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COMMUNITY DEVELOPMENT DEPARTMENT  
CITY OF SOUTH SAN FRANCISCO  
400 GRAND AVENUE  
SOUTH SAN FRANCISCO, CA 94080

AND WHEN RECORDED MAIL TO

ECONOMIC AND COMMUNITY DEVELOPMENT  
CITY OF SOUTH SAN FRANCISCO  
400 GRAND AVENUE  
SOUTH SAN FRANCISCO, CA 94080

Documentary Transfer Tax \$  
**EXEMPT**  
County of San Mateo  
City of South San Francisco ☒

Right of Way Agent

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**RESALE RESTRICTION AND RIGHT OF FIRST REFUSAL  
AGREEMENT FOR BELOW MARKET RATE PROPERTY**

This Resale Restriction and Right of First Refusal Agreement for Below Market Rate Property (this "**Agreement**") is entered into as of this 10th day of December, 2007, by and between the CITY OF SOUTH SAN FRANCISCO ("**CITY**") and Jonathan Cano ("**OWNER**").

F.

RECITALS

WHEREAS, on January 9, 2002, the City Council of the City of South San Francisco adopted Ordinance No. 1306-2002 approving a Development Agreement for Marbella Housing Project to develop a 280 unit multi-family residential condominium project now known as "**South City Lights**" (herein, the "**Project**"), said Development Agreement having been recorded as Document No. 2003-115798 (hereinafter, the "**Development Agreement**") in the Official Records of San Mateo County; and

WHEREAS, the developer of the Project is required by the Development Agreement to set aside twenty-five percent (25%) of new housing within the Project as low-, median- and

2007-181999  
FIRST AMERICAN TITLE COMPANY  
08:00am 12/31/07 AG Fee: NO FEE  
Count of pages 19  
Recorded in Official Records  
County of San Mateo  
Warren Slocum  
Assessor-County Clerk-Recorder  
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HCD DEPARTMENT

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Address: 2230 Green # 3303  
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moderate-income level housing, as more particularly described on Exhibit C to the Development Agreement (herein, "**DA Exhibit C**"); and

WHEREAS, the developer is meeting this requirement by offering for sale seventy (70) condominiums (herein, the "**Below Market Rate Units**" or "**BMR Units**") to persons who meet the household income requirements set forth on DA Exhibit C Section 1(a), said BMR Units have been heretofore identified by developer to the City; and

WHEREAS, the City has agreed that onsite sales of the Below Market Rate Units will be sufficient to meet the requirements of the Development Agreement; and

WHEREAS, the City requires that each buyer of a Below Market Rate Unit enter into this Agreement with the City and cause the same to be recorded against the Below Market Rate Unit being purchased; and

WHEREAS, the intent of the CITY is to preserve the number and availability of affordable homes within the City for persons with low to moderate incomes for the longest feasible time;

NOW, THEREFORE, in consideration of the benefits received by the OWNER in purchasing a BMR Unit subject to the Development Agreement, OWNER and CITY agree as follows:

1. Premises. The real property which is the subject of this Agreement is commonly known as 2230 Gellert Blvd. #3303 South San Francisco, CA 94080, more fully described in the legal description attached hereto and incorporated herein by reference as Exhibit A. Said real property (the "**Premises**") is hereby designated as a Below Market Rate Unit and the same shall be subject to the terms and conditions herein set forth.
2. Occupancy and Ownership Restricted to Eligible Households. Pursuant to DA Exhibit C Section 1, OWNER hereunder qualifies as Median-Income Household (herein, the "**Eligible Household**" with respect to the Premises). During the term of this Agreement, OWNER must occupy the Premises as his or her principal residence subject to the provisions of Section 21 below. The OWNER shall be presumed to be occupying the Premises as his or her principal residence if the OWNER is living in the Premises for at least ten (10) months out of each calendar year. The OWNER shall not lease or rent the Premises except as otherwise provided and permitted in Section 21 below. OWNER shall provide CITY with a copy of the lease or rental agreement. Any lease or rental in violation of the provisions of this Agreement shall be prohibited and void. Except as otherwise provided and permitted in this Agreement, all leasing or rental of the Premises shall be a Prohibited Transfer (as herein defined) subject to the provisions of this Agreement. By purchasing the Premises subject to this Agreement, OWNER, and all successive owners and assigns, hereby acknowledge that the Premises are restricted to occupancy by an Eligible Household.

