

FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

Town Hall Square

This FIFTH AMENDMENT OF PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this “**Fifth Amendment**”) is entered into effective as of _____, 2022 (the “**Effective Date**”) by and between SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN LEANDRO, a public agency (the “**Agency**”), the CITY OF SAN LEANDRO, a California charter city (the “**City**,” and together with the Agency, “**Seller**”), and BEAM DEVELOPMENT, LLC, a California limited liability company (“**Buyer**”). The City, Agency, and Buyer are each referred to individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. Buyer and Seller entered into that certain *Purchase and Sale Agreement and Joint Escrow Instructions* dated as of December 7, 2017 (the “**Original Agreement**”), as amended by that certain *First Amendment to Purchase and Sale Agreement* dated as of December 4, 2018 (the “**First Amendment**”), that certain *Second Amendment to Purchase and Sale Agreement* dated as of January 30, 2020 (the “**Second Amendment**”), that certain *Third Amendment to Purchase and Sale Agreement* dated as of January 31, 2022 (the “**Third Amendment**”) and that certain *Fourth Amendment to Purchase and Sale Agreement* dated as of May 31, 2022 (the “**Fourth Amendment**”, and collectively with the Original Agreement, First Amendment, Second Amendment, Third Amendment and Fourth Amendment, the “**Purchase Agreement**”).

B. The Purchase Agreement involves the conveyance of the Property (as that term is defined therein) from Seller to Buyer for the purpose of facilitating its ultimate redevelopment consistent with the overall land use vision and relevant goals and objectives as set forth in the City’s relevant planning documents (e.g., the City’s General Plan). The Original Agreement referenced Buyer’s intention to purchase the Property (as well as one or both of the Adjacent Properties, as that term is defined therein) in order to build a residential mixed use project (but the Original Agreement did not require the development of such project). Buyer’s desire to do so was based, in part, on a conceptual proposal prepared by Buyer that incorporated multi-family residential and retail components, which was based on available information known at the time of the Original Agreement. However, since 2017, Buyer has continued to refine the development concept for the Property to take into account the evolving circumstances including, among other things, changes related to the ever-escalating state and regional housing crisis and the associated Statewide legislation removing barriers to housing development, as well as changes in economic and related market conditions associated with rising construction costs, inflation generally, uncertainty in market demand, and shifting retail demand related to the on-going effects of the COVID-19 pandemic and other factors.

C. Subsequent to the Parties entering into the Original Agreement and the First Amendment, the State Legislature adopted amendments to the Surplus Land Act, which could be interpreted to place the Purchase Agreement at risk of termination as a matter of law unless the Closing (as that term is defined therein) occurs on or before December 31, 2022. However, pursuant to a Buyer’s Condition Precedent as set forth in Section 5.2(e) of the Original Agreement

(such Buyer Condition Precedent hereinafter referred to as the “**Entitlements Condition**”), Buyer is not required to Close on the Property unless, among other things, Buyer “has received all necessary approvals from the appropriate governmental and/or regulatory entities including but not limited to, approvals from the City, that are needed for construction, including, but not limited to, zoning approvals from the Project and all necessary entitlements.”

D. Despite the somewhat uncertain economic and market conditions, Buyer has continued to work with diligence and in good faith to pursue redevelopment of the Property by, among other things, expending substantial amounts of time and monies to: (i) purchase the Adjacent Properties (as contemplated under the Purchase Agreement); (ii) retain technical consultants to prepare various geotechnical and environmental site assessments as well as conduct civil engineering work; (iii) retain legal counsel to provide guidance on the land use entitlement, CEQA, and transactional-related elements to facilitate the entitlement process and the Closing; and (iv) retain architects, other design professionals and a project management team to prepare and refine the development proposal and prepare the necessary development applications.

E. City staff has also worked with diligence and in good faith to facilitate Buyer’s foregoing efforts and the ultimate conveyance of the Property as contemplated in the Purchase Agreement, and the Parties have been and continue to work cooperatively in connection with the submittal of the necessary development applications and related environmental review. Nevertheless, despite these collective diligent and good faith efforts, the Parties recognize that obtaining the necessary entitlements to proceed with the Project as contemplated by the Entitlements Condition cannot reasonably be expected to occur before December 31, 2022.

F. Pursuant to the Fourth Amendment, the Due Diligence Contingency Period was extended through September 30, 2022, and the Parties desire to enter into this Fifth Amendment to extend the Due Diligence Contingency Period to November 30, 2022, and clarify that the Closing or Close of Escrow (as that term is defined in the Purchase Agreement) shall occur no later than December 31, 2022, subject to the terms and conditions set forth herein. Seller has requested that, if the Entitlements Condition remains unsatisfied on or before November 30, 2022, Buyer waive such Entitlements Condition and proceed to Closing. Buyer is willing to waive such Entitlements Condition and proceed to Closing on or before December 29, 2022, subject to the terms and conditions set forth in this Fifth Amendment.

G. The Parties also desire to enter into this Fifth Amendment (1) to expressly recognize the considerations set forth in Recital D above based on a mutual recognition that the contemplated development of the Property to be proposed by Buyer for City’s consideration will consist of multi-family residential units and related amenities and improvements without a retail component (“**Updated Development Proposal**”). In so doing, the key goals and objectives of redeveloping an underutilized, urban infill site at a prominent corner in the City’s downtown with a vibrant, high-quality housing development and the concomitant activation of the Property and vicinity for pedestrians (particularly along East 14th Street and Davis Street) would continue to be achieved. Notwithstanding the foregoing, however, nothing in the Purchase Agreement modifies the City’s discretion with respect to the Project in accordance with the City’s normal land use approval process or obligations of Buyer in connection therewith.

