

**PUT OPTION AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**  
Town Hall Square

THIS PUT OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this “**Put Option Agreement**”), dated as of December \_\_, 2022 (the “**Effective Date**”), is 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, “**City/Agency**”), and BEAM DEVELOPMENT, LLC, a California limited liability company (“**Beam**”). The City, Agency, and Beam are each referred to individually as a “**Party**” and collectively as the “**Parties**”.

**RECITALS**

A. The Parties 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**”), that certain *Fourth Amendment to Purchase and Sale Agreement* dated as of May 31, 2022 (the “**Fourth Amendment**”), and that certain *Fifth Amendment to Purchase and Sale Agreement* dated as of July 18, 2022 (the “**Fifth Amendment**”), and collectively with the Original Agreement, First Amendment, Second Amendment, Third Amendment, Fourth Amendment and Fifth Amendment, the “**Purchase Agreement**”). The Purchase Agreement involves the conveyance of the Property from City/Agency to Beam 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).

B. As provided in Section 5 of the Fifth Amendment, Beam has the right in its sole discretion, but not the obligation (a) to proceed to Closing (as that term is defined in the Purchase Agreement) prior to satisfaction of the Entitlements Condition, and (b) to require City/Agency to accept a conveyance of the Property from Beam pursuant to the terms hereof (the “**Put Option**”) by Beam delivering written notice to City/Agency of Beam’s election to do so at least thirty (30) days in advance of Closing but no later than November 30, 2022. Beam provided said notice to City/Agency on \_\_\_\_\_, 2022. Thereafter, Beam purchased the Property pursuant to the terms of the Purchase Agreement concurrently with the date of this Put Option Agreement (“**Acquisition Date**”).

C. This Put Option Agreement sets forth the Parties’ mutual understanding and agreement regarding the mechanics for the conveyance of the Property from Beam to City/Agency pursuant to the Put Option.

**AGREEMENT**

NOW, THEREFORE, for and in consideration of the foregoing, the Parties hereby agree as follows:

## ARTICLE 1

### CERTAIN DEFINITIONS

**1.1 Definitions.** Capitalized terms used and not otherwise defined herein have the meaning ascribed to them in the Purchase Agreement. The Parties hereby agree that the following terms shall have the meanings hereinafter set forth, such definitions to be applicable equally to the singular and plural forms, and to the masculine and feminine forms, of such terms:

**1.1.1 “Acquisition Date”** shall have the meaning set forth in Recital B above.

**1.1.2 “Beam’s Warranties”** shall mean all of Beam’s covenants, obligations, indemnities, representations and warranties under this Put Option Agreement and any Closing documents, but subject to any express limitations on survival or liability contained herein or therein.

**1.1.3 “CEQA”** shall mean the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) and the CEQA Guidelines (Cal. Code of Reg., Tit. 14, § 15000 *et seq.*).

**1.1.4 “City Discretionary Entitlements”** shall have the meaning set forth in Section 4 of the Fifth Amendment.

**1.1.5 “City Discretionary Entitlements Litigation”** shall mean any third-party litigation filed challenging the City Discretionary Entitlements, the Purchase Agreement and/or this Put Option Agreement, including, without limitation, on grounds under CEQA, the Planning and Zoning laws (Gov’t Code §§ 65000-66499.58), the Subdivision Map Act (Gov’t Code §§ 66410-66499.40), and/or the Surplus Lands Act (Gov’t Code § 54220 *et seq.*).

**1.1.6 “Closing” and “Close of Escrow”** shall have the meaning ascribed in Section 8.4.1 below.

**1.1.7 “Closing Date”** shall mean the date set forth in Section 8.4.1 below.

**1.1.8 “Effective Date”** is defined in the introductory paragraph of this Put Option Agreement.

**1.1.9 “Improvements”** shall mean, collectively, the buildings, improvements, parking lots and structures located on the Property.

**1.1.10 “Land”** shall mean the real property, as described on Exhibit A attached hereto and incorporated herein by this reference.

**1.1.11 “Permitted Exceptions”** shall mean and include all of the following: (a) all “Permitted Exceptions” as defined in the Purchase Agreement; (b) title

exceptions created or imposed in accordance with the Purchase Agreement; (c) any other lien or encumbrance that City/Agency agrees, in their respective sole discretion, to accept as a title exception; and (d) any title exception caused by or created by City/Agency.

**1.1.12 “Personal Property”** shall mean all of the right, title, and interest of Beam in and to the tangible personal property, which is located at and used in connection with the operation of the Real Property and any buildings thereon as of the Closing Date.

**1.1.13 “Property”** shall mean, collectively, the Real Property and the Personal Property.

**1.1.14 “Purchase Agreement”** shall have the meaning ascribed in Recital A above.

**1.1.15 “Purchase Price”** shall have the meaning ascribed in Section 2.2 below.

**1.1.16 “Put Option”** shall have the meaning ascribed in Recital C above.

**1.1.17 “Put Option Election Notice”** shall mean the notice provided by Beam to City/Agency during the Term of this Put Option Agreement to notify City/Agency that Beam has elected to exercise its Put Option and require that City/Agency accept conveyance of the Property pursuant to the terms hereof.

**1.1.18 “Real Property”** shall mean the Land and the Improvements with respect to the Property.

**1.1.19 “Site”** means the Property.

**1.1.20 “Term”** shall mean that period of time from the Effective Date until the earlier of (a) the date of Close of Escrow of the reconveyance of the Property to City/Agency in accordance herewith; (b) September 30, 2023, if Beam has not delivered the Put Option Election Notice on or before such date; (c) the date that is one hundred (100) days after City has approved the City Discretionary Entitlements; and (d) the date that Beam delivers written notice to City/Agency that Beam has elected, in Beam’s sole and absolute discretion, to terminate this Put Option Agreement and retain ownership of the Property. Notwithstanding anything to the contrary in the foregoing, upon Beam’s written request to City/Agency, if City Discretionary Entitlement Litigation has been filed, then the Term shall be extended for a period of one-hundred and twenty (120) days from the date of such filing. Beam and City/Agency, acting through the City Manager/Agency Executive Director, may also mutually agree to extend the Term in their sole discretion.

