

**EXCLUSIVE NEGOTIATION AGREEMENT BY AND BETWEEN
THE CITY OF ALAMEDA
AND
Alameda United Commercial LLC**

This EXCLUSIVE NEGOTIATION AGREEMENT ("Agreement") is entered into by and between the City of Alameda, a municipal corporation ("City"), and Alameda United Commercial, a limited liability corporation ("Developer"), as of June ____, 2014 (the "Effective Date"). The City and the Developer sometimes are referred to collectively as the "Parties" and either individually as a "Party."

RECITALS

A. The City controls or is the owner of certain real property located within the City of Alameda, State of California commonly referred to as the former Alameda Naval Air Station, now known as Alameda Point. The property that is the subject of this Agreement is the Bachelors Enlisted Quarters located at 2651, 2701, and 2401 Lexington Street (Buildings 2, 3, and 4), which is depicted for convenience in Exhibit A (the "Property").

B. The Developer seeks to develop the Property for use as assisted senior housing, independent senior housing, student housing and related services and office spaces (the "Project").

D. The City and the Developer seek to negotiate a transfer of the Property from the City to the Developer for development of the Project. The Parties intend to negotiate mutually acceptable terms and conditions for the transfer and development of the Project in a Disposition and Development Agreement ("DDA").

E. In February 2014, the Alameda City Council approved a Master Infrastructure Plan, General Plan Amendment, Zoning Ordinance Amendment and certified an Environmental Impact Report (collectively referred to as the "Planning Documents") all related to potential development at Alameda Point. The Developer understands that any proposed Project must be consistent with those Planning Documents as now approved, as may be approved and as may be amended from time to time.

NOW, THEREFORE, in consideration of the foregoing and the promises, covenants, and provisions set forth below, the receipt and adequacy of which consideration is acknowledged, the Developer and the City agree as follows.

AGREEMENT

1. Term. The term of this Agreement shall commence on the date the City Council approves this Agreement (the "Effective Date"), and shall extend for six months thereafter unless sooner terminated or extended as herein provided (the "Initial Term").

2. Extended Term. The Initial Term plus any and all extensions of the Initial Term under this Section 2 are referred to collectively as the "Term." The Initial Term may be extended two times for up to three months each time at the sole discretion of the City Manager or his or her designee.
3. Developer Deposit. Within five (5) business days of the Effective Date, Developer must wire transfer to the City a deposit of \$250,000 ("Deposit"). The Deposit will assist the City in offsetting City staff and outside legal and consultant expenses associated with this Agreement and negotiation of the DDA.
 - 3.1 In the first 30 days, the Deposit is 100 percent refundable and during each successive 30 or 31 day period (as applicable), \$50,000 of the Deposit will become non-refundable on the ___ day of each month. After the Initial Term, the Developer understands and agrees that the full Deposit is non-refundable and not intended as reimbursement. Notwithstanding the foregoing, the Developer shall be entitled to a full refund of the Deposit (without interest), if and only if, the City Manager sends the Developer a notice that the SOQ was insufficient pursuant to Section 5.3 below.
 - 3.2 Any interest income generated from the Deposit during the Term accrues to the City as consideration for this ENA.
 - 3.3 If the ENA expires or is terminated early pursuant to Section 9 of this Agreement, then Developer shall be entitled to a refund of that portion of the Deposit, if any, which is still refundable pursuant to the schedule listed in Section 3.1 above. Within five (5) business days of expiration or such early termination of this Agreement, the City shall provide Developer with a letter listing the total amount of Deposit received, minus the non-refundable amount and the then remaining refundable amount, if any. A check made payable to the Developer for the refundable amount, if any, shall accompany the letter. .
4. Negotiation of the DDA. During the Term, the Parties shall negotiate the proposed terms of the DDA for submittal to the City Council for its consideration. The DDA will establish the essential business terms and framework for the transfer and development of the Property, and will define the financial, legal, operational and administrative mechanisms to implement such transfer and development. The DDA shall include a Development Plan for the Project as more fully described in Alameda Municipal Code Section 30-4.13 ("Development Plan"). A summary of non-binding key terms to be included in the DDA is attached as Exhibit B. The Developer understands and agrees that the City Manager shall have right to determine in his/her reasonable discretion if the proposed DDA is complete and sufficiently consistent with the intent described in this Section 4 to be placed on a City Council agenda.
 - 4.1 Development Plan. The Developer is required to familiarize itself with Alameda Municipal Code Section 30-4.13 and all applicable rules and regulations regarding the approval of the Development Plan. The

