

Final W&D 10/26/10

DEVELOPMENT AGREEMENT

BETWEEN

NEW LONDON DEVELOPMENT CORPORATION

AND RIVER BANK CONSTRUCTION, LLC

OCTOBER ___, 2010

This Development Agreement is entered into as of this ___ day of October, 2010, by and between NEW LONDON DEVELOPMENT CORPORATION, a Connecticut non-stock, nonprofit corporation having offices at 165 State Street, Suite 421, New London, Connecticut 06320 ("NLDC"), and RIVER BANK CONSTRUCTION, LLC, a Connecticut limited liability company having offices at 2 Pan Handle Lane, Westport, Connecticut 06880 ("Developer"). This Agreement is acknowledged by the State of Connecticut, acting herein by and through its Commissioner (the "Commissioner") of the Department of Economic and Community Development ("DECD"), and by the City of New London, acting herein by its City Council and through its City Manager (the "City").

WITNESSETH:

AUTHORITY SECTION

WHEREAS, by resolution of the New London City Council dated May 18, 1998, NLDC was designated, pursuant to Chapter 132 of the Connecticut General Statutes, as the Development Agency (also known as the Implementing Agency) for the City of New London in connection with an application for and agreement with the State of Connecticut for financial assistance of up to \$12,500,000 for preparation of the Thames Peninsula Municipal Development Plan ("MDP"); and

WHEREAS, by resolution dated May 18, 1998, the New London City Council approved, in connection with the Thames Peninsula Municipal Development Plan, the designation of NLDC as the City's Municipal Development Agency (also known as Implementing Agency) and the filing by NLDC of an application to DECD for up to \$12,500,000 in order to undertake said Plan; and

WHEREAS, by resolution dated May 18, 1998, the New London City Council recognized the designation of NLDC as the agency to prepare plans on behalf of the City of New London for the Thames Peninsula area under Chapters 5881 and 132 of the Connecticut General Statutes and resolved that the New London Redevelopment Agency should cause NLDC to prepare a redevelopment plan under Chapter 130 of the Connecticut General Statutes for the Thames Peninsula area for the New London Redevelopment Agency's consideration; and

WHEREAS, by unanimous vote on June 1, 1998, and amendment on October 19, 1998, the New London City Council approved the area to be included in the Thames Peninsula Municipal Development Plan to be that land shown on the Project Location Plan attached hereto as Exhibit A; and

PLANNING LRA AUTHORITY AND EDC SUBMISSION SECTION

WHEREAS, by resolution dated February 1, 1999, the New London City Council, noting that it had appointed a Redevelopment Authority (the Naval Undersea Warfare Center Local Redevelopment Authority) recognized by the Secretary of Defense through the Office of Economic Adjustment ("OEA") as the Planning Local Redevelopment Authority ("Planning LRA") for the planning and reuse of the former Naval Undersea Warfare Center ("NUWC"), which was closed pursuant to the Defense Base Closure and Realignment Act of 1990 (Public Law 100-526), as amended by Public Law 101-510 ("BRAC"), and that the Planning LRA had developed such a Reuse Plan for the NUWC site, appointed NLDC to be the Implementing Local Redevelopment Authority ("Implementing LRA") for the NUWC site; and

WHEREAS, on March 3, 1999, the Secretary of Defense officially recognized NLDC as the Implementing LRA for the NUWC site; and

WHEREAS, NLDC submitted an Economic Development Conveyance Application dated June 24, 1999 (the "EDC Application"), to the United States Department of Navy requesting that approximately 14.1 acres of the NUWC site be conveyed to it to be included as part of the MDP Area (Exhibit A), as more particularly shown on the map attached as Exhibit B entitled "Naval Undersea Warfare Center NUWC Property Requested Under An Economic Development Conveyance, City of New London, Connecticut, prepared for the New London, Development Corporation, April 7, 1999" ("NUWC Property"); and

WHEREAS, pursuant to section 2821 of the National Defense Authorization Act for Fiscal Year 2000 (Pub.L. No 106-65) and the United States Department of Defense's "No-Cost EDC Policy Guidance," the NLDC amended its EDC Application on November 24, 1999, to request (1) transfer of the NUWC Property as a no-cost Economic Development Conveyance ("EDC"), (2) execution of a Lease In Furtherance of Conveyance ("LIFOC") immediately following approval of the terms of transfer; and (3) execution of a Memorandum of Agreement ("MOA") setting forth the terms and conditions for the conveyance of the NUWC Property to NLDC as soon as possible; and

WHEREAS, as part of the proposed disposition and reuse of the NUWC site, the United States Department of Navy prepared an Environmental Assessment Disposal and Reuse Plan dated August 4, 1999 (the "NUWC-EA"), as required by and in accordance with The National Environmental Policy Act ("NEPA") of 1969 (PL 91-190; 42 U.S.C. 4321 et seq.), the Council on Environmental Quality ("CEQ") Regulations on Implementing NEPA Procedures (40 C.F.R. 1500-1508), and the Environmental and Natural Resources Program Manual, Chief of Naval Operations Instruction (OPNA VINST) 1590.1 B; and

WHEREAS, as part of the proposed disposition and reuse of the NUWC site, the United States Department of the Navy prepared a Finding of Suitability to Lease ("FOSL"), dated February 7, 2000, as required by and in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") (42 U.S.C. 9601 et seq.); and

WHEREAS, the State acting by and through DECD has made financial assistance available to NLDC to assist NLDC in the implementation of the MDP, including entering into a certain Assistance Agreement by and between the State acting by DECD and NLDC, executed by the State on June 26, 2001, and by NLDC on June 22, 2001, pursuant to which the State has agreed to make a grant to NLDC in the maximum amount of \$50,000,000 upon the terms and conditions contained therein in support of NLDC's plans for completion of the MDP (the "Assistance Agreement"); and

MDP SECTION

WHEREAS, NLDC, in association with DECD and in consultation with the City, prepared the MDP pursuant to Chapters 130, 132 and 5881 of the Connecticut General Statutes in effect at the time; and

WHEREAS, DECD prepared and processed an Environmental Impact Evaluation ("EIE") in accordance with the Connecticut Environmental Policy Act ("CEPA"), Sections 22a-1 through 22a-1h of the Connecticut General Statutes, concluding with the determination by the State of Connecticut Office of Policy and Management ("OPM"), dated April 19, 1999, that, subject to certain conditions, the requirements of CEPA had been satisfied; and

WHEREAS, the State, acting by and through the Department of Environmental Protection ("DEP"), approved DECD's request for an exemption from the certification requirements of Section 25-68d(b) of the Connecticut General Statutes, by correspondence dated December 3, 1999 (the "Flood Plain Exemption"); and

WHEREAS, the Southeastern Connecticut Council of Governments' Regional Planning Commission, by resolution dated September 27, 1999, issued a finding that the MDP is in accord with the regional plan of development; and

WHEREAS, the New London Planning and Zoning Commission, acting as a planning commission, by resolution dated January 14, 2000, issued a finding that the

MDP is in accord with the City's plan of development as embodied in the City Plan of Conservation and Development and that the MDP is essential for the purpose of redevelopment of the Fort Trumbull Area; and

WHEREAS, the New London Redevelopment Agency held a public hearing on the MDP on January 13, 2000, pursuant to the provisions of local law and Chapter 130 of the Connecticut General Statutes, as amended, and, by resolution dated January 14, 2000, approved the MDP; and

WHEREAS, NLDC held a public hearing on the MDP on January 13, 2000, and by resolution dated January 18, 2000, approved the MDP and thereafter submitted the MDP to the New London City Council and the Commissioner for approval; and

WHEREAS, the New London City Council, by resolution dated January 18, 2000, approved the MDP and bestowed upon NLDC all rights and powers permitted to accrue to a municipal development agency or implementing agency under Chapters 130, 132 and 5881 of the Connecticut General Statutes, as amended; and

WHEREAS, the State, acting by and through DECD Commissioner James Abromaitis, approved the MDP by correspondence dated February 15, 2000; and

DEVELOPER SELECTION SECTION

WHEREAS, in 2009, NLDC issued a Request for Qualifications ("RFQ") seeking qualified private developer(s) for certain projects within the MDP Area; and

WHEREAS, the Developer responded with a Qualification Statement, dated January 25, 2010, which Statement was referred by NLDC to the New London City Council, which on March 11, 2010, unanimously adopted a resolution authorizing NLDC to move forward with negotiations with the Developer; and

WHEREAS, by resolution of the NLDC dated March 12, 2010, the Developer was selected developer for certain housing in the MDP Area, including specifically those improvements (collectively, "the Project") to be situated on Parcels 2a, 2b, 2c and 3b (collectively, the "Project Area") of the MDP Area as depicted on a survey prepared by Diversified Technology Consultants dated August 11, 2004, entitled 'Fort Trumbull Municipal Development Plan Phase II-Disposition'; and

WHEREAS, the Developer and NLDC executed a Letter of Intent dated March 12, 2010, pursuant to which NLDC and the Developer agreed, among other matters, to negotiate in good faith a Development Agreement setting forth each party's obligations with respect to the Project.

NOW THEREFORE, in order to effectuate the proposed Project, as contemplated by the City's and the NLDC's 2010 resolutions described above, the MDP, the EIE, the EDC, the RAP and the NUWC-EA, and in consideration of the mutual representations,

covenants and agreements herein set forth, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do promise, covenant and agree as follows:

Article I DEFINITIONS

For purposes of this Agreement, the following words and terms shall have the respective meanings set forth as follows:

“Affiliate” shall mean with respect to a specified person or entity (a “Specified Party”), any other person or entity directly or indirectly controlled by such Specified Party; any family member (meaning parent, child, or grandchild, by blood or adoption) or spouse of such Specified Party (a “Related Party”); any trust or other form of estate planning device established for the benefit of any Specified Party or Related Party; any heir, guardian, conservator, custodian, executor, or administrator for any Specified Party or Related Party; or any receiver or trustee for any Specified Party or Related Party. As used in this definition, control refers to either or both of the following: ownership of a majority of outstanding voting interests with the full right to vote the same, and/or the authority (whether or not exercised), by virtue, in part, of an ownership interest, to manage or to direct management of the business and affairs of the relevant Specified Party or Related Party.

“Agreement” shall mean this Development Agreement, as it may be amended from time to time.

“Architect” shall mean Douglas Cutler Architects PC or such other similarly qualified architects as the Developer may select, subject to the reasonable approval of NLDC, provided that the lead or project architect who signs and seals plans for the Project or any Project Phase shall be licensed or registered in the State of Connecticut and, if required by law, all such Architects or individuals who are employed by such Architects, shall be licensed or registered to practice in the State of Connecticut.

“Assistance Agreement” shall have the meaning set forth in the Preamble.