**1.1.21 “Updated Development Proposal”** shall mean the multi-family residential project on the Property, with the related on- and off-site improvements, as reflected in the approved City Discretionary Entitlements.

**1.2 Rules of Construction.** Article and Section captions used in this Put Option Agreement are for convenience only and shall not affect the construction of this Put

Option Agreement. All references to “Article” or “Sections” without reference to a document other than this Put Option Agreement, are intended to designate articles and sections of this Put Option Agreement, and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Put Option Agreement as a whole and not to any particular Article or Section, unless specifically designated otherwise. The use of the term “including” shall mean in all cases “including but not limited to,” unless specifically designated otherwise. The Parties agree that each Party and its counsel or advisor have reviewed and revised this Put Option Agreement and, accordingly, no rules of construction against the drafter of this Put Option Agreement shall apply in any interpretation or enforcement of this Put Option Agreement, any documents or certificates executed pursuant hereto, or any provisions of any of the foregoing. Any deletion of language from this Put Option Agreement prior to its execution by City/Agency and Beam shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the Parties intended thereby to state the converse of the deleted language.

## **ARTICLE 2**

### **AGREEMENT OF PURCHASE AND SALE; PURCHASE PRICE**

**2.1 Put Option Election Notice; Agreement of Purchase and Sale.** Beam shall have the right, but not the obligation, in Beam’s sole and absolute discretion, to deliver the Put Option Election Notice to City/Agency in writing at any time during the Term. Subject to Beam’s timely delivery of the Put Option Election Notice to City/Agency, Beam agrees to sell, transfer, assign and convey to City/Agency, and City/Agency agree to purchase, accept and assume subject to the terms and conditions stated herein, all of Beam’s right, title and interest in and to the Property. For the avoidance of any doubt, the obligation to purchase pursuant to this Section 2.1 shall be for (a) Agency to purchase those portions of the Property that Agency previously owned, and (b) City to purchase those portions of the Property that City previously owned.

**2.2 Purchase Price.** City/Agency shall pay Beam the purchase price of Two Million One Hundred Thousand and No/100 Dollars (\$2,100,000) (the “**Purchase Price**”) at Closing in cash or other immediately available federal funds.

**2.3 Purchase Price Held In Escrow.** As provided in the Fifth Amendment, the Purchase Price shall be held by Escrow Agent, or in a substantially similar escrow-like account upon the parties’ mutual agreement, from the Acquisition Date until the earlier to occur of (a) the date that Beam reconveys the Property to City/Agency in accordance with this Put Option Agreement, in which case such funds plus interest accrued thereon while in Escrow shall be disbursed to Beam, or (b) the expiration of the Term, which Beam and City/Agency shall promptly confirm in writing to Escrow Agent, in which case such funds plus interest accrued thereon while in Escrow shall be promptly disbursed to City/Agency.

**2.4 Contract Consideration.** Notwithstanding anything in this Put Option Agreement to the contrary, in any event where the Purchase Price funds in Escrow are to be disbursed to City/Agency, One Hundred and No/100ths Dollars (\$100.00) thereof shall be paid

by Escrow Agent to Beam as consideration for the rights and privileges granted to City/Agency herein, thus making this Put Option Agreement the valid and binding obligation of the Parties.

### ARTICLE 3

#### CITY/AGENCY'S DUE DILIGENCE/CONDITION OF THE PROPERTY

**3.1 City's/RDA's Inspections and Due Diligence.** City/Agency acknowledge that, as the prior owners of the Property, as of the Effective Date hereof, City/Agency have conducted their respective examinations, inspections, testing, studies and investigations of the Property, information regarding the Property and such documents applicable to the Property (collectively, the "Due Diligence").

**3.2 Approval of Due Diligence Review.** As of the Effective Date, and subject to Beam's timely delivery of the Put Option Election Notice in accordance with this Put Option Agreement, City/Agency have affirmatively elected to proceed to Closing and shall have no right to terminate or otherwise modify their respective obligations hereunder; provided, however, that City/Agency shall have the right to reasonably approve substantial, material changes in the condition of the Property which significantly decrease the value thereof and which have occurred after the Acquisition Date as a condition precedent to Closing in accordance with Section 8.3.5 hereof. Notwithstanding anything to the contrary in the foregoing, if City/Agency seek to rely on any such disapproval as a basis to not proceed to Closing, then City/Agency shall (a) notify Beam within ten (10) days of City/Agency's discovery of same; (b) reasonably document with specificity the alleged substantial, material change as well as the significant decrease in value as a result thereof; and (c) provide Beam with a reasonable opportunity to cure by placing the Property in substantially the same condition prior to the alleged change and if Beam elects to so cure and notifies City/Agency accordingly, then (i) the Term shall be extended to allow reasonably sufficient time for said cure to be effectuated, and (ii) once said cure occurs, then this condition precedent shall be considered satisfied and City/Agency shall proceed to Closing.

### ARTICLE 4

#### TITLE AND SURVEY

**4.1 Title Insurance.** At Closing, the Title Company shall issue to City/Agency or be irrevocably committed to issue to City/Agency an ALTA 2006 extended coverage form title policy in such form (including as to endorsements) in the amount of the Purchase Price, insuring that fee simple title to the Real Property is vested in City/Agency subject only to the Permitted Exceptions (the "Title Policy"). City/Agency shall be entitled to request that the Title Company increase the liability of the Title Policy beyond the Purchase Price or request changes or further endorsements to the Title Policy provided that the same shall (a) be at no cost to Beam, (b) impose no additional liability on Beam, (c) not be a condition to the Closing and, accordingly, if City/Agency are unable to obtain any of the foregoing, City/Agency shall nevertheless be obligated to proceed to close the transaction contemplated by

this Put Option Agreement without reduction of or set off against the Purchase Price, and (d) the Closing shall not be delayed as a result of City/Agency's request.

## ARTICLE 5

### REMEDIES AND DEPOSIT INSTRUCTIONS

**5.1 Permitted Termination; Beam Default.** If the sale of the Property is not consummated due to the uncured default of this Put Option Agreement by Beam, City/Agency shall have the right as their sole and exclusive remedy, to terminate this Put Option Agreement by written notice to Beam, promptly after which the Purchase Price funds held in escrow (and interest earned thereon) shall be disbursed to City/Agency, and City/Agency shall release Beam by way of documentation in form and substance reasonably acceptable to Beam from all other liability and recovery, including, without limitation, specific performance and damages of any sort. Notwithstanding anything to the contrary contained herein, Beam shall not be deemed in default unless and until City/Agency provide Beam with written notice of such default and Beam fails to cure such default within five (5) business days of its receipt of such written notice.

