

PUBLIC IMPROVEMENT AGREEMENT



5M PROJECT BLOCK H1 (PHASE 1)

This PUBLIC IMPROVEMENT AGREEMENT 5M PROJECT BLOCK H1 (PHASE 1) (this "**Agreement**") dated for reference purposes only as of _____, 2019, is entered into as of _____, 2019, to be effective upon recording of the Final Map, as defined below (the "**Effective Date**"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation of the State of California ("**City**"), and FC 5M H1 EXCHANGE, LLC, a Delaware limited liability company, its successors and assigns ("**Subdivider**").

RECITALS

A. 5M Project, LLC, ("**Developer**") and City entered into that certain Development Agreement dated December 17, 2015, and recorded on January 4, 2016 in the Official Records of San Francisco County as Document No. 2016K183795 (the "**Development Agreement**").

B. Pursuant to the Development Agreement, Developer, and its successors and assigns, have been given certain rights to develop a mixed use project commonly known as the 5M Project on the nearly 4 acre area generally between Mission, Fifth and Howard Street, and are engaged in subdividing the 5M Project site, including the H1 building project property (the "**Property**") described in the Final Map described in Recital E below.

C. Concurrent with the recording of the Final Map for the Property, Developer transferred the Property, and all of its right, title, interest and obligations with respect thereto, including all of its rights, title, interests and obligations under the Development Agreement, to Subdivider, and Subdivider assumed of Subdivider's right, title, interest and obligations with respect to the Property and Development Agreement.

D. A tentative map, dated February 24, 2017, entitled TENTATIVE FINAL MAP FOR CONDOMINIUM PURPOSES, 5M PROJECT, CITY OF SAN FRANCISCO, SAN FRANCISCO COUNTY, CALIFORNIA for the proposed subdivision was approved by the Director of the department of Public Works (the "**Director**", with references to the Director also including the Director's designee where authorized by law), acting as the Advisory Agency for

purposes of the Subdivision Map Act and the City Subdivision Code, subject to certain requirements and conditions contained in the Director's Conditions of Approval dated February 24, 2017 (the "**Tentative Map**"). The Director approved a revised Tentative Map pursuant to Public Works Order 200951.

E. Pursuant to the City Subdivision Code (the "**Code**") and Subdivision Regulations relating to the filing, approval and recordation of subdivision maps, and the Tentative Map, a final map was submitted to the City for approval and recordation, entitled

FINAL MAP 8731, 5M PROJECT, PID 8731-PHASE NO. 1, A MERGER AND VERTICAL SUBDIVISION OF THAT CERTAIN REAL PROPERTY DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JULY 17, 2015, DOCUMENT NO. 2015-K092345, OFFICIAL RECORDS AND THAT CERTAIN GRANT DEED RECORDED JULY 17, 2015, DOCUMENT NO. 2015-K092346, OFFICIAL RECORDS, AND THAT CERTAIN GRANT DEED RECORDED DECEMBER 4, 2017, DOCUMENT NO. 2017-K544770, OFFICIAL RECORDS. BEING A PORTION OF 100 VARA BLOCK 381, CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA (the "**Final Map**").

F. Pursuant to the Development Agreement and the Use Permit for the development of Property, Subdivider is obligated to construct certain public improvements in association with the development of the Property in the public rights of way that are and will continue to be owned by City. The Plans and Specifications include certain public infrastructure to be privately maintained, i.e., Privately Maintained Public Infrastructure, and include certain private improvements in the public right of way to be owned and maintained by Subdivider, fronting property owner or other private entity approved by the City, i.e. Private Infrastructure. All of the above collectively referred to as the "**Required infrastructure**". The Required Infrastructure is more particularly described in the Improvement Plans, including its specifications and details, as they may be amended from time to time, for the construction, installation and completion of the Required Infrastructure, which have been approved by the Director, and more specifically identified in **Exhibit "A"** to this Agreement (the "**Plans and Specifications**"). Copies of the Plans and Specifications are on file with San Francisco Public Works ("**Public Works**").

G. The Code provides that before a final subdivision map or parcel map is approved by the City, the Subdivider shall have either: (i) installed and completed all of the public improvements required by the City and detailed in the plans and specifications approved by the Director, or (ii) will enter into an agreement with the City to install and complete, free of liens, all of such public improvements within a definite period of time and provided appropriate improvement security to ensure the satisfactory completion of the work.