“Authorized Representative” shall mean, (a) for the Developer, the person holding the title of Project Director from time to time, and such other persons as may be appointed by Developer from time to time, upon prior written notice of such designation by Developer to NLDC, all of whom shall be duly authorized to act on behalf of the Developer as to those matters for which such person is acting and (b) for NLDC, the President and such other person as may be appointed by NLDC from time to time, upon prior written notice to Developer, all of whom shall be duly authorized to act on behalf of NLDC as to those matters for which such person is acting.

“Business Plan” shall have the meaning set forth in Section 5.03.

“Certificate of Completion” shall have the meaning set forth in Section 7.05.

“City” shall have the meaning set forth in the preamble hereof.

“Commissioner” shall have the meaning set forth in the preamble hereof.

“Condominium Unit” shall mean a residential dwelling unit constructed by the Developer and created by the filing of a Declaration of Condominium on the City Land Records, together with all appurtenant rights and interests in the common and limited common elements, pursuant to the terms of the Connecticut Common Interest Ownership Act.

“Contractor” shall mean River Bank Construction LLC, or such other similarly qualified contractor or contractors as Developer may select, provided that all such Contractors, and all individuals employed by such Contractors who are required by law to be licensed in the State of Connecticut, shall be licensed to perform work in, and registered in, the State of Connecticut.

“DECD” shall mean the State of Connecticut Department of Economic and Community Development.

“DEP” shall mean the State of Connecticut Department of Environmental Protection.

“Declaration of Condominium” shall mean the legal documents required under the Connecticut Common Ownership Interest Act to establish fee simple interest in individual units in a multi-family residential project.

“Deposit” shall mean the deposit made by the Developer in accordance with Section 5.06(a).

“Design Review” shall mean the three stage architectural review process as set forth in Section 5.02.

“Developer” shall mean River Bank Construction, LLC, and, upon assignment to a Development Entity in accordance with the provisions of Article VII, the Development Entity.

“Developer’s Obligations” shall mean the obligations of Developer hereunder, including but not limited to the obligations set forth in Section 2.04, Section 5.01 and Article V.

“Development Entity” shall have the meaning set forth in subsection 7.01(b).

“Development Period” shall mean the period of time during the Term following the expiration of the Pre-Development Period.

“Dispute Resolution Procedure” shall mean that procedure for resolving disputes between the parties hereto as set forth in Section 8.09.

“Effective Date” shall be the date of execution of this Agreement by the last of NLDC, Developer, DECD or the City. No party is bound by the terms hereof unless and until it is signed by each of NLDC, Developer, DECD and the City.

“Environmental Laws” shall mean all federal, state and local laws, statutes, ordinances, regulations and orders and all amendments thereto pertaining to environmental conditions or Hazardous Substances. For purposes of this definition, the term “Hazardous Substances” shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Law or by common law decision including, without limitation, chlorinated solvents, oil, petroleum products or byproducts, asbestos and polychlorinated biphenyls.

“Events of Default” shall have the meaning set forth in Section 8.01.

“Financing Closing” shall refer to any closing on the financing of the Project or a Project Phase.

“First Closing” shall mean the closing on the Project Area or, if applicable, the first closing on a Project Parcel.

“Fort Trumbull Documents” shall mean the MDP, the EIE, the NUWC-EA, the RAP and the Assistance Agreement.

“Key Milestone” or “Key Milestones” shall be the date or dates identified as such in this Agreement or in the Summary of Key Milestones, Exhibit F, as the same may be from time to time extended pursuant to the terms of Section 8.08.

“Land Disposition Agreement” shall mean each and any agreement between NLDC, as Transferor, and Developer, as Transferee, pursuant to which title to one or more of the Project Parcels is conveyed for the purpose of constructing the Project or a Project Phase, which agreement shall be substantially in the form attached hereto as Exhibit J and which shall be recorded simultaneously with the deed conveying the Project Parcel to the Developer.

“Legal Requirements” shall mean all applicable local, state and federal laws, ordinances, rules and regulations.

“MDP” shall mean the Fort Trumbull Municipal Development Plan prepared by the New London Development Corporation and approved by the City of New London on January 15, 2000 and by DECD on February 15, 2000, as amended, and incorporated herein by reference.

“MDP Area” shall have the meaning set forth in the Preamble.

“MDP Parcels” shall mean those Parcels within the MDP Area and depicted and labeled in Exhibit A.

“NLDC” shall mean New London Development Corporation, a Connecticut non-stock corporation, which, for the purposes of this agreement, shall not be deemed to be a governmental authority.

“NUWC Property” shall have the meaning set forth in the Preamble.

“Permitted Encumbrances” shall have the meaning set forth in Section 3.02.

“Plans and Specifications” shall mean the construction documents for the improvements to be completed by the Developer as part of the Project, or any Project Phase, as developed by the Developer, provided to NLDC and DECD and approved by NLDC in accordance with Section 5.02 and Exhibit H.

“Pre-Development Period” shall mean the period following the Effective Date terminating upon the earlier to occur of (a) the First Closing or (b) twenty-six (26) months following the Effective Date, subject to extension of up to twenty-four (24) months pursuant to Section 8.08.

“Principal” shall have the meaning set forth in Section 7.01(a).

“Project” shall have the meaning set forth in the Preamble, as amplified by Section 2.05.

“Project Area” shall mean that portion of the MDP Area shown as Parcels 2a, 2b, 2c, and 3b on Exhibit B, all of which area was part of the NUWC Property.

“Project Parcel” shall mean any one of the parcels within the Project Area, as shown on Exhibit B.

“Project Phase” shall mean any division or subset of the Project in which a portion of the Project is designed, financed, constructed and marketed.

“Project Schedule” shall have the meaning set forth in Section 5.03(c)(vi).

“RAP” shall mean the Fort Trumbull MDP Area A, Parcel E, Remedial Action Report as approved by the Connecticut Department of Environmental Protection.

“Related Agreements” shall mean this Development Agreement, the Land Disposition Agreement(s) and any other written agreement between the parties hereto relating to the Project, provided that both parties have reviewed any such other written agreement and consented in writing that such agreement shall be included in the definition of “Related Agreements” hereunder.

“Riverwalk” shall mean the walkway completed by NLDC, property of the City of New London, open to the public, consisting of MDP Parcels 8A, 8B, 8C; the course of which is shown on Exhibit C.

“Site Information” shall mean those written reports, land title policies and surveys concerning the condition of the Project Area under the control of the NLDC and located in the offices of the NLDC.

“Site Plan” shall mean the site plan for the development within the Project Area, the current version of which is attached as Exhibit D, as the same may be amended and refined from time to time in accordance with the design review process set forth in Section 5.02 and Exhibit H.

“State” shall mean the State of Connecticut.

“Term” shall mean the term of this Agreement as set forth in Section 2.06.

Article II INTRODUCTION AND BASIC TERMS

2.01. Introduction. This Agreement will govern the relationship of NLDC and the Developer with respect to the development of the Project.

2.02. Project Area. The Project Area will consist of approximately 6.56 acres of real property, more particularly shown as constituting four (4) parcels designated as MDP Parcels 2a, 2b, 2c, and 3b on Exhibit B, as more fully described on Exhibit B-1 attached hereto (the “Project Area”).

2.03. NLDC’s Obligations. Subject to the terms of this Agreement, NLDC agrees to convey the Project Parcels to the Developer subject to the terms of the Permitted Encumbrances.

2.04. Developer’s Obligations. Developer hereby agrees to undertake and complete the Project in accordance with the Plans and Specifications, the terms of the MDP, the EIE, the NUWC-EA, and all Legal Requirements, including any and all environmental land use restrictions required by the DEP and accepted by Developer pursuant to Section 3.02 at Developer’s sole cost and expense (equity and debt financing permitted in accordance with Section 6.01), all as more fully set forth in this Agreement, including but not limited to Article V and in accordance with the Key Milestones.

2.05. The Project.

(a) The Project shall consist of the construction of a condominium of not less than seventy five (75) residential units with at least the minimum number of parking spaces required by the New London Zoning Regulations, sales and administrative offices, storage spaces, maintenance facilities and other site improvements generally as shown and described in concept on the Site Plan and the Elevation Drawing attached hereto as Exhibit D and Exhibit E, respectively, as the same may be from time to time amended in accordance with the terms of this Agreement. Subject to approval of NLDC, DECD and the City and the use restrictions set forth in the Fort Trumbull Documents, the Project may be “mixed use”, i.e., may include certain non-residential uses. The Site Plan and

Elevation Drawing are preliminary and primarily for concept and style. The parties recognize that certain changes in the type, size, orientation, location and physical attributes of the proposed improvements will occur as the Developer incorporates the recommendations gathered from marketing, design and cost estimating consultants, and Design Review. The Project shall be named the 'Village on the Thames', or such other name as may be proposed by the Developer and approved by NLDC.

(b) Notwithstanding anything contained herein to the contrary, it is agreed that the Condominium Units to be erected upon the land shall be one, two and three story townhouses. The facades of the townhouses shall be informed by and reminiscent of the historic architecture of the Greek Revival, Federal and/or Italianate Periods, examples of which are found within the City of New London, and more particularly on Starr Street. The Developer shall prepare and record on the Land Records of the City, a Condominium Declaration for the Project as a condition of conveyance of the Project Parcel, or the initial phase Project Parcel, as the case may be. The Condominium Declaration, including all use restrictions, shall be consistent with the Fort Trumbull Documents, the LDA and this Agreement and shall expressly provide that it may not be terminated without the prior written consent of the City acting by its City Council. Notwithstanding the foregoing, in the interest of success of the Project, the Condominium Units subject to such Declaration shall not be created until the Developer, in its sole discretion, deems the New London market for condominiums suitable for profitable sale of Condominium Units. NLDC agrees with this approach, subject only to confirmation from a title company that the Project Parcel shall be legally encumbered by the Declaration.

(c) The Developer shall be free, following completion of the Project, as hereinafter set forth, in its sole discretion, to offer the Condominium Units in the marketplace for rent and/or for sale. The Developer may finance the construction of any or all of the Condominium Units that are not to be sold initially, and are to be offered in the marketplace for rent, through the Federal Housing Administration (hereinafter referred to as "FHA") Section 221 d(4) program which provides, among other things, loan guarantees to construction and permanent lenders, or through any other means and methods of financing that Developer deems prudent and appropriate in its sole discretion, provided that use restrictions associated with financing shall be consistent with the Fort Trumbull Documents.

(d) The Developer, in its sole discretion, may execute the Project in one phase or in multiple Project Phases on a parcel-by-parcel basis, the chief determinant of which shall be the prevailing conditions of the local real estate market and the availability of construction and/or permanent financing. Notwithstanding the foregoing, the Developer agrees and covenants that it will commence construction of the Project (or the first Project Phase, as the case may be) and complete construction of the Project in accordance with the Key Milestones shown on Exhibit F.