3. Supersession. This Agreement shall supersede any and all resale agreements, deed restrictions and other similar conditions and/or restrictions previously imposed on the Premises whether or not such previous agreements or restrictions were recorded. Notwithstanding the foregoing, the Development Agreement and the terms and conditions of DA Exhibit C are not intended to be superseded hereby. Rather the parties hereto intend that this Agreement shall confirm the provisions of the Development Agreement and in doing so the parties may supplement the Development Agreement where necessary in order to clarify its provisions. Such supplemental provisions are not intended to conflict with the Development Agreement. In the event, however, of any actual conflict between the provisions of the Development Agreement and the provisions hereof, then the provisions of the Development Agreement shall govern and control.

4. Misrepresentation of Fact as a Material Breach. OWNER hereby declares and agrees that the financial and other information previously provided to the CITY for the purpose of qualifying OWNER to purchase the Premises was true and correct at the time it was given and remains true and correct as of the date of this Agreement, or, in the alternative, the financial and other information has been updated to be true and correct today. OWNER further understands that any material misstatement or misrepresentation shall be deemed to be a material breach of this Agreement and shall be grounds for declaring a default, terminating the Agreement, or seeking other such relief and remedies as are appropriate under the circumstances as herein provided.

5. Conditions of Transfer. For purposes of this Agreement, a "**Transfer**" shall mean any voluntary or involuntary sale, assignment or transfer of ownership or any interest in the Premises, including, but not limited to, a fee simple interest, joint tenancy interest, life estate, leasehold interest including any rental of the Premises, or any interest evidenced by a land contract by which physical possession of the Premises is transferred and OWNER retains title. Any Transfer of the Premises shall be subject to the conditions set forth in this Agreement. OWNER may not lease or rent the Premises for any period of time, except as otherwise provided and permitted in Section 21 below. Each transferee shall execute an agreement under the terms of which the transferee shall assume all of the obligations and duties of OWNER and agree to be bound by the restrictions of this Agreement.

6. Prohibited Transfer/Default. Any Transfer which is not in substantial compliance with this Agreement shall be deemed a "**Prohibited Transfer**." Upon receipt of any evidence of a Prohibited Transfer or any other violation of the terms of this Agreement, CITY shall give written notice to the OWNER specifying the nature of the violation. If the violation is not corrected to the satisfaction of the CITY within ten (10) days after the date of the notice, or within such further time as CITY determines is necessary to correct the violation, then such failure to correct shall be deemed an Event of Default under Section 26 below and the CITY may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting the Prohibited Transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate under the circumstances.

7. Senior Lien Holder. Any attempt to transfer title or any interest therein in violation of these covenants shall be void, provided, however, that any deed restrictions herein shall be subordinate to a mortgage ("**First Deed of Trust**") held by a Senior Lien Holder and/or a federally or state chartered bank or savings and loan association qualified to do business in the State of California which mortgage was obtained at the time OWNER purchased the Premises ("**Senior Lien Holder**"). CITY and OWNER acknowledge and agree that this Agreement is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust held by a Senior Lien Holder including all sums advanced for the purposes of (a) protecting or further securing the lien of the First Deed of Trust, curing defaults by the OWNER under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust, or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Premises. The terms and provisions of the First Deed of Trust are paramount and controlling, and they supersede any other terms and provision hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of Premises to an Eligible Household or otherwise restricting the owner's ability to sell the Premises shall have no further force or effect on subsequent owners or purchasers of the Premises. Any person, including his or her successors or assigns (other than the OWNER or related entity of the OWNER), receiving title to the Premises through a foreclosure or deed in lieu of foreclosure of the First Deed or Trust shall receive title to the Premises free and clear from such restrictions. Further, if the Senior Lien Holder acquires title to the Premises pursuant to a deed in lieu of foreclosure, this Agreement shall automatically terminate upon the Senior Lien Holder's acquisition of title, provided that the CITY shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as determined by the Senior Lien Holder, within the time period provided in such notice sent to the CITY.

8. Attorneys' Fees. OWNER hereby agrees to reimburse CITY the full cost and expense, including staff time and attorneys' fees and costs, incurred by CITY in an effort to correct any default or enforce any violation of the terms of this Agreement, and OWNER further understands and agrees that if such funds are not reimbursed, in addition to other available legal remedies, CITY may deduct same from the proceeds upon resale of the Premises.

9. Covenant Running with the Land. The terms and conditions set forth herein are intended to run with the land and shall bind OWNER and all successors, heirs, grantees and assigns, unless and until superseded by subsequently recorded Agreements. These terms and conditions shall be made part of each deed subsequently recorded and shall bind each successor in interest until the earlier of (a) thirty (30) years from the date of recordation hereof, or (b) the recordation of a subsequent and superceding agreement or (c) the date of termination and/or release hereof pursuant to Sections 12, 24, and/or 28 of this Agreement. Each successor in interest shall assume the rights and obligations set forth and herein undertaken by OWNER in this Agreement. This Agreement and the covenants contained herein shall survive delivery of the Deed.

