any of The Property pursuant to any such agreement or instrument;

(f) Town has obtained the requisite approval of the Groton Town Council with respect to this Agreement and all terms contained herein including, without limitation the appointment of Developer as the Exclusive Developer for the Project;

(g) No further authorization, consent, or approval of any Governmental Authority (including courts) is required for the execution and delivery by Town of this Agreement or the performance of its obligations hereunder relating to the Property; and

(h) Whenever a representation is qualified by the phrase “to the best of Town’s knowledge” or by words of similar import, the accuracy of such representation shall be based on the actual knowledge conveyed to the signer of this document by various department heads of Town including engineering, zoning and building officials, without independent investigation or inquiry, other than review of Town’s files on any of the Property. Developer acknowledges that the foregoing are named solely for the purpose of defining the scope of Town’s knowledge and not for the purpose of imposing any liability on or creating any duties running from such individuals to Developer and Developer agrees that such individuals have no liability under this Agreement or in connection with the transactions contemplated hereby.

ARTICLE 5  
APPROVALS, PLANS & SCHEDULES

Section 5.01. Governmental Approvals.

(a) In accordance with the Development Plan, Developer, at its sole cost and expense, and with reasonable diligence, shall prepare detailed applications, plans and appropriate supporting materials and apply for all Governmental Approvals that are required from any Governmental Authority in order to construct the Project in accordance with this Agreement and the Development Plan.

(b) Developer shall be responsible, at its sole cost and expense, for obtaining any

Building Code, Fire Code or similar waivers that may be required to construct the Project.

(c) All such applications for Governmental Approvals (including any waivers that may be required,) will be submitted and diligently prosecuted by Developer therefor in a commercially reasonable manner so as to effectuate compliance with the Development Plan. Developer acknowledges that the required approvals are or may be within the discretion of the Planning and Zoning Commission, the Inland Wetland and Watercourses Agency, the Director of Planning and Development Services, Director of Public Works or such other governmental authority before which such approval is sought, which is not bound by Town's covenants herein.

Section 5.02. Zoning Amendments/Subdivision. Notwithstanding the foregoing, Town shall be responsible for amending its Zoning Regulations to provide for and permit, subject to reasonable conditions and approvals, the development contemplated in this Agreement. The Parties acknowledge that in order to accommodate the development of the Project, a subdivision of the Property may be required to provide for (a) a separate parcel on which some or all of the historic buildings of the former Mystic Oral School are located; (b) a separate parcel on which the remaining buildings of the former Mystic Oral School are located; and (c) separate parcels as needed for the residential units and other uses. To the extent that Developer determines, in its sole discretion, that a subdivision is required, Developer shall provide written notice to Town of Developer's determination, within ninety (90) days of the Effective Date, and Developer, at its sole cost and expense, and with reasonable diligence, shall prepare and submit the required subdivision application, plans and appropriate supporting materials and will diligently pursue approval of the application in a commercially reasonable manner. Developer acknowledges that the required zoning amendments and subdivision approval are or may be within the discretion of the Planning and Zoning Commission, which is not bound by Town's covenants herein.

Section 5.03. Utilities and Easements. Developer shall evaluate, apply for and pursue "Will Serve" letters from utility providers for utilities necessary for the construction and operation of the Developer Improvements and adequate assurances from the Town of Groton regarding temporary and permanent easements required for the Project as agreed upon by the Parties.

Section 5.04. Preparation of Plans. Developer hereby confirms that it has authorized the preparation of architectural and engineering plans, as required for the development of the Private Improvements and Developer Infrastructure which preparation is underway and shall be based upon the terms of this Agreement and the Development Plan with such changes thereto as are required, provided that such plans shall be in accordance with the terms of this Agreement and all Applicable Law. The Developer shall pursue the preparation and completion of all such plans in accordance with the Development Plan and so that all requisite Governmental Approvals can be obtained, contracts can be bid and construction can commence, proceed and be completed in accordance with the Development Plan.

Section 5.05. Town Assistance. To the extent permitted by law and not otherwise prohibited in this Agreement, the Town will cooperate and use commercially reasonable efforts to assist Developer in its applications for all required Governmental Approvals. Nothing in this section 5.05 shall be construed to limit, modify or override the independent decision making power or discretion of any Town officer, board, commission and/or agency.

Section 5.06. Failure to Obtain Governmental Approval. If any required Governmental Approval is denied or otherwise unavailable or not obtained within forty-four (44) months of the Effective Date, or if one or more Governmental Approvals are (a) obtained with conditions that are materially adverse to the Developer as determined by the Developer in its sole discretion, or (b) are otherwise deficient or insufficient as determined by developer in its sole discretion, Developer may terminate this Agreement upon ten (10) days' prior written notice to the Town or pursue any available

appeal rights. Upon such termination, all rights and obligations of the Parties to each other under this Agreement shall be terminated. Termination pursuant to this subsection shall not be deemed a default.

Section 5.07. Additional Contingencies. This Agreement, at Developer's option, is expressly contingent upon the following occurring prior to the Closing:

(a) Acceptance into and satisfaction of any pre condition to closing under the Brownfield Remediation and Revitalization Program, C.G.S § 32-769, ("**BRRP**") or similar brownfield liability relief program in connection with Developer's purchase of the Property. Developer acknowledges that the Town does not control and/or decide whether Developer is accepted into said program.

(b) In the event the Property becomes taxable as a result of the Lease contemplated in section 9.02, execution of a Tax Agreement or other similar written assurance limiting the annual real estate and personal property taxes assessed against the Property as a result of the Lease to no more than \$25,000.00, as more fully detailed in Section 9.02 of this Agreement within ninety (90) days of the Effective Date. The Tax Agreement contemplated in this section 5.07(b) shall terminate prior to the effective date of the credit enhancement agreement contemplated in section 9.01 hereof to avoid any "double dipping" and/or duplicative tax incentives on the same tax dollars involved with the Tax Agreement and credit enhancement agreement. Notwithstanding anything in this Agreement to the contrary, this Tax Agreement shall last no more than one year following the Closing.