(e) Developer understands that DECD and DEP may permit no more than eighty (80) residential units and appurtenant parking, administrative and

maintenance facilities to be built within the MDP Area. Developer may seek approval from DECD and DEP, and the City, for more than 80 residential units. Provided the Developer is not in default hereunder and the NLDC deems the number of units proposed by the Developer to be reasonable, NLDC will support the Developer, at no cost to NLDC, in obtaining approval from DECD, DEP and the City for an increase in units above 80. Developer shall have the right, but not the obligation, to construct pursuant to this Agreement as many residential units within the Project Area as the DECD, DEP and the City approve (the "Additional Units"), provided construction of the Additional Units shall be substantially completed within twenty-four (24) months of the date of the latest such approval, and in no event later than six (6) years from the Effective Date in accordance with the Key Milestones.

2.06. Term. The term of this Agreement shall commence on the Effective Date and shall terminate, if not sooner terminated in accordance with the terms hereof, on the earlier of (a) five (5) years from the Effective Date plus any applicable extension periods as set forth herein with respect to the Pre-Development Period (maximum 2 years) or the Additional Units (maximum 1 year), or (b) with respect to the Project or Project Phase, as the case may be, upon the issuance of a Certificate of Completion for the Project or Project Phase, except with respect to the obligations and liabilities of this Agreement which expressly survive the termination hereof or which are identified in the Certificate of Completion as matters yet to be completed. At any point during the Pre-Development Period, the Developer shall have the right to terminate this Agreement in its sole discretion, provided notice of termination is given to NLDC in writing. Within five (5) business days of receipt by the NLDC of Developer's timely notice of termination of this Agreement, NLDC shall return to the Developer the Deposit minus those sums which Section 5.06(a) of this Agreement entitles the NLDC to have withdrawn as of the date such notice of termination is received.

2.07. Role of State; Effect of State Role on NLDC.

(a) The Developer acknowledges that: (i) the State, acting by and through DECD, entered into the various financial assistance agreements, including the Assistance Agreement, which provided substantial financial assistance for the development of the Thames Peninsula Area and in association with NLDC assisted with the preparation of the MDP pursuant to Chapters 130, 132 and 5881 of the Connecticut General Statutes, as amended; (ii) without such financial assistance from the State the Project would not be developed and completed as contemplated herein; and (iii) accordingly, the State is an intended beneficiary of this Agreement. The duties and obligations of the Developer and NLDC under this Agreement are also owed to and are enforceable by the State, and neither NLDC nor the Developer nor both may alter or modify this Agreement without the prior written consent of DECD.

(b) The Developer acknowledges that the State, through DECD, as a beneficiary of this Agreement, shall enjoy the benefit of the performance of the duties and obligations by Developer and NLDC, and the right to such enjoyment shall not be limited by, nor shall it be construed to be limited by, the enumeration of specific rights,

duties and/or obligations owed by Developer and NLDC to DECD; provided, however, that this is not intended to expand the obligations of the Developer specifically set forth in this Agreement. The State, through DECD, is granted certain specific rights pursuant to this Agreement. In addition, the parties acknowledge that this Agreement is intended to be consistent with the Fort Trumbull Documents and applicable terms of the Assistance Agreement. The parties further agree that DECD shall be entitled to receive any and all reports, plans, specifications, agreements and other documentation or information which NLDC is entitled to receive hereunder and, upon request, either party will promptly furnish any such material to DECD. DECD shall also be entitled to receive copies of all notices and requests as set forth in Section 9.04 hereof.

(c) The Developer acknowledges that NLDC and DECD entered into the Assistance Agreement and that such Assistance Agreement included terms and provisions which provide, inter alia, that:

(i) Any default by NLDC in this Agreement, not cured as herein provided, may constitute a default by NLDC in the Assistance Agreement;

(ii) Failure by NLDC to take certain action after any default by the Developer hereunder may constitute a default under the Assistance Agreement; and

(iii) Any default by NLDC in the Assistance Agreement could give rise to the assignment of all of NLDC's rights and remedies hereunder to DECD as more particularly described in Section 7.01(a) herein below.

(d) NLDC has granted to DECD a mortgage (the "DECD Mortgage") of NLDC's ownership interest in each Project Parcel it owns. At the time of conveyance of a Project Parcel to the Developer in strict accordance with the terms of this Agreement, and after satisfaction by Developer of all conditions precedent to closing, DECD shall release the DECD mortgage with respect to the Project Parcel to be conveyed. By acknowledging this Agreement by signing below, DECD expressly agrees to the terms of this paragraph.

2.08 Acknowledgement of Role of the City.

(a) The Developer acknowledges that the City has a significant interest in the development of the Fort Trumbull MDP area and, in association with NLDC, assisted with the preparation of the MDP pursuant to Chapters 130, 132 and 588(l) of the Connecticut General Statutes. As such, the City is a beneficiary of this Agreement. Neither NLDC nor the Developer nor both may alter or modify this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld. When modification of this Agreement is sought by the NLDC and the Developer, the City shall have forty-five (45) business days from the date of transmittal by certified mail to the City and the City's Law Director of the proposed modification to approve or disapprove the requested modification. Provided the "automatic approval" notice provided in Section 9.04(a) accompanies such request for modification, if the City does

not respond in writing to the request within said 45 days, then the City shall be deemed to have approved the modification.

(b) Notwithstanding anything to the contrary contained herein, NLDC and the Developer acknowledge and agree that as a beneficiary, the City shall enjoy the benefit of the performance of the duties and obligations by Developer and NLDC and is granted certain specific rights under this Agreement. The City shall be entitled to receive from NLDC any and all reports, plans, specifications, agreements and other documentation or information which NLDC is entitled to receive hereunder and that the City shall also be entitled to receive copies of all notices and requests as set forth in Section 9.04 hereof.

(c) By acknowledging this Development Agreement by execution below, the City hereby confirms its consent to, and approval of the disposition plan for the herein identified Project Parcels as set forth in this Development Agreement with respect to the conveyance of the fee interest. The City acknowledges that the Developer is relying upon the foregoing confirmation, consent and agreement in entering into this Development Agreement. Accordingly, the City covenants and agrees with the Developer that the foregoing confirmation, consent and agreement is irrevocable and for all purposes arising under applicable Legal Requirements (including Conn.Gen.Stats. §8-193(d) as and to the extent applicable to NUWC Property). Notwithstanding the foregoing, should the City receive the land from NLDC prior to conveyance to the Developer under this Agreement, then all provisions of this Agreement shall remain in effect.

Article III PROPERTY TRANSFER TO DEVELOPER

3.01. Conditions Precedent to the Transfer of Title. NLDC shall not be obligated to transfer title to one or more Project Parcel(s), or any portion thereof, to the Developer unless and until the Developer has delivered to NLDC and DECD for approval evidence, in form and substance reasonably satisfactory to NLDC and DECD, that it has received design approval for the entire Project and is prepared to commence construction of the Project or a Project Phase, as the case may be, on the Project Parcel(s) to be conveyed including, without limitation, the following:

(a) Permits and Approvals. All governmental permits and approvals required to construct the Project or the Project Phase have been issued, remain validly outstanding, and have been complied with in all respects;

(b) Evidence of Financial Feasibility. Evidence that sufficient funds are available to complete the Project or the Project Phase on the Project Parcel(s) to be conveyed, including, without limitation, loan documents and equity commitments containing customary and reasonably attainable contingencies and conditions providing sufficient funds to cover the cost of any construction, renovations, architects, engineers and other professional fees, debt service, taxes (as abated by the City, if abatement is granted), insurance, legal fees, loan fees, operating expenses, and all other reasonable

needs of the Project or the Project Phase. The evidence shall be consistent with information provided in the Business Plan, as amended, as described in Section 5.03.

(c) Design and Construction Contracts. The Developer represents to NLDC in writing that Developer has entered into such construction contracts as Developer, in its sole discretion, deems necessary to complete construction of the Project or Project Phase for which the portion of the Project Area that is being conveyed to assure NLDC and Developer's construction lender, if any, that construction may be completed in compliance with the Project budget and the Plans and Specifications, and in accordance with this Agreement.

(d) Completion Guarantee. If Developer's construction lender requires Developer to provide a security for a construction loan other than a mortgage, Developer shall have delivered to NLDC a copy of such other security, whether or not it takes the form of a Completion Guarantee described in Section 5.06 (c).

(e) Business Plan. Developer shall have complied with the requirements set forth in Section 5.03, below, NLDC and DECD shall have approved the Business Plan for the subject Project or project Phase pursuant to Section 5.03 and Developer shall have certified that there has been no material change in the information included in the Business Plan for the subject Project or Project Phase since it was approved by NLDC and DECD.

(f) Condominium Documents. Developer shall have prepared for, and consented to the recording immediately after any deed of conveyance, and before any document granting an interest to any third party, whether with respect to collateralizing a debt obligation or otherwise (subject to the provisions of Section 7.01), the Declaration of Condominium for the Condominium Units to be built as part of that Project Phase, subject to the Developer's discretion in Section 2.05(b) regarding the timing of creation of the Condominium Units.

3.02. Title.

(a) NLDC shall convey marketable, insurable title to the Project Parcels to the Developer by Quit Claim Deed substantially in the form attached hereto as Schedule A, in accordance with this Agreement and the parties' Land Disposition Agreement(s) substantially in the form attached hereto as Exhibit J. NLDC shall convey title to each Project Parcel by quitclaim deed in fee simple title, free and clear of all encumbrances, except Permitted Encumbrances which shall include:

- (i) Provisions of existing building and zoning laws and other ordinances as may affect the use, maintenance or ownership of the Project Parcel;
- (ii) Building lines, if established;
- (iii) Taxes on the then current tax list (as the same may be modified or adjusted by a tax abatement);

- (iv) Those Permitted Encumbrances described in clause (b) below.

