

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Attn: Tuija Catalano
File no: 8730.01

Space Above This line for Recorder's Use

BLOCK/LOT: 3708/012
SITUS: 526 Mission Street

EASEMENT AGREEMENT
(for Overland Stormwater Flow)

April __, 2016

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (“**Agreement**”), dated for reference purposes as of the ___ day of _____, 2016, is entered into by and between Oceanwide Center LLC, a Delaware limited liability company (“**Owner**”) and the City and County of San Francisco, a municipal corporation (“**City**”).

RECITALS

A. Owner is the owner of certain real property located at 526 Mission Street between First Street and Ecker Place, on Assessor’s Block 3708, Lot 012, in the City of San Francisco, County of San Francisco, State of California, and more fully described in Exhibit “A” to this Agreement (“**Property**”).

B. The Property is part of a larger site that is proposed by Owner for the construction of a mixed-use development with two towers featuring over 250 residential dwelling units, a hotel and approximately one (1) million square feet of office use rising above integrated basement levels, and including full renovation and rehabilitation of one historic building and partial renovation of another building, and the creation of a multi-story high “urban room” on the ground level facing First Street that will serve as public open space (“**Project**”).

C. The Project incorporates portions of Elim Alley and Jessie Street, which portions would need to be vacated in order for the construction of the Project to proceed so that the tower fronting First Street could be constructed in accordance with the scale of development contemplated by the Transit Center District Plan (“**Street Vacation**”). The Street Vacation requires an approval by the City’s Board of Supervisors.

D. Jessie Street is currently an east-west oriented street between Ecker Place and First Street with a right-of-way width of 27.5 feet. A portion of Jessie Street west of First Street is proposed to be vacated for a length of approximately 130 feet (“**Vacated Jessie Street**”), and in place of Vacated Jessie Street the Project would relocate Jessie Street via a public right-of-way through the Property, rerouting it 90 degrees as it enters the Property, so that it will terminate on Mission Street instead of First Street (“**Pedestrian and Vehicular Path Area**”). The Pedestrian and Vehicular Path Area will be located on that portion of the Property described in attached Exhibit ___ and shown on attached Exhibit ___ (“**Easement Area**”) and will be subject to pedestrian and vehicular access for the benefit of the public with an unobstructed vertical clearance of _____ feet. The Easement Area includes only the area on and above the completed surface of the street improvements for the use of the easement created by this Agreement.

E. Due to the vacation of Vacated Jessie Street, overland or surface flow from Jessie Street upstream of Vacated Jessie Street (“**Jessie Street Remainder**”) and City sewer system facilities on, over or below the Jessie Street Remainder in excess of the 5-year storm capacity (“**Overland Flow**”) would be directed onto the Easement Area and therefrom be returned to the public right-of way and/or City sewer system facilities located on, over or below Mission Street.

F. In connection with the Street Vacation, and in order to allow the storm water Overland Flow onto and through the Easement Area following the Street Vacation, Owner will cause the Easement Area to be improved with street improvements for pedestrian and vehicular use and Overland Flow, and the Owner has offered to grant a non-exclusive easement for the benefit of the City.

NOW, THEREFORE, in consideration of the covenants and agreements of the parties herein contained, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and City hereby agree as follows:

1. Grant of Easement. Owner hereby grants the City a nonexclusive, permanent easement in gross over and across the Easement Area, for the purposes of allowing Overland Flow from the Jessie Street Remainder and City sewer system facilities on, over or below the Jessie Street Remainder in excess of the 5-year storm capacity onto and through the Easement Area to the public right-of way and/or City sewer system facilities located within Mission Street (“**Overland Flow Easement**”). The Overland Flow Easement is a non-exclusive easement, and the Easement Area will be used by Owner, and by Owner’s employees, agents, tenants, guests and invitees, as well as by the public, for pedestrian and vehicular ingress and egress from Jessie Street to Mission Street via the Pedestrian and Vehicular Path Area.

2. Effective Date. The Overland Flow Easement granted hereby shall be effective upon the completion of the construction of the initial street improvements for the Pedestrian and Vehicular Path Area, which shall be deemed to have occurred at the time when City’s Department of Building Inspection and/or Department of Public Works, as the case may be, has completed a final inspection of the said improvements.

