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RECORDING REQUESTED BY
CHICAGO TITLE COMPANY

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09/30/2003 08:30 AM

CLACK COUNTY

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Redevelopment Agency of the
City of Emeryville
Attn: Patrick O'Keefe
1333 Park Avenue
Emeryville, CA 94608

668345-AS

At
11/14
pm

**RESALE RESTRICTION AGREEMENT
AND RIGHT OF FIRST REFUSAL**

This Resale Restriction Agreement and Right of First Refusal is entered into as of September 18, 2003, between REDEVELOPMENT AGENCY OF THE CITY OF EMERYVILLE ("Agency"), THE CITY OF EMERYVILLE ("City"), **Robert/J. Arias, Jr.** ("Owner") with reference to the following facts:

A. Pursuant to Section 33334.2 of the California Health and Safety Code, the Agency has set aside 20% of tax increment revenues allocated to it to improve and increase the supply of affordable housing in the City of Emeryville. The Agency used a portion of these monies to make a loan for the development of condominium conversion project (the "Project") on certain real property located at 1500 Park Avenue, Emeryville, California. Twenty percent of the condominium units in the Project are required to be affordable to persons and families of moderate income (the "Affordable Units"). The Affordable Units are sold to persons and families of moderate income at a restricted sales price.

B. Pursuant to Emeryville Ordinance No. 90-11, the City has developed a housing program designed to achieve a balanced community with housing available for households with a range of income levels and diverse special housing needs and to reduce the cost of housing to its residents. The Project is subject to Emeryville Ordinance No. 90-11.

C. Owner is this day purchasing one of the Affordable Units, which is identified as having a street address of **1500 Park Avenue, #322** and is more particularly described on **Exhibit A** attached hereto (the "Premises").

D. Owner's acquisition of the Premises is subject to the resale restrictions and the City's and Agency's right of first refusal as more fully described in this Agreement.

NOW THEREFORE, in consideration of the benefits received by Owner, Owner, Agency and City agree as follows:

1. Right of First Refusal. Owner hereby grants and gives to the City and Agency a right to purchase the Premises under conditions hereinafter set forth. City and Agency may

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(E)

designate a governmental, for profit, or nonprofit organization to exercise its right of first refusal. City and Agency or its designee may assign this right to an individual private buyer who meets the City and Agency's eligibility qualifications. After the exercise of said right by City and Agency, its designee or assignee in the manner hereinafter prescribed, City and Agency, its designee or assignee may assign said right to purchase to any substitute individual private buyer who meets the City and Agency's eligibility requirements and is approved by the City and Agency; provided, however, that such subsequent assignment shall not extend any time limits contained herein. Any attempt to transfer title or any interest therein in violation of these covenants shall be void.

2. Procedure on Sale. Whenever the Owner and all successors in interest of the Premises no longer desires to own the Premises, Owner shall notify City and Agency in writing to that effect. Such notice shall be personally delivered or deposited in the United States mail, postage prepaid, first class, certified, addressed to City Manager, City of Emeryville, 1333 Park Avenue, Emeryville, California 94608. City and Agency, its designee or assignee shall then have the right to exercise its right to purchase the Premises by delivery of written notice, by personal delivery or certified mail, to the Owner thereof at any time within 60 days from the receipt by City and Agency of such written notice from Owner of intent to sell or dispose of the Premises.

If the City and Agency, its designee or assignee exercises its right to purchase the Premises, close of escrow of the purchase shall be within 90 days of the opening of the escrow by either party. The escrow shall be opened upon delivery to Owner of written notice of the exercise of the option or as soon thereafter as possible. In the event City and Agency decides to assign the right to purchase provided herein, City and Agency may postpone opening of escrow until selection of an assignee, or as soon thereafter as possible, provided that the closing of the escrow shall not be postponed longer than 90 days after the Owner is notified of the City and Agency's exercise of its right to purchase.

Closing costs and title insurance shall be paid pursuant to the custom and practice in the City of Emeryville at the time of the opening of such escrow. 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 cause 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. 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 Owner.

3. Purchase Price. The purchase price of the Premises shall be fixed at the lower amount arrived at via the following two methods:

A. City and Agency or its designee shall have an appraisal made by an appraiser of its choice to establish the market value if it feels that there is any substantial chance that such an appraisal will be lower than the value calculated by method B below.

The Owner may also have an appraisal made by an appraiser of Owner's choice to establish the market value. If agreement cannot be reached, the average of the two appraisals shall be termed the market price.