(b) Within twenty (20) days of the date hereof, NLDC shall deliver to the Developer a draft title commitment from a title company authorized to transact business in Connecticut setting forth the status of title for the Project Parcels as of the date issued. The Developer shall have sixty (60) days from its receipt of a title policy, or title commitment or title report to object in writing to any matters disclosed therein. If the Developer does not object to any such title matter, NLDC shall direct the Title Company to issue a Title Commitment to the Developer, and each disclosed encumbrance listed shall constitute a "Permitted Encumbrance". In the event that the Developer timely objects to any title matter, NLDC shall either endeavor to obtain from the Title Company a notation on the Title Commitment that the same shall be deleted at closing upon satisfaction of expressly stated conditions or to have the Title Company remove such encumbrance from the Title Commitment. In the event NLDC is unable to so resolve any such title objection within thirty (30) days or such additional time as the parties shall agree to, NLDC shall so notify the Developer who shall have the option of terminating this Agreement by written notice to NLDC of such termination within thirty (30) days following receipt of notice by NLDC, whereupon this Agreement shall terminate and be of no further force and effect. Upon such termination, NLDC shall promptly return and remit to Developer the Deposit. In the event the Developer does not so terminate this Agreement, the Title Company shall issue to the Developer a final Title Commitment which shall be effective on its face for a period of not less than three years and the encumbrance objected to shall constitute a "Permitted Encumbrance". Objections to matters of title or title defects arising after the date of issuance of the final Title Commitment and not covered by said Commitment shall consist only of those matters that are construed as rendering title to the Project Parcels "unmarketable" pursuant to the Standards of Title of the Connecticut Bar Association and NLDC shall be obligated to convey title free and clear of the same at Closing.

(c) The Developer recognizes that the Project Parcels may be subject to (a) certain encumbrances and/or land use restrictions imposed in conjunction with the transfer of title of the NUWC Properties from the United States of America acting by and through the Department of the Navy to the NLDC, and (b) to land use restrictions and/or easements required by DEP or any other State or local governmental authority, including specifically, but without limitation, those in the MDP.

(d) So long as this Agreement remains in full force and effect, Seller agrees that it will not voluntarily grant any liens or encumbrances or voluntarily grant or modify any easements or rights-of-way in or with respect to all or any portion of the Project Area.

(e) Provided the encumbrances contemplated in Subsection (c) do not render title uninsurable or unmarketable, such additional encumbrances may be imposed on the Project Area pursuant to the terms of the Fort Trumbull Documents, which additional encumbrances shall be reviewed by the Developer within thirty (30) days following

written notice to the Developer of NLDC's learning of such encumbrances. If the Developer does not object to any such additional encumbrance within thirty (30) days, the encumbrance shall constitute a "Permitted Encumbrance". In the event that the Developer timely objects to the additional encumbrance Developer shall have the option of terminating this Agreement by written notice to NLDC of such termination within thirty (30) days following receipt of notice by NLDC, whereupon this Agreement shall terminate and be of no further force and effect. Upon such termination, NLDC shall promptly return and remit to Developer the balance of the Deposit. In the event the Developer does not so terminate this Agreement, the encumbrance objected to shall constitute a "Permitted Encumbrance".

3.03. Closing on Financing and Project Parcels and Schedule. The Developer shall close on the financing for the Project, or a phase of the Project, as identified in the approved Business Plan, prior to or simultaneously with the closing on the transfer of title to the Project Parcel for which the financing has been secured. TIME SHALL BE OF THE ESSENCE with respect to Developer's obligation to satisfy the conditions precedent to closing identified in Section 3.01 and to close on one or more of the Project Parcels by no later than the end of the Pre-Development Period. It is anticipated that title transfer will occur no more than 15 days prior to commencement of construction. In the event the Project is phased, the Developer shall satisfy the conditions precedent to closing identified in Section 3.01 and shall close on any remaining Project Parcels during the initial twenty-four (24) months of the Development Period in accordance with the Key Milestones.

Article IV NLDC COVENANTS

4.01. Developer Due Diligence. Within twenty (20) days of execution of this Agreement by the Developer and NLDC, NLDC shall, as a convenience to Developer, provide to the Developer access to the Fort Trumbull Documents and the Site Information. NLDC makes no representation or warranty as to the completeness or accuracy of the Fort Trumbull Documents and the Site Information.

4.02. Governmental Approvals. NLDC shall support the Developer in procuring all approvals, permits, certificates and other governmental authorizations, including if necessary FHA approval, required for the Project or the Project Phase(s) and to be obtained by the Developer pursuant to the terms of this Agreement, provided such assistance shall be at no cost or expense to NLDC. Nothing in this provision is intended to diminish or otherwise alter NLDC's rights set forth in this Agreement with respect to its consents and approvals.

4.03. Compliance with Assistance Agreement. NLDC shall comply with the terms of the Assistance Agreement. NLDC shall provide the Developer with a copy of any notice from DECD given under the Assistance Agreement which alleges any default or failure of NLDC to meet its obligations thereunder or which alleges any default of the Developer under this Agreement.

Article V
DEVELOPER COVENANTS

5.01. Developer's Design and Construction Obligations. The Developer shall, at its sole cost and expense (utilizing debt financing and equity secured by the Developer as identified in the applicable Business Plan), design the Project and any Project Phases, obtain the necessary permits and approvals to construct the Project and any Project Phases, and construct, or cause to be constructed, the approved Project and any Project Phases all in accordance with the Plans and Specifications, the Key Milestones and otherwise in accordance with the terms of this Agreement.

5.02. Design Review.

(a) The Developer shall submit to the NLDC, for the reasonable review and approval of NLDC, DECD and the City, all design and engineering work for the Project or each Project Phase, including specifically, the Site Plan and the Plans and Specifications. Such Plans and Specifications shall be submitted and reviewed in accordance with the procedures detailed in Exhibit H.

(b) The Developer and NLDC shall meet as outlined in Exhibit H during the design and planning of the Project and each Project Phase from concept to final design. No Site Plan or design-related approval, or other approval by a local, State or federal agency, shall be sought by the Developer prior to completion of the Schematic Design Review, provided that in the event Schematic Design Review is near completion and progress on the Project or Project Phase requires such approvals, Developer may submit application(s) for the required approval(s) with the prior written consent of NLDC and the City, which consent shall not be unreasonably withheld.

5.03. Business Plan Review.

(a) With respect to the Project or each Project Phase, NLDC and DECD shall undertake a business plan review of the proposed Project or Project Phase. Not later than ninety (90) days after approval of final design review for each Phase pursuant to Exhibit H, the Developer will submit a business plan for the Project or a Project Phase for NLDC and DECD review (herein, the "Business Plan"). Within thirty (30) days of receiving the written Business Plan, NLDC and DECD shall respond in writing by approving the Business Plan or disapproving the Business Plan, identifying specifically the commercially reasonable basis for disapproving the Business Plan. If the Business Plan does not include sufficient information for NLDC and DECD to approve it, DECD and/or NLDC may request additional information and the timelines for DECD and NLDC approval shall be stayed until such additional information is provided. Any material change in the Business Plan occurring prior to the transfer of title to the Parcel for the subject Project Phase shall be submitted for review and considered for approval in the same manner as the original Business Plan.

(b) The Business Plan will be used for the purpose of determining the financial feasibility of each Project Phase of the Project and to demonstrate the

Developer's ability to complete the Project or each Project Phase as proposed. All the non-public information contained in the Business Plan which the Developer is not required by statute, the State Building Code or other State regulation, or the New London Zoning Regulations to provide will be held in confidence by the NLDC, DECD and the City (to the extent such information is provided to the City), and shall not be disseminated to any third party without the express written consent of the Developer unless otherwise required by law as interpreted by counsel to those parties; provided that the Developer shall have the right to contest any Freedom of Information Act or similar request for non-public information about the Developer or the Project, or any Project Phase, at the Developer's expense.

(c) The Business Plan shall contain the following:

- (i) Narrative description of the Project or the Project Phase;
- (ii) Description and experience of the development team, including the Developer, development project manager, development entity, the Architect, site civil engineer, the contractor, the environmental consultant and the operating or management agent, and the Developer's corporate structure, if applicable;
- (iii) Narrative description of the financial structure and marketing feasibility;
- (iv) Schedule of sources and uses of funds, showing total development cost and sources of funding;
- (v) Cash flow projections (5 year pre-tax basis), including any assumptions upon which the pro forma or other projections are based;
- (vi) The project schedule showing the timeline of key target dates to construction completion (the "Project Schedule") consistent with the Key Milestones;
- (vii) All available evidence of lender and equity commitments for all sources of funding, including letters of intent and commitments for any debt, equity, joint venture, and other forms of financial participation needed to complete the Project or the Project Phase;
- (viii) Leasing or pre-purchase commitments, if any;
- (ix) Design development drawings (which may be by reference to the drawings approved in the Design Review process).

5.04. Limit on Developer Requests for State or City Assistance. With the exceptions of request(s) to the City for real property tax abatements and applications for zoning and other permits, the Developer shall not request financial or other assistance for the Project or Project Phase from the State or the City prior to the issuance of a Certificate of Completion for the Project or for any Project Phase without the prior written consent of NLDC, which consent shall not be unreasonably withheld.

5.05. Approvals and Permits. The Developer shall be responsible for obtaining, at its sole cost and expense, those permits, approvals and authorizations designated as Developer's responsibility on Exhibit I and such other permits, as may be required in connection with Developer's obligations to construct, complete and operate the Project or the Project Phase. NLDC shall have no obligation to secure permits or approvals.

5.06. The Deposit.

(a) Deposits. Within five (5) business days after the Effective Date, the Developer agrees to deposit with NLDC, as evidence of its commitment to complete the Project, the sum of One Hundred Fifty Thousand Dollars (\$150,000) in cash ("Deposit"). The Deposit shall be held by the NLDC in trust, in an escrow account (any interest accruing to the NLDC). Commencing on a date that is two months following the Effective Date, and so long as this Agreement is not terminated, the following amounts shall be disbursed irrevocably from the Deposit to NLDC monthly: (i) for the first six (6) months, the sum of Four Thousand Dollars (\$4,000.00); (ii) thereafter, the sum of Seven Thousand Dollars (\$7,000.00). Upon an Event of Default that results in the termination of Developer's rights hereunder, the remaining Deposit may be drawn upon by NLDC and used for the implementation of the MDP in any manner NLDC may reasonably determine.

(b) Return to Developer of Good Faith Deposit. Not later than the date on which the Developer deposits with NLDC the Deposit in accordance with Section 5.06(a), NLDC shall return to the Developer the Good Faith Deposit of seventy five thousand dollars (\$75,000) in accordance with the Escrow Agreement dated March 29, 2010, by and between the Developer and NLDC,

(c) Completion Guarantees. Developer shall provide to NLDC and DECD, prior to the conveyance of all or any portion of the Project Area for the completion of the Project or a Project Phase, a copy of any Completion Guarantee Agreement required by the Developer's construction lender or equity provider. The Completion Guaranty Agreement may take the form of a completion or performance guaranty, a performance bond, or an agreement requiring a cash deposit or letter of credit.