Development Plan requires a detailed submission to the City's Planning Department and review and approval by the City's Planning Board. This can be a time consuming process and the Developer is well advised to undertake this process early in order to complete the necessary review and approval process during the Term. The Developer is advised that the draft DDA will not be placed on the City Council agenda unless and until the Development Plan has been approved pursuant to Alameda Municipal Code Section 30-4.13.

5. City Responsibilities. During the Term, the City shall do the following to further the negotiation process:

- 5.1 Exclusive Negotiations. The City shall negotiate exclusively with the Developer regarding the Project, the Property, and the terms of the DDA and shall not solicit, market to, or negotiate with any other person or entity regarding the Project or the Property or solicit or entertain bids or proposals to do so.
- 5.2 Retention of Discretionary Authority. The City shall negotiate in good faith with the Developer during the Term. The Developer understands and agrees that by entering into this Agreement the City is making no commitment that it will approve a DDA, including a Development Plan, for the Project with the Developer. The City specifically retains the right to approve or deny a proposed DDA, including a Development Plan, or to approve an alternative or to impose any conditions or mitigation measures upon the Project in its sole discretion.
- 5.3 Evaluation of Developer's Statement of Qualifications ("SOQ"). The City shall evaluate the Developer's timely submitted SOQ. The City may also request additional information or conducting such independent investigation as the City Manager shall deem prudent and advisable to establish the Developer's relevant development experience, capacity, financial qualifications and proven track record with similar projects. If the City Manager, in his sole discretion, finds the Developer's SOQ insufficient, based upon the evaluation criteria listed in Exhibit C ("SOQ Requirements"), then he shall send a notice of insufficiency to Developer within 30 days of receiving the SOQ and this Agreement shall terminate pursuant to Section 9.

6. Developer Responsibilities. During the Term, Developer shall do the following at its sole expense to further the negotiation process:

- 6.1 Non-Refundable Deposit to Offset City Expenses. Developer shall timely make the Deposit pursuant to Section 3 above..
- 6.2 SOQ. The City expects high quality and well-designed development at Alameda Point consistent with the Planning Documents. The Developer

must demonstrate to the City relevant development experience, financial qualifications and a proven track record with similar developments. As a result, the Developer is required to submit a SOQ to the City within thirty (30) days of the Effective Date consistent with the SOQ Requirements presented in Exhibit C.

- 6.3 Further Entitlements. Developer shall seek further entitlements, as needed, for development of the Project, including but not limited to, preparation of a proposed Development Plan. Developer understands and agrees that the Project will be required to conform to City's approval processes and be consistent with the City's Zoning Ordinance, General Plan, Master Infrastructure Plan, and other specific plans as now approved, as may be approved and as may be amended from time to time.
 - 6.4 Transportation Demand Management Compliance Strategy. Developer shall prepare a Transportation Demand Management ("TDM") Compliance Strategy in compliance with the Alameda Point TDM Plan.
 - 6.5 Financing Plan and Project ProForma. Developer shall prepare a Financing Plan for the proposed Project, including a proforma, for review and approval by the City that includes sources and uses of funds for financing the Project and any rate of return requirements.
 - 6.6 Project Team. Developer shall identify key individuals on its Project Team who will be dedicated to working with the City during implementation of the DDA. Additionally, Developer shall provide the City with a list of its intended consultants, including but not limited to, architectural, engineering, legal, financial, and construction.
 - 6.7 Reports. At any time requested by the City, but not more frequently than monthly, Developer shall make oral and summary form written progress reports advising the City on all progress being made on the responsibilities listed in this Section 6. These reports and any draft and final work products prepared during the Term can be used by the City for this and other development projects at Alameda Point at the City's sole discretion.
 - 6.8 Timely Submissions. The Developer understands and agrees that the submissions from Developer required pursuant to Sections 6.4, 6.5, 6.6, and 6.7 are integral to the drafting of a DDA. Thus Developer agrees to provide these submittals to the City as early into the Term as possible.
7. Meetings. Developer and City staff, as needed, shall meet or hold a conference call on average of every two weeks during the Term to discuss the status of activities and tasks related to the negotiations and the Project, the accomplishment of such activities and tasks, and other such matters.