**5.2 Permitted Termination; City/RA Default.** If the sale of the Property is not consummated due to the uncured default of this Put Option Agreement by City/Agency, then, as Beam's sole and exclusive remedy, Beam shall have the right to initiate a suit for specific performance of this Put Option Agreement against City/Agency within ninety (90) days of the date the Closing was otherwise to occur. Notwithstanding anything to the contrary contained herein, City/Agency shall not be deemed in default unless and until Beam provides City/Agency with written notice of such default and City/Agency fail to cure such default within thirty (30) days of their receipt of such written notice.

**5.3 Escrowed Funds Instructions.** The Escrow Agent shall invest the amount in Escrow in accounts that are federally insured or that invest solely in government securities and shall be applied in accordance with the terms of the Purchase Agreement and this Put Option Agreement. Interest earned thereon shall be added to the funds held in Escrow.

## ARTICLE 6

### REPRESENTATIONS, WARRANTIES; AS-IS; WAIVERS AND RELEASES

**6.1 Beam's Representations and Warranties.** Beam represents and warrants to City/Agency the following:

**6.1.1 Status.** Beam is a limited liability company duly organized or formed, validly existing and in good standing under the laws of the State of California and qualified to transact business and in good standing in the State of California.

**6.1.2 Authority.** The execution and delivery of this Put Option Agreement and the performance of Beam's obligations hereunder have been or will be duly authorized by all necessary action on the part of Beam, and this Put Option Agreement constitutes the legal, valid and binding obligation of Beam, subject to equitable principles and principles governing creditors' rights generally.

**6.1.3 Non-Contravention.** The execution and delivery of this Put Option Agreement by Beam and the consummation by Beam of the transactions contemplated hereby will not conflict with, result in a breach of, or constitute a default under the organizational documents of Beam, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Beam is a party or by which Beam may be bound and, in either case, that would have a material and adverse effect on Beam's ability to consummate the transactions contemplated by this Put Option Agreement.

**6.1.4 Non-Foreign Entity.** Beam is not a "foreign person" or "foreign corporation" as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

**6.1.5 Bankruptcy.** Beam has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceedings, to hold, administer and/or liquidate all or substantially all of its property, or (iii) made an assignment for the benefit of creditors.

**6.1.6 Contracts.** There are no service, maintenance, operating, repair, supply, consulting, professional service, advertising or other contracts to which Beam, or its agents, representatives, employees or predecessors in interest is a party, relating to the operation or management of the Property that shall be binding upon City/Agency at the Closing.

## **6.2 City/Agency's Independent Investigation, Waivers and Disclaimers.**

**6.2.1 Investigations.** Subject to Beam's compliance with its obligations under this Put Option Agreement, City/Agency have been given a full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of City/Agency's choosing, including, without limitation:

(a) All matters relating to title, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements, and building codes;

(b) The physical condition and aspects of the Property, including, without limitation, the interior, the exterior, the square footage within the Improvements on the Real Property, the structure, the paving, the utilities, and all other physical and functional aspects of the Property, including, without limitation, an examination for the presence or absence of hazardous substances, which shall be performed or arranged by City/Agency at City/Agency's sole expense;

(c) Any easements and/or access rights affecting the Property;

(d) All other matters of material significance affecting the Property.

**6.3 Disclaimer.** Subject to Beam’s Warranties, City/Agency hereby fully and forever waive, and Beam hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Property, whether express, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

**6.4 “AS-IS” Sale.**

City/Agency acknowledge that subject to Beam’s compliance with its obligations under this Put Option Agreement, as of the Effective Date, City/Agency have had the opportunity to consider and evaluate, to the extent City/Agency in their respective sole discretion deem necessary, information provided by or obtained by City/Agency’s consultants, and any other information about the condition of the Property. City/Agency further acknowledge that they have engaged all environmental consultants, engineers, and other professionals as City/Agency in their respective sole discretion deems necessary to evaluate on their own the condition of the Property. **CITY/AGENCY FURTHER ACKNOWLEDGE THAT, WITHOUT LIMITING BEAM’S LIABILITY FOR BEAM’S WARRANTIES OR BEAM’S INTENTIONAL (AS OPPOSED TO NEGLIGENT) FRAUD, CITY/AGENCY ACKNOWLEDGE AND AGREE THAT NEITHER BEAM, NOR ANYONE ACTING FOR OR ON BEHALF OF BEAM HAS MADE ANY REPRESENTATIONS, WARRANTIES, OR PROMISES TO CITY/AGENCY, OR TO ANYONE ACTING FOR OR ON BEHALF OF CITY/AGENCY, CONCERNING ANY ASPECT OF THE PROPERTY INCLUDING, WITHOUT LIMITATION, (A) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (B) COMPLIANCE WITH TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990 AND ALL SIMILAR STATE AND LOCAL ACCESSIBILITY LAWS; (C) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, CALIFORNIA HEALTH & SAFETY CODE, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, THE CLEAN WATER ACT, THE SAFE DRINKING WATER ACT, THE HAZARDOUS MATERIALS TRANSPORTATION ACT, THE TOXIC SUBSTANCE CONTROL ACT, AND REGULATIONS PROMULGATED UNDER ANY OF THE FOREGOING; (D) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE PROPERTY; (E) THE CONTENT, COMPLETENESS OR ACCURACY OF ANY MATERIALS PROVIDED BY BEAM FOR CITY/AGENCY’S REVIEW OR THE TITLE COMMITMENT; OR (F) THE CONFORMITY OF THE IMPROVEMENTS TO ANY PLANS OR SPECIFICATIONS FOR THE PROPERTY, INCLUDING ANY PLANS AND SPECIFICATIONS THAT MAY HAVE BEEN OR MAY BE PROVIDED TO CITY/AGENCY. CITY/AGENCY FURTHER ACKNOWLEDGE AND AGREE THAT SUBJECT TO BEAM’S WARRANTIES THE PROPERTY HAS BEEN INDEPENDENTLY INVESTIGATED BY CITY/AGENCY TO THEIR FULL SATISFACTION PRIOR TO THE EFFECTIVE DATE, THAT**



