

WHEN RECORDED MAIL TO:
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

The undersigned hereby declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and from Documentary Transfer Tax (CA Rev. & Tax. Code § 11922 and SF Bus. and Tax Reg. Code § 1105)

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

APN: _____

DECLARATION OF PUBLIC ACCESS COVENANTS AND RESTRICTIONS
(Former Portions of Jessie Street and Elim Alley, East of 1st Street)

This Declaration of Public Access Covenants and Restrictions (Former Portions of Jessie Street and Elim Alley, East of 1st Street) ("**Declaration**") is made as of _____, 2016, by OCEANWIDE CENTER, LLC, a California limited liability company ("**Declarant**"), in favor of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**").

RECITALS

A. Declarant owns certain real property in the City and County of San Francisco bordered by First Street, Mission Street, Stevenson Street, and Ecker Place, and further described in the attached Exhibit A (the "**Declarant Property**").

B. Declarant further owns certain real property in the City and County of San Francisco described in the attached Exhibit B and depicted on the plat attached as Exhibit C (the "**Former Street Property**"), which abuts portions of the Declarant Property and was owned by City and used as a public right of way immediately prior to the recordation of this Declaration in the Official Records of San Francisco.

C. Declarant intends to construct a mixed-use development known as Oceanwide Center on the Declarant Property and the Former Street Property, as further described in _____ [Insert Planning Commission approval motion that describes the project] (the "**Declarant Project**").

D. As a condition of vacating the Former Street Property as a public right of way and selling it to Owner, and as partial consideration for such sale, Declarant agreed to enter into this Declaration in its capacity as owner of the Former Street Property to provide the terms and conditions for public pedestrian access on the portions of the Former Street Property described and depicted on the attached Exhibit D (the "**Vacated Property**") and to provide for the other matters described herein. The Vacated Property is comprised of the "**Former Jessie Street Area**" and the "**Former Elim Alley Area**", both as described and depicted on the attached Exhibit D.

AGREEMENT

Now, therefore, in consideration of the City's vacation and conveyance of the Former Street Property, Declarant agrees as follows:

1. Required Improvements.

(a) Improvements; Conceptual Plans. Declarant shall construct and improve the Vacated Property substantially as described in the conceptual plan dated _____ (the "**Conceptual Plan**") a copy of which is attached as Exhibit D. The improvements described in the Conceptual Plan as may be modified pursuant to this subsection (a) are referred to herein as the "**Required Improvements**". Declarant shall have the right to modify and/or update the Conceptual Plan from time to time as it may determine in its sole business judgment, subject to the provisions of this Section and provided further that any such modifications shall be subject to review and approval by the City's Planning Department staff (or the staff of any successor or other City department, agency or office having jurisdiction) (the "**Planning Department**"), acting in its regulatory capacity with respect to permit issuance, if applicable. No additional design review or other approval rights are intended to be granted to the Planning Department pursuant to this Declaration.

If Declarant wishes to apply for any permits for improvements to the Vacated Property that materially differ from the Conceptual Plan and materially and adversely impact the public's ability to access or use the Vacated Property for the Pedestrian Use (as defined in Section 3), Declarant shall provide a copy of such plans to the City's Director of Property (or successor City officer, if applicable) (the "**Director of Property**"). Any proposed material modifications to the Conceptual Plans that materially and adversely impact the public's ability to access or use the Vacated Property for the Pedestrian Use shall be subject to the approval of the Director of Property, which may be withheld in his or her reasonable discretion. Other than the Required Improvements, Declarant shall construct no improvements and make no installations in the Vacated Property that materially and adversely impact the public's ability to access or use the Vacated Property for the Pedestrian Use without the prior approval of the Director of Property (which may be withheld in his or her reasonable discretion).

(b) Completion Deadline. Declarant shall substantially complete the Required Improvements by the earlier date (the "**Initial Completion Deadline**") to occur of the third (3rd) anniversary of the date this Declaration is recorded in the Official Records and (ii) the date the first temporary certificate of occupancy is issued for the Declarant Project. Notwithstanding the foregoing, the Director of Property may extend the Initial Completion Deadline (1) in his or her reasonable discretion with respect to completion delays resulting from delays by the Planning Department or the City's Department of Building Inspection in issuing permits, making required determinations or findings, or taking other action with respect to the Declarant Project if Declarant timely submits all items required for the Planning Department or City's Department of Building Inspection to take such action, or (2) in his or her sole discretion for Force Majeure (as defined in Section 1(e) below) or any other delays. Any such extension to the Initial Completion Deadline pursuant to this Section shall be the "**Extended Deadline**".