In the event that either contingency is not satisfied, as determined by Developer in its sole discretion, Developer may terminate this Agreement upon ten (10) days prior written notice to Town, which notice shall be sent no later than ten (10) days prior to the Closing. Upon such termination, all rights and obligations of the Parties to each other (unless otherwise surviving hereunder) shall be terminated. Termination pursuant to this section shall not be deemed a default. In the event Developer does not terminate this Agreement pursuant to this section 5.07, this section 5.07 shall be null and void and Developer shall continue to be bound by the terms and conditions of this Agreement.

## ARTICLE 6 PRIVATE IMPROVEMENTS; DEVELOPER INFRASTRUCTURE

Section 6.01. Agreement to Develop Private Improvements. Subject to the terms and provisions set forth in this Agreement and as required by any Governmental Authority having jurisdiction over the Project, Developer agrees to commence, diligently pursue and complete design and construction of the Private Improvements in a good and workmanlike manner in accordance with the Development Plan, this Agreement, and all Applicable Law. Developer shall commence construction of the First Phase of the Developer Improvements on or before the Construction Commencement Date.

Section 6.02. Private Improvements. As used herein, "**Private Improvements**" means all buildings and improvements to be located in the area shown on the final Development Plan, including:

(a) Up to eight hundred fifty (850), but no less than seven hundred (700) newly constructed residential rental units;

(b) Redevelopment of existing campus buildings to include commercial, retail, restaurant and associated space and renovation of the Pratt Building as described in Section 6.03 of this Agreement;

(c) Residential parking facilities including on street, surface lot and under building

parking at an initial parking ratio of 1.3 spaces per unit and nonresidential parking facilities at a target parking ratio of 2 spaces per 1000 square feet, subject to applicable zoning regulations; and

(d) Diverse outdoor recreational facilities, walking paths, benches, small concert facilities and a rehabilitated launch area on the Mystic River and associated parking, if permitted by the State or Town, as applicable. Recreational facilities will be developed and sited in accordance local and state requirements and standards.

Section 6.03. The Pratt Building Recreational Facility.

(a) Developer will evaluate and, as necessary, renovate components of the Pratt Building exterior and interior, including but not limited to installation of a new roof and renovation of existing mechanical systems, the swimming pool, gymnasium and auditorium, in accordance with the scope of work milestones contained in the Critical Path and as agreed upon by the Town and the Developer pursuant to the Pratt Building Lease (defined in subsection (b) of this Section 6.03).

(b) The Parties desire to negotiate and to enter into a mutually agreeable, long term lease agreement (the "**Pratt Building Lease**") within nine (9) months of the Effective Date. Developer will provide Town with written periodic updates on the renovations being undertaken at the Pratt Building pursuant to the Lease. The final Pratt Building Lease will allow for use of the Pratt Building as a recreation facility and contain such other provisions as may reasonably be required by either of such Parties related to the provision of a lease including, without limitation, indemnifications, insurance, default provisions, remedies, and dispute resolution procedures.

Section 6.04. Agreement as to Developer Infrastructure.

(a) Subject to the terms and provisions set forth in this Agreement and as required by any Governmental Authority having jurisdiction over the Project, Developer, at its sole cost and expense, agrees to commence, diligently pursue and complete design and construction of any required or associated road improvements, utility infrastructure and other public improvements that may be required in connection with the construction, operation, permitting and approval of the Project, including without limitation, necessary upgrades and/or modifications to Oral School Road and the construction of a new road or driveway from Oral School Road to Cow Hill Road, if Developer obtains all necessary property acquisitions and Governmental Approvals for the construction of such road, (the "**Developer Infrastructure**"), in a good and workmanlike manner in accordance with the Development Plan, this Agreement, and all Applicable Law.

(b) The Parties acknowledge that Developer Infrastructure may include all or a portion of the following detailed list of improvements: (i) all improvements and modifications required on Oral School Road and/or Cow Hill Road and/or Mystic Street; (ii) utility mains, sanitary sewer mains, storm water mains and management system necessary to serve the Private Improvements; (iii) new curb, pavement, decorative sidewalk, pedestrian gathering spaces, pedestrian scale ornamental lighting, street trees, street furniture, and traffic calming devices such as center landscaped medians, bump-outs, textured pavement, trash receptacles, planting pots, planters and plantings, bike racks, lighting fixtures, trees, bushes and other landscaping, sprinklers, bollards, benches and other public seating, decorative improvements, all located within the Property; (iv) parking space striping, parking signage and other parking controls at the parking areas located on the Property; and (v) other private streetscape improvements with respect to the areas described as part of Developer Infrastructure.

(c) The Town acknowledges that Town or State assistance with the provision of easements and acquisition of additional property or widening of existing roadways is required to provide

safe and adequate public ingress and egress to the Project and/or for the required utilities serving the Project. To the extent such assistance relates to a Town roadway or Town property, Developer shall provide detailed information regarding any such assistance required within three (3) months of the Effective Date and the Town will, within thirty (30) days thereafter, respond to Developer in good faith with what assistance the Town, in its sole discretion, is willing to pursue in furtherance of such assistance to Developer.

(d) The Parties acknowledge that in no event shall Town be required to waive any Applicable Law, or approve any modification to plans relating to the Project that would adversely affect public health, safety or welfare.

(e) The Town shall be responsible for all upkeep, monitoring, repair and maintenance of the Developer Infrastructure located on or in Town property or Town roadways, sidewalks and rights of way.

## ARTICLE 7 PROJECT PHASING AND CRITICAL PATH

Section 7.01. Project Phases. Exhibit 7.01 to this Agreement contains a preliminary timeline for the Project including benchmarks for specific known Governmental Approvals and for construction associated with development phases (the “Phases”) for the Project. Developer shall incorporate and update these benchmarks into the Critical Path as provided for in Section 3.02(e) of this Agreement. Town and Developer shall work cooperatively to ensure that the respective responsibilities and obligations of the Parties associated with each Phase of the Project are achieved. Developer shall promptly provide Town with any updated or revised Critical Path developed.