**CITY/AGENCY WILL BE ACQUIRING THE PROPERTY BASED SOLELY UPON AND IN RELIANCE ON THEIR OWN INSPECTIONS, EVALUATIONS, ANALYSES AND CONCLUSIONS, AND THAT SUBJECT TO BEAM'S WARRANTIES, CITY/AGENCY WILL BE ACQUIRING THE PROPERTY IN ITS "AS-IS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE CLOSING, AND CITY/AGENCY EXPRESSLY ACKNOWLEDGES THE RISK THAT ADVERSE PHYSICAL, ENVIRONMENTAL, FINANCIAL, LEGAL AND OTHER CONDITIONS MAY NOT BE REVEALED BY CITY/AGENCY'S INSPECTION OF THE PROPERTY.**

**BY INITIALING BELOW, THE CITY/AGENCY ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE MEANING AND SIGNIFICANCE OF THIS SECTION AND AGREE TO THE TERMS SET FORTH HEREIN.**

CITY: \_\_\_\_\_

AGENCY: \_\_\_\_\_

#### **6.5 City/Agency's Release of Beam.**

**6.5.1 Beam Released From Liability.** Subject to Beam's Warranties, Beam is hereby released from all responsibility and liability to City/Agency regarding the condition (including, without limitation, its physical condition and its compliance with applicable laws, and the presence in the soil, air, structures and surface and subsurface waters, of hazardous substances or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever except to the extent that such responsibility or liability is the result of a breach of Beam's Warranties or Beam fraud, or the acts or omissions of Beam after the Acquisition Date.

**6.5.2 City/Agency's Waiver of Objections.** Subject to Beam's Warranties, City/Agency acknowledges that prior to the Effective Date they have inspected the Property, observed its physical characteristics and existing conditions and had the opportunity to conduct such investigation and study on and of said Property and adjacent areas as it deemed necessary, and subject to Beam's Warranties, hereby waive any and all objections to, claims, causes of action or complaints (including, without limitation, actions based on federal, state or common law and any private right of action under CERCLA, RCRA or any other state and federal law to which the Property is or may be subject) regarding physical characteristics and existing conditions, including, without limitation, structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and hazardous substances on, under, adjacent to or otherwise affecting the Property and existing as of the Acquisition Date. City/Agency further hereby acknowledge the risk of changes in applicable laws and regulations including, without limitation, those relating to past, present and future environmental conditions on the Property, and the risk that adverse physical characteristics and conditions, including

without limitation the presence of hazardous substances or other contaminants, may not be revealed by its investigation.

**6.5.3 Civil Code Section 1542 Waiver.** In connection with the releases and waivers set forth in this Section 6.5, City/Agency, on behalf of themselves, their respective successors, assigns and successors-in-interest and such other persons and entities, waive the benefit of California Civil Code Section 1542, which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.”

City: \_\_\_\_\_  
Agency: \_\_\_\_\_

**6.5.4 Limitation.** Notwithstanding any other provision of this Put Option Agreement to the contrary, in no event shall any waiver or release by City/Agency under this Put Option Agreement apply to the matters covered by Beam's intentional (as opposed to negligence) fraud, or claims arising from Beam's breach of any of the Closing documents hereunder.

**6.5.5 Survival.** The foregoing waivers and releases by City/Agency shall survive either (a) the Closing and the recordation of the Deed, and shall not be deemed merged into the Deed upon its recordation, or (b) any termination of this Put Option Agreement.

**6.6 Discharge.** Notwithstanding any other provisions contained herein, or in any document or instrument delivered in connection with the transfer contemplated hereby, to the contrary (including, without limitation, any language providing for survival of certain provisions hereof or thereof), City/Agency hereby acknowledge and agree that (a) prior to Closing, City/Agency's sole recourse in the event of a breach by Beam shall be as set forth in Section 5.1 hereof, and (b) upon consummation of Closing, City/Agency shall be deemed to have waived any existing breach of Beam's Warranties as of the Closing Date to the extent Beam is in breach of the same as of the Closing Date and such breach is actually known to Beam.

## ARTICLE 7

### BEAM'S COVENANTS

**7.1 Pre-Closing.** From the Effective Date until Closing or earlier termination of this Put Option Agreement, and except as otherwise consented to or approved by City/Agency, Beam covenants and agrees with City/Agency that Beam will:

**7.1.1** operate, manage and maintain the Property in the ordinary course of Beam's business, subject to ordinary wear and tear and further subject to Section 9.2 below;

**7.1.2** maintain, as the minimum coverage required of it by this Put Option Agreement, (a) \_\_\_\_\_, and (b) commercial general liability insurance insuring

Beam against liability for personal injury, bodily injury, death, and damage to property occurring in, on or about, or resulting from the use or occupancy of the Property (or any portion thereof, with combined single limit coverage of at least One Million Dollars (\$1,000,000.00).

**7.1.3** not enter into any leases or similar occupancy agreements for any portion of the Property that would not be terminable by Beam as of the Closing Date, except with City/Agency's prior written consent;

**7.1.4** not enter into any new contract for the provision of goods or services to or with respect to the Property that would not be terminable by Beam as of the Closing Date, except with City/Agency's prior written consent;

**7.1.5** not make any material changes to the Improvements or the Property except with City/Agency's prior written consent, not to be unreasonably withheld, delayed or conditioned;

**7.1.6** from and after the Effective Date, Beam shall not remove from the Property any fixtures or articles of Personal Property that were located at the Property as of the Acquisition Date except as may be necessary for repairs (provided that, once repaired, such item shall be promptly returned), or the discarding of worn out items (provided that such items are replaced with items of approximately equal or better quality) or obsolescent or useless items and except as necessary to comply with any applicable law or governmental order; and

**7.1.7** Beam (a) shall promptly deliver written notice to City/Agency of (and, if the same may adversely affect City/Agency or the Property, defend at Beam expense) all actions, suits, claims and other proceedings affecting the Property, or the use, possession or occupancy thereof first arising on or after the Effective Date, and (b) shall not settle any insurance claims or other litigation that would materially and adversely affect the Property following the Closing without City/Agency's prior written consent, which may be given or withheld in City/Agency's sole and absolute discretion.