(c) Maintenance and Modifications. Declarant shall maintain the Vacated Property in a clean and litter-free condition, and shall maintain Required Improvements in perpetuity in accordance with this Declaration. Notwithstanding the foregoing, Declarant shall have the right to modify, renovate, replace and/or update the Required Improvements (collectively, "**Changes**") subject to the provisions of this subsection and any review and approval of such Changes required by the Planning Department in its regulatory capacity with respect to permit issuance. Before submitting any permit application for Changes that would or could materially and adversely impact the public's ability to access or use the Vacated Property for the Pedestrian Use,

Declarant shall provide a copy of the plans to be submitted with such permit application to the Director of Property. If the Director of Property determines that the proposed Change will materially and adversely impact the public's ability to access or enjoy the Vacated Property, such change shall be subject to the approval of the Director of Property, which approval may be withheld in his or her reasonable discretion.

(d) Remedies for Failure to Construct or Maintain Required Improvements. If the Required Improvements are not completed by the Initial Completion Deadline or, if applicable, the Extended Deadline, then City may exercise all rights and remedies available at law and in equity for such failure. Declarant acknowledges that its failure to construct the Required Improvements in a timely manner as provided herein will cause irreparable harm to the City and that the City will not have an adequate remedy at law for such breach and therefore City shall be entitled to specific performance or injunctive or other equitable relief by reason of such breach.

(e) Force Majeure. As used herein, "**Force Majeure**" means events that cause delays in Declarant's performance of the Required Improvements due to causes beyond Declarant's reasonable control, including, but not restricted to: acts of God or of the public enemy; acts of the government (including any general moratorium in the issuance of permits applicable to the Vacated Property or the Required Improvements, but in the absence of such a moratorium, acts of the government relating to issuance of building permits or other regulatory approvals are not Force Majeure delays); fires; floods; tidal waves; epidemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather; delays of contractors or subcontractors due to any of the foregoing causes; the unanticipated presence of Hazardous Materials or other concealed conditions on the Vacated Property that would delay or materially and adversely impair Declarant's ability to construct the Required Improvements; substantial interruption of work because of other construction by third parties in the immediate vicinity of the Vacated Property; archeological finds on the Vacated Property; strikes or other substantial interruption of work because of labor disputes; inability to obtain materials or acceptable (to Declarant in its reasonable discretion) substitute materials (provided that the Declarant has ordered such materials on a timely basis and is not otherwise at fault for such inability to obtain materials); or any Litigation Force Majeure or other administrative appeals, litigation and arbitration relating to the approval or construction of the Required Improvements (provided that Declarant proceeds with due diligence to defend such action or proceeding or take other appropriate measures to resolve any dispute that is the subject of such action or proceeding). Notwithstanding anything to the contrary in this Section, the lack of credit or financing (unless such lack results from some other event of Force Majeure such as failure of a condition to funding which is caused by Force Majeure) shall not be considered to be a matter beyond Declarant's control and therefore no event caused by a lack of such financing in and of itself shall be considered to be an event of Force Majeure for purposes of this Declaration.

If there is any delay resulting from Force Majeure, the Initial Completion Deadline will be extended for the period of the Force Majeure delay if, within the later to occur of ninety (90) days after the beginning of any such Force Majeure delay or six (6) months prior to the Initial Completion Deadline, Declarant has notified City in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period of such delay.

(f) Litigation Force Majeure. As used herein "**Litigation Force Majeure**" means any action or proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, brought by the City or a third party, that seeks to (i) enjoin or delay the construction of the Required Improvements or challenge the validity of any action taken by the City in connection with the Required Improvements, including City's approval, execution, and delivery of the Agreement for the Sale of Real Estate between City and Declarant, dated _____, 2016, for the sale of the Former Street Property (the "**Sale Agreement**"), the quitclaim deed transferring ownership of the Former Street