## ARTICLE 8 ADDITIONAL DEVELOPMENT COVENANTS

Section 8.01. Maintenance of Private Improvements. Developer shall maintain the Private Improvements in a first class manner.

Section 8.02. Easements and Licenses. To the extent not attached to this Agreement as an exhibit, or as otherwise provided for herein, the Parties shall negotiate and enter into in good faith and in a timely manner such easements and/or licenses for construction, drainage, utilities, vaults, footings, construction signage and other similar purposes, as may be reasonably necessary to permit or facilitate performance of the Parties’ respective obligations hereunder in accordance with the Phases and the Critical Path (including, without limitation, such easements, rights of way or other agreements with utility providers), provided that such easements, licenses, rights of way and other agreements are acceptable to the Groton Town Council in accordance with Applicable Law and contain reasonable indemnification and insurance provisions and such other terms as may be mutually agreed to by the Parties thereto.

## ARTICLE 9 TAX INCREMENT FINANCING AND TOWN ASSISTANCE

Section 9.01. Tax Increment Financing. The Parties acknowledge that the development of the Project will provide substantial benefit to the Town through, among other things, economic development and job creation and that substantial investment in Project improvements including those associated with: (a) the construction and improvement of new and existing roads and utilities lines; (b) the construction of a parking garage; (c) the rehabilitation, renovation, HBM abatement and environmental remediation of existing buildings at the site, including the Oral School Building and Pratt Building; and (d) other Project

development amenities which will be undertaken by the Developer. As such, and to facilitate the development and completion of the Project, the Town will make good faith efforts to pursue, through the procedures delineated within Chapter 105b of the Connecticut General Statutes, as amended, Tax Increment Financing (“TIF”) and the Town of Groton Tax Increment Financing Policy, adopted by the Groton Town Council on March 6, 2018, to provide to Developer through the approval of a district master plan and creation of a TIF District and associated instruments and requirements, including a credit enhancement agreement to be negotiated between the Parties if such TIF District is established, and in accordance with Applicable Laws. If the adoption of a district master plan, the creation of a TIF district and the execution of a credit enhancement agreement (in an amount sufficient to Developer in Developer’s sole discretion) and associated instruments have not occurred within nine (9) months following Developer identifying to the Town, in detail and with documentary support reasonably satisfactory to the Town, how the TIF will be utilized in connection with eligible Project improvements and activities, and Developer’s costs associated with such improvements and activities; Developer may terminate this Agreement upon ten (10) days prior written notice to Town. Developer shall identify how the TIF will be utilized in connection with eligible Project improvements and activities, and Developer’s costs associated with such improvements and activities, and provide said detail and documentary support, within ninety (90) days following the Effective Date. Upon such termination, all rights and obligations of the Parties to each other (unless otherwise surviving hereunder) shall be released and of no further force and effect. Termination pursuant to this section shall not be deemed a default.

Section 9.02. Town Assistance. Town will use its best efforts to assist Developer in the pursuit of, and will advocate for, any federal and state assistance available for the Project including assistance potentially available from DOT, DECD, DEEP, OPM, and the Connecticut General Assembly. The Parties acknowledge that during the Period between the effective date of the PSA and the Closing, Developer shall enter into a lease agreement with the State (the “Lease”) under which Developer, in consideration of the payment of an annual base rent of One Dollar (\$1.00), shall occupy a portion of the Property in order to prevent vandalism and repair and prevent further damage to the Property from the natural elements. To the extent permitted by law and not otherwise prohibited by this Agreement, Town shall cooperate with Developer and use commercially reasonable efforts to assist Developer in entering into a Tax Agreement or other similar written assurance limiting the annual real estate and personal property taxes assessed against the Property as a result of the Lease to no more than \$25,000.00. The Parties agree that any such Tax Agreement or written assurance shall terminate upon the issuance of a building permit for the First Phase of Developer Improvements.

## ARTICLE 10 COOPERATION

Section 10.01. Cooperation. The Parties shall expeditiously cooperate in a reasonable manner and in good faith for the duration of this Agreement in all matters relating to the development of the Developer Improvements, including, but not limited to, the following:

(a) The Parties agree to meet on a regular basis for the purpose of coordinating all matters related to timely completion of the Developer Improvements and resolution of all issues that arise in connection therewith;

(b) To the extent that either Party is requested to review plans, applications or other materials relating to the Project, the Parties shall use all reasonable efforts to complete such review in an expeditious manner with recognition of the milestones and dates contained in the Critical Path;

(c) The Parties shall, upon request, use all reasonable efforts to assist one another in any discussions with any public or private entity related to the Developer Improvements; and

(d) The Parties acknowledge that extensive public communications will be necessary to ensure the success of the Project, so they hereby agree to cooperate in the regular dissemination of information to the public in a timely manner.

## ARTICLE 11 RESTRICTIONS ON TRANSFER AND ASSIGNMENT

### Section 11.01. Transfers Prior to Substantial Completion.

(a) In accordance with this Article 11, the Developer agrees that prior to Substantial Completion of the First Phase of Developer Improvements as provided for in the Development Plan, no transfer shall occur with respect to the Property without the written consent of Town, which consent shall not be unreasonably withheld.

(b) It is expressly acknowledged and agreed that notwithstanding the provisions of this Article 11, Developer shall be entitled to enter into individual space leases for the Private Improvements at any time, to grant mortgages in connection with the financing of the acquisition, construction, development and/or operation of the project, and to grant easements, licenses and rights-of-way necessary to the construction, development and/or operation of the Project.

(c) It is expressly acknowledged and agreed that notwithstanding anything contained in this Agreement to the contrary, Developer may, on or before Closing, create a single purpose entity to act as the Exclusive Developer of the Project. In connection therewith Developer may assign this Agreement to the single purpose entity and such single purpose entity shall assume all of Developer's rights and obligations hereunder; in such event Developer shall be released of all rights, obligations and liabilities under this Agreement.

Section 11.02. Transfer Following Substantial Completion. Following Substantial Completion of Phase I of the Developer Improvements as provided for in the Development Plan, the Developer may transfer any of its interest in the Property.