H. The City and Subdivider desire to enter into this Agreement in order to permit the approval and recordation of the Final Map by the City (including any dedications contained therein), to implement the Conditions of Approval, and to simultaneously satisfy the security provisions of the Subdivision Map Act and the Code

I. Except as specifically defined herein, capitalized terms shall have the meaning given, as applicable in the Development Agreement, and, if not so defined in the Development Agreement in either (i) the Code or (ii) City Subdivision Regulations.

NOW, THEREFORE, in order to ensure satisfactory performance of the Subdivider under the Code, Subdivider and City agree as follows:

1. Recitals. The above recitals are true and correct, and are incorporated into this Agreement.

2. Subdivider's Obligations.

(a) Required Infrastructure. Subdivider shall, in good and workmanlike manner, furnish all necessary materials and complete the Required Infrastructure in conformity with the Plans and Specifications as described in Exhibit A and to the satisfaction and approval of the Director.

(b) Completion. Subdivider shall complete the Required Infrastructure on or within two (2) years following the recordation of the Final Map. The period of time provided in this condition may be extended upon application by Subdivider and approval by the Director pursuant to Section 4(b) below, or may be extended by operation of the delay provisions of Section 8. In reviewing such application for an extension of time, the Director shall consider

reasonable construction, access and storage requirements for each adjacent project and subsequent projects.

(c) Other Required Documentation.

(i) Prior to the Director's submittal of this Agreement to the City's Board of Supervisors ("**Board of Supervisors**"), Subdivider has provided executed and recorded copies of all the documents, agreements and notices required pursuant to Exhibit C, unless deferred by the Director, in writing, until the time of a request for a Notice of Completion or other specified deadline, pursuant to Section 6(a). To the extent that the Director authorized the deferral of any conditions, improvements or materials, those conditions, improvements or materials, and conditions related thereto, are listed in Exhibit D.

(ii) At the time of request for a Notice of Completion, pursuant to Section 6(a), for the Required Infrastructure, or any portion thereof, Subdivider shall provide all documents required pursuant to Exhibit E, plus any other material previously deferred by the Director in item (i) above, unless deferred by the Director in writing until the time of a request for Acceptance pursuant to Section 6(b) below, or otherwise provided in Exhibit D. In addition, the Subdivider shall furnish to Public Works and, if requested, the City Department of Building Inspection, as-built plans of the completed Required Infrastructure or portion thereof, in both electronic (in a reasonably current version of AutoCAD and/or another digital format acceptable to Public Works) and Mylar formats and any reports required by any related Plans and Specifications.

(iii) At the time of a request for Acceptance pursuant to Section 6, of the Required Infrastructure, or any portion thereof, Subdivider shall provide all the documents required pursuant to Exhibit F, plus any other materials previously deferred by the Director pursuant to subsections (i) and (ii) above. In addition, as part of compliance with this Section 2, Subdivider shall coordinate with the City and assist in the City process for the subsequent dedication and Acceptance of the Required Infrastructure by (i) providing necessary maps, legal descriptions and plats for street openings, proposed easements and/or dedications for right of way or utility purposes and for relinquishment of existing rights of access and utilities associated with on-site and off-site development, and (ii) executing easement agreements or grant deeds or

modifying existing easements or grant deeds consistent with the Conditions of Approval.

3. Improvement Security.

(a) Security. Prior to the Director executing this Agreement on behalf of the City and the City releasing the Final Map for recordation, Subdivider shall furnish and deliver to the Director bonds, in favor of the City, substantially in the form attached as Exhibit G, and approved by the City Attorney, from an issuer approved by the Director, securing the installation and completion of the Required Infrastructure as follows:

(i) Performance bonds in the amount of Eight Hundred Forty-Eight Thousand Dollars (\$848,000) (110% of estimated "hard" cost of completion of the construction and installation of Required Infrastructure as determined by the Public Works Director) to secure the satisfactory performance of Subdivider's obligations (**Exhibit G-1**);

(ii) A payment bond or other acceptable security in the amount of Four Hundred Twenty-Four Thousand Dollars (\$424,000) (55% of the estimated cost of completion of the Required Infrastructure as determined by the Public Works Director) as guarantee of payment for the labor, materials, equipment, and services required for the Required Infrastructure (**Exhibit G-2**);

(iii) A performance bond for the deferred improvements, curb ramp and cross-walk striping, described as Deferred Improvements 1-3 in Exhibit D (the "**Deferred Improvements**") in the amount of Twenty-Five Thousand Dollars (\$25,000); and

(b) Other Acceptable Security. In lieu of providing any of the security described in Section 3(a), Subdivider may, subject to the approval of the Director, provide a deposit or other security as described in Section 66499 of the Government Code. Any security provided under Section 3(a) or this Section 3(b) shall be referred to collectively as the "Security".

(c) Use of Security. If the Required Infrastructure is not completed within the

time periods specified in Section 2(b) and such period is not extended by the City or as otherwise provided under this Agreement, or Subdivider has not satisfactorily corrected all deficiencies during the Warranty Period, the Security may, by resolution of the Board of Supervisors, be used by the City for completion of the Required Infrastructure in accordance with the Plans and Specifications and for the correction of any such deficiencies.

(d) Development Agreement. The security requirements of this Agreement shall be read and constructed in accordance with the requirements of the Code and the Development Agreement. Nothing in this Agreement shall alter the City or Subdivider's rights and remedies under the Development Agreement.

4. Construction of Required Infrastructure.

(a) Permits and Fees. Subdivider shall not perform any Required Infrastructure work until all required permits have been obtained for the component or portion of work involved, and all applicable fees, including inspection and testing fees, have been paid. In addition, no work shall commence until the Subdivider has submitted to the City and City has approved all required items described in Exhibit C and any additional requirements of and authorizations specified in the Code, Subdivision Regulations, Conditions of Approval, and this Agreement, unless the Director, in his or her discretion, has granted a written deferral for one or more of these materials.

(b) Extensions. The Subdivider may request an extension of the time period specified in Section 2(b) for completion of the Required Infrastructure by written request to the Director. A request shall state adequate evidence to justify the extension, and shall be made upon Subdivider's determination that it cannot reasonably meet the deadline in the time remaining for completion. The Director may request additional information, and shall in good faith attempt to determine within fourteen (14) days of the request whether to grant an extension of time. The Director's failure to respond within the time specified shall, however, not constitute either a grant or denial of the requested extension. The time for completion additionally shall be automatically extended for the number of days past fourteen (14) during which a request for an extension is pending a determination by the Director, as well as during any Excusable Delay. The Director shall not unreasonably withhold a request for an extension. The Director may

reasonably condition an extension subject to the terms of this Agreement and the conditions provided in the Code, including execution of an extension agreement and the extension of any security. No extension approved hereunder shall limit or relieve a surety's liability, or provide an extension on any future obligation under this Agreement or the Development Agreement (except as expressly stated in the approved extension).

(c) Revisions to Plans and Specifications. Requests by the Subdivider for revisions, modifications, or amendments to the approved Plans and Specifications (each a "**Plan Revision**") shall be submitted in writing to the Director (with a copy to the Director's designee). Subdivider shall not commence construction of any proposed Plan Revision without approval by Public Works and until revised plans have been received and approved by the Director (or the Director's designee). If the Director or his or her designee approves an instructional bulletin, such approval shall be considered the Director's approval for purposes of this Subsection.

(i) Any documentation required for a Plan Revision shall be processed by the City with reasonable promptness, and approval of the Plan Revision shall not be deemed final until the Plan Revision documentation has been completed.

(ii) Any Plan Revision request shall be accompanied by (A) a statement explaining the need for or purpose of the proposed revision, and (B) drawings and specifications and other related documents showing the proposed Plan Revision in reasonable detail, consistent with the original Plans and Specifications.

5. Release of Security. The Security, or any portions thereof, not required to secure completion of Subdivider's obligation for construction or installation of the Required Infrastructure, to satisfy claims by contractors, subcontractors, and/or persons furnishing materials or equipment, or for setting monuments set forth on the Final Map (a form of bond for such monuments is appended hereto as Exhibit G-3), shall be released to the Subdivider, or its successors in interest, or reduced, pursuant to the procedures below as appropriate:

(a) One Year Warranty Bond. Upon the Director's issuance of a Notice of Completion for a portion of the Required Infrastructure (or separately for the Deferred Improvements) in accordance with Section 6(a), the Security shall be reduced as to that portion

in accordance with Section 1770 of the Code. As to that portion, the Security remaining following such reduction is referred to herein as the “**Remaining Security**,” which term shall also refer to all Security remaining after any release under this Subsection following the Director’s issuance of a Notice of Completion for the final portion of Required Infrastructure.

(b) Partial Release of Security. Notwithstanding the release provisions in Section 5(a), the Security may be reduced in conjunction with completion of any portion or component of the Required Infrastructure to the satisfaction of the Director in compliance with Section 6(a) hereof to an amount determined by the Director that equals the actual cost of the completed portion or component of the Required Infrastructure. Prior to the date that the conditions set forth in Section 5(c) are satisfied, in no event, however, shall the amount of the Security be reduced below the greater of (i) the amount required to guarantee the completion of the remaining portion of the Required Infrastructure and any other obligation imposed by the Subdivision Map Act, the Code or this Agreement; or (ii) ten percent (10%) of the original amount.

(c) Release of Remaining Security. Remaining Security shall be released when all of the following have occurred:

(i) One (1) year following the date of Acceptance (as defined below) of (or, as appropriate, a Certificate of Conformity regarding) the relevant portion the Required Infrastructure, or, with respect to any specific claim of defects or deficiency in Required Infrastructure after such has been Accepted, one (1) year following the date that any such defect or deficiency which the Director identified in the Required Infrastructure in accordance with Section 8(a) has been corrected or waived in writing by the Director; and

(ii) The Clerk of the Board of Supervisors (or the Clerk’s designee) certifies that no claims by any contractor, subcontractor or person furnishing labor, materials or equipment for the Required Infrastructure have been filed against the City, all such claims have been satisfied, withdrawn, or otherwise secured by bond or other security approved by the Director (or the Director’s designee).

6. Completion and Acceptance.

(a) Director's Inspection. No sooner than ninety (90) days prior to the date that Subdivider intends to request the Director issue a Notice of Completion, Subdivider shall make a written request to the Director of the Subdivider's intent to initiate the Notice of Completion process ("Letter of Intent to Request Notice of Completion"). Upon written request from the Subdivider for a "**Notice of Completion**" as defined in the Code accompanied with any and all materials that are required under Section 2(c) related to the Notice of Completion and any other materials that the Director deferred in writing at the time of PIA approval, the Director shall promptly determine whether the Required Infrastructure, or portion thereof, is ready for its intended use and completed substantially in conformity with the Plans and Specifications and applicable City Regulations and shall notify Subdivider as soon as reasonably practicable in writing of the determination. If the Subdivider fails to submit a Letter of Intent to Request Notice of Completion, the Director need not consider the Subdivider's request for the Director's issuance of a Notice of Completion until such a Letter of Intent to Request Notice of Completion is submitted to the Director and ninety (90) days have passed from the submission of the Letter; provided, however, that the Director, in his or her discretion, may agree in writing to a period of less than ninety (90) days from receipt of the Letter to consider issuance of a Notice of Completion. If the Director determines that the Required Infrastructure has not been completed or does not satisfy the above requirements, Director shall notify Subdivider of such determination together with a statement setting forth with particularity the basis for that determination. If the Director determines that the Required Infrastructure has been completed and meets the above requirements, the Director shall issue the Notice of Completion.

(b) Acceptance. "**Acceptance**" by the City of the Required Infrastructure, or portion thereof, for public use and maintenance shall be deemed to have occurred when:

(i) The Director has issued a Notice of Completion for the Required Infrastructure, or portion thereof, in accordance with Section 6(a);

(ii) The Subdivider submits a written request to the Director to initiate acceptance legislation or other appropriate action, before the Board of Supervisors. Such submission shall include any and all materials for which the Director authorized deferral under

Section 2(c), all materials that are required under Section 2(c) related to Acceptance, and any other materials that the Director deems necessary to provide the required authorizations and certifications to the Board of Supervisors as part of the acceptance legislation; and

(iii) The Board of Supervisors, by ordinance or other appropriate action, accepts the Required Infrastructure, or portion thereof, for public use and maintenance in accordance with the provisions of San Francisco Administrative Code Section 1.52 and Subdivider's maintenance and warranty obligations under and Section 9(a) of this Agreement. City will promptly process a request for acceptance once Subdivider has submitted all required materials in final form as specified above in Section 6(b)(2).

(c) Offers of Dedication. The owners' statements on the Final Map include or shall include, where applicable, certain irrevocable offers of dedication of improvements, easements shown only on the map, easements by agreement, and real property in fee simple. In addition, any offers of dedication of improvements shall be made by separate instrument(s); any offers of dedication of real property in fee simple shall be made by separate instrument(s) and separate grant deed(s); and any offers of dedication of easement agreements shall be made by separate instrument(s) unless the Director requires that easement agreements be recorded concurrently with the Final Map in which case no offer of dedication for such easements is necessary. The Board of Supervisors, shall accept, conditionally accept, or reject such offers. The City, at its discretion, may accept these easements at its convenience through formal action of the Board of Supervisors or as otherwise provided in local law or as part of the Board of Supervisors' approval of the Development Agreement. The Board of Supervisors also shall by ordinance accept, conditionally accept, or reject for public right-of-way and utility purposes the Required Infrastructure (or a portion or component of the Required Infrastructure) in accordance with Subsection 6(b). The Final Map includes certain offers of dedication as more particularly set forth therein. Upon the Director's issuance of a Notice of Completion for the Required Infrastructure, or portion thereof, in accordance with Section 6(a) of this Agreement, the Board of Supervisors shall by ordinance or other appropriate action accept, conditionally accept, or reject such offers. The Board of Supervisors also shall accept, conditionally accept, or reject offers of any portions of the Required Infrastructure that were not included in such previous offers of dedication.

(d) Dedication. In addition to accepting public improvements, the City shall dedicate the portions of the Required Infrastructure that are public to public use and shall designate them for their appropriate public uses, in accordance with the Development Agreement.

(e) Temporary Facilities and Private Infrastructure Shall Not Be Publicly Dedicated. Subdivider shall not offer for dedication any temporary facilities, if any, or private infrastructure. Such improvements shall be owned, operated, and maintained by Subdivider, unless the City, at its sole discretion, decides to accept any such improvements at a future date. Any such temporary facilities or private infrastructure are acknowledged to be integral components of the Required Infrastructure and are necessary components of a fully functional set of improvements on the 5M Project. Promptly upon Subdivider's request, the City shall inspect temporary facilities, if any, and any private infrastructure and the City shall issue a Certificate of Conformity for any such facilities or private infrastructure that meet the standard for such set forth in Section 5 above. The Subdivider shall obtain a Certificate of Conformity for any temporary facility or private infrastructure prior to City Acceptance of the Required Infrastructure (or portions or components thereof); provided, however, that the Director, in consultation with any affected City department, may grant an exception to this requirement on a case by case basis.

(f) General Maintenance and Liability Prior to Acceptance. Prior to Acceptance, Subdivider shall be responsible for the maintenance and repair of the Required Infrastructure and shall bear the liability regarding the same consistent with the Code.

(g) Maintenance and Liability Following Acceptance. Following Acceptance the City shall assume the responsibility of operating and maintaining and shall be liable for such Accepted Required Infrastructure, subject to any exceptions identified in the Board of Supervisors ordinance accepting the Required Infrastructure. Without limiting the generality of the foregoing, nothing in this Agreement shall be construed to mean that Subdivider is responsible (or that City shall have right to call upon the Security) for the repair, replacement, restoration, or maintenance of the Required Infrastructure damaged by the actions of third parties following Acceptance by the City.

(h) Privately Maintained Public Infrastructure and Private Infrastructure. If and to the extent the Required Infrastructure includes Privately Maintained Public Infrastructure, facilities for which the City may accept ownership but place responsibility for maintenance and liability on Subdivider, and Private Infrastructure, facilities for which the Subdivider shall bear the liability and responsibility for maintenance, such responsibility will be set out in a “**Master Encroachment Permit.**” Notwithstanding any Acceptance by the City, the Parties understand and agree that Subdivider, its successor in interest as to one or more of the development parcels depicted on the Tentative Map (i.e., Lots 3725-005,006,008, 009, 012 and 098 inclusive), fronting property owner, or other private entity approved by the City, shall be responsible for the ongoing maintenance and liability of the Privately Maintained Public Infrastructure and Private Infrastructure. The maintenance and liability obligations for the Privately Maintained Public Infrastructure and Private Infrastructure shall be defined in a Master Encroachment Permit approved by the Board of Supervisors. The Master Encroachment Permit shall provide for the designation of any successor to Subdivider’s responsibilities thereunder. The Subdivider shall obtain the Board of Supervisors’ approval of the Master Encroachment Permit prior to or concurrent with Board of Supervisors’ approval of the first Final Map for development parcels; provided, however, that the Director, upon Developer request and in his or her discretion, may defer such agreement and satisfaction of this requirement to a time no later than issuance of the first Notice of Completion for applicable Required Infrastructure. Subdivider agrees that no portion of the Privately Maintained Public Infrastructure may be offered to the City for Acceptance until that infrastructure is included in an approved and executed Master Encroachment Permit.