5.07. Additional Covenants of the Developer. In connection with the performance of its Developer Obligations, Developer agrees:

(a) to proceed diligently and continuously to complete said Obligations, including but not limited to the design, permitting and construction of the Project in accord with the Key Milestones;

(b) to provide and oversee the performance of all necessary architectural, engineering and design services for the construction of the Project or each of the Project Phases and the acquisition and installation of appropriate fixtures, equipment and personal property;

(c) to invest the amounts required by Section 6.01(a);

(d) to complete construction of each Project Phase within no more than 24 months of the start of construction of the respective Project Phase (but in no event later than five (5) years from the Effective Date, subject to the agreed extension for Additional Units with respect to such units only) in accordance with the Key Milestones;

(e) to deliver to NLDC and DECD, upon completion of the Project or each Phase of the Project, a complete set of "as-built" drawings with respect to all utility lines, foundations and improvements within three feet above grade level; and

(f) to execute a Maintenance Easement with the City of New London for the portion of the City's Fort Trumbull Riverwalk abutting the Project substantially as set forth in Schedule K.

5.08. Employment and Contracting Requirements and Goals. Developer agrees to comply with all applicable federal and state employment laws and regulations, and to make all reasonable efforts to meet the Employment and Contracting Goals and Objectives attached hereto as Exhibit G.

5.09. Tax Abatement. At any time prior to the conveyance of the first Project Parcel to Developer (but in no event later than fourteen (14) months from the Effective Date), Developer may petition and apply to the City for a temporary abatement of the real property taxes levied, or to be levied, on the Project improvements constructed by the Developer. NLDC agrees to support, at no cost or expense to itself, the Developer's effort to secure a tax abatement satisfactory to Developer

Article VI

PROJECT FUNDING AND FINANCIAL AGREEMENTS

6.01. Debt/Equity Commitment.

(a) The Developer shall secure all necessary financing for completion of the Project. Equity investment may be through passive investors or joint venture arrangements subject to the limitations of Section 7.01 hereof, provided, however, that the Developer or one or both Principals shall retain development control over the Project until completion thereof. The Developer or one or both Principals shall maintain a minimum investment of its/his/their own equity in an amount of not less than ten (10%) percent of the total development costs, provided however, a portion of the equity may be invested by means of deferred, commercially reasonable development, construction management and/or general contracting fees as may be permitted by either the construction lender(s) or the NLDC in its sole discretion. Further, the Developer or one or both Principals shall contribute not less than twenty five (25%) percent of such required minimum equity for a Project Phase in cash or cash equivalents within six (6) months of conveyance of title to that Project Phase. To the extent the Developer exceeds the ten (10%) percent of total cost equity contribution for any Project Phase, the excess contribution may be credited towards the total equity contribution for later Project Phases provided that only cash or cash equivalents paid in one Project Phase shall count against the Developer's obligations to contribute cash or cash equivalents in any later Project Phase.

(b) The parties hereto agree and acknowledge that DECD shall have the right to approve the structure and source(s) of financing for the Project or for each Project Phase, as the case may be, providing however that such approval shall not be withheld if financing is provided by (a) The Stillman Organization or either of the Principals, provided financial statements reasonably satisfactory to DECD are provided upon DECD request, or b) an institutional lender and/or one or more investors of good reputation and in good standing (including the legal capacity to transact business in Connecticut) on commercially reasonable terms and conditions.

6.02. Requisitions.

The Developer shall, in a timely manner, when requested by NLDC, deliver copies of monthly requisitions for funds made by the Developer to its construction lender. NLDC shall promptly review and deliver each such requisition to DECD. The requisitions transmitted pursuant to this paragraph shall be held in strict confidence and shall not be disseminated to any third parties without the express written consent of the Developer unless otherwise required by law as interpreted by counsel to those parties; provided that the Developer shall have the right to contest any Freedom of Information Act or similar request for non-public information about the Developer or the Project, or any Project Phase, at the Developer's expense.

Article VII
MISCELLANEOUS RIGHTS AND OBLIGATIONS

7.01. Assignments and Transfers by Developer.

(a) The Developer represents that it is a Connecticut limited liability company authorized and qualified to conduct business in the State of Connecticut. As of the date of this Agreement, the sole members of Developer are Irwin Stillman and Robert Stillman (each a "Principal" and, collectively, the "Principals"). The Developer acknowledges that the choice of the Developer by NLDC was based, in part, on the involvement of the Principals and that NLDC, DECD and the City are relying upon the Developer and the involvement of the Principals in the Developer for the faithful performance of all of the undertakings and covenants set forth in this Agreement. Accordingly, except any sales of Condominium Units to residential consumers and except as provided in subparagraphs (b) and (c) of this Section, the Developer shall not transfer any interest in the Property until a Certificate of Completion has been issued by NLDC for the portion of the Property transferred. For purposes hereof a "transfer" shall include a transfer of a controlling interest in the Developer.

(b) Notwithstanding the foregoing, Developer shall have the right to assign, with respect to each Project Phase, its rights and obligations hereunder to a "Development Entity" in which one or more of the Principals owns at least a 51% interest and has management control. The Development Entity shall assume, in writing, full responsibility for the performance of the obligations of the Developer; and the Developer shall guarantee such Development Entity's performance of its assigned obligations.

(c) All other transfers or changes in ownership interests shall be subject to the consent of NLDC and DECD, which consent shall be within the sole discretion of NLDC and DECD.

(d) Except as otherwise expressly set forth herein with respect to an assignment to a Development Entity, neither Developer nor the Development Entity may transfer, assign or otherwise encumber its interest in this Agreement, except to a third party lender or investor approved by NLDC in accordance with Section 6.01(b).

7.02. Assignments and Transfers by NLDC

(a) The Developer acknowledges and agrees that NLDC has the right to make an assignment or collateral assignment of this Agreement to DECD to the extent required by DECD with respect to the Assistance Agreement and hereby consents to any such assignment. If NLDC is in default of any of its obligations to DECD such that DECD succeeds to NLDC's rights and obligations under this Agreement, the Developer acknowledges and agrees that DECD may assume all of NLDC's rights and obligations hereunder, in which event DECD shall undertake to cure any and all defaults of NLDC as hereinafter provided, and that during any such cure period, DECD shall not be deemed to be in default hereunder. In particular, the parties hereto agree that DECD shall not in any manner be liable for any monetary damages arising out of NLDC's defaults, if any,

hereunder and that DECD shall not be in default hereunder by virtue of any defaults by NLDC hereunder. For purposes of this subparagraph, DECD shall be deemed to include any successor implementing agency or development agency approved by DECD.

(b) Developer acknowledges and agrees that NLDC has the right to make an assignment or collateral assignment of this Agreement to the City pursuant to any agreement that may hereafter be entered into between NLDC, DECD and/or the City. Developer hereby consents to any such assignment. In such an event, the Developer agrees that the City shall assume all of NLDC's rights and obligations hereunder, in which event the City shall undertake to cure any and all defaults of NLDC, if any. In particular, the parties hereto agree that the City shall not in any manner be liable for any monetary damages arising out of any of NLDC's defaults hereunder occurring prior to the effective date of such transfer of interest and that the City shall not be in default hereunder by virtue of the same; subject only to refund of the unexpended portion of the Deposit to Section 8.02(a).

7.03. Staff.

(a) In order to implement the terms of this Agreement, the Developer shall during the construction of the Project or any of the Project Phases employ a Project Manager and all reasonably necessary staff and consultants to execute properly and in a timely manner the Project and each Project Phase. The initial Project Manager will be Robert Stillman.

(b) NLDC shall from time to time designate a Project Director, who shall manage NLDC's responsibilities hereunder. The initial Project Director will be John Brooks.

7.04. Fort Trumbull Municipal Development Plan.

(a) NLDC shall work with the City and DECD to uniformly enforce the objectives, standards and controls set forth in the MDP, and the Developer shall comply with all such objectives, standards and controls.

(b) NLDC shall use reasonable efforts to insure that any modification of the MDP and the approval of any certificate of occupancy, variance or special exception shall not interfere with the Project.

7.05. Certificate of Completion. Upon completion of the following: (a) issuance of a certificate of substantial completion by the Project Architect for the improvements in any Project Phase, (b) issuance of a certificate(s) of occupancy for such improvements by the City of New London, and (c) receipt by NLDC of the as-built drawings required by Section 5.07(d), and provided that no Event of Default has occurred and is continuing, NLDC will within thirty (30) following a written request by the Developer (with all supportive documentation reasonably required for NLDC and DECD review and sign-off), furnish the Developer with a Certificate of Completion. TIME SHALL BE OF THE ESSENCE with respect to issuance of each Certificate of Completion to which the

Developer is entitled under this Agreement. A Certificate of Completion shall acknowledge substantial completion of the Project or Project Phase, as the case may be, specifying (i) the items remaining to be completed by the Developer in the Project or the Project Phase(s) (which may include only those items such as landscaping and punch-list items that NLDC and DECD are satisfied will be completed by the Developer within a reasonable period of time and for which a cash bond or equivalent security, satisfactory to NLDC and DECD has been posted in the amount of 115% of NLDC's and DECD's reasonable estimate of the cost of completing the outstanding development obligations on the Project or the Project Phase(s)), and (ii) the obligations of this Agreement which continue to apply to the Project or the Project Phase. The Certificate of Completion shall expressly extinguish any right of termination in favor of NLDC or its successors with respect to construction of the completed Project or the Project Phase(s) covered thereby. A Certificate of Completion issued by NLDC shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement with respect to the obligations and liabilities of the Developer and its successors and assigns to construct the Project or the Project Phase(s), except as to those obligations, liabilities and acknowledgements of the Developer in the Agreement as may be specifically enumerated in the Certificate of Completion for the Project or the Project Phase(s), which shall be substantially in the form attached as Schedule B. All such obligations, liabilities and acknowledgments of the Developer as set forth in the Certificate of Completion for the Project or any Project Phase(s) shall be effective and continue for the time periods indicated in such certificate and shall be deemed to be a part of this Agreement and subject to all applicable provisions herein. The Certificate of Completion shall be in a form proper for recording on the Land Records of the City of New London.

7.06. Meetings of NLDC and the Developer.

(a) Upon the request of either party, but not less frequently than monthly during the Pre-Development Period, one or more Authorized Representatives from each party, including, at the option of DECD and the City, a representative of DECD and a representative of the City, shall meet in New London, Connecticut, to exchange and review all information relevant to the Project, including, but not limited to, design progress, construction scheduling, phasing and the schedule for the Project or each Project Phase, project budget, project Business Plan, and affirmative action goals and efforts. All such information shall be made available to the NLDC, which in turn shall distribute the same to the DECD and the City, upon request. Upon the request by either party for a meeting, the NLDC shall notify the DECD and the City of the time, date and location of the meeting. All the information provided by the Developer in any such meeting that is not required by statute, the State Building Code or other State regulation, or the New London Zoning Regulations to provide will be held in strict confidence by the NLDC, DECD and the City (to the extent such information is provided to the City), and shall not be disseminated to any third party without the express written consent of the Developer unless otherwise required by law as interpreted by counsel to those parties; provided that the Developer shall have the right to contest any Freedom of Information Act or similar request for non-public information about the Developer or the Project, or any Project Phase, at the Developer's expense.