## ARTICLE 12 DISPUTE RESOLUTION

Section 12.01. Good Faith. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement first by negotiation, then by mediation, and finally by litigation.

Section 12.02. Negotiation. If a dispute arises, any Party may give the other Party written notice of any dispute not resolved in the normal course of business, specifically referring to this Section 12.02 and requesting negotiation. The receiving Party shall promptly submit to the other a written response. The notice and the response shall each include a statement of the Party's position and a summary of arguments supporting that position. If deemed appropriate, the Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for relevant information made by one party to, the other should be honored. It is the goal of the Parties to attempt to negotiate resolutions within thirty (30) days of the date a dispute arises. To the fullest extent permitted by applicable law (including FOIA), all negotiations pursuant to this provision are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and the FOIA. The Parties shall continue to perform under this Agreement while any such dispute is pending.

Section 12.03. Mediation. If a dispute arises out of or relates to this Agreement, or breach



thereof, and if said dispute cannot be settled through direct negotiation, the Parties agree to first endeavor to settle the dispute in an amicable manner by non-binding mediation using the Mediation Procedures of the American Arbitration Association before having recourse to a judicial forum, except where some other method of dispute resolution is expressly provided for herein. Each of the Parties agrees to provide the other with notice of any intent to initiate mediation pursuant to this Section 12.03 within thirty (30) days of determination that the process described in Section 12.02 is non-productive. Each Party shall be responsible for its own costs (including attorneys' fees, expert fees and document costs) and one-half of all fees and costs charged by the mediator. The venue for any mediation shall be within the Town of Groton.

Section 12.04. Judicial Proceeding. If the Parties are unsuccessful in the mediation of a dispute, all Parties agree that the Superior Court of the State of Connecticut for the judicial district of New London (and, in the event of appeal, the appropriate appellate courts of the State of Connecticut) shall be the sole and exclusive jurisdiction and venue for any dispute or disagreement arising under or related to this Agreement. Notwithstanding the alternative dispute provisions contained in this Article 12, the Parties each expressly reserve all rights to seek injunctive relieve in the appropriate venue as provided for herein.

Section 12.05. Attorneys' Fees. In the event of any dispute between the parties, which has not been resolved through negotiation under Section 12.02 or mediation under Section 12.03 of this Agreement, the non-prevailing party shall be responsible for paying the prevailing party's attorneys' fees and costs, (including those for any paralegal or legal assistant) in any such dispute whether at the trial level, appeal or in bankruptcy. The applicable court or trier of fact shall determine: (i) which Party is the non-prevailing party and is responsible for paying the prevailing Party's attorneys' fees and costs and (ii) the reasonableness of such fees awarded as a result of the subject dispute between the Parties under this Agreement.

Section 12.06. Waiver of Consequential Damages. Notwithstanding anything to the contrary contained herein, Town and Developer hereby waive consequential damages, punitive damages, treble or other multiple damages, and damages for lost opportunity or lost profits for claims, disputes, or other matters arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all such damages due to the termination of this Agreement pursuant to judicial proceeding conducted pursuant to this Article 12.

## ARTICLE 13 DEFAULTS AND REMEDIES

Section 13.01. Default by Developer. The occurrence of any one or more of the following events constitutes a default by Developer under this Agreement ("**Developer Default**"):

(a) Failure by Developer to use its commercially reasonable efforts to promptly, professionally and diligently proceed to design and construct the Developer Improvements in accordance with the terms hereof, including, without limitation, the failure to satisfy in any material respect any milestone for which it is obligated set forth herein or in the Development Plan, where the satisfaction of such milestone is within the control of Developer and not within the control of Town, if such failure shall continue for more than thirty (30) days after notice of such failure is given to Developer by Town; provided, however, that Developer shall not be in default with respect to such matters that are susceptible of cure but cannot be reasonably cured within thirty (30) days, so long as Developer has promptly commenced such cure within such thirty (30) day period, and diligently proceeds in a reasonable manner to complete the same thereafter, or if such failure, is as a direct result of any action, inaction or default by Town.

(b) Failure by Developer to observe or perform any other material covenant, agreement, condition or provision of this Agreement, if such failure shall continue for more than thirty (30) days after notice of such failure is given to Developer by Town; provided, however, that Developer shall not be in default with respect to such matters that are susceptible of cure but cannot be reasonably cured within thirty (30) days, so long as Developer has promptly commenced such cure within such thirty (30) day period, and diligently proceeds in a reasonable manner to complete the same thereafter, or if such failure is as a direct result of any action, inaction or default by Town.

(c) If any warranty or representation of Developer contained in this Agreement is untrue in any material respect as of the date made.

(d) Developer admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver, or for a major part of its property a trustee or receiver is appointed for Developer or for a major part of its assets and it is not discharged within ninety (90) days after such appointment; or bankruptcy, reorganization, receivership, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any federal or state bankruptcy law, or similar law for the relief of debtors, are instituted by or against Developer, and, if instituted against Developer, are allowed against it or are consented to by it or are not dismissed within ninety (90) days after such institution.

Section 13.02. Developer's Extended Cure Rights. In the event that Developer wishes to avail itself of the extended cure rights provided in this Section 13.02 in circumstances in which cure is possible, but cannot commence such cure rights within thirty (30) days of the date of notice of default, Developer shall promptly furnish to Town a written statement specifying the actions undertaken or to be undertaken to cure such default and a timetable for the satisfaction of such actions, and thereafter, upon the written request of Town, shall promptly provide such additional or updated information with respect to such actions as Town may reasonably request.

Section 13.03. Default by Town. The occurrence of any one or more of the following events constitutes a default by Town under this Agreement ("**Town Default**"):

(a) Failure of Town to observe or perform any other material covenant, agreement, condition or provision of this Agreement, if such failure shall continue for more than thirty (30) days after notice of such failure is given to Town by Developer; provided, however, that Town shall not be in default with respect to such matters that are susceptible to cure but cannot be reasonably cured within thirty (30) days, so long as Town has promptly commenced such cure, and diligently proceed in a reasonable manner to complete the same thereafter, or if such failure is as a direct result of any action, inaction or default by Developer.