3. Approval of Plans for Initial and Future Construction. For so long as this Agreement continues in effect, no new permanent structures or other improvements shall be constructed on the Easement Area to the extent that they would interfere with the operation and/or use of the Overland Flow Easement. Upon Owner’s submittal of the building and/or sidewalk improvement permit application(s) for the initial construction of the street improvements for the Pedestrian and Vehicular Path Area including the Easement Area (“**Easement Improvements**”), City shall have the right to review and approve the plans and drawings for the said permit application(s) for the purpose of ensuring that the Overland Flow Easement can be used as described in this Agreement. All proposed plans and drawings for the initial and any subsequent Easement Improvements shall identify the location of the Overland Flow Easement. All Easement Improvements shall be constructed in accordance with the plans and drawings approved by City. This prohibition against construction shall not apply to paving and striping and other street improvements that are necessary or appropriate for pedestrian and vehicle access and use purposes, or other improvements that do not interfere with the use of the Overland Flow Easement, provided that any initial construction or subsequent modification of paving, curbs, gutters, curb cuts, storm drains, street grade, and any other improvements that could affect stormwater flow shall only be constructed in accordance with plans approved by City.

4. Temporary Construction Easement. Owner hereby grants to City a temporary easement over and through the Easement Area and/or Vacated Jessie Street (“**Temporary Easement Area**”) as necessary for the Overland Flow from the Jessie Street Remainder and the

City sewer system facilities located on, over or below the Jessie Street Remainder in excess of the 5-year storm capacity (“**Temporary Easement**”) for the period from the effective date of Owner’s acquisition of Vacated Jessie Street until the Easement Improvements are completed. The Temporary Easement shall terminate automatically without any further action upon the issuance of a certificate or other notice of completion of the Easement Improvements by the City’s Department of Building Inspection or Department of Public Works. During the term of the Temporary Easement, Owner shall be responsible for managing and directing Overland Flow across Owner’s property to the public right of way, to City’s satisfaction.

5. Relocation. Subject to the provisions contained in **Section 10** (Modification or Revocation) below, Owner shall have the right to relocate or reconfigure the easement(s) described herein provided such reconfiguration or relocation is designed, engineered and constructed in a manner that addresses Overland Flow to City’s satisfaction.

6. Maintenance and Repair. The Owner, or subsequent owners of the parcel(s) wherein the Easement Area is located, shall at all times maintain the Easement Area subject to the easement(s) described herein in a first-class, safe, clean condition, free and clear of debris, rubbish and trash and in good operating order and repair.

7. Inspections by the City. At reasonable times and in a reasonable manner, the City, its agents, employees and contractors, shall have the right of ingress and egress to, over and through the Easement Area and the right to inspect the Easement Area in order to ensure that the Easement Area is being properly maintained for the purpose of this Agreement and the easement rights granted hereby. In the event the Owner or its successors and assigns have failed to correct any defects in the Easement Area that prevent or substantially interfere with the City’s use of the Easement Area pursuant to this Agreement within the time specified in a written notice from the City, the City shall have the right to enter the Easement Area to perform remedial work, in which event Owner shall pay City the cost of such work, including compensation for staff time at City’s standard rate, within thirty (30) days after receipt of City’s invoice..

8. Subsequent Building Permits. As part of the submission for any building permit applications to the City Department of Building Inspection on or after the effective date of this Agreement, each Owner shall submit a copy of this Agreement if and to the extent any work under the said building permit application(s) would involve the Easement Area and/or would impact the SFPUC’s ability to use the Easement Area. For the sake of clarity, the aforementioned restriction applies only with respect to the Easement Area, and shall not apply to any area or volume above or beyond the Easement Area, including any area or improvements below or above the Easement Area.

9. Duration. The restrictions contained in and the easements granted by this Agreement shall be perpetual, unless modified, revoked or terminated pursuant to **Section 10** (Modification or Revocation) below.