10. Right of First Refusal. Subject to the provisions hereof, OWNER hereby grants and gives the City of South San Francisco or its designee or assignee a right of first refusal (herein, the "**First Refusal Right**") to purchase the Premises under the conditions set forth in Section 11 below. CITY, at its sole discretion, may assign its First Refusal Right to an individual buyer who qualifies as an Eligible Household. CITY reserves the right to reassign the First Refusal Right to another Eligible Household buyer in the event the initial designee fails or is unable to complete the transaction. Notwithstanding the foregoing, no assignment or reassignment of this First Refusal Right shall extend any time limits for performance under this Agreement without mutual, express and written agreement signed by both the OWNER and any assignee.

11. Resale Procedures.

A. Notice of Offer to Sell. Whenever the OWNER wishes to sell the Premises, OWNER shall notify CITY of the same. Such notice (herein, the "**Notice of Offer to Sell**") shall be in writing and may be personally delivered or sent by certified/return receipt, first class mail through the United States Postal Service, addressed to Economic, and Community Development, CITY of South San Francisco at 400 Grand Avenue, South San Francisco, CA 94080. OWNER's Notice of Offer To Sell may be withdrawn by OWNER, provided that its notice of withdrawal has been received by CITY or its designee, in writing, prior to acceptance by CITY or its designee.

B. Acceptance. CITY, its designee or assignee shall have thirty (30) days from the date of receipt of OWNER's Notice of Offer To Sell within which to exercise its First Refusal Right to purchase the Premises. This acceptance shall be in writing and personally delivered or sent by first class mail through the United States Postal Services, addressed to the OWNER of record at the official address of the Premises or at such other address as OWNER may have specified in its Notice of Offer To Sell. For purposes of fulfillment of the terms of this procedure, the Notice of Offer To Sell the Premises shall be deemed to be an offer to sell, and the exercise of the First Refusal Right to purchase by the CITY or its designee or assignee shall be deemed to be an acceptance of that offer. Acceptance by CITY or its designee or assignee shall constitute a legally binding contract for the transfer of title, and once accepted, the Notice of Offer To Sell may not be withdrawn without the express, written consent of the party who accepted the offer.

C. Escrow. Within thirty (30) days of the date of acceptance by the CITY or its designee of the OWNER's Notice of Offer To Sell, an escrow account shall be opened by the CITY or its designee or assignee. CITY reserves the right, at any time during this process, to subsequently assign its right to purchase to an individual who is qualified as an Eligible Household. Once opened, an escrow must be closed within thirty (30) days, unless both parties mutually agree, in writing, to an extension of time. In no case shall the time between receipt of the Notice of Offer To Sell and the date of close of escrow exceed ninety (90) days, unless both parties mutually agree, in writing, to extend that date, or if for any reason the time

periods herein are tolled. OWNER shall be responsible for paying all customary closing costs assigned to sellers.

12. Transfer by Owner if First Refusal Right Not Exercised. In the event the CITY or its designee does not exercise its First Refusal Right timely pursuant to Section 11 above, then OWNER may offer the Premises for sale to other than targeted households at market price under the terms of this Section. Upon resale of the Premises at market price, the CITY shall receive the difference between the Base Resale Price (defined in Section 14 below) and the actual market sales price of the Premises. The CITY shall have the right to submit a demand into escrow for said excess proceeds. Together with such demand and subject to receiving the excess proceeds, CITY shall provide a recordable document stating that the Premises are forever released from the provisions of this Agreement and the Development Agreement.

13. Owner's Obligation to Cooperate. At all times from and after the date on which the CITY timely exercises its First Refusal Right, OWNER shall ensure that the Premises are clean and in good repair and available to be shown to prospective buyers. OWNER shall cooperate with the CITY and its respective officers, employees and representatives in connection with the sale of the Premises to a buyer qualified as an Eligible Household. Failure to comply with these conditions shall be deemed a material breach of OWNER's obligations pursuant to the terms of this Agreement, and upon determination by the CITY that OWNER has failed to comply with any of the above conditions, CITY shall notify OWNER that the time periods stated herein shall be tolled, and the applicable time periods extended accordingly, until OWNER has complied with all of the conditions of this Agreement. Acts by OWNER which shall be deemed to be a breach of this obligation include, but are not limited to, failure to make the Premises available for showing to prospective buyers upon reasonable notice, willful or deliberate actions to dissuade prospective buyers from purchasing the Premises, and failure or refusal to return telephone calls, complete forms, provide required reports, or perform other actions ordinarily required by a party to a real estate transaction in a timely manner. In addition to tolling the applicable time periods, the CITY may pursue any other remedies for breach based upon this section.