8. Representations and Warranties.
 - 8.1 Duly Formed and Validly Existing. Developer represents and warrants that Alameda United Commercial is a limited liability corporation and is duly formed and validly existing under the laws of the State of California.
 - 8.2 Developer Authority. Developer represents and warrants that the person executing this Agreement on behalf of Developer has the full right, power, and authority to execute this Agreement and to bind Developer hereunder. Developer agrees to provide City with evidence of this authority upon request.
 - 8.3 City Authority. The City represents and warrants that the person executing this Agreement on behalf of the City has the full right, power, and authority to execute this Agreement and to bind the City hereunder.
9. Termination. This ENA shall terminate upon the occurrence of any one of the following events:
 - 9.1 Immediately upon expiration of the Term with or without a successfully negotiated DDA.
 - 9.2 The City Council in its sole discretion fails to approve the DDA.
 - 9.3 The Developer fails to wire transfer the Deposit in full within five (5) business days of the Effective Date.
 - 9.4 The Developer fails to timely submit the Statement of Qualifications to the City within thirty (30) days of the Effective Date consistent with the requirements presented in Exhibit C.
 - 9.5 The City Manager in his/her sole discretion determines that the Developer's SOQ is insufficient and so states in a notice of insufficiency pursuant to Section 5.3.
 - 9.6 The Developer elects to terminate the ENA upon five (5) business days' notice to the City. The Developer understands and agrees that the calculation of what amounts are refundable and non-refundable shall be determined as of the date the termination notice becomes effective.
10. No Assignment. The Developer may not sell, assign, or transfer any of its rights or obligations under this Agreement.
11. Notices. All notices required or permitted under this Agreement shall be delivered in person; by facsimile, email or overnight courier with written confirmation of receipt, or by registered or certified mail, postage prepaid, return receipt requested, to such Party at its address shown below, or to such other address designated in writing by such Party:

Notices to the City:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager

Telephone: 510.747.7400
Facsimile: 510.865.1498
Email: jrusso@alamedaca.gov

With copies to:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

Telephone: 510.747.4750
Facsimile: 510.865.4028
Email: jkern@alamedacityattorney.org

Notices to Developer:

Alameda United Commercial, LLC
18801 Bellgrove Circle
Saratoga, CA 95070

Telephone: (408) 644-5995
Email: zhenzli@gmail.com

With copies to:

Salvatore Caruso Design Corporation
980 El Camino Real, Suite 200
Santa Clara, CA 95050

Telephone: 408.998.4087
Facsimile: 408.998.4088
Email: scaruso@caruso-designs.com

Notice shall be deemed received and effective on delivery, if delivered personally or upon receipt of confirmation if by facsimile, email or overnight courier; or three days after deposit into the United States mail if delivered by registered or certified mail.

12. Limitations of this Agreement.

- 12.1 Limitations of the City's Commitment. The City is not, by entering this Agreement, committing itself to or agreeing to undertake any other acts or activities requiring the subsequent independent exercise of discretion by the City or any agency or department thereof. This Agreement is merely an agreement to enter exclusive negotiations with respect to the Property according to the terms hereof, with all final discretion and approval remaining with the City Council as to any DDA, including Development Plan, and all proceedings and decisions in connection therewith. If negotiations under this Agreement result in a proposed DDA, City Council approval thereof may occur only after compliance, as may be required, with all applicable laws and ordinances including, without limitation, CEQA.
- 12.2 Effect of Expiration or Termination. If the DDA has not been approved by the City Council by the date this Agreement expires or is terminated under Section 9, neither Party shall have any further rights, obligations, or liability to the other Party under this Agreement.