(b) If any warranty or representation of Town contained in this Agreement is untrue in any material respect as of the date made.

Section 13.04. Town's Extended Cure Rights. In the event that Town wishes to avail itself of the extended cure rights provided in this Section 13.04 in circumstances in which cure is possible, but cannot cure such cure rights within thirty (30) days of the date of notice of default, Town shall promptly furnish to Developer a written statement specifying the actions undertaken or to be undertaken to cure such default and a timetable for the satisfaction of such actions, and thereafter, upon the written request of Developer, shall promptly provide such additional or updated information with respect to such actions as Developer may reasonably request.

Section 13.05. Remedies Generally. Subject to the Provisions of Article 12 hereof, if a

Developer Default or Town Default occurs, the Parties shall be entitled to pursue their respective rights and remedies pursuant to this Agreement or as may otherwise be available in law or equity.

Section 13.06. Developer's Remedies. With respect to a Town Default, subject to the provisions of Article 12, Developer may pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

(a) Pursue an action for damages incurred by or asserted against Developer as a result of the default by Town; and

(b) Exercise or pursue any other remedy or cause of action permitted under this Agreement or conferred upon Developer at law or in equity, including, but not limited to, instituting an action for specific performance; and/or termination of this Agreement subject to compliance with the express terms of Section 13.08 hereof.

Section 13.07. Town's Remedies. With respect to a Developer Default, subject to the provisions of Article 12, Town may pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

(a) Pursue an action for damages incurred by or asserted against Town as a result of the default by Developer.

(b) Exercise or pursue any other remedy or cause of action permitted under this Agreement or conferred upon Town at law or in equity, including, but not limited to, instituting an action for specific performance; and/or termination of this Agreement subject to compliance with the express terms of Section 13.08 hereof.

Section 13.08. Mediation Prior to Termination. As a condition precedent to terminating this Agreement pursuant to Section 13.06(b) or Section 13.07(b) hereof, a Party wishing to terminate this Agreement must follow the procedures set forth in Article 12 hereof to determine whether a Default has occurred and is continuing and whether termination of this Agreement is warranted based upon the occurrence of such Default.

Section 13.09. Indemnification To the fullest extent permitted by applicable law, Developer shall indemnify, defend and hold harmless the Town, its councils, departments, agencies, boards, commissions, officers, committees, officials, employees, agents, representatives (collectively, "Indemnitees") from and against any and all damages, actions, claims, liabilities, injuries to persons (including death) and to property, losses, demands, actions, causes of action, suits, sums, fines, penalties and expenses (including but not limited to reasonable attorneys' fees and costs), whether arising in tort, contract or otherwise (collectively "Claims"), which Claims arise out of: (i) the negligent, reckless and/or intentional acts, misconduct, errors or omissions of the Developer, its officers, managers, members, contractors, subcontractors, consultants and/or anyone employed by any of them (collectively "Indemnitors") relating to the Project; and/or (ii) the failure of any of the Indemnitors to comply with any Applicable Law relating to the Project; and/or (iii) the breach of any representation or warranty made by Developer, in connection with this Agreement; provided, however, this indemnification obligation expressly excludes: (a) those matters relating to the Town's tenancy and operation of the Pratt Building for which it is responsible under the Pratt Building Lease; (b) any lawsuit or appeal relating to a decision made by any council, board, commission, agency, officer of the Town regarding a permitting, zoning or other local land use approval over which the Town, or any of its councils, boards, commissions, agencies or officers, has jurisdiction; (c) all Claims for bodily injury or property damage to the extent primarily caused by or resulting from the negligent, reckless and/or intentional misconduct, acts or omissions of

Indemnitees; (d) Claims primarily arising from or resulting from the failure of any of the Indemnitees to comply with any Applicable Law relating to the Project; and (e) Claims primarily arising from or resulting from the breach of any representation or warranty made by Town, in connection with this Agreement. This section 13.09 shall survive termination of the Agreement for a period of three (3) years.

## ARTICLE 14 NOTICES

Section 14.01. Notices. Any notice which may be or is required to be given hereunder must be in writing and must be: (i) personally delivered, (ii) transmitted by United States mail, as registered or certified matter, return receipt requested, and postage prepaid, or (iii) transmitted by nationally recognized overnight courier service to the applicable party at its address listed below. Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given and received, whether or not actually received, on (a) the date of receipt if delivered personally, (b) two (2) Business Days after the date of posting if transmitted by registered or certified mail, return receipt requested, postage prepaid, or (c) one (1) Business Day after pick-up if transmitted by a nationally recognized overnight courier service, whichever shall first occur. A notice or other communication not given as herein provided shall be deemed given if and when such notice or communication and any specified copies are actually received in writing by the party and all other persons to whom they are required or permitted to be given. Any Party hereto may change its address for purposes hereof by notice given to the other Parties in accordance with the provisions of this Article 14, but such notice shall not be deemed to have been duly given unless and until it is actually received by the other Parties. Telephone numbers, facsimile numbers and e-mail addresses are for informational purposes only. Notice to a Party's counsel shall not constitute notice to the Party unless notice is also given to the Party as hereinafter set forth.