B. **Two hundred six thousand and no/100 Dollars (\$206,000.00)** (sale price), plus an amount, if any, to compensate for any increase in the cost of living as measured by the Consumer Price Index, All Urban Consumers, for the San Francisco-Oakland-San Jose area published by the U.S. Department of Labor, Bureau of Labor Statistics (hereinafter "the Index"). For that purpose, the Index prevailing on the date of the purchase by the selling Owner of the Premises shall be compared with the latest Index available on the date of receipt by City and Agency of notice of intent to sell. The percentage increase in the Index, if any, shall be computed and the sale price shall be increased by that percentage; provided, however, that the price shall in no event be lower than the purchase price paid by the selling Owner when s/he purchased the Premises. This adjusted price shall be increased by: (1) the value of any substantial structural or permanent fixed improvements which cannot be removed without substantial damage to the Premises or substantial or total loss of value of said improvements and (2) the value of any appliances, fixtures or equipment which were originally acquired as part of the Premises by Owner; provided that such price adjustment for replacement appliances, fixtures or equipment shall be allowed only when the expenditure is necessitated by the non-operative or other deteriorated condition of the original appliance, fixture or equipment. The manner in which all such price adjustments shall be determined is described in Appendix A, which is hereby incorporated. No adjustments shall be made without adequate documentation, the manner for which is also described in **Appendix A**.

Any sale price determined through the use of this method described in paragraph 3B (sale price adjusted by Consumer Price Index and value of improvements, appliances, fixtures or equipment added) shall be adjusted by decreasing said price by an amount to compensate for deferred maintenance costs, which amount shall be determined as follows: Upon receipt of notice of Owner's intent to sell, City and Agency or its designee shall be entitled to inspect to Premises. City and Agency or its designee shall have an opportunity to determine whether all plumbing, electrical and heating systems are in working order; whether any violations or applicable building, plumbing, electric, fire or housing codes exist; whether all appliances which were originally furnished to Owner as part of the Premises, or any replacements thereof, are in working order; whether walls, ceilings and floors are clear and free of holes or other defects (except for holes typical of picture hangers); whether doors, windows, screens and similar appurtenances are cracked, broken or torn; and whether carpets, drapes and similar features which were originally furnished to Owner as part of the Premises, or any replacement thereof, are clean and free of holes, tears and other defects. In the event deficiencies are noted, the Code Enforcement Officer of City shall obtain estimates to cure the observed deficiencies. The Owner shall cure the deficiencies in a reasonable manner acceptable to City and Agency or designee within 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 and Agency, its designee or assignee, escrow may be closed, title 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 and Agency) shall be withheld from the money due the selling Owner and held by escrow holder for the purpose of curing such deficiencies. City and Agency, its designee or assignee shall cause such deficiencies to be cured and upon certification of completion of work by City and Agency, escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to the selling Owner. No other payment shall be due said Owner.

In no event shall City and Agency 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 and Agency be in any way obligated or liable to Owner for any failure of City and Agency's assignee to consummate a purchase of the Premises or to comply with the terms of any purchase and sale agreement.

4. No Transfers in Violation of this Agreement.

A. Until such time as the City and Agency's right to purchase is exercised, waived or expired, the Premises and any interest in title thereto shall not be sold, leased, rented, assigned or otherwise transferred to any person or entity except with the express written consent of City and Agency or its designee, which consent shall be consistent with the City and Agency's goal of creating, preserving, maintaining and protecting housing in Emeryville for persons of moderate, low and very-low income. This provision shall not prohibit the encumbering of title for the sole purpose of securing financing; however, in the event of foreclosure or transfer by deed in lieu of foreclosure, the provisions of paragraph 7 of this instrument shall govern.

B. The following transfers of title or any interest therein are not subject to the right of first refusal provisions of this Agreement: transfer by gift, devise or inheritance to grantee's spouse or issue; taking of title by surviving joint tenant; transfer of title to spouse as part of divorce or dissolution proceedings; acquisition of title or interest therein in conjunction with marriage; provided, however, that the covenants contained in this Agreement and the right of first refusal shall continue to run with the title to the Premises following said transfers.

5. Primary Place of Residence. By purchasing the Premises, Owner agrees to occupy the Premises as its primary place of residence. Owner may not lease the Premises. Whenever the Owner fails to maintain the Premises as his/her primary place of residence, and continues to do so for six months following written notice of such failure by the City and Agency, the City and Agency may within its discretion provide Owner with a written notice that it deems the failure to maintain the Premises as a primary place of residence as a sale, which thereby begins the 60-day period for the right of first refusal described above in paragraph 1.