## ARTICLE 8

### CLOSING AND CONDITIONS

**8.1 Escrow Instructions.** Upon execution of this Put Option Agreement, the Parties hereto shall deposit an executed counterpart of this Put Option Agreement with the Title Company, and this Put Option Agreement shall serve as escrow instructions to the Title Company as the Escrow Holder for consummation of the purchase and sale contemplated hereby. Beam and City/Agency agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Put Option Agreement; provided, however, that in the event of any conflict between the provisions of this Put Option Agreement and any supplementary escrow instructions, the terms of this Put Option Agreement shall control absent any mutual written agreement to the contrary.

**8.2 Beam's Conditions to Closing.** The Closing and Beam's obligations with respect to the transaction contemplated by this Put Option Agreement are subject to the

timely satisfaction or written waiver by the respective dates designated below of the following conditions precedent for Beam's benefit (the "**Beam Conditions Precedent**").

**8.2.1 City/Agency's Deliveries.** On or before the Closing Date, City/Agency shall have delivered to Escrow Holder all of the funds and documents as provided in Section 8.6 hereof.

**8.2.2 Performance.** As of the Closing Date, City/Agency shall not be in material default in the performance of any material covenant or agreement to be performed by City/Agency under this Put Option Agreement.

Neither City/Agency nor Beam shall willfully or in bad faith act or fail to act for the purpose of permitting any of the Beam Conditions Precedent to fail. Except as otherwise provided herein, if any of the foregoing Beam Conditions Precedent are not satisfied by the respective dates designated hereunder for any reason other than a default by Beam or City/Agency hereunder, then at Beam's election with written notice to City/Agency and Escrow Agent this Put Option Agreement shall terminate and neither Party shall have any further rights or obligations under this Put Option Agreement except for those which this Put Option Agreement expressly provides shall survive any termination. Beam shall have the right to waive any of the Beam Conditions Precedent, and the election by Beam to proceed with the Closing shall be deemed Beam's waiver of any unsatisfied Beam Conditions Precedent to the extent any such Beam Condition(s) Precedent has(have) not been previously satisfied or waived.

**8.3 City/Agency's Conditions to Closing.** The Closing and City/Agency's obligation to consummate the transaction contemplated by this Put Option Agreement are subject to the timely satisfaction or written waiver by the respective dates designated below of the following conditions precedent for City/Agency's benefit (the "**City/Agency Conditions Precedent**"):

**8.3.1 Beam's Deliveries.** On or before the Closing Date, Beam shall have delivered to Escrow Agent the documents described in Section 8.5 below.

**8.3.2 Performance.** As of the Closing Date, Beam shall not be in material default in the performance of any material covenant or agreement to be performed by Beam under this Put Option Agreement beyond all applicable notice and cure periods.

**8.3.3 Title Policy.** As of the Closing Date, the Title Company shall have issued or irrevocably committed to issue the Title Policy to City/Agency as provided in Section 4.1 above.

**8.3.4 Representations and Warranties.** As of the Closing Date, all representations and warranties of Beam contained in Section 6.1 hereof shall be true and correct in all material respects as of the date made and as of the Closing Date with the same effect as if those representations and warranties were made at and as of the Closing Date.

**8.3.5 Changes to Condition of Property.** Subject to the obligations set forth in Section 3.2 above, City and Agency shall have reasonably approved any substantial,

material changes in the condition of the Property which have significantly decreased the value thereof and occurred after the Acquisition Date.

Neither City/Agency nor Beam shall willfully or in bad faith act or fail to act for the purpose of permitting any of the City/Agency Conditions Precedent to fail. If any of the City/Agency Conditions Precedent set forth in this Put Option Agreement are not timely satisfied for any reason other than a default by Beam or City/Agency hereunder, then at City/Agency's election by written notice to Beam and Escrow Agent this Put Option Agreement shall terminate and neither Party shall have any further rights or obligations under this Put Option Agreement with respect to the Property except for those which this Put Option Agreement expressly provides shall survive any termination. Notwithstanding the foregoing, City/Agency shall have the right to waive, in their sole and absolute discretion, any of the City/Agency Conditions Precedent, and the election by City/Agency to proceed with the Closing with the actual knowledge that a City/Agency Condition Precedent has not been satisfied, shall be deemed City/Agency's waiver of such City/Agency Condition Precedent to the extent any such City/Agency Condition Precedent has not been previously satisfied or waived.

#### **8.4 Closing.**

**8.4.1 Closing Date.** The closing hereunder following the satisfaction or waiver of all conditions under Sections 8.2 and 8.3 above (“**Closing**” or “**Close of Escrow**”) shall be held and delivery of all items to be made at the Closing under the terms of this Put Option Agreement shall be made through escrow at Escrow Agent's office no later than thirty (30) days after the date that Beam delivers the Put Option Election Notice to City/Agency on such date and time as City/Agency and Beam may mutually agree upon in writing (the “**Closing Date**”). Except as otherwise expressly provided in this Put Option Agreement, such date may not be extended without the prior written approval of both Beam and City/Agency.

**8.4.2 Deposit of Funds.** In sufficient time to allow disbursement to Beam on the Closing Date (which shall in no event be required to be more than one (1) business day prior to the Closing Date), City/Agency shall deposit in Escrow with the Escrow Agent all costs and amounts to be paid by City/Agency at the Closing pursuant to the terms of this Put Option Agreement, by instructing Escrow Agent to disburse such funds to Beam at the Closing or by Federal Reserve wire transfer of immediately available funds to an account to be designated by the Escrow Agent.

