

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)

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

APN _____, Block _____

COMMERCIAL VEHICLE ACCESS EASEMENT AGREEMENT

This COMMERCIAL VEHICLE ACCESS EASEMENT AGREEMENT (this "**Agreement**"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and OCEANWIDE CENTER, LLC, a California 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**"), which Owner plans to improve with 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 a vacated portion of Jessie Street between First Street and Ecker Place, which was 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 granted to City, in perpetuity for the public, continuous and perpetual pedestrian and vehicular access the portion of the Burdened Property described and depicted on the attached Exhibit B (the "**Replacement Road**").

E. Certain commercial vehicles serving the Burdened Property and other private properties in the general vicinity ("**Commercial Vehicles**") will not be able to use the Replacement Road due to its height restrictions and the turning radius required to connect from Jessie Street to the Replacement Road.

F. To allow for Commercial Vehicles to serve the Project and surrounding private properties, Owner has agreed to improve the twenty foot (20') wide portion of the Burdened Property described and depicted on the attached Exhibit B (the "**Easement Area**") with the equivalent of a private road and to grant to City, for the benefit of the public, a non-exclusive, permanent easement in gross on, over and across the Easement Area for vehicular ingress, egress and access by Commercial Vehicles between Jessie Street and First Street upon the completion of access improvements ("**Access Improvements**") over the Easement Area (the "**Effective Date**") and on the terms and conditions specified in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties 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 to City, for the benefit of the public, a non-exclusive, permanent easement in gross ("**Easement**") on, over and across the Easement Area for ingress, egress and access of Commercial Vehicles between Jessie Street and First Street ("**Vehicle Use**").

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 Easement, including, but not limited to, installing, maintaining, repairing, or replacing the Access Improvements as long as interim measures are made available for the 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 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 Vehicle Use without the City's prior written approval, which City may withhold in its sole discretion.

2. As-Is Condition. The use of the 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 Easement by City and the public for the Vehicle Use. 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 Access 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 Access Improvements, as well as SFPW's and SFMTA's inspection and final approval of the installed Access Improvements, to ensure they will properly and safely accommodate the Vehicle Use. Prior to commencing such construction, Owner shall obtain the appropriate permit from SFPW for City's review of the design of the Access Improvements.

Commencing on the Effective Date, except as otherwise expressly permitted under Section 1 above, Owner shall maintain the Easement Area, and any surface improvements from time to time constructed on the Easement Area, at all times in a level, good and safe condition that avoids interference with use of the Easement for the Vehicle Use by City and the public and supports appropriate load requirements for Commercial Vehicles. Owner shall perform such repair and maintenance at its sole expense and to the City's reasonable satisfaction. City shall have no obligation under this Agreement to maintain or repair the Easement Area or to maintain, repair, replace or remove any improvements or materials in the Easement Area.

4. Operation of Vehicular Access. In addition to the Vehicle Use, after the Effective Date, the Easement Area will be used for general public pedestrian access pursuant to that certain Declaration of Public Access Covenants and Restrictions made by Owner in favor of City and recorded in the Official Records of San Francisco as Instrument No. _____ on the date this Agreement is recorded therein (the "**Declaration**"), and will be used for emergency vehicle access pursuant to that certain Emergency Vehicular Access Easement Agreement made by Owner in favor of City and recorded in the Official Records of San Francisco as Instrument No. _____ on the date this Agreement is recorded therein (the "**Emergency Vehicle Easement**").

To safely accommodate the pedestrian access provided under the Declaration, Owner shall ensure that the mitigation measures required by City for Commercial Vehicle use of the Easement Area and attached as Exhibit C, are followed at all times that Commercial Vehicles enter the Easement Area. **[Planning to confirm if the mitigation measures in Commission Motion are subject to revision with Planning approval]** Owner shall not allow Commercial Vehicles to enter the Easement Area at any time that vehicles access the Easement Area pursuant to the Emergency Vehicle Easement. **[SFFD to confirm]**

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 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 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. 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.

7. Abandonment of Easement. City may, at its sole option, abandon the Easement by recording a quitclaim deed. Except as otherwise provided in this Agreement, upon recording such quitclaim deed, the Easement and all rights, duties and liabilities hereunder shall be terminated and 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 Easement.

8. 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: _____

9. 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.

10. 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.

11. 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 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 California 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 Commercial Vehicle 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

Exhibit C

Mitigation Measures