(b) In the event that either party has a particular issue which requires review, notice of that issue shall be given to the other party (with copy to DECD) no less than three (3) days prior to the scheduled date of the meeting, unless circumstances prevent such notice.

Article VIII

DEFAULT AND TERMINATION

8.01. Definition of Events of Default. An Event of Default shall mean any of the following which continues beyond any applicable notice and cure period:

(a) With respect to the Developer:

- (i) Developer's failure to observe or perform any of the material terms, conditions, and covenants of this Agreement;
- (ii) Developer's failure to satisfy the Conditions Precedent to the Transfer of Title set forth in Section 3.01 of this Agreement to close, in accordance with the requirements of Article III and the Key Milestones;
- (iii) Developer's failure to commence and diligently pursue construction, or complete construction in accordance with the terms hereof and to complete construction on the Project or any phase of the Project in accordance with the Key Milestones;
- (iv) An event of default by Developer shall occur under any Related Agreement and such default continues after all required notices and opportunities to cure;
- (vi) Developer shall obtain an order for relief in a case filed by it under the United States Bankruptcy Code; a receiver or trustee shall be appointed for Developer's property and affairs; or Developer shall make an assignment for the benefit of creditors or shall file a petition in bankruptcy or insolvency or for reorganization or shall make application for the appointment of a receiver and such adjudication, appointment, assignment or petition shall not be set aside, vacated, discharged or bonded within one hundred and twenty (120) days after the issuance of same; or
- (vii) The liquidation or dissolution of Developer.

(b) With respect to NLDC:

- (i) NLDC's failure to observe or perform any of the material terms, conditions, and covenants of this Agreement or the Related Agreements and such failure has or will likely have a material adverse impact on the Project; or
- (ii) An event of default by NLDC shall occur under any Related Agreement and such default continues after all required notices and opportunities to cure and such default has or will likely have a material adverse impact on the Project or on the Developer.

8.02. Cross Defaults. Notwithstanding any provision hereof which implies the contrary, the occurrence of any Event of Default under this Agreement shall not, in and of itself, be deemed a default and breach of any Related Agreement, unless such default also constitutes default under the specific terms of such Related Agreement: provided, however, that an event of default under this Agreement by NLDC shall constitute a default by NLDC under the Assistance Agreement and shall entitle DECD to pursue any and all remedies available at law or in equity under the Assistance Agreement and this Agreement.

8.03. Procedure Regarding Defaults and Claims of Default. If a default shall occur under this Agreement, then the non-defaulting party ("Non-Defaulting Party") must demand by written notice ("Default Notice") that the condition or event which has caused such default be cured by the defaulting party (the "Defaulting Party"). A copy of any such Default Notice shall be sent to DECD and any mortgagee of record of a Defaulting Party of which written notice and an address has been given to the Non-Defaulting Party. If the Defaulting Party or any mortgagee does not cure the condition or event which has caused such default within thirty (30) days after receipt of the Default Notice, or if such default is of a kind which cannot be reasonably cured within thirty (30) days and the Defaulting Party or its mortgagee does not within such thirty (30) day period commence to cure such default and diligently thereafter prosecute such cure to completion, then the Defaulting Party shall be in default hereunder and shall be subject to the remedies set forth in Section 8.06(b) below. Notwithstanding the foregoing, if NLDC is the Defaulting Party, DECD shall have the right, but not the obligation, to cure the condition or event which has caused such default within ninety (90) days after receipt of the Default Notice. If DECD does cure the condition or event which has caused such default within ninety (90) days after receipt of the Default Notice, or if such default is of a kind which cannot be reasonably be cured within ninety (90) days and DECD does within such ninety (90) day period commence to cure such condition or event which has caused such default and thereafter prosecute such cure to completion, then NLDC and DECD shall not be in default hereunder and shall not be subject to the remedies set forth in Section 8.06(b) below. If NLDC is the Defaulting Party by virtue of a default which gives rise to a claim by Developer for a return of a Deposit, and if DECD exercises any rights it has by virtue of any assignment or collateral assignment of this Agreement and becomes NLDC's assignee hereunder, DECD shall nonetheless have no liability for such default, and DECD shall not be deemed to be in default hereunder as the result of the default by

NLDC relating to any such claim for return of a Deposit against NLDC and the Developer shall have the right to pursue its claim for return of Deposit against NLDC only. Notwithstanding the foregoing, should DECD or the City hold the Deposits, the Developer shall also have a right to pursue its claim for the Deposit against DECD or the City, as the case may be. Neither NLDC nor DECD shall have liability for any portion of the Deposits drawn down by the other party.

8.04. Limited Waiver of Right to File Lis Pendens. The Developer specifically recognizes that the purpose of this Agreement is to fulfill the public policy as set forth in the MDP and the EDC and that the development of the Project Area is of the utmost importance to the City and the general welfare of the City and that significant public assistance from both the City and State has been made available for purposes of bringing the Project to fruition. The Developer therefore expressly agrees that in the event of a default by NLDC, provided that NLDC has complied with the standard set forth in Section 9.04 and acted in a commercially reasonable manner, the Developer knowingly and voluntarily, waives any and all rights to avail itself of any remedies that would prevent good, marketable title to the Project Parcels vesting or remaining in NLDC, provided, however, that this waiver does not exclude Developer's right to exercise such rights as it may have to secure a notice of lis pendens subject to discharge proceedings pursuant to Conn. Gen. Stat. Sections 52-325a and 52-325b. The Developer irrevocably waives any claim the Developer may have against NLDC for a) any prejudgment remedy pursuant to Conn. Gen. Statutes Chapter 903A or b) specific performance or other injunctive relief except as provided in Section 8.06(b) below, in both the Connecticut and Federal courts. The provisions of this paragraph shall survive the issuance of a Certificate of Completion and the term of this Agreement.

8.05. Waiver of Damages. Developer specifically agrees that NLDC shall not be liable for monetary damages resulting from any failure to comply with the terms of this Agreement or any Related Agreement, including specifically but without limitation, delay in the Project regardless of the cause for the delay, except as explicitly provided in this Agreement solely with respect to recovery of the Deposit.

8.06. Remedies in Event Default Not Cured.

- (a) If the Developer is the defaulting party, then NLDC and, where applicable, DECD shall collectively have the following exclusive remedies:
 - (i) The right to retain and use, free from any claims by the Developer, the Deposit paid in accordance with the provisions of Section 5.06(a), to reimburse NLDC for cost and expenses incurred in the issuance and implementation of the Project and to permit NLDC to seek a new developer for the Project;
 - (ii) The right to draw upon letters of credit and/or payment and performance bonds in accordance with their terms, if any;

- (iii) The right to reimbursement of all costs and reasonable attorneys' fees incurred in connection with the enforcement of this Agreement and the exercise of NLDC's rights and remedies in the event of a default by Developer hereunder;
- (iv) The right to terminate this Agreement after the expiration of applicable cure or grace periods, such termination to be effective upon delivery of notice of the same pursuant to the notice provisions set forth herein at Section 9.04.

(b) If NLDC is the defaulting party, then the Developer shall have, subject to the rights granted DECD hereunder including, without limitation, the right of DECD to cure such default as herein provided, the following exclusive remedies:

- (i) The right to terminate this Agreement, in which event NLDC shall return to Developer the Deposit minus those sums which Section 5.06(a) of this Agreement entitles the NLDC to have withdrawn as of the date such notice of termination is received and this Agreement shall be of no further force and effect except as to matters which expressly survive termination of this Agreement;
- (ii) The right to specific performance with respect to the conveyance of title to a Project Parcel for which all conditions precedent to the transfer of title have been satisfied (or, but for NLDC's default, would have been satisfied), provided Developer is not in default hereunder;
- (iii) The right to specific performance with respect to the delivery of a Certificate of Completion concerning the Project, or a Project Parcel for which all conditions have been fulfilled (or, but for NLDC's default, would have been fulfilled), provided Developer is not in default hereunder;
- (iv) The right to specific performance with respect solely to release or elimination of a land title encumbrance voluntarily created by NLDC after completion of title review by the Developer in violation of Section 3.02; and
- (v) The right to reimbursement of all costs and reasonable attorneys' fees incurred in connection with the enforcement of this Agreement and the exercise of Developer's rights and remedies in the event of a default by NLDC hereunder.

(c) The remedies provided in this Article VIII are exclusive with respect to this Agreement, but are in addition to any remedies expressly available elsewhere in the Related Agreements. Exercise of one remedy shall not be deemed to preclude

exercise of other remedies for the same default, and all remedies available to a party may be exercised cumulatively.

(d) No waiver of any default by any party to this Agreement shall be implied from any omission by any other party to take any action in respect of such default, if such default continues or is repeated. No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more written waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement.

(e) Notwithstanding anything contained herein to the contrary, no default with respect to a Project Phase shall constitute a default with respect to any other Project Phase for which a Certificate of Completion has been issued.

8.07. Dispute Resolution.

(a) Prior to the commencement of any lawsuit, the Parties will attempt in good faith to resolve the dispute through negotiation in the following stages. Any Party may initiate negotiations by providing written notice ("Notice of Dispute") in letter form to the other Party setting forth the subject of the dispute, including but not limited to a disputed allegation of default under this Agreement, and the relief requested. The other Party will respond in writing within five days of receipt of the Notice of Dispute to the first Party with a statement of its position on and recommended solution to the dispute.

(b) If the dispute is not resolved by such exchange of correspondence, then representatives of each Party with full settlement authority will meet at a mutually agreeable time and place in the area of New London within ten (10) days of the date of the Notice of Dispute in order to exchange relevant information and perspectives, and to attempt to resolve the dispute.

(c) If the dispute is not resolved by the above negotiations within such ten-day period, the parties agree to retain a retired federal judge or federal magistrate judge to mediate the dispute within fifteen (15) days (or such other time as the parties agree in writing) of the end of such ten-day period. The parties shall share equally the mediator's fees and bear their own expenses and attorney's fees whatever the outcome of the mediation.

(d) If the dispute is not resolved by such mediation, venue for any lawsuit for relief permitted by this Agreement shall be in the Connecticut Superior Court, Judicial District of New Haven. In any such lawsuit, this Agreement shall constitute the Parties' irrevocable stipulation to a court order for an expedited pleading, discovery, settlement conference and trial schedule.