6. Abandonment of the Right to Purchase. In the event that the City and Agency or its designee abandons or fails to exercise its right to purchase the Premises within 60 days after it receives the notice of intent to sell as more fully described in paragraph 2 above, City and Agency will cause to be recorded in Alameda County a notice of intent not to exercise its right with

respect to the Premises, and declaring that the provisions of this right are no longer applicable to the Premises, and shall deliver a copy thereof to Owner of the Premises. Said notice shall be recorded within 15 days of City and Agency's decision not to exercise its right, but no later than 60 days after City and Agency receives the notice of intent to sell to a third party. Upon recordation of said notice, the provisions of the right to purchase shall no longer be applicable to the Premises.

7. Termination of Right of First Refusal. The provisions set forth in this Agreement relating to City and Agency's right to purchase shall terminate and become void automatically 25 years following the date of recordation of this Agreement.

8. Request for Notice of Default; Foreclosure. Owner covenants to cause to be filed for record in the Office of the Recorder of the County of Alameda 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 the Premises pursuant to Section 2924(b) of the Civil Code of the State of California. Such request shall specify that any such notice shall be mailed to the City Manager, City of Emeryville, 1333 Park Avenue, Emeryville, California 94608. Any notice of sale given pursuant to Civil Code Section 2924(f) shall constitute a notice of intent to sell hereunder and City and Agency may exercise its preemptive right 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 and Agency's right to purchase shall run from the date City and Agency obtains actual knowledge of a sale or proposed sale. In the event City and Agency elects not to exercise its 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 net amount that Owner would have received after payment of encumbrances under the formula set forth above had City and Agency exercised its right to purchase the property on the date of the foreclosure sale, shall be paid to Owner on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to the City and Agency.

9. Distribution of Insurance and Condemnation Proceeds. In the event that the Premises are 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 case of a condominium project, in the event of liquidation of the homeowners' 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 the Premises shall be distributed as follows: That portion of the surplus up to but not to exceed the net amount that Owner would have received under the formula set forth above had City and Agency exercised its right to purchase the property on the date of the destruction, condemnation valuation date, or liquidation, shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to the City and Agency.

10. Notices. All notices required herein shall be sent to the following address:

City and Agency: City Manager
 City of Emeryville
 1333 Park Avenue
 Emeryville, CA 95608

Owner: At the address shown in paragraph C

11. Notices of Prohibited Transfer. Upon receiving notification of a transfer prohibited by this Agreement (a "Prohibited Transfer"), City and Agency will give written notice to the Owner, specifying the nature of the Prohibited Transfer. If the violation is not corrected to the satisfaction of the City and Agency within 10 days after the date of the notice, or within such further time as City and Agency determines is necessary to correct the violation, City and Agency may declare a default under this Agreement. Upon the declaration of a default, City and Agency may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale or 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.

12. Attorney Fees and Costs. If any action is brought to enforce the terms of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and cost.

13. Controlling 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.

14. Severability. If any one or more of the provisions contained in this Agreement shall for any reasons be held to be invalid, illegal or unenforceable in any respect, then such provision or 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 provisions(s) had never been contained herein:

15. Time of the Essence. Time is of the essence of this entire Agreement.

AGENCY:

THE REDEVELOPMENT AGENCY OF THE
CITY OF EMERYVILLE

By: _____

Its: _____



John A. Flores
Executive Director

CITY:

THE CITY OF EMERYVILLE

By: _____

Its: _____


John A. Flores
City Manager

-AND-

OWNER:

15. Time of the Essence. Time is of the essence of this entire Agreement.

AGENCY:

THE REDEVELOPMENT AGENCY OF THE
CITY OF EMERYVILLE

By: 
Its: John A. Flores
Executive Director


CITY:

THE CITY OF EMERYVILLE

By: 
Its: John A. Flores
City Manager

-AND-

OWNER:

 JR
Robert Arias, Jr.

APPENDIX A

Method of Calculating Value of Appliance, Fixture or Equipment

If at the time of replacement the original appliance, fixture or equipment had in excess of 20% of its original estimated useful life remaining, Owner shall document to the City's satisfaction the condition of the appliance, fixture or equipment which necessitated its replacement. No such price adjustment shall be made significantly in excess of the reasonable cost to replace the original appliance, fixture or equipment with a new appliance, fixture or equipment of comparable quality as hereinafter provided. No such adjustment shall be made except for improvements, appliances, fixtures or equipment made or installed by the Owner. No improvements, appliance, fixture or equipment shall be deemed substantial unless the actual initial cost thereof to the Owner exceeds 1% of the purchase price paid by the Owner for the Premises; provided that this minimum limitation shall not apply in either of the following situations:

- (a) Where the expenditure was made pursuant to a mandatory assessment levied by the homeowner's association for the development in which the Premises is located, whether levied for improvements or maintenance to the Premises, the common area or related purposes.
- (b) Where the expenditure was made for the replacement of appliances, fixtures or equipment which were originally acquired as part of the Premises by Owner.