**8.5 Beam's Closing Documents and Other Items.** At least one (1) business day before the Closing Date, Beam shall deposit into Escrow the following items:

**8.5.1** A duly executed and acknowledged Grant Deed in the form attached hereto as Exhibit B (the “**Deed**”);

**8.5.2** An affidavit pursuant to Section 1445(b)(2) of the Code, and on which City/Agency is entitled to rely, stating that Beam is not a “foreign person” within the meaning of Section 1445(f)(3) of the Code and a California 593-C Certificate (the “**Tax Certificates**”);

**8.5.3** An Owner's Affidavit to the Title Company on Title Company's standard form;

**8.5.4** Such other documents as may be reasonably required by the Title Company or as may be agreed upon by Beam and City/Agency to consummate the purchase of the Property as contemplated by this Put Option Agreement, including without limitation, any documents necessary to transfer any of the City Discretionary Entitlements (to the extent any such transfer is allowable under applicable laws and regulations), and a duly executed reciprocal easement agreement or license agreement in a form mutually acceptable to the Parties that provides for reciprocal use and access to and from the parking lots located on the Property;

**8.5.5** Two (2) duly executed counterparts of the Closing Statement; and

**8.5.6** Keys to all entrance doors in the Improvements, properly tagged for identification, and, to the extent in Beam's possession, all operating manuals relating to operation of the equipment and systems which are part of the Property (if any).

**8.6 City/Agency's Closing Documents and Other Items.** Except as set forth above, at least one (1) business day prior to the Closing, City/Agency shall deposit into Escrow the following items:

**8.6.1** Such funds as are necessary to close this transaction;

**8.6.2** The Grant Deed, duly executed and acknowledged on the "Acceptance" page thereof;

**8.6.3** Such other documents as may be reasonably required by the Title Company or as may be agreed upon by Beam and City/Agency to consummate the purchase of the Property as contemplated by this Put Option Agreement, including, without limitation, any documents necessary to transfer any of the City Discretionary Entitlements (to the extent any such transfer is allowable under applicable laws and regulations), and a duly executed reciprocal easement agreement or license agreement in a form mutually acceptable to the Parties that provides for reciprocal use and access to and from the parking lots located on the Property; and

**8.6.4** Two (2) duly executed counterparts of the Closing Statement.

**8.7 Prorations and Closing Costs.**

**8.7.1 Prorations.**

(a) General. For purposes of calculating prorations, City/Agency shall be deemed to be in title to the Property, and therefore entitled to the income and responsible for the expenses, for the entire day upon which the Close of Escrow occurs.

(b) Taxes and Assessments. Real estate taxes and any installment payments on account of assessments and/or bonds applicable to the Site or any part thereof shall not be prorated. The Property will be exempt from all such taxes and assessments from and after the Close of Escrow. Beam shall be responsible for payment of all real estate

taxes, assessment and bonds applicable to the Property, and any refund for real estate taxes or assessments applicable to the extent applicable to the period preceding the Close of Escrow, whether paid before or after the Close of Escrow, shall be paid to Beam, and City/Agency shall have no claim or right whatsoever thereto.

(c) Operating Expenses. Water, gas, electricity and other public utility charges shall be paid by Beam to the utility company to the Closing Date. Beam shall use good faith efforts to arrange for a final reading of all utility meters (covering gas, water, steam and electricity) as of the Closing. To the extent requested by Beam, Beam and City/Agency shall jointly execute a letter to each of such utility companies advising such utility companies of the termination of Beam's responsibility for such charges for utilities furnished to the Property as of the date of the Closing and commencement of City/Agency's responsibilities therefor from and after such date. If a bill is obtained from any such utility company as of the Closing, then Beam shall pay such bill on or before the Closing. If such bill shall not have been obtained on or before the Closing, then Beam shall, upon receipt of such bill, pay all such utility charges as evidenced by such bill or bills pertaining to the period prior to the Closing, and City/Agency shall pay all such utility charges pertaining to the period thereafter. Any bill which shall be rendered which shall cover a period both before and after the date of Closing shall be apportioned between City/Agency and Beam as of the Closing. Beam shall be entitled to all deposits presently in effect with the utility providers, and City/Agency shall be obligated to make its own arrangements for deposits with the utility providers.

(d) Method of Proration; Corrections. All prorations shall be made in accordance with custom and practice in Alameda County, except as otherwise expressly provided herein. All items attributable to the period up to the date on which the Close of Escrow occurs shall be credited to Beam. All items attributable to the period on and after the date on which the Close of Escrow occurs shall be credited to City/Agency. If any errors or omissions are made regarding adjustments and prorations as set forth above, the Parties shall make the appropriate corrections promptly upon the discovery thereof, provided the same is discovered within six (6) months after the Close of Escrow. Any error or omission not discovered within that period shall not thereafter be subject to adjustment. The amount necessary to correct any adjustment or proration that is to be corrected hereunder shall be paid in cash to the Party entitled thereto. Said six (6) month limitation shall not apply to any real property tax refund to Beam for the period preceding the Close of Escrow, which shall be paid to Beam regardless of when the refund is made.

**8.7.2 Closing Costs.** Beam shall pay (a) county transfer taxes, if any, (b) the Escrow Agent's escrow fee, (c) the cost of the Title Policy, and (d) all additional closing costs and charges.

**8.8 Disbursements and Other Actions by Escrow Agent.** Without limiting the terms and conditions of Section 8.1 and 8.4.2, above, upon the Close of Escrow, Escrow Agent shall promptly undertake the following in the manner indicated, provided that Escrow Agent shall undertake the Closing only when it can perform each of the following:

**8.8.1 Funds.** Disburse all funds deposited with Escrow Agent by City/Agency in payment of the Purchase Price as follows:

(a) If, as the result of the costs, prorations and credits pursuant to this Section 8.8, amounts are to be charged to the account of Beam, deduct the total amount of such charges. If, as a result of the costs, prorations and credits pursuant to Section 8.7, amounts are to be charged to the account of City/Agency, collect the total amount of such charges (“City/Agency’s Charges”) from City/Agency.

(b) Disburse to Beam the full Purchase Price together with any interest accrued therein while in Escrow, plus any City/Agency’s Charges payable owed to Beam or payable under Section 8.7, above, less deductions charged to Beam, if any, under Section 8.7, above.

(c) After all disbursements to Beam are completed, disburse the remaining balance of the funds in Escrow, if any, as City/Agency directs.

**8.8.2 Recording and Filing.** Cause the Deed to be filed for recording in the Official Records of Alameda County.

**8.8.3 Title Policy.** Issue the Title Policy to City/Agency.

**8.8.4 Disbursement of Documents to City/Agency.** Disburse to City/Agency (a) the Tax Certificates; (b) a conformed copy showing the applicable recording information for the Deed; and (c) any other documents (or copies thereof) deposited into Escrow to which City/Agency is entitled pursuant to the terms of this Put Option Agreement.