8.08. Extension of Key Milestones.

(a) The parties shall extend the relevant Key Milestones in Exhibit F only in accordance with the following:

- (i) Upon written agreement of the parties, subject to the reasonable consent of DECD.
- (ii) With respect to the Pre-Development Period only, for the duration of any delay caused by any judicial or other governmental challenge or any appeal from, or lawsuit concerning, the issuance of any permits or approvals obtained for the Project brought or filed by a third party, plus any remobilization period as may be reasonably required, up to a maximum total extension of twenty-four (24) months, provided the party claiming the delay is diligently and continuously proceeding with its development obligations, as set forth in this Agreement, to the extent feasible.

(b) A party seeking or claiming an extension shall so notify the other party, in writing, specifying the basis for extension, prior to the applicable Key Milestone.

(c) The Developer agrees to complete the Project within the Term and TIME IS OF THE ESSENCE to such final completion date.

8.09. No Recourse Against the City; Exceptions. Notwithstanding that the City has appointed NLDC as its development agency and implementing agency under Conn. Gen. Stat. Chapters 132 and 588l, the Developer hereby agrees that the City of New London shall not be liable in any manner to the Developer or any Affiliate or assignee of the Developer for any obligation of NLDC in this Agreement, and that the Developer, and its Affiliate and/or assignee, will only look to NLDC for any claims under and subject to the limitations of this Agreement, excepting only if and to the extent there has been an assignment to the City under Section 7.02(b). The provisions of this paragraph shall survive the issuance of a Certificate of Completion and the term of this Agreement. This Section does not affect the Developer's right to appeal tax and utility assessments and zoning or other permitting decisions or actions by the City or any officer, board or commission of the City.

8.10 No Recourse Against the Principals, Members and Directors of the Developer. NLDC, DECD and the City of New London hereby acknowledge and agree that the principals, stockholders, directors, officers, managers and members of the Developer (or of any Development Entity named and approved pursuant to Section 7.01) shall not be liable in any manner to the NLDC, DECD, the City, or to any successor or assignee of the NLDC, DECD or the City, or to any person claiming under them, or under this Agreement (the "Benefitted Parties"), for any obligation of the Developer under this Agreement and that the Benefitted Parties will have only such recourse and remedies as are permitted under the terms of this Agreement for any and all claims

hereunder The provisions of this subsection shall survive the issuance of a Certificate of Completion and the termination of this Agreement.

8.11 No Recourse Against NLDC or the Members, Officers, Directors of NLDC.

The Developer hereby acknowledges and agrees that neither NLDC nor its directors, officers, consultants, managers and members shall be liable in any manner to the Developer, any Development Entity or successor or to any other person claiming under them or under this Agreement, for any obligation of NLDC in this Agreement and that the Developer or any Development Entity or successor to the Developer or any other person claiming under them or under this Agreement will have only such recourse and remedies as are permitted under the terms of this Agreement for any and all claims hereunder . The provisions of this paragraph shall survive the issuance of a Certificate of Completion and the termination of this Agreement.

Article IX

MISCELLANEOUS REPRESENTATIONS AND AGREEMENTS

9.01. Representations.

(a) The Developer represents that it is duly authorized and empowered to undertake and complete the Project as herein described and set forth and to execute and deliver this Agreement and any and all documents, deeds and instruments required hereunder to be executed and delivered by it for the Project.

(b) NLDC represents that it is authorized to undertake its obligations in connection with the Project as herein described and set forth and to execute and deliver this Agreement and any and all documents, deeds and instruments required hereunder to be executed and delivered by it for the Project.

(c) Each of the parties hereto affirmatively represents that it has engaged no broker or finder in connection with the negotiation of this Agreement, and each hereby indemnifies and holds the other harmless against any claims for fees for such services by any persons or firm claiming under or through such indemnitor.

(d) The Developer represents, acknowledges and agrees that NLDC is not guaranteeing the completeness or accuracy of the Site Information and, if Developer closes on the conveyance of any Project Parcel, Developer shall take that Project Parcel in "as is" condition as shown by that certain Fort Trumbull MDP Area A, Parcel E, Remedial Action Report as approved by the Connecticut Department of Environmental Protection ("the Remedial Action Report") and all the environmental studies and reports listed in the Remedial Action Report and the Developer's own due diligence.

(e) NLDC represents that its Project Director, John Brooks,(i) is unaware of any material condition of the project Area not disclosed in the Fort Trumbull Documents and/or the Site Information, including but not limited to the RAP; (ii) to the best of his knowledge, NLDC has received no notice from any State or Federal officer or agency of any environmental conditions at the Project Site that are not disclosed in the

Site Information. NLDC agrees promptly to disclose to Developer (i) any new environmental reports concerning the Project Area which come to attention of the NLDC after this Agreement is signed and (ii) any and all notice(s) from any State or Federal officer or agency concerning site conditions during the term hereof.

9.02. General Agreements.

(a) Nothing contained in this Agreement, or in past or future transactions, shall create, or be deemed to create, any Partnership, principal agent, or joint venture relationship between NLDC and the Developer.

(b) This Agreement shall survive the execution and delivery of any deeds, leases or other documents required by, or referred to, in this Agreement.

(c) The prevailing party in any dispute resolution proceedings brought to enforce a party's obligations under the terms of this Agreement shall be entitled to payment of its costs and attorneys fees by the other party.

9.03. Principles of Interpretation. In this Agreement:

(a) The terms "hereby", "hereof," "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the date of this Agreement.

(b) Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) Nothing in this Agreement shall be interpreted to benefit any party other than NLDC, the State of Connecticut, through DECD, the City of New London and the Developer. There are no other third party beneficiaries of this Agreement.

9.04. Approvals, Actions and Notices

(a) Whenever the consent or approval of NLDC, the Developer, the City or DECD is required hereunder or otherwise in connection with the development of the Project, such consent or approval shall not be unreasonably delayed, conditioned or

withheld, nor shall it be made contingent upon or structured so as to require, directly or indirectly, the payment of any fee or charge by NLDC, the City or the Developer or any Development Entity, except as otherwise expressly set forth in this Agreement. Any disapproval or refusal to grant consent or acceptance shall include reasons therefor. Wherever there is a requirement that any thing, act or circumstance shall be satisfactory to the Developer, NLDC, the City or DECD or shall be done and performed to the Developer's, NLDC's, the City's or DECD's satisfaction or there is any other requirement of similar import, the standards of reasonableness and customary practice with respect to projects of similar size, location and complexity shall be used in determining whether the requirement has been fulfilled. With respect to DECD and the City, the standards set forth in this Section 9.04(a) apply to specific approvals and consents required by contract pursuant to the terms of this Agreement and are not intended to alter or diminish the governmental discretion or authority of either. Whenever a time period is specified herein for a party to act on a request for review, consent or approval, the failure of such party to act on such request within such time period shall be deemed a grant, approval or consent to such request, provided that such request, when submitted, is prefaced with the following language printed in capital letters in boldface type:

NOTICE

THIS REQUEST FOR CONSENT OR APPROVAL REQUIRES A PROMPT RESPONSE. THE FAILURE TO RESPOND WITHIN [] DAYS SHALL RESULT IN AN AUTOMATIC APPROVAL.

(b) All notices and requests to be given hereunder shall be given in writing within a reasonable time and shall be deemed to have been made either (i) when deposited in the United States mail, by certified or registered mail, return receipt requested, or (ii) hand-delivered and addressed to the parties below. Courtesy electronic notification of all notices and requests shall be provided for with e-mail addresses as indicated.

If to Developer: River Bank Construction LLC
2 Pan Handle Lane
Westport, CT 06880
Attention: Robert Stillman
E-mail: r.stillman@rcn.com

cc: Kepple, Cole-Chu, Cipparone, Avena & Zaccaro,
PC 261 Williams Street
New London, CT 06320
Attention: Leeland J. Cole-Chu, Esq.
Email: lcc@kccaz.com

If to NLDC: New London Development Corporation
165 State Street, Suite 421
P.O. Box 2042

New London, CT 06320-2042
Attention: John Brooks, Director of Development
Email: jbrooks@nldc.org

cc: Wiggin & Dana One
Century Tower
P.O. Box 1832
New Haven, CT 06508-1832
Attention: Susan J. Bryson, Esq.
Email: sbryson@wiggin.com

If to DECD: State of Connecticut
Department of Economic and Community
Development
505 Hudson Street
Hartford, CT 06106
Attention: Commissioner

cc: Updike, Kelly & Spellacy, P.C.
One State Street
Hartford, CT 06103
Attention: James H. Lloyd, Esq.
Email: jlloyd@uks.com

If to City of New London: City Manager
City of New London
City Hall, 181 State Street
New London, CT 06320
Email: mberliner@ci.new-london.ct.us

cc: Conway & Londregan, P.C.
Huntington Street
New London, CT 06320
Attn: Thomas J. Londregan, Esq.
Email: tlondregan@clsmlaw.com

(c) Whenever the Developer is required by the terms of this Agreement to provide documents, information, notices or requests to the DECD and/or the City, the Developer shall satisfy this obligation by providing the same to the NLDC, which in turn shall distribute such documents, notices or requests to the appropriate individuals within the DECD and/or the City.

9.05. Miscellaneous.

(a) This Agreement constitutes the entire written understanding of the parties with respect to the matters set forth herein and all prior agreements and

undertakings are merged herein. This Agreement may not be amended except in writing, signed by each of the parties.

(b) This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Connecticut.

(c) If any provision of this Agreement shall be ruled invalid by any court of competent jurisdiction or shall be rendered invalid by any change in applicable laws or for any other reason, the invalidity of such provision shall not affect any of the remaining provisions hereof.

(d) In the event there is any conflict between the provisions of this Agreement and those of other agreements mentioned herein, the provisions of this Agreement shall govern the disposition of the conflict, provided however, that this provision shall be inapplicable to the Assistance Agreement.

(e) The terms of the Exhibits and Schedules attached to this Agreement shall be incorporated herein as if fully set forth herein.

(f) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and shall be binding upon the parties, their successors and assigns.

(g) This Agreement (or a memorandum hereof, executed by both parties) may be recorded by either party on the Land Records of the City of New London. The parties agree to execute such additional documents for recordation in the New London Land Records to effectuate the matters contemplated hereunder.

(h) The parties each agree that each has played a material role in the drafting and negotiation of this Development Agreement and that such document shall not be construed against any party merely because of that party's role in the drafting thereof.

9.06. Modification without Consent of the City and State Ineffective. Developer and NLDC hereby acknowledge and agree that any modification of this Agreement or any of its exhibits, tables, schedules, or attachments shall be ineffective without the prior written approval of DECD and the City of New London, said consents not to be unreasonably withheld.

9.07. Termination. This Agreement shall terminate five (5) years from the date hereof with respect to the Project Parcels not then transferred. Upon termination, this Agreement shall be void and of no further force and effect with respect to such Project Parcels. Specifically, but without limitation, the parties shall have no further rights or obligations hereunder with respect to any such Project Parcel and the Developer shall have no right to or claim in any such Project Parcel.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement, in six (6) counterparts, to be signed, sealed and delivered by their duly authorized officers. New London Development Corporation, acting herein by its President, and River Bank Construction, LLC, acting herein by its Managing Member, as of the date first above written.