Property from City to Declarant and recorded in the Official Records of San Francisco County concurrently with this Declaration (the "**Quitclaim Deed**"), City's performance of its rights hereunder, or any other action by the City or any of its departments or commissions approving or recommending City's execution and delivery of the Sale Agreement or the Quitclaim Deed, or any findings upon which any of the foregoing are predicated, or (ii) challenge the failure of any regulatory agency to issue, the conditions of, or the validity of any other regulatory approval required in connection with the Sale Agreement, the Quitclaim Deed, or the Required Improvements. Notwithstanding the foregoing, Litigation Force Majeure shall exclude any action or proceeding brought by an affiliate of the Declarant, any of the Declarant's members or their affiliates, any consultant of the Declarant, or any other third party assisted by the Declarant, directly or indirectly, in such action or proceeding. Performance by Declarant shall be deemed delayed or made impossible by virtue of Litigation Force Majeure during the pendency thereof, and until a judgment, order, or other decision resolving such matter in favor Declarant has become final and unappealable.

2. Use of Pedestrian Area. The Vacated Property shall be used solely at all times for (i) the Pedestrian Use, (ii) emergency vehicular access pursuant to the _____ granted by Declarant to City and recorded in the Official Records of San Francisco County concurrently with this Declaration, (iii) public over-sized vehicular access pursuant to the _____ granted by Declarant to City and recorded in the Official Records of San Francisco County concurrently with this Declaration, (iv) the temporary street and utility purposes reserved by City pursuant to the Quitclaim Deed, (v) any subsurface improvements that do not interfere with the Pedestrian Use (the "**Subsurface Improvements**"), and (vi) any Permitted Project Improvements (as defined in Section 4). The Vacated Property shall only be improved with the Required Improvements, any approved Changes, any Subsurface Improvements, and any Permitted Project Improvements, and there shall be no above-ground improvements (affixed or otherwise situated) in any portion of the Vacated Property other than the Permitted Project Improvements.

3. Public Access. Declarant shall make the Vacated Property available at all times for nonvehicular public access and use and for pedestrian ingress and egress between 1st Street and Ecker or Stevenson Streets (as applicable) (the "**Pedestrian Use**"). On City's request, Declarant and its tenants and agents shall work closely with City personnel to establish and follow protocols to avoid disruption of the public use of the Vacated Property for the Pedestrian Use. Notwithstanding the foregoing, Declarant shall be permitted to close the Vacated Property on a temporary basis as required due to Force Majeure or for construction (including construction of the Required Improvements or any approved Changes), restoration, repairs or maintenance, provided that Declarant shall use good faith diligent efforts to minimize the length and extent of such closure.

Declarant may develop and enforce reasonable rules and regulations governing security, use, and conduct of the Vacated Property by the public, provided that such rules (i) do not prohibit public access (except for those individuals who violate the rules and regulations), (ii) are nondiscriminatory, (iii) comply with applicable laws, and (iv) shall be subject to approval by the Director of Property, which approval shall not be unreasonably withheld, conditioned or delayed. A copy of the initial rules and regulations for the Pedestrian Area that have been approved by the Director of Property are in the files of the City's Real Estate Division for this matter. **[Note: Rules and regulations to be in place by the time this is recorded]** Declarant may amend such rules and regulations from time to time; provided, however, that changes that provide for more restrictions shall be subject to approval by the Director of Property, which approval shall not be unreasonably withheld, conditioned or delayed. All rules and regulations for the Pedestrian Area shall be enforced in a nondiscriminatory manner.

4. Air Rights. There shall be no construction of permanent building components, facilities or structures on or in the air rights above the Pedestrian Area; provided however, that Declarant shall have the right to use the airspace in the Former Jessie Street Area that is above the plane of sixty-eight and one-half feet (68.5') feet above the ground surface of the Former Jessie Street Area (as such ground surface may be raised for the Declarant Project), and the airspace in the Former Elim Alley Area that is above a plane of seventy-four feet (74') feet above the ground surface of the Former Elim Alley Area (as such ground surface may be raised for the Declarant Project) for bay window projections related to the Declarant Project (collectively, the "**Permitted Project Improvements**"), subject to obtaining all required permits and approvals. None of the air rights above the Former Elim Alley Area, and none of the air rights between the ground surface and the plane of sixty-eight and one-half feet (68.5') feet above the ground surface in the Former Jessie Street Area, shall be considered as the basis for approval of additional floor area to be used for construction of commercial, office, or residential uses on the Declarant Property or the Vacated Property.