14. Purchase Price. The purchase price shall be paid in cash at the close of escrow or as may be otherwise provided by mutual agreement of buyer and seller. The purchase price of the Premises to an Eligible Household shall be determined pursuant to the provisions of this Section:

A. Base Resale Price. The "**Fixed Sales Price**" paid by OWNER for the Premises is Three Hundred Sixty-Four Thousand Three Hundred Eight Dollars (\$364,308). The "**Base Resale Price**" for the Premises shall be calculated as follows. The Fixed Sales Price shall be adjusted by the percentage increase or decrease in the median annual income for a family of four in San Mateo County as published by HUD. The percentage increase or decrease shall be computed for the period that the Premises are held by OWNER beginning on the date the OWNER acquired the Premises based upon the date of recordation of the deed conveying the Premises. CITY shall provide to OWNER, upon written request for the same

from time to time, the Base Resale Price then applicable to the Premises. The Base Resale Price shall be increased by the market value, if any, of any documented, permanent capital real estate or fixed improvements approved by CITY. Owner shall provide the CITY a list of improvements, if any, with the Notice of Offer to Sell. No price adjustment will be made except upon presentation to the CITY of written documentation of all expenditures made by OWNER for which an adjustment is requested. The adjusted Base Resale Price shall be decreased by the amount necessary to repair any damages and to put the Premises into a sellable condition, including items such as paint, cleaning, construction repairs, and to bring the Premises into conformity with all applicable provisions of the South San Francisco Municipal Code. The value of adjustments to the Base Resale Price shall be reasonably determined by the CITY.

B. Deferred Maintenance. The Base Resale Price shall also be adjusted by an amount to compensate for deferred maintenance costs, which amount shall be determined in the following manner. Upon receipt of OWNER's Notice of Offer To Sell, CITY or its designee or assignee shall be entitled to inspect the Premises. CITY or its designee or assignee shall have an opportunity to determine whether any violations of applicable building, plumbing, electric, fire, or housing codes or any other provisions of Title 16 of the South San Francisco Municipal Code exist.

15. Wood Destroying Pests and Organisms. OWNER shall bear the expense of providing a current written report of an inspection by a licensed Structural Pest Control Operator. All work recommended in said report to repair damage caused by infestation or infection of wood-destroying pests or organisms found and all work to correct conditions that caused such infestation or infection shall be done at the expense of the OWNER. Any work to correct conditions usually deemed likely to lead to infestation or infection of wood-destroying pests or organisms, but where no evidence of infestation or infection is found with respect to such conditions, is not the responsibility of the OWNER, and such work shall be done only if requested by the buyer and then at the expense of the buyer.

16. Real Estate Transfer Disclosure Statement. Upon the opening of the sale escrow, OWNER shall provide the CITY with a full disclosure of the condition of the premise under Civil Code Section 1102, et seq. The CITY will provide the OWNER with the form of Real Estate Transfer Disclosure, which shall be completed by the OWNER and submitted to the CITY within five (5) business days after delivery of the OWNER's Notice of Offer To Sell.

17. Property Deficiencies. If deficiencies are noted following an inspection of the Premises by the CITY, the CITY or its designee or assignee shall obtain estimates to cure the deficiencies. The OWNER shall cure the deficiencies in a reasonable manner acceptable to CITY or its designee or assignee within sixty (60) days of being notified of the results of the inspection, but in no event later than close of escrow. Should OWNER fail to cure such deficiencies prior to the scheduled date of close of escrow, at the option of CITY, its designee or assignee, escrow may be closed, titled passed and money paid to the selling OWNER, subject to the condition that such funds as are necessary to pay for curing such deficiencies

(based upon written estimates obtained by CITY, its designee or assignee), shall cause such deficiencies to be cured, and upon certification by CITY of completion of work, escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to the selling OWNER.

18. Intentionally Omitted.

19. Assignment of Right to Purchase. In no event shall CITY become in any way liable to OWNER, nor become obligated in any manner, by reason of the assignment of its right to purchase, nor shall CITY be in any way obligated or liable to OWNER for any failure of CITY's designee or assignee to consummate a purchase of the Premises or to comply with the terms of any purchase and sale agreement. Nothing in this Agreement shall be construed to obligate CITY to purchase the Premises in the event that a buyer participating in the BMR program fails to close escrow.

20. Refinance of Senior Lien Holder Loan; Junior Loan

A. Refinance. CITY shall permit a prepayment and refinance of the Senior Lien Holder loan if:

- i. Such refinance reduces OWNER's monthly payments of principal and interest on the Senior Lien Holder Loan or provides financing for permanent capital real estate or fixed improvements;
- ii. Does not cause the principal amount of all debt secured by the Premises (including all liens secured when the Premises were purchased) to exceed more than 95% of the Base Resale Price of the Premises as established by CITY at the time the Premises are refinanced;
- iii. The total new housing cost to OWNER does not exceed a housing cost that is affordable to lower to moderate income households as determined by CITY in accordance with criteria established by the Department of Housing and Urban Development (HUD).