Signed, sealed and delivered in
the presence of:

NEW LONDON DEVELOPMENT
CORPORATION

By: _____

Michael Joplin
Its President
Duly authorized

Signed, sealed and delivered in
the presence of:

River Bank Construction, LLC

By: _____

Robert Stillman
Its Managing Member
Duly authorized

ACKNOWLEDGED:

STATE OF CONNECTICUT
DEPARTMENT OF ECONOMIC AND
COMMUNITY DEVELOPMENT

By: _____

Ronald Angelo
Deputy Commissioner
Date signed: _____

CITY OF NEW LONDON

By: _____

Martin Berliner
City Manager
Date signed: _____

STATE OF CONNECTICUT)

) ss: New Haven

October __, 2010

COUNTY OF NEW LONDON)

Personally appeared Michael W. Joplin, President of New London Development Corporation, one of the signers and sealers of the foregoing instrument, and he acknowledged the same to be the free act and deed of New London Development Corporation, and of himself as its President before me.

Name: _____

Susan Bryson

Commissioner of the Superior Court

STATE OF CONNECTICUT)

) ss: New London

October __, 2010

COUNTY OF NEW LONDON)

Personally appeared Robert Stillman, Managing Member of River Bank Construction, LLC, one of the signers and sealers of the foregoing instrument, and he acknowledged the same to be the free act and deed of River Bank Construction LLC, and of himself as its Managing Member before me.

Name: _____

Leeland Cole-Chu

Commissioner of the Superior Court

TABLE OF EXHIBITS [NOT final]

Exhibit	Description	Reference
Exhibit A	MDP Area	Preamble
Exhibit B	Project Parcels <i>(2a, 2b, 2c and 3b)</i>	Preamble
Exhibit B-1	Legal Description of Project Parcels	2.02
Exhibit C	Easements and Rights of Way (includes Riverwalk)	3.02
Exhibit D	Preliminary Site Plan	2.05(a)
Exhibit E	Preliminary Elevation Drawing	2.05(a)
Exhibit F	Key Milestones	5.03(c)(vi), 8.08
Exhibit G	Employment and Contracting Goals and Objectives	5.08
Exhibit H	Design Review Procedure and Submittal Requirements	5.02
Exhibit I	Permits and Approvals	5.05
Exhibit J	Draft Land Disposition Agreement	2.03
Exhibit K	Draft Riverwalk Maintenance Easement	5.07(f)
Schedule A	Form of Quit Claim Deed	2.03
Schedule B	Form of Certificate of Completion	7.05

TABLE OF CONTENTS

<u>Article I. DEFINITIONS</u>	<u>5</u>
<u>Article II. INTRODUCTION AND BASIC TERMS</u>	<u>10</u>
<u>2.01. Introduction</u>	<u>10</u>
<u>2.02. Project Area</u>	<u>10</u>
<u>2.03. NLDC's Obligations</u>	<u>10</u>
<u>2.04. Developer's Obligations</u>	<u>10</u>
<u>2.05. The Project</u>	<u>10</u>
<u>2.06. Term</u>	<u>12</u>
<u>2.07. Acknowledgement of Role of State</u>	<u>12</u>
<u>2.08. Acknowledgement of Role of City</u>	<u>13</u>
<u>Article III. PROPERTY TRANSFER TO DEVELOPER</u>	<u>14</u>
<u>3.01. Condition Precedent to the Transfer of Title</u>	<u>14</u>
<u>3.02. Permitted Encumbrances</u>	<u>15</u>
<u>3.03. Closing on Financing and Project Parcels and Schedule</u>	<u>16</u>
<u>Article IV. NLDC OBLIGATIONS</u>	<u>16</u>
<u>4.01. Government Approvals</u>	<u>16</u>
<u>4.02. NLDC Costs</u>	<u>16</u>
<u>4.03. Compliance with Assistance Agreement</u>	<u>16</u>
<u>Article V. THE PROJECT DEVELOPER'S OBLIGATIONS</u>	<u>16</u>
<u>5.01. Developer Obligations</u>	<u>16</u>
<u>5.02. Design Review</u>	<u>17</u>
<u>5.03. Due Diligence Review</u>	<u>17</u>
<u>5.04. Coordination of NLDC and Developer Obligations</u>	<u>18</u>
<u>5.05. Approvals and Permits</u>	<u>19</u>
<u>5.06. Performance Security</u>	<u>19</u>
<u>5.07. Additional Covenants of the Developer</u>	<u>20</u>
<u>5.08. Employment and Contracting Requirements</u>	<u>20</u>
<u>5.09. Tax Abatement</u>	<u>20</u>
<u>Article VI. PROJECT FUNDING AND FINANCIAL AGREEMENTS</u>	<u>21</u>
<u>6.01. Debt/Equity Commitment</u>	<u>21</u>
<u>6.02. Financing Statements</u>	<u>21</u>
<u>Article VII. MISCELLANEOUS RIGHTS AND OBLIGATIONS</u>	<u>21</u>
<u>7.01. Assignments and Transfers by Developer</u>	<u>21</u>
<u>7.02. Assignments and Transfers by NLDC</u>	<u>23</u>
<u>7.03. Staff</u>	<u>23</u>
<u>7.04. Fort Trumbull Municipal Development Plan</u>	<u>24</u>
<u>7.05. Certificate of Completion</u>	<u>24</u>

7.06. Meetings of NLDC and the Developer	25
<u>Article VIII. DEFAULT AND TERMINATION</u>	25
8.01. Definition of Events of Default.....	25
8.02. Cross Defaults.....	27
8.03. Notice of Event of Default and Dispute Resolution	27
8.04. Waiver of Appeal and Right to File Lis Pendens	28
8.05. Waiver of Damages.....	28
8.06. Remedies in Event Default Not Cured.....	28
8.07. Dispute Resolution.....	30
8.08. Extension of Key Milestones.....	30
8.09. No Recourse Against the City.....	31
8.10. No Recourse Against the Principals, Members and Directors of the Developer Milestones	31
8.11 No Recourse Against NLDC or the Members, Officers, Directors of NLDC	31
<u>Article IX. MISCELLANEOUS REPRESENTATIONS AND AGREEMENTS</u>	32
9.01. Representations	32
9.02. General Agreements.....	32
9.03. Principles of Interpretation	33
9.04. Approvals and Notices	33
9.05. Miscellaneous	35
9.06. Modification without Consent of the City and State Ineffective	36
9.07. Termination.....	36
<u>TABLE OF EXHIBITS</u>	40

SUMMARY
Riverbank Construction, LLC
Qualifications and Proposal for Fort Trumbull Residential Project
"Village on the Thames"

Number of residential units - 75- 80, on Parcels 2A/B/C and Parcel 3B
Size of units – TBD, with expectation that most or all would have 2 bedrooms+
Type of units – two story attached townhouses; some configured as flats for ADA, retiree market
Architectural style – New England Colonial, Federal, Greek Revival, Italianate
Construction method – wood frame construction (no basements due to FEMA/DEP Reqt.)
Business model – developed as condos, rented until condo market recovers
Phases – depending on market; possible two phase (developer option)

MDP consistency – yes; “village concept” explicitly mentioned in MDP. Parcel 3B was originally part of Parcel 2 (will require minor MDP change by NLDC Board).

Proposed River Bank Project Development Team:

Principals – Robert Stillman, Irwin Stillman, Westport, CT (50/50)
Architect – Douglas Cutler, Wilton, CT
Legal – Lee Cole-Chu, New London, CT
Environmental – HRP (Skip Alleman), Farmington, CT
Structural – Jim Destefano, Fairfield, CT
Civil – Robert Frangione, New Canaan, CT
Geotechnical – Clarence Welti, Glastonbury, CT
Building Code – Richard Sampson, Norfolk, MA
General Contracting – River Bank Construction, Westport, CT

Proposed Owner equity – 10%

Other notes:

- Requires for fee-simple land transfer v. ground lease for development as condo
- All land for project is former NUWC, transferred to NLDC by the Federal government under an Economic Development Conveyance (EDC).
- No developer subsidy requested beyond tax abatement from the City of New London

Resolution 101029-2

Whereas, on January 22, 2010 River Bank Construction, LLC responded to a Request for Qualifications (RFQ) issued by the New London Development Corporation seeking developers for the Fort Trumbull Municipal Development Plan, and

Whereas, a Resolution of the Board of Directors of the New London Development Corporation on February 19, 2010 authorized the Real Estate Committee to present the River Bank Construction, LLC proposal for the consideration of the Economic Development Committee of the City Council of the City of New London, such presentation receiving the unanimous consent of the New London City Council and City Council Economic Development Committee on March 11, 2010 regarding the commencement of negotiations with River Bank Construction, LLC for the proposed Fort Trumbull Residential Project, and

Whereas, the Executive Committee authorized the commencement of exclusive negotiations with River Bank Construction LLC on March 12, 2010 as the Selected Developer of the Fort Trumbull Residential Project, and

Whereas, the Real Estate Committee has reported, on the advice of legal counsel, that agreement has been reached with River Bank Construction, LLC on a Final Draft of Development Agreement which will result in the development and implementation of the proposed Fort Trumbull Residential Project, in furtherance of the New London Development Corporation's obligations under the Municipal Development Plan as approved by the State of Connecticut and the Economic Development Conveyance of Federal land as approved by the United States of America,

Be it hereby Resolved,

That the Board of Directors of the New London Development Corporation hereby approves the Final Draft of the Development Agreement between New London Development Corporation and River Bank Construction, LLC, and

Be it also Resolved,

That the Board of Directors authorizes the Real Estate Committee to present the Final Draft Development Agreement to the Economic Development Committee of the City Council of the City of New London, at a time and place convenient to it, for City Council review and concurrence with the agreement, and that following such concurrence,

Be it resolved,

That the Board of Directors of the New London Development Corporation authorizes Michael Joplin, President, to sign the development agreement with River Bank Construction, LLC on behalf of the New London Development Corporation, and to execute the obligations and terms of the development agreement that are the responsibility of the New London Development Corporation.

Certificate

I, Linda Mariani, Secretary of the New London Development Corporation, do hereby certify the above resolution was adopted at a meeting of the Board of Directors of the New London Development Corporation held on October 29, 2010, and that said resolution is contained in the minutes of said meeting on file in the New London Development Corporation office, 165 State Street, Suite 421, New London, Connecticut, and that it has not been modified nor rescinded whatsoever.

Attest:

Linda Mariani

Date

10.29.2010