Notices hereunder shall be directed as follows:

**To Town:**

Town of Groton  
45 Fort Hill Road  
Groton, CT 06340  
Attn: Town Manager  
Phone: 860-441-6633  
Fax:  
Email:

**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@sswbgg.com](mailto:ecallahan@sswbgg.com)

**To Developer:**

Respler Homes, LLC  
Attn: Jeffrey Respler  
833 Glen Drive  
Woodmere, NY 11598  
Email: Jeff.respler@resplerhomes.com  
Phone: (646) 321-9290

**With copies at the same time to:**

Pullman & Comley, LLC  
90 State House Square  
Hartford, CT 06103  
Attn: Gary B. O'Connor, Esq.  
Telephone: (860) 424-4366  
Facsimile: (860) 424-4370  
E-mail: goconnor@pullcom.com

ARTICLE 15  
MISCELLANEOUS

Section 15.01. Overriding Authority of Town's Permitting Authorities. The drafting, pendency or execution of this Agreement is not intended to supplant or influence the role of Town's Planning and Zoning Commission, Planning Director, Inland Wetlands and Watercourses Commission, or other regulatory body, authority or official with respect to any aspect of any zoning, subdivision, inland wetlands, coastal, building permit or other application which may now be, or hereinafter become necessary to complete the Project. The execution of this Agreement by Town shall not be construed in any way to constitute a commentary on, or approval of or special consideration for or exemption from, any such application before or approval by OPM, DECD, DEEP, Town's Planning and Zoning Commission, Planning Director, Inland Wetlands and Watercourses Commission, or other regulatory body, authority or official in such capacity.

Section 15.02. Force Majeure. Whether stated or not, all periods of time in this Agreement are subject to this Section 15.02. No Party shall be considered in default of its obligations under this Agreement in the event of enforced delay due to, without its fault or negligence, any Force Majeure Event. In the event of any such enforced delay, the time or times for performance of the obligations of the Party claiming such enforced delay shall be extended for a reasonable time period commensurate with the impact of such event; provided, however, that the Party seeking the benefit of this Section 15.02 shall take commercially reasonable steps to mitigate the effects of such Force Majeure Event and, promptly after such Party knows of any such Force Majeure Event (as soon as practicable but no longer than ten (10) days), notify the other Party of the specific delay in writing and claim the right to a reasonable extension hereunder; provided, however, that any Party's failure to notify any other Party of a Force Majeure Event shall not alter, detract from or negate its character as an enforced delay if such Force Majeure Event was not known or reasonably discoverable by the Party claiming the benefit thereof.

Section 15.03. Term. This Agreement shall terminate and be of no further force and effect upon the earlier to occur of (i) the termination of this Agreement by any Party in accordance with this Agreement; or (ii) the expiration of the term of six (6) years from the date Developer receives all

Governmental Approvals that are required from any Governmental Authority in order to construct the Project in accordance with this Agreement and the Development Plan.

Section 15.04. Cooperation; Appeals. Town, as is appropriate and legal, which shall be determined by Town in its sole discretion, shall at the request of Developer, join as co-applicant with respect to applications for governmental approvals and permits and, at the Developer's request, cooperate in the Developer's prosecution and/or defense of any appeals with respect thereto.

Section 15.05. Counterparts; Facsimile or Electronic Transmission. This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original but together shall constitute but one and the same agreement. Signatures to this Agreement, any amendment hereof and any notice given hereunder, transmitted by pdf electronic transmission or telecopy shall be valid and effective to bind the party so signing.

Section 15.06. Construction of Agreement. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the Parties, it being recognized that both Developer and Town have contributed substantially and materially to the preparation of this Agreement.

Section 15.07. Conflict of Interests; Town Representatives and Agents not Individually Liable. No member, official, employee, agent, or other authorized representative of Town shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, employee, agent, or representative participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, employee, agent, or other authorized representative of Town shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Town or for any amount which may become due to Developer or its successor or on any obligations under the terms of this Agreement. No stockholder, member, director, manager, official, employee, agent, or other authorized representative of the Developer shall be personally liable to Town, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to Town or its successor or on any obligations under the terms of this Agreement.

Section 15.08. No Partnership. No relationship between Town and the Developer of partnership or joint venture is intended to be created hereby, and any such relationship is hereby expressly disclaimed.

Section 15.09. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid, inoperative or unenforceable, neither the remainder of this Agreement nor the application of such term or provision to persons or circumstances other than those as to which it is held invalid, inoperative or unenforceable, shall be affected thereby; and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 15.10. Entire Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All Exhibits and Schedules attached hereto are a part of this Agreement and are incorporated herein by reference.

Section 15.11. Interpretation. Unless otherwise specified herein: (a) the singular includes the plural and the plural the singular; (b) words importing any gender include the other genders; (c) references to persons include their permitted successors and assigns; and (d) the headings of articles and sections contained in this Agreement are inserted as a matter of convenience and shall not affect the

construction of this Agreement. The Parties have jointly, with the advice and assistance of their respective legal counsel, participated in the negotiation and drafting of all of the terms and provisions of this Agreement, and, accordingly, it is agreed that no term or provision of this Agreement shall be construed in favor of or against any party by virtue of the authorship or purported authorship thereof by any party.

Section 15.12. Applicable Law. This Agreement shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of the State of Connecticut. Venue for purposes of any actions brought under this Agreement, or under any agreement or other document executed in conjunction herewith, shall be the state or federal courts located within and having jurisdiction over the State of Connecticut.

Section 15.13. Amendment and Waiver; Approvals. This Agreement may be amended or changed only by written instrument duly executed by all Parties and any alleged amendment or change which is not so documented shall not be effective as to any Party. Provisions of this Agreement may be waived by the Party hereto which is entitled to the benefit thereof by written waiver executed by such Party. The failure of any Party to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Agreement, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Agreement or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. Except as otherwise explicitly stated in this Agreement, whenever an approval or consent is to be provided under this Agreement by any Party, such approval shall not be unreasonably withheld, conditioned or delayed. After all Developer Improvements have been completed the Parties shall act reasonably to review the status of this Agreement and determine what rights and obligations remain hereunder and shall enter into a supplemental agreement as is necessary to effectuate the goals of the Parties.

