

Recording requested by and  
when recorded mail to:

City and County of San Francisco  
Real Estate Division  
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)

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(Space above this line reserved for Recorder's use only)

APN **3708-006**

## PEDESTRIAN AND VEHICULAR PUBLIC ACCESS AND CITY UTILITY EASEMENT AGREEMENT

This PEDESTRIAN AND VEHICULAR PUBLIC ACCESS EASEMENT AND CITY  
UTILITY EASEMENT AGREEMENT (this "**Agreement**"), by and between the CITY AND  
COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and OCEANWIDE  
CENTER, LLC, a Delaware limited liability company ("**Owner**"), is executed as of  
\_\_\_\_\_ (the "**Execution Date**").

### RECITALS

- A. Owner owns the real property located in San Francisco, California, and fully  
described on the attached Exhibit A (the "**Burdened Property**").
- B. The Burdened 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 vacated portions of Elim Alley and Jessie Street between  
First Street and Ecker Place, which were vacated pursuant to Board of Supervisors Ordinance  
No. \_\_\_\_\_, effective \_\_\_\_\_, 2016 ("**Street Vacation Ordinance**"), and sold by City to  
Owner pursuant to that certain Quitclaim Deed with Reserved Easement recorded concurrently  
with this Agreement as Instrument No. \_\_\_\_\_ in the Official Records of San  
Francisco County.
- D. Prior to the effective date of Street Vacation Ordinance, Jessie Street was an east-  
west oriented public street that connected Anthony Street and First Street. In order to provide for  
the continued flow of pedestrian and vehicular access from the terminus of Jessie Street to  
Mission Street, Owner agrees to provide continuous and perpetual pedestrian and vehicular  
access **over the 17-foot wide, 187.62 foot long portion, and 13.5 foot height portion of the  
Burdened Property described and depicted on the attached Exhibit B** (the "**Easement Area**").  
**[PW to confirm dimensions and legal description]**

E. In connection with the Street Vacation, and in order to provide for public pedestrian and vehicular access and for public utilities, the Owner has offered to provide a non-exclusive, public pedestrian and vehicular ingress, egress and access easement and a public utility easement over the Easement Area upon the completion of a pedestrian and vehicular access roadway ("**Road Improvements**") over the Easement Area (the "**Effective Date**").

F. Owner agrees to grant such non-exclusive easement for the benefit of the City on the terms and conditions specified in this Agreement.

## AGREEMENT

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. Pursuant to the terms and conditions specified in this Agreement, and commencing on the Effective Date, Owner grants in perpetuity to City for the benefit of the public a non-exclusive, permanent easement in gross on, over and across the Easement Area for public pedestrian and vehicular ingress, egress and access between Jessie Street and Mission Street (the "**Access Easement**") and a non-exclusive, permanent public utility easement in gross to City on, over and across the Easement Area for any public utilities installed in the Easement area (the "**Utility Easement**"). [JM and PW to confirm] Owner acknowledges that the Access Easement will require that Owner obtain street permits from City's Public Works ("**SFPW**") with respect to certain activities in the Easement Area.

Without limiting the foregoing, this Agreement does not prohibit Owner, its successors, assigns, grantees, and licensees from using the Easement Area after the Effective Date in any manner that complies with applicable laws and does not interfere with the Access Easement or the Utility Easement, including, but not limited to, installing, maintaining, repairing, or replacing the Road Improvements as long as interim measures are made available for the Access Easement and the Utility Easement over the Easement Area or other property to the satisfaction of the City, to the extent such interim measures are deemed necessary or reasonable by the City and the appropriate City permits are obtained for such activity. City acknowledges that Owner may install, maintain, repair, replace or remove structures and appurtenances on the Burdened Property in the airspace above the Easement Area after the Effective Date in any manner that does not interfere with the Access Easement.

Notwithstanding the provisions of foregoing paragraph, neither Owner nor any subsequent fee owner of the Burdened Property, nor their successors and assigns as to all or any portion of such fee, nor any party claiming an interest in the Burdened Property through any such party, shall construct or permit any structures on the Easement Area that would interfere with or obstruct the use of the Easement Area for the Access Easement or the Utility Easement without the City's prior written approval, which City may withhold in its sole discretion.

2. As-Is Condition. The use of the Access Easement and the Utility Easement shall be with the Easement Area in its "as is" physical condition, except as otherwise specifically provided in this Agreement. City waives any and all claims against Owner arising from, out of or in connection with the suitability of the physical condition of the Easement Area for the uses specified in Section 1 above as long as Owner performs its obligations with respect to the Easement Area expressly as specified in this Agreement and Owner does not take any action that would impair use of the Access Easement by City and the public or use of the Utility Easement by City. Nothing herein shall be construed in any way to alter, amend, or otherwise relieve Owner of its responsibilities with regard to the physical condition of the Easement Area (including without limitation, responsibilities with regard to environmental investigation and

remediation and construction of public improvements) set forth in any other document, instrument or agreement between City and Owner.