13. Miscellaneous Provisions.

- 13.1 Entire Agreement. This Agreement is the entire agreement as understood by the Parties with respect to the matters set forth herein.
- 13.2 Amendments. This Agreement may be amended only in a writing signed by all Parties and approved by the City Council.
- 13.3 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in Alameda County or, in the case of any federal claims, in federal court for the Northern District of California.
- 13.4 Limitation on Remedies. In any action or other legal or administrative proceeding to enforce this Agreement, or that otherwise may arise out of this Agreement, neither the City nor Developer shall be entitled to any damages or monetary relief. It is understood and agreed by the Parties that this Agreement is solely to enable the Parties to negotiate the terms of a proposed DDA, including Development Plan, on an exclusive basis for the Term. There is no commitment that any DDA, including Development Plan, will be approved and no damages, monetary relief or specific performance shall be available to Developer if a DDA, including Development Plan, is not approved during the Term.
- 13.5 Attorneys' Fees. In any action or other legal or administrative proceeding to enforce this Agreement, or that otherwise may arise out of this Agreement, each Party shall pay its own attorneys' fees and costs.

- 13.6 Headings. The section headings in this Agreement are for convenience only; they do not explain, modify, or add to the meaning of this Agreement.
- 13.7 Interpretation. This Agreement is the result of the combined efforts of the Parties. If any provision is found ambiguous, the ambiguity will not be resolved by construing this Agreement in favor of or against either Party, but by construing the terms according to their generally accepted meaning.
- 13.8 Time Periods. Any time period to be computed under this Agreement shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday, or legal holiday, the last day will be extended until the next day the City is open for business. All references to days in this Agreement shall mean calendar days unless otherwise expressly specified. The City offices are closed on Fridays and therefore any reference to business days shall mean Monday through Thursday unless one of those days is a holiday observed by the City.
- 13.9 Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 13.10 Successors and Assigns. This Agreement is binding on and will inure to the benefit of the Parties and their respective successors. This Agreement cannot be transferred or assigned.
- 13.11 Independent Capacity. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with each another.
- 13.12 Conflict of Interest. No officer or employee of the City shall hold any interest in this Agreement (California Government Code § 1090).
- 13.13 Permit to Enter. Prior to entering upon, conducting any inspections of or performing any soils or other testing on the Property, Developer shall execute a written Permit to Enter with the City and shall conduct such entry, inspection and testing in strict compliance with the Permit to Enter.
- 13.14 Authorization to Execute Agreement. Each individual executing this Agreement represents and warrants he or she is duly authorized to execute and deliver this Agreement on behalf of the Party named herein and this Agreement is binding upon said Party in accordance with its terms.
- 13.15 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

13.16 Exhibits. The following exhibits are attached to this Agreement and incorporated herein as though set forth in full for all purposes:

Exhibit A: Diagram of the Property
Exhibit B: Summary of Non-Binding Key Terms for the DDA
Exhibit C: SOQ Requirements

CITY:

CITY OF ALAMEDA,
a California municipal corporation

By: _____
Name: John Russo
Title: City Manager

APPROVED AS TO FORM:

Name: Janet Kern
Title: City Attorney

By: _____

DEVELOPER:

Alameda United Commercial
a Limited Liability Corporation

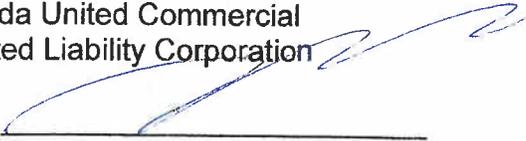
By: 
Name: ZhenZhen Li
Title: Chief Executive Officer