No adjustment shall be made for the value of any improvements, appliances, fixtures or equipment unless the Owner shall present to the City valid written documentation of the cost of said improvements. The value of such improvements by which the sale price shall be adjusted shall be determined as follows:

- (a) The value of any improvement, appliance, fixture or equipment, the original cost of which was less than Five Thousand Dollars (\$5,000), shall be the depreciated value of the improvement, appliance, fixture or equipment calculated in accordance with principles of straight-line depreciation applied to the original cost of the improvement, appliance, fixture or equipment based upon the estimated original useful life of the improvement, appliance, fixture or equipment.
- (b) The value of any improvement, appliance, fixture or equipment, the original cost of which was Five Thousand Dollars (\$5,000) or more, shall be the appraised market value of the improvement, appliance, fixture or equipment when considered as an addition or fixture to the Premises (i.e., the amount by which said improvement, appliance, fixture or equipment enhances the market value of the Premises) at the time of sale. Said value shall be determined in the same manner as the fair market value of the Premises in Section 3(a) of the Resale Restriction Agreement to which this Appendix is attached.

- (c) On January 1, 1992, and every two years thereafter, regardless of the date of execution or recordation hereof, the amount of Five Thousand Dollars (\$5,000) referred to in paragraphs (a) and (b) immediately above shall be automatically adjusted for the purpose of those paragraphs in the following manner. On each adjustment date, the Housing Cost Component of the Consumer Price Index, All Urban Consumers, for the San Francisco-Oakland area published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index") prevailing on January 1, 1990, shall be compared with the Index prevailing on the date of adjustment. The percentage of increase in the Index, if any, shall be computed and the sum of Five Thousand Dollars (\$5,000) shall be increased in the same percentage. In no event shall the sum be reduced below Five Thousand Dollars (\$5,000).
- (d) No price adjustment will be made except upon presentation to City of written documentation of all expenditures made by Owner for which an adjustment is requested.

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On SEPTEMBER 25, 2003, before me, ANGEL SWEET, personally appeared ROBERT ARIAS, JR. 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.

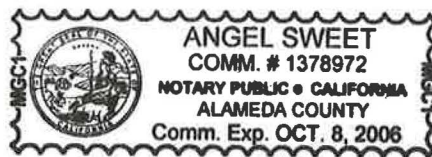
WITNESS my hand and official seal.

Signature

Angel Sweet
Angel Sweet

Name (Typed/Printed)

Notary Public in and for said County and State



ILLEGIBLE NOTARY SEAL DECLARATION

(GOVERNMENT CODE 27361.7)

I declare under penalty of perjury that the notary seal on the document
to which this statement is attached, reads as follows:

NAME OF NOTARY PUBLIC: Angel Sweet

COMMISSION NUMBER: 1378972

NOTARY PUBLIC STATE: CALIFORNIA

COUNTY: ALAMEDA

MY COMM. EXPIRES: 10 / 8 / 2006
(DATE)

SIGNATURE OF DECLARANT: Jan Raunick

PRINT NAME OF DECLARANT: JAN RAUNICK

CITY & STATE OF EXECUTION: Walnut Creek, California

DATE SIGNED: SEPTEMBER / 29 / 2003

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Alameda

SS.

On Sept. 18, 2003, before me, Erika Broyard, Notary

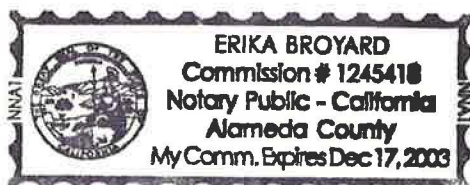
Date

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

personally appeared John A. Flores

Name(s) of Signer(s)

- ☒ personally known to me
☐ ~~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

Erika Broyard
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: Resale Restriction Agreement

Document Date: 9/18/03 Number of Pages: 9

Signer(s) Other Than Named Above: Robert J. Arias, Jr.

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: City of Emeryville

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

ILLEGIBLE NOTARY SEAL DECLARATION

(GOVERNMENT CODE 27361.7)

I declare under penalty of perjury that the notary seal on the document
to which this statement is attached, reads as follows:

NAME OF NOTARY PUBLIC: Erika Broyard

COMMISSION NUMBER: 1245418

NOTARY PUBLIC STATE: CALIFORNIA

COUNTY: ALAMEDA

MY COMM. EXPIRES: 12/17/ 2003
(DATE)

SIGNATURE OF DECLARANT: Jan Raunick

PRINT NAME OF DECLARANT: JAN RAUNICK

CITY & STATE OF EXECUTION: Walnut Creek, California

DATE SIGNED: SEPTEMBER / 29 / 2003

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING