

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property

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

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

**EASEMENT AGREEMENT
(Public Sidewalk Easement)**

This Easement Agreement ("**Agreement**") is made by and between 923 Folsom Acquisition LLC, a Delaware limited liability company ("**Grantor**"), and the City and County of San Francisco, a municipal corporation ("**City**"), with reference to the following facts:

A. Grantor is the owner of that certain real property situated in the City and County of San Francisco, State of California, commonly known as 923 Folsom Street, described more particularly in **Exhibit A** attached to this Agreement (the "**Burdened Property**").

B. City desires an easement for pedestrian passage on, over and within that portion of the Burdened Property more particularly described in **Exhibit B-1** attached to this Agreement (the "**Easement Area**") and generally depicted as "Proposed Easement" on the Plat to Accompany Legal Description Public Sidewalk Easement ("**Plat**") attached as **Exhibit B-2** to this Agreement.

C. Grantor made an irrevocable offer of dedication of an easement to the City for public sidewalk purposes on, over, and within the Easement Area, subject to the terms set forth in this Agreement, and City accepted such offer of dedication subject to the covenants and restrictions set forth herein.

D. This Agreement is entered into by Grantor and City in order to provide the terms and conditions of the Public Sidewalk Easement (defined in Section 1 below), and among other matters, this Agreement prohibits the construction of any permanent structures within the Easement Area that are not consistent with the use of the Easement Area for the Public Sidewalk Easement.

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

1. Grant of Public Sidewalk Easement. Subject to the provisions of this Agreement, Grantor hereby grants in perpetuity to City for the benefit of the public a nonexclusive, irrevocable easement on, over, and within the Easement Area solely for pedestrian access, passage, ingress, and egress for public sidewalk purposes ("**Public Sidewalk Easement**"). The Easement Area shall be free of any obstructions, except for those specific architectural and utility features either shown within the Easement Area on the attached Plat or otherwise approved by the Department of Building Inspection pursuant to City-issued permits. The Easement Area and the sidewalk and curb improvements thereon shall be subject to the provisions of San Francisco Public Works Code Section 706, or any successor ordinance concerning sidewalk maintenance.

2. Limitation on Use. City acknowledges that the easement granted herein is nonexclusive. Grantor, its successors, assigns, grantees, tenants and licensees, shall have the right to use the Easement Area in a manner that will not unreasonably interfere with the use of the Easement Area for the Public Sidewalk Easement. Grantor and any subsequent fee owner of the Burdened Property shall, during such party's fee ownership of the Burdened Property, maintain the Easement Area in a manner that provides an unobstructed path of travel that is free from any temporary or permanent physical obstructions (including without limitation, street furniture, such as benches, planters, tables and chairs, merchandise displays, signboards, and information kiosks), except for temporary obstructions reasonably required (i) in connection with the installation, maintenance, repair or replacement of structural elements of or utility facilities serving the improvements now or hereafter located on the Burdened Property, pursuant to City-issued permits (provided that the improvements to the Easement Area shall be promptly restored) or (ii) as needed for such activities not requiring City-issued permits, such as window-washing, which may require a limited use of the Easement Area for a temporary and reasonable period.

3. Term of Easement. The term of the Public Sidewalk Easement described in Section 1 of this Agreement shall be perpetual. City, may, however, terminate the Public Sidewalk Easement at any time as to all or any portion of the Easement Area by written notice to the Grantor and the City shall issue a Quitclaim Deed to confirm such termination at such time.

4. Condition of Burdened Property and Easement Area.

(a) As-Is. Grantor makes no representations or warranties whatsoever under this Agreement with respect to the current physical condition of the Burdened Property, including, without limitation, the Easement Area, and Grantor shall have no responsibility under this Agreement with respect thereto (except as otherwise specifically set forth herein). The use of the Public Sidewalk Easement granted herein shall be with the Easement Area in its "as is" physical condition, except as otherwise specifically provided herein. City hereby waives any and all claims against Grantor arising from, out of or in connection with the suitability of the physical condition of the Easement Area for the uses permitted under Section 2 above. However, Grantor shall not take any action that would unreasonably impair the ability of the public to use the Public Sidewalk Easement granted herein.

(b) No Interference. Notwithstanding the provisions of Section 4(a) above, neither Grantor 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 Public Sidewalk

Easement without the City's prior written approval, which City may withhold in its sole discretion.

(c) Maintenance. Grantor shall maintain the Easement Area, including, without limitation, the sidewalk and curb improvements thereon, in a safe condition and in such physical condition as specified in City's Public Works Code, and in accordance with San Francisco Public Works Code Section 706, or any successor ordinance concerning sidewalks or sidewalk areas, including curbs and vegetation maintenance. Grantor shall perform such repair and maintenance at Grantor's expense and to the reasonable satisfaction of City.

5. No Liability; Indemnity.

(a) No Liability. City, by acceptance of the Public Sidewalk 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.

(b) Indemnification. Subject to Section 19 hereof, Grantor, and each successor and assign to Grantor 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 attorneys 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 any of the Indemnified Parties on or about the Easement Area, except where such condition was at any time caused by migration of a Hazardous Material from another property that was owned, operated or controlled at the time of such migration by the Indemnified Party seeking indemnification; however, Indemnitors 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. Subject to Section 19 hereof, Indemnitors' obligations under this Section 5 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 5, 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.

6. Enforcement. City, but not the general public, shall have all rights and remedies at law and in equity in order to enforce the Public Sidewalk Easement and the terms of this Agreement (including, but not limited to, remedies for violation of a building permit or San Francisco Public Works Code Section 706, or any successor ordinance concerning sidewalk maintenance). 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. In the event of any breach of this Agreement by Grantor or any successor fee owner of the Burdened Property, the City shall be entitled to recover all attorneys' fees and costs reasonably incurred in connection with City's enforcement activities and actions.

7. Litigation Expenses.

(a) General. 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 7 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.

(b) Appeal. 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.

(c) Fee Award for City's Attorneys. 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. Time. Time is of the essence of this Agreement and each and every part hereof.

9. Amendment. This Agreement may be amended or otherwise modified only in writing signed and acknowledged by Grantor and City, or the respective successors and assigns of each.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be entitled to be the original and all of which shall constitute one and the same agreement.

12. References; Titles. Wherever in this Agreement the context requires, reference to the singular shall be deemed to include the plural. Titles of sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

13. Notices.

(a) Notices. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial overnight courier that guarantees next day delivery and provides a receipt, or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given.

Grantor:	923 Folsom Acquisition LLC c/o Align Real Estate One California, 4th Floor San Francisco, CA 94111 (415) 351-9842 Attention: Julian Marsh
With a copy to:	Reuben, Junius & Rose, LLP One Bush Street, Suite 600 San Francisco, CA 94104 Attention: Andrew J. Junius
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: Public Works General Counsel
and to:	Director of Property Real Estate Department 25 Van Ness Avenue, Suite 400 San Francisco, California 94108

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the

date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

(b) Construction Notices. Grantor shall provide prior written notice to City of any planned construction or installation activities in or affecting the Easement Area to City at the following address:

Bureau Chief of Street Use and Mapping
c/o Director's Office
Department of Public Works
City and County of San Francisco
Room 348, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

14. Exclusive Benefit of Parties. The provisions of this Agreement are for the exclusive benefit of Grantor and City and their successors and assigns, subject to the provisions hereof, and not for the benefit of nor give rise to any claim or cause of action by any other person; and this Agreement shall not be deemed to have conferred any rights upon any person except Grantor and City. Nothing herein shall be deemed a dedication of any portion of the Burdened Property (including, without limitation, the Easement Area) to or for the benefit of the general public.

15. Severability. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provisions to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

16. Entire Agreement. This Agreement, together with any attachments hereto or inclusions by reference, constitute the entire agreement between the parties on the subject matter hereof, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the easement which is the subject matter of this Agreement.

17. Compliance With Laws. Grantor, at Grantor's expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the Easement Area, now in force or hereafter adopted, with respect to the use by the public of the Easement Area under the authority of the easement herein granted.

18. Default. The failure to perform any covenant or obligation of a party hereunder and to cure such non-performance within thirty (30) days of written notice by the party to whom performance is owed shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if the defaulting party commences such cure within such period and diligently prosecutes such cure to completion. Upon such default, the non-defaulting party 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.

19. Burden on Land; Assignment and Release of Liability. The Public Sidewalk Easement created by this Agreement shall be a burden on the Burdened Property, which burden shall run with the land and shall be binding on any future owners and encumbrances of the Burdened Property or any part thereof and their successors and assigns. In the event of the conveyance of fee title to the entire Burdened Property from Grantor or any successor fee owner of the Burdened Property to a third party (each, an "*Aquiring Party*"), then from and after the date of such conveyance, Grantor or such successor fee owner, as applicable, shall be released from all of its respective obligations and liability under this Agreement thereafter accruing and such Aquiring Party shall automatically assume all the obligations of Grantor or such successor fee owner, as applicable, under this Agreement at the time such Aquiring Party acquires fee interest of the Burdened Property. In connection with any such conveyance of fee title, Grantor or such successor fee owner, as applicable, and such Aquiring Party shall execute and deliver to the City a written assignment and assumption agreement; provided, however, that the failure of any party to execute or deliver such an agreement shall not affect the automatic transfer and assumption of obligations and liability under this Agreement by such Aquiring Party.

20. Survival. All representations, warranties, and waivers given or made hereunder shall survive termination of this Agreement.

[No further text this page.]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on _____, 2017.

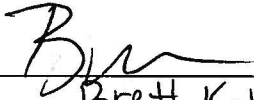
CITY:

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation

By: _____
JOHN UPDIKE
Director of Property

GRANTOR:

923 FOLSOM ACQUISITION LLC,
A Delaware limited liability company

By:  _____
Name: Brett Kahn
Title: Executive Director

APPROVED AS TO FORM:

DENNIS HERRERA,
City Attorney

By: _____

Deputy City Attorney
DESCRIPTION CHECKED/APPROVED:

Bruce Storrs P.L.S. Date
City and County Surveyor
City and County of San Francisco
LS 6914
Expires _____

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)
County of Los Angeles v.s.) ss
~~San Francisco~~

On March 13, 2017, before me, Elizabeth Solano, a notary public in and for said State, personally appeared Brett Kahn, 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 Elizabeth Solano (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)

(Notary Seal)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this deed dated _____, from the grantor to the City and County of San Francisco, a charter city and county, is hereby accepted by order of its Board of Supervisors' Ordinance No. _____, adopted on _____, 20_____, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

CITY AND COUNTY OF SAN FRANCISCO

By: _____
JOHN UPDIKE
Director of Property

EXHIBIT A

Legal Description of Burdened Property

LEGAL DESCRIPTION

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

PARCEL ONE:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF SHIPLEY STREET, DISTANT THEREON 100 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIFTH STREET; RUNNING THENCE SOUTHWESTERLY AND ALONG SAID LINE OF SHIPLEY STREET 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 75 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 75 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA BLOCK NO. 383.

PARCEL TWO:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF FOLSOM STREET, DISTANT THEREON 150 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIFTH STREET; AND RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF FOLSOM STREET 75 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 165 FEET TO THE NORTHWESTERLY LINE OF SHIPLEY STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF SHIPLEY STREET 75 FEET; AND THENCE AT A RIGHT ANGLE NORTHWESTERLY 165 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA BLOCK NO. 383.

PARCEL THREE:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF FOLSOM STREET, DISTANT THEREON 225 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIFTH STREET; RUNNING THENCE SOUTHWESTERLY AND ALONG SAID LINE OF FOLSOM STREET 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 165 FEET TO THE NORTHWESTERLY LINE OF SHIPLEY STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF SHIPLEY STREET 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 165 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA BLOCK NO. 383.

APN: Lot 106; Block 3753 (Parcel One), Lot 142; Block 3753 (Parcel Two) and Lot 141; Block 3753 (Parcel Three)

EXHIBIT B-1

Legal Description of Easement Area



ENGINEERS
SURVEYORS
PLANNERS

July 8, 2016
BKF No. 20130015-76

LEGAL DESCRIPTION EXHIBIT A 1.00 FOOT WIDE SIDEWALK EASEMENT

All that certain real property situated in the City and County of San Francisco, State of California, being a portion of parcels 1, 2, and 3 as described in that certain Grant Deed recorded April 1, 2015, as Document Number 2015-K041040-00, in the Office of the Recorder of the City and County of San Francisco, State of California, and being more particularly described as follows:

BEGINNING at a point on the northerly line of Shipley Street, distant thereon 100.00 feet westerly from the westerly line of 5th Street, said point being the **TRUE POINT OF BEGINNING** of this description;

Thence westerly along said northerly line of Shipley Street, 175.00 feet to the southerly prolongation of the easterly line Parcel B as shown on that certain Parcel Map 6314 filed in Book 48 of Parcel Maps at Pages 121 through 122 in the Office of the Recorder of the City and County of San Francisco;

Thence at a right angle northerly along said prolongation, 1.00 feet;

Thence leaving said prolongation at a right angle easterly, 175.00 feet to the easterly line of Parcel 1 as described in said Grant Deed;

Thence along said easterly line at a right angle southerly, 1.00 feet to the **TRUE POINT OF BEGINNING**.

Containing an area of 175 square feet, more or less.

Being part of 100 Vara Block Number 383.

A plat showing the above-described parcel is attached herein and made a part hereof.

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.


Alex M. Calder, PLS 8863




Dated

END OF DESCRIPTION

EXHIBIT B-2

Plat of Easement Area