(i) Protection of Required Infrastructure. In order to protect the Required Infrastructure from damage until such time as the applicable Required Infrastructure, or portion thereof, is Accepted, Subdivider may erect a construction fence around areas under construction, to be constructed in the future, or constructed but not Accepted, provided that Subdivider has procured all necessary permits and complied with all applicable laws. However, no construction fence may be built or maintained if the Director determines that a construction fence adversely affects public health or safety by restricting the ingress and egress of the public to and from a public right of way.

7. Warranty and Indemnity.

(a) Warranty. Acceptance of Required Infrastructure by the City shall not constitute a waiver of any defects. Subdivider covenants that all Required Infrastructure constructed or installed by Subdivider shall be free from defects in material or workmanship and shall perform satisfactorily for a period (a “**Warranty Period**”) of one (1) year. Such Warranty Period shall begin upon the issuance of a Notice of Completion for the Required Infrastructure (or portion thereof) as specified in the Code, except that the Warranty Period for plant materials and trees planted as part of the Required Infrastructure shall not commence until the Director receives a certification from the City’s Construction Manager that a plant establishment period set in accordance with the Plans and Specifications has passed. During the Warranty Period, Subdivider shall, as necessary, and upon receipt of a request in writing from the Director that the work be done, inspect, correct, repair or replace any defects in the Required Infrastructure at its own expense. Should Subdivider fail to act with reasonable promptness to make such inspection, correction, repair or replacement, or should an emergency require that inspection, correction, repair or replacement be made before Subdivider can be notified (or prior to Subdivider’s ability to respond after notice), the City may, at its option, upon notice to Subdivider, make the necessary inspection, correction, repair or replacement or otherwise perform the necessary work and Subdivider shall reimburse the City for the actual cost thereof. During the Warranty Period, the City shall hold the Subdivider’s Security, reduced as described in Section 5, to secure performance of Subdivider’s foregoing warranty obligations. Subdivider’s responsibility during the Warranty Period shall include repairing defects and defective material or workmanship, but not ordinary wear and tear or harm or damage from improper maintenance or operation of the Required Infrastructure by the City or any agent or agency of either.

(b) Indemnity. For purposes of this Subsection, any capitalized term shall be defined consistent with the Development Agreement. The indemnity provided in Section 4.7 of the Development Agreement shall apply to all work performed under this Agreement. Development Agreement Section 4.7 is reproduced here and made a part of this Agreement; such incorporation shall not limit, replace or alter the effect of Development Agreement Section 4.7. In the event of any difference between the text of Development Agreement Section 4.7 and the reproduction herein, the Development Agreement as executed shall govern.

"4.7 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "City Parties") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("Losses") arising or resulting directly or indirectly from (i) any third party claim arising from a default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Subsequent Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Subsequent Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted Future Changes to Existing Standards, (iv) any accident, bodily injury, death, personal injury or loss of or damage to property occurring on a Project Site (or off-site, with regard to the Public Improvements) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Subsequent Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that such indemnity is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The

foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four years."

(c) Limitation on City. City shall not be an insurer or surety for the design or construction of the Required Infrastructure pursuant to the approved Plans and Specifications, nor shall any officer or employee thereof be liable or responsible for any accident, loss, or damage happening or occurring during the construction of the Required Infrastructure as specified in this Agreement, except as may arise due to the negligence or willful acts or omissions of the City.

8. Miscellaneous.

(a) Final Map Recordation. The City, in accordance with the Code, shall record the Final Map with the County Clerk in the Official Records of the City and County of San Francisco promptly upon Board of Supervisors' approval. The City shall notify Subdivider of the time of recordation. In the event the Final Map is not recorded within fifteen (15) days of approval, this Agreement shall be null and void.