3. Construction, Maintenance and Repair. Prior to \_\_\_\_\_, Owner shall construct the Road Improvements at Owner's sole expense, to City standards, and in compliance with all laws and to the satisfaction of City. Owner shall obtain the prior written approval of SFPW and City's Municipal Transportation Agency ("SFMTA") to Owner's initial and final drawings and specifications for the Road Improvements, as well as SFPW's and SFMTA's inspection and final approval of the installed Road Improvements, to ensure they will properly and safely accommodate the Access Use and the Utility Use. Prior to commencing such construction, Owner shall obtain the appropriate permit from SFPW for City's review of the design of the Road Improvements.

Commencing on the Effective Date, except as otherwise expressly permitted under Section 1 above, Owner shall maintain the Road Improvements and the Easement Area (including, but not limited to any curbs, parking strips, parkways, automobile runways, and vegetation) at all times in a good and safe condition that properly and safely accommodates, and avoids interference with, use of the Easement Area by City and the public for the Access Use and use of the Easement Area by City for the Utility Use. Owner shall perform such repair and maintenance at its sole expense and to the City's reasonable satisfaction. Except as otherwise specified in Section \_\_\_\_\_ below, City shall have no obligation under this Agreement to maintain or repair the Easement Area or to maintain, repair, replace or remove the Road Improvements or any improvements or materials in the Easement Area.

4. No General Liability; Insurance. City shall not be liable pursuant to this Agreement for any injury or damage to any person on or about the Burdened Property or any injury or damage to the Burdened Property, to any property of any tenant or occupant, or to any property of any other person, entity or association on or about the Burdened Property, except to the extent such injury or damage is caused solely by City's willful misconduct or gross negligence. City shall have no obligation to carry liability insurance with respect to its use of the Access Easement.

5. Default; Enforcement. Owner's failure to perform any of its covenants or obligations under this Agreement and to cure such non-performance within thirty (30) days of written notice by City of such failure shall constitute a default under this Agreement; provided that if more than thirty (30) days are reasonably required to cure such failure, no event of default shall occur if Owner commences such cure within such thirty (30) day period and diligently prosecutes such cure to completion. Upon such default, City shall be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law except termination of the easement herein granted. In the event of any breach of this Agreement, the City shall be entitled to recover all attorneys' fees and costs reasonably incurred in connection with City's enforcement activities and actions.

City shall have all rights and remedies at law and in equity in order to enforce the Access Easement, the Utility Easement, and the terms of this Agreement. All rights and remedies available to City under this Agreement 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.

6. No Liability; Indemnity. City, by acceptance of the Access Easement and the Utility Easement, shall not in any event whatsoever be liable for any injury or damage to any person happening on or about the Easement Area or the Burdened Property, for any injury or damage to the Burdened Property, or to any property of any tenant or occupant, or to any property of any other person, entity or association on or about the Burdened Property, except only such injury or damage as is caused exclusively by the willful misconduct or gross negligence of the City.

Owner, and each successor and assign to Owner holding an interest in the Burdened Property (collectively called "**Indemnitors**"), shall defend, hold harmless and indemnify the City, including but not limited to all of its boards, commissions, departments, agencies and other subdivisions, and their respective officers, directors, commissioners, employees and agents (collectively, "**Indemnified Parties**"), of and all liabilities, penalties, costs, damages, expenses, causes of action, claims or judgments (including without limitation attorney's fees) (collectively, "**Indemnified Claims**"), resulting from: (i) injury or the death of any person (including without limitation any Indemnified Party) or physical damage to property, real or personal, of any kind wherever located and by whomever owned (including, without limitation, property owned by an Indemnified Party), occurring in the Easement Area; (ii) any default by an Indemnitor in the observation or performance of any of the terms, covenants or conditions of this Agreement to be observed or performed on such Indemnitor's part; (iii) any use of the Easement Area or actions on the Easement Area by or on behalf of any Indemnitor; and (iv) the use, generation, processing, production, packaging, treatment, storage, emission, discharge or disposal of Hazardous Materials (as that term is defined below) by any party other than City or its employees, contractors or agents on or about the Easement Area; however, Indemnitor shall have no obligation to indemnify, defend or hold harmless any Indemnified Party to the extent any Indemnified Claims arise out of or result from the gross negligence or willful misconduct of any Indemnified Party. Grantor, on behalf of the Indemnitors, specifically acknowledges and agrees that the Indemnitors have an immediate and independent obligation to defend the Indemnified Parties 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 Indemnified Claim is tendered to any applicable Indemnitor. Indemnitors' obligations under this Section shall survive termination of the Easements as to any indemnification obligation arising out of an event or conditions occurring prior to such termination. For purposes of this Section, the term "**Hazardous Materials**" shall mean any substance, material or waste that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment, including, but not limited to petroleum, petroleum-based products, natural gas, or any substance, material, or waste that is or shall be listed, regulated or defined by federal, state or local statute, regulation, rule, ordinance or other governmental requirement to be hazardous, acutely hazardous, extremely hazardous, toxic, radioactive, biohazardous, infectious, or otherwise dangerous.