**8.8.5 Disbursement of Documents to Beam.** Disburse to Beam (a) one (1) a conformed copy showing the applicable recording information for the Deed; (b) a copy of the Tax Certificates; and (c) any other documents (or copies thereof) deposited into Escrow to which Beam is entitled pursuant to the terms of this Put Option Agreement.

**8.8.6 Closing Statement.** Deliver to each of City/Agency and Beam a final closing statement showing the distribution, application, and receipt of all funds processed through the Escrow (the “**Closing Statement**”).

**8.9 Broker.** Beam hereby represents and warrants to City/Agency that Beam has not employed any broker with respect to this transaction. If any person brings a claim for a commission or finder’s fee based upon any contact, dealings, or communication with City/Agency in connection with the transactions contemplated by this Put Option Agreement, then City/Agency shall defend Beam from such claim, and shall indemnify Beam and hold Beam harmless from any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys’ fees and disbursements) incurred by Beam with respect to the claim. If any person brings a claim for a commission or finder’s fee against City/Agency based upon any contact, dealings, or communication with Beam in connection with the transactions contemplated by this Put Option Agreement, then Beam shall defend City/Agency from such claim, and shall indemnify City/Agency and hold City/Agency harmless from any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys’ fees and disbursements) incurred by City/Agency with respect to the claim. The provisions of this Section 8.9 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Put Option Agreement.



**ARTICLE 9**

**MISCELLANEOUS**

**9.1 Amendment and Modification.** Subject to applicable law, this Put Option Agreement may be amended, modified, or supplemented only by a written agreement signed by the Parties.

**9.2 Risk of Loss and Insurance Proceeds.** City/Agency shall be bound to purchase the Property for the full Purchase Price as required by the terms hereof, without regard to the occurrence or effect of any damage to the Property or destruction of any improvements thereon or condemnation of any portion of the Property, provided that upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the amount of any insurance proceeds or condemnation awards collected by Beam as a result of any such damage or destruction or condemnation. Beam shall have no obligation to repair or restore any such damage or destruction. If the proceeds or awards have not been collected as of the Closing, then such proceeds or awards shall be assigned to City/Agency.

**9.3 Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following address:

If to Agency: Successor Agency to the San Leandro  
Redevelopment Agency  
835 E. 14<sup>th</sup> Street  
San Leandro, CA 94577  
Attn: Economic Development Manager  
E-mail:

and to City: City of San Leandro  
835 E. 14<sup>th</sup> Street  
San Leandro, CA 94577  
Attn: City Manager  
E-mail:

If to Beam: Beam Development, LLC  
4100 Redwood Road, Suite 10-292  
Oakland, CA 94611  
Attn: Mukesh Bajaj  
E-mail: maebajaj@gmail.com

with copies to: Miller Starr Regalia  
1331 N. California Blvd., Fifth Flr.  
Walnut Creek, CA 94596  
Attn: Nadia Costa, Esq.  
E-mail: nadia.costa@msrlegal.com

If to Escrow Agent: First American Title Company

1850 Mt. Diablo Blvd., Suite 530  
Walnut Creek, CA 94596  
Attn: Pam Nicolini  
E-mail:

Any such notices may be sent by (a) certified mail, return receipt requested, in which case notice shall be deemed delivered five (5) business days after deposit, postage prepaid in the U.S. mail, (b) a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit for next business day delivery with such courier, or (c) electronic mail, in which case the notice shall be deemed delivered upon transmission provided that the sender does not receive a delivery failure notification from the recipient's electronic mail server. Any electronic mail transmission initiated after 5:00 PM on a weekday, or at any time on a Saturday, Sunday, or legal holiday, shall be deemed given on the following business day. The above addresses and electronic mail addresses may be changed by written notice to the other Party(ies); provided that no such notice shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Any notice sent by the attorneys representing a Party shall qualify as notice under this Put Option Agreement.

**9.4 Assignment.** City/Agency shall not have the right to assign this Put Option Agreement, without the prior written consent of Beam, which consent Beam may withhold in its sole and absolute discretion. This Put Option Agreement shall be binding upon and inure to the benefit of Beam and City/Agency and their respective successors and permitted assigns, and no other party will be conferred any rights by virtue of this Put Option Agreement or be entitled to enforce any of the provisions hereof. Whenever a reference is made in this Put Option Agreement to Beam or City/Agency, such reference shall include the successors and permitted assigns of such Party under this Put Option Agreement.

**9.5 Governing Law and Consent to Jurisdiction.** THIS PUT OPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS OR CHOICE OF LAWS. ANY ACTION ARISING OUT OF THIS PUT OPTION AGREEMENT MUST BE COMMENCED BY CITY/AGENCY OR BEAM IN THE STATE COURTS OF THE STATE OF CALIFORNIA OR IN U.S. FEDERAL COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AND EACH PARTY HEREBY CONSENTS TO THE JURISDICTION OF THE ABOVE COURTS IN ANY SUCH ACTION AND TO THE LAYING OF VENUE IN THE STATE OF CALIFORNIA. ANY PROCESS IN ANY SUCH ACTION SHALL BE DULY SERVED IF MAILED BY REGISTERED MAIL, POSTAGE PREPAID, TO THE PARTIES AT THEIR RESPECTIVE ADDRESS DESCRIBED IN SECTION 9.3 HEREOF.

**9.6 Counterparts.** This Put Option Agreement may be executed in two or more fully or partially executed counterparts, each of which shall be deemed an original binding

the signer thereof against the other signing Parties, but all counterparts together shall constitute one and the same instrument.

**9.7 Entire Agreement.** This Put Option Agreement, all exhibits and schedules and any other document to be furnished pursuant to the provisions hereof embody the entire agreement and understanding of the Parties hereto as to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in such documents. This Put Option Agreement and such documents supersede all prior agreements and understandings among the Parties with respect to the subject matter hereof.

**9.8 Severability.** Any term or provision of this Put Option Agreement that is invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Put Option Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Put Option Agreement.