B. Junior Loans. Mortgage loans or equity lines of credit junior in lien priority to the liens and Trust Deeds established when the Premises were purchased are not permitted, except as when expressly approved by the CITY in writing. Notwithstanding the provisions of this subsection, mortgage loans from other public agencies designed to increase affordable homeownership, that are compatible with the CITY'S First Time Homebuyer Program and that do not cause the OWNER'S total housing costs to exceed a housing cost that is affordable to low- to moderate-income households as determined by the Department of Housing and Urban Development (HUD) are permitted.

21. Rental Requirements. In the event OWNER wishes to convert the Premises to a rental unit, OWNER shall notify CITY of its desire to offer the Premises for rent under the conditions set forth below. Such notice from OWNER (the "**For Rent Notice**") shall be in writing, and may be personally delivered or sent by certified/return receipt, first class mail



through the United States Postal Service, addressed to Economic and Community Development, City of South San Francisco, 400 Grand Avenue, South San Francisco, CA 94080. OWNER's For Rent Notice may be withdrawn by OWNER at any time.

A. In the event OWNER converts the Premises to a rental unit, OWNER shall rent the Premises to persons who meet the requirements of an Eligible Household. Upon OWNER's request, CITY will provide to OWNER the criteria for making that determination as to prospective tenants.

B. Within thirty days following receipt of the For Rent Notice, CITY shall notify OWNER in writing of the amount of rent permitted to be charged by OWNER to an Eligible Household for the rental of the Premises. The parties acknowledge and agree that the total monthly rent payable by a tenant for the Premises shall be (1) determined in accordance with the annual income limits published by the Department of Housing and Urban Development at the time the Premises are converted to a rental unit, (2) shall not exceed thirty percent (30%) of the applicable tenant's monthly household income, and (3) may be adjusted annually pursuant to the annual percentage increase in median income for a San Mateo County household in the San Francisco Primary Metropolitan Statistical Area, published annually by the Department of Housing and Urban Development. The parties further acknowledge and agree that rent determined in accordance with the preceding sentence shall be deemed "affordable" in accordance with the Development Agreement and this Agreement and that such formula shall be the manner in which rent is calculated for the Premises. Notwithstanding the foregoing, in accordance with the Development Agreement, no tenant shall be obligated to pay rent for the Premises in an amount greater than ninety percent (90%) of the market rental rate for a unit of comparable size in the Project. If no comparable units exist CITY will use Fair Market Rents for San Mateo County as published by HUD to determine the market rental rate for the Premises.

C. The total monthly rental amount for the Premises shall include a utility allowance as determined annually by the Department of Housing and Urban Development (the "**Utility Allowance**"). The CITY acknowledges and agrees that OWNER may reduce the monthly rent amount payable by tenants of the Premises by the amount of such Utility Allowance and obligate tenants of the Premises to pay for utilities directly to the applicable utility providers. Except as otherwise set forth herein, OWNER shall not be obligated to pay utilities for the Premises.

D. The Premises shall meet minimum below market rate and habitability standards. Said standards determined by the CITY are set forth in Exhibit B, incorporated herein and attached hereto. Furthermore, the rental of the Premises pursuant hereto shall be subject to the conditions set forth on Exhibit C hereto. Said conditions shall be reflected in all rental agreements for the Premises.

22. Intentionally Omitted.

23. Exempt Transfers. The following transfers of title or any interest therein are not subject to the CITY's First Refusal Right: transfer by gift, devise, or inheritance to grantee's spouse or issue; taking of title by surviving joint tenant or a surviving spouse of community property; transfer of title to a spouse as part of marriage dissolution proceedings; acquisition of title or interest therein in conjunction with marriage; transfer pursuant to the provisions of any Fannie Mae mortgage; provided, however, that with the exception of Fannie Mae acquisitions through foreclosure or acceptance of deed in lieu of foreclosure, these covenants shall continue to run with the title to said Premises following said transfers. An instrument shall be executed, acknowledged and recorded by the transferee containing the following covenant:

"This property is subject to the terms and provisions of that certain 'Resale Restriction and Right of First Refusal Agreement'. Transferee, on behalf of transferee, and by transferee's successors and assigns, covenants and agrees to be bound by, and to perform in accordance with, such Agreement, and to include this covenant in any further transfer of the property."