7. Litigation Expenses. If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

Attorneys' fees under this Section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. For purposes of this Agreement, reasonable fees of attorneys of the City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's counsel's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

8. Run with the Land; Exclusive Benefit of Parties. The rights and obligations set forth

herein shall burden the Burdened Property, run with the land, and bind and inure to the benefit of the successors and assigns of the parties hereto. This Agreement is for the exclusive benefit of City and Owner and their respective successors and assigns and not for the benefit of, nor give rise to any claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the Easement Area to or for the benefit of the general public.

9. Abandonment of Easement. City may, at its sole option, abandon all or any portion of the Access Easement or the Utility Easement by recording a quitclaim deed. Except as otherwise provided in this Agreement, upon recordation of such quitclaim deed, the applicable portion of the Access Easement or the Utility Easement, and all corresponding rights, duties and liabilities hereunder, shall be terminated and shall be of no further force or effect. No temporary non-use of the Easement Area or other conduct, except for recordation of the quitclaim deed as provided in this Section, shall be deemed City's abandonment of the Access Easement or the Utility Easement.

10. Notices. All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally-recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or any other address that a party designates by written notice delivered to the other party pursuant to the provisions of this Section):

If to City: Director of Department of Public Works  
Department of Public Works  
City and County of San Francisco  
Room 348, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102

with copies to: City Attorney, City of San Francisco  
Room 234, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Attention: John Malamut, Esq.

and to: Director of Property  
Real Estate Department  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94108

If to Owner: Oceanwide Center LLC  
88 First Street  
San Francisco, CA 94104  
Attn: [xx]

with a copy to: Reuben, Junius & Rose LLP  
One Bush Street, Suite 600  
San Francisco, CA 94102  
Attn: Tuija Catalano

11. MacBride Principles – Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. City also urges San Francisco companies to do business with corporations that abide by the

MacBride Principles. Owner acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

12. Tropical Hardwood and Virgin Redwood Ban. City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

13. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and Owner and recorded in the Official Records of the City and County of San Francisco. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This Agreement contains the entire agreement between the parties with respect to the Emergency Access Easement and all prior negotiations, discussions, understandings and agreements are merged herein. (d) This Agreement shall be governed by California law and City's Charter. (e) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. (f) This Agreement does not create a partnership or joint venture between City and Owner as to any activity conducted by Owner on, in or relating to the Easement Area. (g) Time is of the essence of this Agreement and each party's performance of its obligations hereunder. (h) All representations, warranties, waivers, releases, indemnities and surrender obligations given or made in this Agreement shall survive the termination of this Agreement or the extinguishment of the Easement. (i) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement. (j) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement. (k) Owner represents and warrants to City that the execution and delivery of this Agreement by Owner and the person signing on behalf of Owner below has been duly authorized and Owner is a limited liability company duly formed, validly existing and in good standing under the laws of the State of California. (l) City represents and warrants to Owner that the execution and delivery of this Agreement by City and the person signing on behalf of City below has been duly authorized.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Execution Date.

**OWNER:** OCEANWIDE CENTER,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY:** CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
John Updike, Director of Property  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

**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 California            )  
  ) ss  
County of San Francisco    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, 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 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 \_\_\_\_\_ (Seal)

**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 California            )  
  ) ss  
County of San Francisco    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, 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 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 \_\_\_\_\_ (Seal)



**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the Pedestrian and Vehicular Access Easement Agreement dated \_\_\_\_\_, from the Oceanwide Center, LLC, a Delaware limited liability company, to the City and County of San Francisco, a municipal corporation ("Grantee"), is hereby accepted by order of its Board of Supervisors' Resolution No. \_\_\_\_\_, adopted on \_\_\_\_\_, 2016, and approved by the Mayor on \_\_\_\_\_, 2016, and Grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

**Exhibit A**

**Legal Description of Burdened Property**

**Exhibit B**

**Legal Description and Depiction of Easement Area**