**9.9 Professional Fees.** If any action is brought by any party to this Put Option Agreement to enforce or interpret its terms or provisions, the prevailing Party will be entitled to reasonable attorneys' fees and costs incurred in connection with such action prior to and at trial and on any appeal therefrom. Except as provided in Section 8.9 above, each Party to this Put Option Agreement shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel, consultants and accountants, incurred in the negotiation, preparation, and consummation of this Put Option Agreement and the transaction contemplated hereunder including, without limitation, in the case of City/Agency, all third-party engineering and environmental review costs and all other due diligence costs.

**9.10 No Joint Venture.** Nothing set forth in this Put Option Agreement shall be construed to create a joint venture between City/Agency and Beam.

**9.11 Time of Essence.** Time is of the essence of this Put Option Agreement.

**9.12 No Waiver.** No waiver of any of the provisions of this Put Option Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, nor shall a waiver in any instance constitute a waiver in any subsequent instance. No waiver shall be binding unless executed in writing by the Party making the waiver.

**9.13 Counting of Days.** Unless otherwise expressly specified herein, any reference to "days" shall mean calendar days. To the extent the last day for any act falls on a Saturday, Sunday or legal holiday, the last day for that act shall be extended to the next business day.

**9.14 Electronic Signatures.** Signatures to this Put Option Agreement, any amendment hereof and any notice given hereunder, transmitted by facsimile or electronic mail shall be valid and effective to bind the Party so signing. Each Party agrees to promptly deliver an execution original of this Put Option Agreement (and any amendment hereto) with its actual signature to the other Party, but a failure to do so shall not affect the enforceability of this Put

Option Agreement (or any amendment hereto), it being expressly agreed that each Party to this Put Option Agreement shall be bound by its own telecopied or electronically mailed signature and shall accept the electronically mailed signature of the other Party to this Put Option Agreement.

**9.15 Natural Hazard Disclosure.** City/Agency shall obtain, at Beam's sole cost and expense, a natural hazard disclosure report prepared by a professional consulting firm relating to the Property prior to Close of Escrow. City/Agency and Beam acknowledge that Beam may be required to disclose if the Property lies within the following natural hazard areas or zones: (i) a special flood hazard area designated by the Federal Emergency Management Agency (California Civil Code Section 1103(c)(1)); (ii) an area of potential flooding (California Government Code Section 8589.4); (iii) a very high fire hazard severity zone (California Government Code Section 51178 et seq.); (iv) a wild land area that may contain substantial forest fire risks and hazards (Public Resources Code Section 4135; (v) earthquake fault zone (Public Resources Code Section 2622); or (vi) a seismic hazard zone (Public Resources Code Section 2696) (sometimes all of the preceding are herein collectively called the "**Natural Hazard Matters**"). City/Agency and Beam hereby instruct Escrow Holder, or an affiliate thereof (who, in such capacity, is herein called the "**Natural Hazard Expert**") to examine the maps and other information specifically made available to the public by government agencies for the purposes of enabling Beam to fulfill its disclosure obligations, if and to the extent such obligations exist, with respect to the natural hazards referred to in California Civil Code Section 1103 et seq. and to report the result of its examination to City/Agency and Beam in writing. The written report prepared by the Natural Hazard Expert regarding the results of its full examination shall fully and completely discharge Beam from its disclosure obligations referred to herein, if and to the extent any such obligations exist, and, for the purpose of this Put Option Agreement, the provisions of Civil Code section 1103.4 regarding non-liability of Beam for errors or omissions not within its personal knowledge shall be deemed to apply and the Natural Hazard Expert shall be deemed to be an expert, dealing with matters within the scope of its expertise with respect to the examination and written report regarding the natural hazards referred to above. City/Agency agrees to provide Beam with a written acknowledgment of its receipt of the Natural Hazard Disclosure Statement prior to the Close of Escrow.

**9.16 Possession.** Beam shall deliver possession of the Property upon Close of Escrow, subject to the Permitted Exceptions.

**9.17 Computation Of Time.** The time in which any act is to be done under this Put Option Agreement is computed by excluding the first day (such as the Effective Date), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. Unless expressly indicated otherwise, (a) all references to time shall be deemed to refer to Pacific time, and (b) all time periods shall expire at 5:00 p.m., Pacific time.

**9.18 No Recordation.** Neither this Put Option Agreement nor a memorandum hereof shall be recorded by City/Agency. The filing or recordation of this Put Option Agreement or a memorandum hereof in violation of this provision shall be deemed a default by City/Agency of this Put Option Agreement.

**9.19 Date and Delivery of Agreement.** Notwithstanding anything to the contrary contained in this Put Option Agreement, the Parties intend that this Put Option Agreement shall be deemed effective, and delivered for all purposes under this Put Option Agreement, and for the calculation of any statutory time periods based on the date an agreement between Parties is effective, executed, or delivered, as of the Effective Date.

**9.20 Approvals and Amendments.** This Agreement can be amended only by the mutual written consent of the Parties, and the Parties shall not be bound by verbal or implied agreements. The City Manager (or designee) shall have the authority to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially add to the costs incurred or to be incurred by the City as specified herein. The Agency Executive Director (or designee) shall have the authority to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Agreement on behalf of the Agency so long as such actions do not materially or substantially add to the costs incurred or to be incurred by the Agency as specified herein. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council and Successor Agency Board. Notwithstanding the foregoing, the City Manager and Agency Executive Director shall maintain the right to submit to the City Council and Successor Agency Board for consideration or action any matter under their authority if they desires to do so. The City Manager and Agency Executive Director may delegate some or all of his or her powers and duties under this Agreement to one or more management level employees of the City/Agency.

[Remainder of page intentionally left blank; signature page to follow.]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Put Option Agreement to be duly executed as of the day and year first above written.

**AGENCY:**

**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:**

**CITY OF SAN LEANDRO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Reviewed as to Form:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

**BEAM:**

**BEAM DEVELOPMENT, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ESCROW AGENT ACKNOWLEDGEMENT:**

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

**FIRST AMERICAN TITLE COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**

**Description of Real Property**

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN LEANDRO,  
COUNTY OF ALAMEDA, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

*[attach legal descriptions]*

**EXHIBIT B**  
**Form of Grant Deed**

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

“GRANTOR”

BEAM DEVELOPMENT, LLC,  
a California limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A to Grant Deed**

**Legal Description**

5149013.1