24. Default and Foreclosure. OWNER covenants to cause to be filed for record in the Office of the Recorder of the County of San Mateo a request for a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering said Premises pursuant to Section 2924b of the Civil Code of the State of California. Such request shall specify that any such notice shall be mailed to the City of South San Francisco, Economic and Community Development, 400 Grand Avenue, South San Francisco, California, 94080. Any notice of sale given pursuant to Civil Code Section 2924f shall constitute a Notice of Offer To Sell hereunder and CITY may exercise its First Refusal Rights prior to any trustee's sale, judicial foreclosure sale, or transfer by deed in lieu of foreclosure. In the event OWNER fails to file such request for notice, CITY's right to purchase shall run from the date CITY obtains actual knowledge of a sale or proposed sale. CITY or its designee or assignee shall have the right to cure any such notice of default. The exercise of such right to cure shall in no way affect the operation of the notice of default as a notice of intent to sell by OWNER. CITY, its designee or assignee, shall be entitled to recover all costs incurred in curing such default from OWNER. Such costs shall be paid through escrow from the proceeds of sale if the sale is consummated. If the sale is not consummated and OWNER retains ownership of the Premises, CITY, its designee or assignee, shall be entitled to recover its costs directly from OWNER. None of the foregoing shall be interpreted to impair the right of the FNMA (Fannie Mae) to take legal action under the terms of its First Deed of Trust or to require FNMA to send default or foreclosure notice to any third party. In the event CITY fails to exercise its First Refusal Right to purchase or prevent foreclosure or trustee's sale, a completed action of foreclosure or trustee's sale shall render this Agreement and the restrictions imposed thereby to be null and void and of no further force or effect. In the event CITY elects not to exercise its First Refusal Right to purchase upon default, any surplus to which OWNER may be entitled pursuant to Code of Civil Procedure Section 727 shall be paid as follows: That portion of surplus (after payment of encumbrances), if any, up to but not exceeding the Base Resale Price, shall be paid to OWNER on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to the CITY in order to

compensate the CITY for the loss of the Premises as a BMR Unit and to preserve the CITY's Below Market Rate Housing Program. Forthwith following any foreclosure sale of the Premises, the City shall forthwith cause to be recorded a termination of this Agreement and release of the Premises of and from the Development Agreement.

25. Defaults. The following events shall constitute a default by the OWNER under this Agreement:

- (a) The CITY determines that the OWNER has made a misrepresentation to obtain the benefits of purchase of the Premises or in connection with its obligations under this Agreement;
- (b) The OWNER fails to occupy or lease the Premises in compliance with the provisions and conditions hereof; or
- (c) The OWNER makes a Prohibited Transfer in violation of this Agreement;
- (d) The OWNER fails to comply with or otherwise violates the requirements of this Agreement;
- (e) A notice of default is issued under the Senior Lien Holder's First Deed of Trust and the same is not cured before a notice of sale is recorded by said Senior Lien Holder; or
- (f) A lien is recorded against the Premises other than the lien of a bona fide first mortgage loan or a junior loan approved by the CITY in accordance with Section 20B.

26. Notice and Cure; Event of Default. Upon the occurrence of a default by OWNER under this Agreement, the CITY shall give written notice to the OWNER specifying the nature of the default. If the violation is not corrected to the satisfaction of CITY within a reasonable period of time, not longer than thirty (30) days after the date the notice of default is mailed, or within such further time as the CITY determines is necessary to correct the default, or if the OWNER is in default under any other mortgage loan on the Premises, then such uncured default shall be deemed an "**Event of Default**" hereunder, whereupon the CITY shall provide written notice of the Event of Default to OWNER and to the Senior Lien Holder at the address and in the manner provided by the Senior Lien Holder to the CITY.

27. Procedures Upon Event of Default. Upon an Event of Default, the CITY may:

- (a) Exercise its Purchase Option under Section 28 hereof;
- (b) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate; and

- (c) Pursue all CITY remedies under the this Agreement; and
- (d) Exercise its First Refusal Right under Section 10 above.

28. Purchase Option Upon Default. Notwithstanding, and in addition to, the remedies provided the CITY in this Agreement, the OWNER hereby grants to the CITY (or its assignee) an option to purchase (herein, the “**Purchase Option**”) the Premises upon the occurrence of an Event of Default. CITY, at its sole discretion, may assign its Purchase Option to an individual buyer who qualifies as an Eligible Household. This Purchase Option is given in consideration of the economic benefits received by the OWNER resulting from purchase and ownership of the Premises. The CITY (or its assignee) shall have thirty (30) days after written notice of an Event of Default is given to OWNER and the Senior Lien Holder to notify the OWNER and the Senior Lien Holder of its decision to exercise its Purchase Option under this Section. Not later than ninety (90) days after the notice is given by the CITY to the OWNER of the CITY’S intent to exercise its option under this Section, the CITY or its assignee shall purchase the Premises for the Base Resale Price calculated in the manner set forth in Section 14. Notwithstanding the foregoing, in no event shall CITY become in any way liable to OWNER, nor become obligated in any manner to purchase the Premises..