5. Removal of Designated Improvements. In addition to any other remedies available at law or in equity, if Declarant is in default under this Declaration beyond any applicable notice or cure period, City shall have the right to require Declarant to remove any improvements or installations on the Street Property that obstruct nonvehicular public access to the Pedestrian Area, such as entry gates and walls ("**Access Barriers**"), even if the Director of Property previously approved the installation of such Access Barriers under the procedures specified in the Declaration or otherwise, and even if approval was not initially required for such installation. Declarant, at Declarant's sole cost, shall remove the Access Barriers identified in written notice from the City requiring such removal (the "**Removal Notice**") within thirty (30) days after the date of the Removal Notice. Declarant shall have the right to reinstall such Access Barriers following the cure of the event of default which triggered the Removal Notice.

6. Maintenance of Subsurface Improvements and Permitted Project Improvements. Declarant shall have the right to install, modify, renovate, replace and/or update the Subsurface Improvements and the Permitted Project Improvements (collectively, "**Maintenance Work**") subject to the provisions of this Section and any review and approval of such Maintenance Work required by the Planning Department in its regulatory capacity with respect to permit issuance. Before submitting any permit application for Maintenance Work that would or could materially and adversely impact the public's ability to access or use the Vacated Property for the Pedestrian Use, Declarant shall provide a copy of the plans to be submitted with such permit application to the Director of Property. If the Director of Property determines that the proposed Maintenance Work will materially and adversely impact the public's ability to access or enjoy the Vacated Property for the Pedestrian Use, such change shall be subject to the approval of the Director of Property, which approval may be withheld in his or her reasonable discretion.

7. Enforcement. City may, in its sole discretion, rely on this Declaration to enforce any of the covenants or restrictions hereunder. City, but not the general public, shall have all rights and remedies available at law or in equity in order to enforce the easements, covenants and restrictions set forth in this Declaration. All rights and remedies available to City under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy. If there is any breach of the easements, covenants or restrictions hereunder, the City shall be entitled to recover all attorneys' fees and costs in connection with City's enforcement activities and actions.

If Declarant fails to maintain the Vacated Property or the Required Improvements or to remove any Access Barriers in the manner required in this Declaration, and Declarant fails to timely cure such failure pursuant to Section 8 below and no Lender cures such failure pursuant to Section 10, City shall further have the right, at its sole option, to remedy such failure at

Declarant's expense by providing Declarant with three (3) days' prior written notice of City's intention to cure such failure (a "**Self-Help Notice**"). Such action by City shall not be construed as a waiver of such default or any rights or remedies of City, and nothing herein shall imply any duty of City to do any act that Declarant is obligated to perform. Declarant shall reimburse City for all of its costs and expenses, including without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such failure, within thirty (30) days' of receiving City's invoice for such costs and expenses, together with documentation reasonably evidencing such costs and expenses. If Declarant fails to timely reimburse City for such costs and expenses, City shall have the right to record a notice of such unpaid costs and expenses against record title to the Vacated Property. At City's request, Declarant shall provide security in a form and amount satisfactory to City to ensure Declarant's prompt reimbursement of any amounts owed by Declarant to City pursuant to this Section.

8. Notice and Cure Rights. Except as provided in this Section, City shall provide written notice to the Declarant of any actual or alleged violation of the covenants or restrictions set forth in this Declaration prior to enforcement thereof. Such notices shall be given to Declarant at the address last furnished to the City. Declarant shall have (i) a period of two (2) business days after receipt of such notice to cure any violation under Section 3 above ("**Public Access Violations**") and (ii) a period of thirty (30) days after receipt of such notice to cure any other violation, provided that if the violation is not capable of cure within such 30-day period, Declarant shall have such additional time as shall be reasonably required to complete a cure so long as Declarant promptly undertakes action to commence the cure within the 30-day period and thereafter diligently prosecutes the same to completion. The time in which Declarant may cure is herein called the "**Declarant Cure Period,**" and except as provided in Section 10 below, the City shall not exercise any legal or equitable remedies during the Declarant Cure Period (or the Lender Cure Period, as defined in Section 11 below) so long as Declarant (or any applicable Lender, as defined in Section 11 below) is diligently pursuing such cure. Notwithstanding anything to the contrary herein, in no event shall the Declarant Cure Period exceed six (6) months, subject to extension for Force Majeure delays (provided that the cure period for failures to complete the Required Improvements by the Extended Deadline shall not be further extended on account of Force Majeure delays). Further, notwithstanding anything to the contrary herein, if City is entitled to give written notice to Declarant regarding a Public Access Violation on more than two (2) occasions during any calendar year, and City actually gives such notices to Declarant, then thereafter the two (2) business day Declarant Cure Period shall no longer apply until a period of twelve (12) months passes during which no notices of Public Access Violation are given by City, at which time the two (2) business day Declarant Cure Period provided for above shall again apply to Public Access Violations.