Exhibit A

Exhibit B – Summary of Non-Binding Key Terms for the DDA
BEQ Site

This Summary of Non-Binding Key Terms for the DDA (“Term Sheet”) is intended to assist the Parties as a guide to their negotiations. The actual terms of the DDA will be subject to further good faith negotiations and may be the same, substantially different than, or in addition to, the terms listed below. The existence of this Term Sheet shall not be construed as a promise that the Parties will be successful in negotiating a mutually agreeable DDA. The Developer understands that a DDA negotiated by City staff must be approved by the Alameda City Council in its sole discretion by ordinance and fully executed by both sides before it becomes binding on the Parties. Capitalized terms not defined herein shall have the same meaning given them in the ENA.

The Parties will seek to negotiate a DDA using the following terms and conditions as a guide to their negotiations:

- | | |
|------------------------|--|
| Property: | The acreage of the Property is estimated at 20 acres and illustrated in the attached Alameda Point Map, Exhibit “A” to the ENA and is shown as Parcel B. |
| Condition of Property: | The Property is to be sold in its “As Is” with all faults condition. |
| Proposed Project: | Developer is proposing a mixed use project consisting of assisted senior housing, independent senior housing (approximately 100,000 s.f.), student housing and related services (approximately 90,000 s.f.) and additional office spaces (collectively the “Project”). |
| Purchase Price Offer: | Developer has offered to purchase the Property for \$388,000 per acre. |

Exhibit C
SOQ Requirements

I. Content of Statement of Qualifications

The statement of qualifications (SOQ) submitted by the Developer shall clearly include, at a minimum, the elements described below:

1. Executive Summary. Brief synopsis of the development team's approach to development, public/private partnerships, key qualifications, and relevant experience.
2. Project Understanding and Approach. Discussion of the Developer's (a) understanding of the City of Alameda, Alameda Point, and the Property; and (b) approach to meeting the City's goals and objectives expressed in the Planning Documents.
3. Description of Project Team. Description of the Developer's structure, designated project manager, and project management team, including the role of each team member. Please also include contact information, resumes, relevant experience, and references for each member of the project management team.
4. Previous Experience. Description of the specific project experience of the Developer and key individual team members in entitlements and community outreach; infrastructure development; adaptive reuse of historic structures; senior housing and assisted living; student housing; affordable housing; sustainable design and development; sensitivity to environmental protections; infill and brownfield redevelopment; public/private financing; and transportation planning.

It is requested that the SOQ provide as much of the following information as possible for each relevant project: photos; site plans; completion date; Developer structure/team; project management staff; costs and financing; lessons learned; and relevant elements to development at Alameda Point. For every project, please provide specific information on sources of predevelopment funds, construction financing, long-term financing, equity funding or financing, and other working capital.

Please also include references for at least five of the previous projects referenced in this section.

5. Financial Qualifications. Provision of clear evidence of financial resources to assist in the entitlement and development of the Property, as indicated by financial statements, and evidence of access to predevelopment, construction capital, and equity financing. If the development entity was formed within the last two years then please provide this information for the parent company. Any confidential financial information shall be submitted in an envelope labeled

Exhibit C
SOQ Requirements

“CONFIDENTIAL FINANCIAL INFORMATION” that will be provided to the City’s economic consultant for review and evaluation.

II. SOQ Evaluation Criteria

SOQs will be evaluated along with the results of the City’s due diligence and reference checks. More specifically, the criteria used to assist in the evaluation of the Developer will be:

- Responsiveness to the SOQ Requirements;
- Evidence of relevant experience and proven track record;
- Technical capability and relevant experience of the project management team;
- Evidence of financial capacity, resources, and relationships, and clear corporate/organizational structure; and
- In depth understanding of, and reasonable approach to, the project.

The City will also be using the “Evaluation Criteria for Alameda Point Development Proposals” approved by the City Council in 2013 to evaluate each of the SOQs, which can be found at the following link: <http://alamedaca.gov/alameda-point/final-planning-documents>.