10. Modification or Revocation. This Agreement will be recorded at the closing for City’s conveyance of the areas subject to the Street Vacation to Owner. This Agreement may not be modified, revoked or terminated except in a writing duly executed by the Owner(s) of the parcels wherein the Easement Area is located, and by City, after obtaining any necessary

approvals from City departments, commissions, Board of Supervisors and Mayor, and such modification, revocation or termination, executed by the Owner(s) and the City, is recorded in the Official Records of the City.

11. Run with the Land. Each and all of the foregoing covenants, conditions and restrictions (i) shall run with the land; (ii) shall be binding upon, and shall inure to the benefit of, Owner and any person having or acquiring any interest in any portion of the parcel wherein the Easement Area is located, and all of their respective successive owners and assigns; (iii) shall be binding upon, and shall inure to the benefit of, the Property and each Parcel thereof, and every portion thereof and interest therein; and (iv) shall benefit and bind the City and its successors in interest.

Owner hereby declares that all the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, reservations, rights, easements, conditions and covenants, all of which are imposed as equitable servitudes upon the Property.

12. Indemnity. Owner, and each successor owner of the parcel wherein the Easement Area is located, with respect to matters arising during or prior to the period that it remains an owner of the parcels wherein the Easement Area or Temporary Easement Area (as the case may be) is located, on behalf of itself and its successors and assigns (“**Indemnitors**”), shall indemnify, defend and hold harmless (“**Indemnify**”) the City including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, and all of the heirs, legal representatives, successors and assigns (individually and collectively, the “**Indemnified Parties**”), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, “**Claims**”), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Easement Area or Temporary Easement Area from the use contemplated hereunder; (b) any default by such Indemnitors in the observation or performance of any of the terms, covenants or conditions of this Agreement to be observed or performed on such Indemnitors’ part; (c) the use or occupancy or manner of use or occupancy of the Easement Area or Temporary Easement Area by such Indemnitors or any person or entity claiming through or under such Indemnitors; (d) the condition of the Easement Area or Temporary Easement Area; (e) any construction or other work undertaken by such Indemnitors permitted or contemplated by this Agreement; (f) any acts, omissions or negligence of such Indemnitors in, on or about the Easement Area or Temporary Easement Area by or on behalf of such Indemnitors; (g) any injuries or damages to real or personal property, goodwill, and persons in, upon or in any way allegedly connected with the use contemplated hereunder from any cause or Claims arising at any time; and/or (h) any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by Indemnitors in, under, on or about the Easement Area or Temporary Easement Area; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and further except only such Claims as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The

foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the City's costs of investigating any Claim. Owner on behalf of the Indemnitors specifically acknowledges and agrees that the Indemnitors have an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this Indemnity even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such Claim is tendered to such Indemnitors by the City and continues at all times thereafter. As used herein, "hazardous material" means any substance, waste or material which, because of its quantity, concentration of physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

13. Authority. The person executing this Agreement on behalf of Owner does hereby covenant and warrant that Owner is a duly formed and existing Delaware limited liability company, that Owner has full right and authority to enter into this Agreement, and that the person signing on behalf of Owner is authorized to do so.

14. Exhibits; Recitals. The exhibits attached to and reference in this Agreement, and the recital set forth above are incorporated into and made a part of this Agreement.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute one instrument.

Wherefore, the parties have executed this Agreement as of the date(s) set forth in the attached Notary Acknowledgments.

OCEANWIDE CENTER LLC, a Delaware limited liability company

By _____

Its _____

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By _____
John Updike, Director of Real Estate

APPROVED AS TO FORM
Dennis J. Herrera, City Attorney

By _____
[_____] Deputy City Attorney

NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)SS
COUNTY OF _____)

On _____

before me, _____, a Notary Public, personally appeared

who 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 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 of Notary Public

(THIS AREA FOR OFFICIAL NOTARIAL SEAL)

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY AND EASEMENT AREA

[This description should include the Assessor's Lot & Block as well as metes and bounds descriptions for the parcel(s) subject to the DOR/Easement Agreement and the location of the Restriction/Easement Area]

EXHIBIT "B"

MAP SHOWING EASEMENT AREA

[This map should depict the Property, any lot adjustments/changes, and the location of the Restricted or Easement Area. It should clearly label the parcels subject to the DOR.]