Any notices required or permitted to be given under this Declaration shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows, or such other address as either party may from time to time specify in writing to the other party:

Declarant: Oceanwide Center

City: Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

Attn: Director of Property

with a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance Team

9. Binding on Successors; No Merger. This Declaration and the covenants and restrictions set forth herein constitute restrictions and covenants running with the land and shall bind and burden Declarant, in its capacity as owner of the Vacated Property, and any successor owner or occupier of the Vacated Property.

10. Injunctive Relief. Notwithstanding anything to the contrary contained herein, City may seek and obtain injunctive relief in any court of competent jurisdiction to restrain the Declarant from any conduct in breach of this Declaration which causes or threatens to cause immediate and irreparable harm to the extent such equitable relief is otherwise available.

11. Lender Notice and Cure Rights. So long as any deed of trust encumbering any portion of the Former Street Property made in good faith and for value (each, an "**Encumbrance**") shall remain unsatisfied of record, the City shall give to the beneficiary of such Encumbrance (each, a "**Lender**") a copy of each notice the City gives to Declarant from time to time of the occurrence of a violation under this Declaration, provided that such Lender has given to the City a written request for notice. Copies of such notices shall be given to any such requesting Lender at the address such Lender last furnished to the City. Nothing in this Section shall be construed to mean that City must provide a Lender with a copy of any Self-Help Notices.

Each Lender shall have the right, but not the obligation, to do any act or thing required of Declarant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof; provided, however, that no such action shall constitute an assumption by such Lender of the obligations of Declarant under this Declaration. In the case of any notice of violation given by the City to Declarant, the Lender shall have the same concurrent cure periods as are given Declarant under this Declaration for remedying a default or causing it to be remedied and, except in the event of a Public Access Violation, if prior to the expiration of the applicable cure period specified in Section 8 above, a Lender gives City written notice that it intends to undertake the curing of such default or to cause the same to be cured, and then proceeds with all due diligence to do so, Lender shall have, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary) so long as Lender commences cure within such thirty (30) day period and diligently proceeds to completion) after the later to occur of (i) the expiration of such cure period, or (ii) the date that the City has served such notice of default upon Lender, and the City shall accept such performance by or at the instance of the Lender as if the same had been made by Declarant. The time in which Lender may cure is herein called the "**Lender Cure Period**". Notwithstanding anything to the contrary herein, in no event shall the additional Lender Cure Period exceed six (6) months beyond Declarant's cure period.

12. Priority of Lien. No violation or breach of any provision of this Declaration shall impair, defeat or invalidate the lien of any Encumbrance, but all provisions hereof shall thereafter be binding upon and effective against any owner whose title is derived through foreclosure of any Encumbrance or acceptance of any deed in lieu of foreclosure.

13. No Waiver. No waiver by City of any violation under this Declaration shall be effective or binding unless and to the extent expressly made in writing by City, and no such waiver may

be implied from any failure by City to take action with respect to such violation. No express written waiver of any violation shall constitute a waiver of any subsequent violation in the performance of the same or any other provision of this Declaration.

14. Severability. Should any provision or portion hereof be declared invalid or in conflict with any law, the validity of all remaining provisions shall remain unaffected an in full force and effect.

IN WITNESS WHEREOF, Declarant and City have executed this Declaration as of the date first written above.

DECLARANT:

OCEANWIDE CENTER, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Updike
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By: _____
Carol Wong
Deputy City Attorney

EXHIBIT A

Legal Description of Declarant Property

EXHIBIT B

Legal Description of Vacated Property

EXHIBIT C

Depiction of Vacated Property and Declarant Property

EXHIBIT D

Conceptual Plan for Required Improvements