29. Entirety of Agreement. This Agreement comprises the entire agreement between the parties, and no other terms or conditions shall be deemed to apply, unless by a mutually executed, written amendment, modification or superseding agreement which references this Agreement. OWNER covenants that he or she has not and will not execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that in any event, OWNER understands and agrees that this Agreement shall control the rights and obligations between and among the parties and respective successors.

30. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

31. Distribution of Insurance and Condemnation Proceeds. If the condominium project of which the Premises are a part is destroyed and insurance proceeds are distributed to OWNER instead of being used to rebuild; or in the event of condemnation, if proceeds thereof are distributed to OWNER; or in the event of termination of the condominium, liquidation of the association and distribution of the assets of the association to the members thereof, including OWNER, any surplus of proceeds so distributed remaining after payment of encumbrances of said Premises shall be distributed as follows: That portion of the surplus up to but not to exceed the Base Resale Price shall be distributed to OWNER, and the balance of such surplus, if any, shall be distributed to CITY.

32. Nonwaiver. With the exception of the CITY’S First Refusal Right, the failure of the CITY to take an action to enforce a right or to seek a remedy under the terms and

conditions of this Agreement shall not be deemed to be a waiver by the CITY to take such action or enforce any rights it may otherwise have pursuant to this Agreement.

33. Notices. All notices required herein shall be sent to the following addresses:

CITY

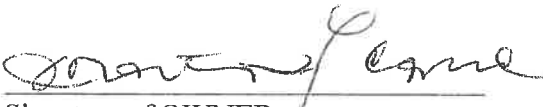
Economic and Community Development  
City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080

OWNER:

F.  
Jonathan Cano  
2230 Gellert Blvd. #3303  
South San Francisco, CA 94080

By acceptance of this Agreement, OWNER accepts and agrees to be bound by the covenants contained herein.

DATED: 12/27/07

  
Signature of OWNER

Jonathan F. Cano  
Print or Type Name

(JFC)

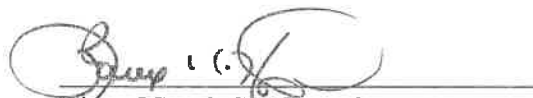
\_\_\_\_\_  
Signature of OWNER

\_\_\_\_\_  
Print or Type Name

2230 Gellert Blvd. #~~3303~~ 3303  
South San Francisco, CA 94080  
Print or Type Address of Unit

(JFC)

DATED: 12/12/07

  
City of South San Francisco  
Barry M. Nagel, City Manager

Approved as to form

Date: 12/10/07

By: SSW/A  
City Attorney

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Mateo

On 12/12/07 before me,

Irene Soto  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Barry M. Nagel  
Name(s) of Signer(s)

NOTARY PUBLIC

☒ personally known to me

☐ (or proved to me on the basis of satisfactory evidence)



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Irene Soto  
Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF California )  
COUNTY OF Alameda )

File No: ( )

APN No:

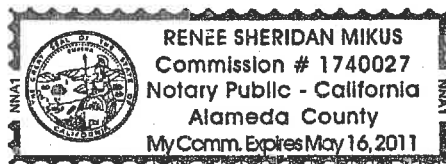
On December 27, 2007 before me, Renee Sheridan Mikus, Notary Public, personally appeared Jonathan F. Cano who proved to me on the basis of satisfactory evidence to be the person(s) instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Renee Sheridan Mikus



THIS AREA FOR OFFICIAL NOTARIAL SEAL.

### OPTIONAL SECTION CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER(S) TITLE(S)  
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER

SIGNER IS REPRESENTING:

Name of Person or Entity

Name of Person or Entity

### OPTIONAL SECTION

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

**THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW**

TITLE OR TYPE OF DOCUMENT: \_\_\_\_\_

NUMBER OF PAGES \_\_\_\_\_ DATE OF DOCUMENT \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

# EXHIBIT A

Order Number: 0105-2222-3303

Page Number: 6

## LEGAL DESCRIPTION

Real property in the City of South San Francisco, County of San Mateo, State of California, described as follows:

### PARCEL ONE:

An undivided equal interest as a tenant in common in and to Lot 3 of Subdivision Map entitled "Marbella", filed April 15, 2005, Map Book 133, pages 42 through 44, inclusive, San Mateo County Records.