Section 15.14. Confidentiality of Information. To the extent permitted by law (including, without limitation, the Freedom of Information Act), all information obtained by any Party from any other person or Party pursuant to this Agreement shall be and remain confidential; provided, however, that the foregoing restrictions shall not apply to the extent such information (a) is now, or hereafter becomes, through no act or failure to act on the part of the Party disclosing such information, generally known or available to the public, (b) is hereafter rightfully furnished to the disclosing Party by a third party, without restriction as to use or disclosure, or (c) is information the disclosing Party can document was independently developed by such Party; provided, however, that the foregoing restrictions shall not prevent any Party from disclosing such information, if any, (i) as may reasonably be required to carry out its obligations hereunder (including without limitation disclosure to its lenders, state funding sources or regulators, attorneys, accountants or consultants retained for the purposes of this transaction) or as reasonably requested by potential or current investors or as reasonably requested by a prospective construction lender or permanent lender or rating agency or as may be required in connection with any litigation or alternative dispute resolution proceedings between the Parties to this Agreement, or (ii) as required by Applicable Law, court order or any rule, regulation or order of any governmental authority or agency having jurisdiction over the Parties or the Project; prior to disclosing any such information pursuant to clause (ii), the disclosing Party shall notify the other Parties, so that the other Parties may seek a protective order or other appropriate remedy.

Section 15.15. Successors and Assigns; Recording; No Lien.

(a) This Agreement shall be binding on, and shall inure to the benefit of, the Parties hereto and the Parties' respective permitted successors and assigns.

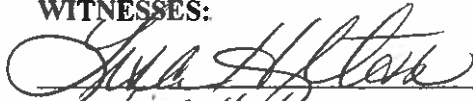
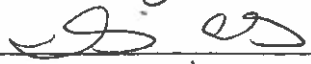
(b) If required by Town, this Agreement shall be recorded on the Groton Land Records. The Parties acknowledge and agree that this Agreement and the recording thereof in the Groton Land Records shall not create, or be deemed to create, a lien on the Property.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]

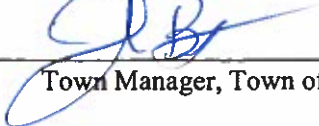


IN WITNESS WHEREOF, this Development Agreement has been executed as of the date first written above.

**WITNESSES:**

  
Lisa Hyblon  
  
ISMAIRE ALS

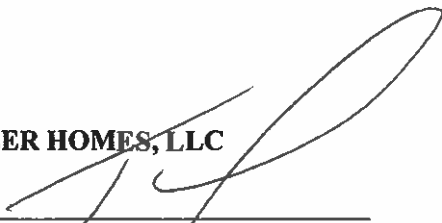
**TOWN OF GROTON**

By:   
Town Manager, Town of Groton

May by Margarita Nemetz

Chau Lam, Chana Oacman

**RESPLER HOMES, LLC**

By:   
Name: Jeffrey Respler  
Its: manager.

## SCHEDULE A

### **0 Oral School Parcel**

ALL THAT CERTAIN piece or parcel of land, together with the buildings and improvements thereon, situated in the Town of Groton, County of New London and State of Connecticut, being bounded and described as follows:

BEGINNING at the northwesterly corner of the premises at land now or formerly of Laura Pickering and THENCE running easterly and southerly by the line of a private way leading past the Mystic Oral School for the Deaf Corporation to land now or formerly of Elizabeth Williams; THENCE westerly, northerly and southerly by land now or formerly of said Elizabeth Williams to land now or formerly of said Laura Pickering; THENCE westerly by said Pickering land to the southwest corner of these described premises; THENCE northerly by said Laura Pickering land to a private way at the place of beginning, containing seven (7) acres, more or less.

Said premises being commonly known as 0 Oral School Road, Groton, Connecticut.

### **240 Oral School Parcel**

ALL THOSE CERTAIN pieces or parcels of land, together with the buildings and improvements thereon, situated in the Town of Groton, County of New London and State of Connecticut, being more particularly bounded and described as follows:

FIRST TRACT On the north by lands now or late of the heirs of Hannan Postwick; on the east and south by lands now or late of Clark P. Brown; on the west by land now or late of Charles L. Kinney, containing about twenty (20) acres of land being the same more or less (said property being known as the Mystic Oral School property formerly the Whipple Home School property)---together with all and singularly the tenements, hereditaments, and appurtenances thereunto belonging or in any way appertaining, and the reversions, remainders, rents, issues, and profits thereof. Said tract of land being conveyed to the Mystic Oral School for the Deaf Corporation by Clara M. Hammond McGuigan of Philadelphia, Pa. by quit-claim deed dated May 4th, 1800 and recorded in Book 40, Page 547 of the Groton Land Records.

CONTINUED

THIRD TRACT Beginning at the northeast corner of lands conveyed to Lucien O. Allen by Alice H. Damon by deed dated April 24th, 1904 at a drill mark (T) on the bottom stone of a wall on the west line of lands lately owned by Charles D. Williams and running thence north  $16^{\circ} 47'$  east with said wall  $558 \frac{7}{10}$  feet; thence north  $15^{\circ} 50'$  east with said wall 278 feet; thence north  $15^{\circ} 27'$  east with said wall 130 feet; thence north  $14^{\circ} 27'$  east with said wall 236 feet to lands now or lately owned by Nathan Holloway; thence north  $76^{\circ} 51'$  west with the wall and said Holloway's lands  $225 \frac{3}{10}$  feet; thence north  $45^{\circ} 42'$  west with the wall  $90 \frac{85}{100}$  feet; thence north  $26^{\circ} 41'$  west with the wall  $84 \frac{25}{100}$  feet; thence north  $7^{\circ} 3'$  west  $78 \frac{3}{10}$  feet to land now or lately owned by Alfred Bostwick; thence north  $76^{\circ} 7'$  west with the wall and said Bostwick land 329 feet to land now or lately owned by the Mystic Oral School for the Deaf; thence south no degrees 26' west with said Oral School Land  $1134 \frac{5}{10}$  feet to the southeast corner of said Oral School land; thence north  $84^{\circ} 6'$  east bounded north by said Oral School land  $356 \frac{15}{100}$  feet to a wall running southerly; thence south  $2^{\circ} 1'$  west with said wall  $400 \frac{75}{100}$  feet to a mere-stone and being a corner of the said land conveyed to said Lucien O. Allen by the party of the first part; thence north  $89^{\circ} 55'$  east 242  $\frac{6}{10}$  feet to a drill mark (T) on bottom stone of an old farm wall; thence continuing the same course and with the wall 265 feet to another drill mark; thence continuing the same course to the drill mark (T) on the bottom stone of the wall on the westerly line of the said Charles D. Williams land being the place of beginning containing  $18 \frac{75}{100}$  acres more or less, together with a right of way to the above described lands across the said lands heretofore conveyed by said Alice H. Damon to said Lucien O. Allen by deeds dated April 21, 1904 from a private road or way through the bar way a short distance north of the northwest corner of the (north field) and a short distance south of the mere-stone mentioned in the foregoing description at or near the old roadway across said Allen's land being the same right of way reserved by said Alice H. Damon in said deeds to said Lucien O. Allen and together with the rights reserved by said Alice H. Damon hereto and in favor of the owner of the herein described premises which rights are set forth in said Lucien O. Allen's deed wherein and whereby the particular location and width of said reserved way is to be adjusted and agreed upon by the owner of the premises hereby conveyed and by the owner of the premises conveyed by said deed to said Allen. Said tract being conveyed to the Mystic Oral School for the Deaf by Alice H. Damon by Warranty deed dated December 9th, 1909 and recorded in Book 51, Page 531 of the Groton Land Records.