The Alameda Countywide Oversight Board has approved this Fifth Amendment by Resolution No. ____ at its meeting on July 25, 2022.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Fifth Amendment, Buyer and Seller agree as follows:

1. Recitals. The above recitals are true, and the recitals and terms set forth therein are incorporated into this Fifth Amendment by this reference.

2. Definitions. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Purchase Agreement.

3. Extension of the Due Diligence Contingency Period. The Due Diligence Contingency Period shall be extended to November 30, 2022.

4. Necessary Discretionary Entitlements; No Retail Component Required. The Parties acknowledge and agree that the Purchase Agreement does not specify the type of development project which Buyer may build upon the Property, and does not require Buyer to include a retail component in its Updated Development Proposal, in order to proceed under the Purchase Agreement. The Parties further acknowledge and agree that for Buyer to develop the Updated Development Proposal, Buyer will need to obtain City approval of a conditional use permit for multi-family residential developments located in the City's DA-1 District ("**CUP**"), as well as approval of the site design ("**Site Plan Review**") and a lot merger (or similar mapping mechanism) to effectuate the merger of the Property, the Adjacent Properties, and/or other relevant lands that Buyer owns ("**Lot Merger**"). Together, the CUP, Site Plan Review and Lot Merger are referred to herein as the "**City Discretionary Entitlements**". Since the foregoing entitlements are discretionary in nature, the City will need to comply with requirements under the California Environmental Quality Act and the CEQA Guidelines (collectively, "**CEQA**") prior to approving the City Discretionary Entitlements. In accordance with CEQA, the City is obligated to exercise independent review and judgment of the required CEQA document for the Updated Development Proposal and retains all discretion to review, approve, deny, or condition the City Discretionary Entitlements pursuant to its land use authority and all other applicable laws and regulations. For purposes of this Fifth Amendment, "**satisfaction of the Entitlements Condition**" shall mean that Buyer has obtained City approval of the City Discretionary Entitlements (as that term is defined below) with conditions imposed thereon that are reasonably acceptable to Buyer and are in accordance with all legal requirements (including, without limitation, legal nexus).

5. Put Option.

Buyer has a right to right, but not an obligation, to proceed to Closing pursuant to the terms and conditions set forth herein and in the Purchase Agreement prior to satisfaction of the Entitlements Condition. If Buyer elects to waive the Entitlements Condition and proceed to Closing, in consideration thereof, Seller hereby agrees to grant Buyer the right to elect to require Seller to accept a conveyance of the Property from Buyer after the Closing Date ("**Put Option**"). If Buyer elects (a) to proceed with Closing and (b) to require the Put Option, Buyer shall deliver written notice to Seller of its election at least thirty (30) days in advance of Closing, but in no event later

than November 30, 2022. In connection therewith, Buyer and Seller hereby agree to execute and deliver a Put Option Agreement and Joint Escrow Instructions in form and substance substantially similar to that attached hereto as Exhibit A (the “**Put Option Agreement**”). If Buyer timely elects to require the Put Option, delivery of the executed Put Option Agreement upon Closing shall be a Buyer’s Condition Precedent.

6. Escrowed Purchase Price. In the event that the Put Option Agreement is duly executed and delivered by the Parties and Close of Escrow occurs, the Parties acknowledge and agree that the Purchase Price shall be held by Escrow Holder to be disbursed in accordance with the instructions set forth in the Put Option Agreement.

7. Counterparts; Electronic Transmission, Authority. This Fifth Amendment may be executed in counterparts, and when so executed by the Parties hereto, each such counterpart shall be deemed an original. This Fifth Amendment may be executed and delivered as images of manually executed signatures transmitted by electronic format (including, without limitation, “pdf”, “tif” or “jpg”) or other electronic signatures (including, without limitation, DocuSign and AdobeSign), and shall be binding on the Party delivering the executed document with the same force and effect as the delivery of a printed copy of the document with an original ink signature. Each Party represents and warrants that the person who is executing this Fifth Amendment on its behalf has the full power and authority to execute this Amendment on its behalf and to bind it to the terms hereof.

8. Conflict and Force and Effect. In case of any inconsistency between this Fifth Amendment and other provisions of the Purchase Agreement, the provisions of this Fifth Amendment shall control. The Purchase Agreement, together with this Fifth Amendment, embodies the entire understanding between the Seller and Buyer with respect to its subject matter and can be changed only by an instrument in writing signed by Seller and Buyer. Except as modified by this Fifth Amendment, the Purchase Agreement is ratified, affirmed, in full force and effect, and incorporated herein by this reference.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Fifth Amendment effective as of the Effective Date.

SELLER:

**SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY OF SAN LEANDRO**

By: _____
Name: _____
Title: _____

Attest:

By: _____
Name: _____
Title: _____

Reviewed as to Form:

By: _____
Name: _____
Title: _____

CITY OF SAN LEANDRO

By: _____
Name: _____
Title: _____

Attest:

By: _____
Name: _____
Title: _____

Reviewed as to Form:

By: _____
Name: _____
Title: _____

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

BUYER:

BEAM DEVELOPMENT, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

ESCROW AGENT ACKNOWLEDGEMENT:

The Escrow Agent is executing this Purchase Agreement to evidence its agreement to hold the Purchase Price and act as escrow agent in accordance with the terms and conditions of this Purchase Agreement.

FIRST AMERICAN TITLE COMPANY

By: _____
Name: _____
Title: _____

EXHIBIT A

Form of Put Option Agreement

[see following pages]

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