EXCEPTING THEREFROM the following:

A) All of the Condominium Units as shown on the Condominium Plan ("the Plan") attached as Exhibit "A" to the South City Lights Declaration of Restrictions ("the Declaration"), recorded January 17, 2006, Instrument No. 2006-006865, Official Records and amended by document recorded October 18, 2006 as Instrument No. 2006-157166, official records, together with any and all amendments and annexations thereto.

B) The exclusive right to use all those Exclusive Use Common Areas designated as balcony and parking spaces, as shown on the Condominium Plan referred to above. Reserving therefrom, non-exclusive rights of each Owner of a Unit for ingress, egress, use and enjoyment over and across the Common Area, as specified in said Declaration of Restrictions.

### PARCEL TWO:

Unit 3303, as shown on the Condominium Plan referred to in Parcel One above.

### PARCEL THREE:

The exclusive right to use those Exclusive Use Common Areas designed to serve a single Unit, designated by the letter "B" (balcony), which immediately abuts and is directly accessible from the unit described in Parcel Two above.

### PARCEL FOUR:

The exclusive right to use those Exclusive Use Common Area(s) designated G3205 and G3206 (Parking Space), granted as an appurtenance to the Unit described in Parcel Two above, as shown on the Condominium Plan referred to in Parcel One above.

### PARCEL FIVE:

Non-exclusive easements for ingress, egress, use and enjoyment over and across the Common Area and Association Property, as shown on the Condominium Plan referred to above, and as set forth in, the Declaration referred to above.

APN: 091-661-380-5 (Affects this and other property)



**EXHIBIT A**

Legal Description of the Premises

## **EXHIBIT B**

### **Minimum Habitability Standards**

Below Market Rate Rental Units shall meet minimum habitability standards. OWNER must ensure compliance with all state and local housing codes, licensing requirements and any other standards regarding the condition of a structure and the operation of the housing and/or services. Specifically, OWNER must adhere to proper standards regarding accessibility, sanitation, security, illumination, electricity, and fire safety. These standard include, but are not limited to:

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and walls;
- Functional plumbing facilities, including hot and cold running water, and efficient sewage disposal;
- Gas facilities, heating resources and electrical system in good working order;
- Lights and wiring that work and are safe. At least two functioning electrical outlets in every room, with at least one light in the bathroom;
- Well-lighted common areas, such as stairs and hallways;
- Buildings, grounds and fixtures that are clean, sanitary and free from debris, rodents and vermin;
- Adequate and properly maintained trash receptacles;
- Doors and windows in good repair. Functional outer doors and locks, including a deadbolt lock for the main entry door, and window locks;
- Functional smoke detector—it's the tenant's responsibility to buy and install batteries for the smoke detector;
- Floors, stairways and railings that are safe and in good repair;
- Prevention and elimination of mold and mildew;
- Interior and exterior paint in fair to excellent condition.

The OWNER shall allow and make arrangements with tenants to permit the City, at its discretion, to inspect all units on a biannual basis to monitor compliance with the habitability standards.

### EXHIBIT C

The following conditions shall apply to the rental of all Below Market Rate Units and, to the extent applicable, the conditions shall be reflected in the rental agreements between the OWNER and all Tenants of the Below Market Rate Units:

1. Tenants shall be annually certified as to income eligibility for the Below Market Rate Units and the annual certification shall be submitted to the office of Community Development. If OWNER fails to perform an annual certification, CITY shall notify OWNER in writing that OWNER is in violation of the Resale Restriction and Right of First Refusal Agreement and OWNER is subject to Declaration of Default. Upon receiving written notice, OWNER shall have thirty (30) days from the date of notification to perform the certification. In the event OWNER fails to perform the certification within the thirty (30) day period, CITY shall declare OWNER in default of the Resale Restriction and Right of First Refusal Agreement. Notwithstanding the foregoing, in the event Tenant is not cooperating with OWNER in preparing the annual certification, so long as OWNER is using commercially reasonable efforts to obtain such annual certification, CITY shall not declare OWNER in default of Resale Restriction and Right of First Refusal Agreement. In addition, notwithstanding the foregoing, OWNER shall not be obligated to provide an annual certification for any Tenant that OWNER is in the process of evicting at the time such annual certifications are due to the CITY.

2. In the event any income eligible Tenants are subsequently determined to be ineligible (or over income tenants), said Tenant shall be given three (3) months from the date of ineligibility to vacate the Below Income Unit. Nothing, however, shall prevent the OWNER from evicting said Tenants for cause such as, including but not limited to, conducting illegal activities on or about the Premises or failing to pay rent.

3. The parties acknowledge and agree that in the event OWNER is not allowed to evict a Tenant, OWNER shall not be deemed in violation of the Resale Restriction and Right of First Refusal Agreement and such Tenant shall be deemed an income eligible Tenant, unless OWNER is not using commercially reasonable efforts to evict such Tenant.