FOURTH TRACT Beginning at the southwest corner of the premises adjoining lane or private way running easterly by north side of said lane; thence northerly by land of Clara Hammond; thence westerly by lands of John and Andrew Mason; thence southerly by said Mason's land to the place of beginning containing about one (1) acre of land. Said tract of land being obtained by said Mystic Oral School for the Deaf Corporation from Mary C. Wilcox by warranty deed dated October 27th, 1917 and recorded in Book 55, Page 635 of the Groton Land Records.

**Exhibit A**

Resolution from Town Council authorizing entry into Development Agreement



# Town of Groton, Connecticut

## Certified Copy

## Town Council

45 Fort Hill Road  
Groton, CT 06340  
Town Manager: 860-441-6630  
Town Clerk: 860-441-6640

File Number: 2020-44 -1

Date Passed: 2/04/2020

I, Betsy Moukawsher, Town Clerk of the Town of Groton, Connecticut, do here by certify that the following is a true and correct copy of Referral Number 2020-44-1 duly adopted at a meeting of the Town Council of the Town of Groton, Connecticut on February 4, 2020, at which meeting a duly constituted quorum of the Town Council was present and acting throughout and that such Referral has not been modified, rescinded or revoked and is at present in full force and effect:

2020-44 - 1 Mystic Education Center - Development Agreement and Project Overview

### RESOLUTION TO ENTER INTO A DEVELOPMENT AGREEMENT WITH RESPLER HOMES LLC FOR THE MYSTIC EDUCATION CENTER PROPERTY

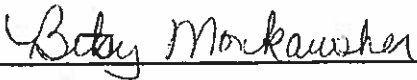
WHEREAS, the Town of Groton's Office of Planning and Development Services (OPDS) has been working with the State of Connecticut on the sale and redevelopment of the state-owned property at the Mystic Education Center (former Mystic Oral School) and

WHEREAS, Respler Homes was provided "preferred developer" status for this project after completion of a thorough RFP and vetting process by state and local participants and

WHEREAS, the State of Connecticut and Respler Homes have signed a Purchase and Sales (P&S) Agreement and have finalized a lease agreement for the property, and

WHEREAS, in order to further advance the project and to document future direction between the Town and Respler Homes, the Town desires to formalize the partnership and project framework through a development agreement, now therefore be it

RESOLVED, that the Town Council hereby authorizes the Town Manager to enter into a development agreement with Respler Homes LLC for the Mystic Education Center.



Betsy Moukawsher  
Town Clerk

February 6, 2020

Date Certified

**EXHIBIT 3.02(C)**

Proposed Subdivisions of the Property

See attached.



**EXHIBIT 7.01**  
**PRELIMINARY TIMELINE FOR PROJECT**

**6 months\***

- Engineering & architectural approvals
- Start application process to secure Federal and state historic preservation tax credits
- Prepare and submit application under one of the State of Connecticut's Brownfields liability relief programs
- Develop proposal for construction of walking trail and waterfront amenities over the approximately 37 acre portion of 240 Oral School Road to be retained by the State and submit proposal to State and Town, as applicable, for consideration
- Comprehensive Phase II/III ESAs working in concert with DECD and Department of Administrative Services.

**6-12 months**

- Obtain State DOT approvals for intersection of Oral School Rd. and Route 614
- Traffic study completed and approval from OSTA
- Finalize application process Federal Tax Credits
- Finalize application process for historic tax credits
- RAP development and, as possible, implementation
- Implementation of environmental remediation and Hazardous Building Materials abatement program at Oral School facilities and grounds

\* Note: The timeline is an estimate based on a number of assumptions including (1) a prompt governmental approval process and (2) a moderate absorption rate of unit sales and rentals. If the governmental approval process is delayed (i.e., appeals to Superior Court) or the absorption rate of unit sales and rentals is reduced because of external market factors, the development timeline will be extended accordingly.

- Blasting and site preparation
- Rock crushing for site use
- Start construction of Developer Infrastructure

**12-18 months**

- Begin reconstruction of intersection of Oral School Road and Route 614
- Start rehab Pratt Building
- Continue implementation RAP Oral School
- Start structured multi-level parking garage
- Infrastructure expansion continues
- Begin construction of Phase I – 150 apartment units
- Landscaping as needed

**18-24 months**

- Complete rehab Pratt Building
- Start rehab Oral School
- Continue structured multi-level parking garage
- Infrastructure expansion continues
- Complete construction 150 Apts Phase I
- Begin construction of Phase II – 220 apartment units
- Landscaping as needed

**24-30 months**

- Complete shell Rehab Oral School
- Start tenant fit out Oral School
- Complete multi-level parking garage
- Complete construction Phase II Apts
- Begin construction of Phase III – 220 Apartment Units
- Landscaping as needed



**30-36 months**

- Continue tenant fit outs Oral School
- Begin construction of Phase IV balance of Apartment Units
- Complete construction Phase III – 220 Apt Units
- Landscaping as needed