(b) Independent Contractor. In performing its obligations under this Agreement, the Subdivider is an independent contractor and not an agent or employee of the City.

(c) Excusable Delay. All time periods in this Agreement shall be extended for Excusable Delay as defined in Section 11.5.2 of the Development Agreement, which is

reproduced below. In the event of any difference between the text of Development Agreement Section 11.5.2 and the reproduction herein, the Development Agreement as executed shall govern.

"11.5.2 **Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation,

and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement."

(d) Subdivider Extension. All time periods in this Agreement shall be extended for the period of any "**Excusable Delay**" as defined in Section 11.5.2 of the Development Agreement

(e) Park Related Extension. Developer and City wish to avoid damaging the private publicly accessible open space improvements proposed for Mary Court East and Mary Court West during construction of adjacent components of Required Infrastructure or damaging Required Infrastructure adjacent to Mary Court East or Mary Court West during construction of such private open space improvements. Accordingly, subject to compliance with required Mitigation Measures, Developer may apply for an extension for completion of Required Infrastructure or components thereof (the "**Park Related Extension**") by submitting a written request for such extension to the Director identifying the scope and length of the extension request. Approval for such extension shall not be unreasonably withheld if Developer satisfactorily demonstrates that such extension is necessary to avoid damaging the adjacent private open space improvements during construction of adjacent Required Infrastructure, to avoid damaging adjacent Required Infrastructure during construction of the private open space improvements, or to coordinate the completion of such open space improvements with the Required Infrastructure serving the private publicly accessible open space.

(f) Attorneys' Fees. Should any party hereto institute any action or proceeding in court or other dispute resolution mechanism ("**DRM**") to enforce any provision

hereof or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive from the losing party, court or DRM costs or expenses incurred by the prevailing party including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or DRM may adjudge to be reasonable attorneys' fees for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Section 8(f) 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 and any in-house counsel for the City or the Subdivider shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the City's or the Subdivider's in-house counsel's services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City, or, in the case of the Subdivider's in-house counsel, as employed by the outside counsel for the Subdivider.

(g) Notices.

(i) A notice or communication under this Agreement by either party to the other (or by or to the Director) shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

In the case of a notice or communication to the Director of Public Works:

Director of Public Works
City and County of San Francisco
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Infrastructure Task Force

With copies to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Public Works General Counsel
Reference: 5M Project

And in the case of a notice or communication to the Subdivider:

FC 5M H1 EXCHANGE, LLC
c/o Brookfield Properties
875 Howard Street, Suite 330
San Francisco, CA 94103
Attn: James Ostrom

With copies to:

Brookfield Properties
127 Public Square, Suite 3200
Cleveland, OH 44114
Attn: General Counsel

Every notice given to a party hereto, pursuant to the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

- (A) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;
- (B) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (C) if approval is being requested, shall be clearly marked “**Request for Approval under the 5M Project H-1 Public Improvement Agreement**”; and
- (D) if a notice of disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

(ii) 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.

(iii) Any notice or request for review, consent, or other determination or action by the Director shall display prominently on the envelope enclosing such request (if any) and the first page of such request, substantially the following words: **“5M PROJECT INFRASTRUCTURE: IMMEDIATE ATTENTION REQUIRED.”**

(h) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto (as set forth in the Development Agreement), and upon such transfer, the Subdivider shall be released from its obligations hereunder. Any assignment of Subdivider’s rights and obligations under this Agreement shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned and shall be subject to the reasonable approval of the Director; provided, however, that if Subdivider assigns its rights under the Development Agreement as “Developer” (as defined therein as it relates to the affected real property), an assignment of this Agreement to the same assignee shall not require the Director’s approval so long as: (1) Subdivider provides notice of the intended transfer to the Director consistent with any required notice to City under the Development Agreement; (2) Subdivider provides to the Director a copy of the executed Development Agreement assignment and assumption (which includes the transfer of rights and obligations under this Agreement); (3) the assignee provides replacement bonds that are consistent with Exhibits G-1 and G-2 in the amount required to secure any remaining obligations; and (4) the assignee provides proof of adequate insurance in the amount previously provided by Subdivider and by an insurer with an equal or better credit rating; and (5) the assignee has obtained all real estate rights and assumes the obligation to complete the work contemplated by this Agreement.

(i) Development Agreement. The City shall cooperate with the Subdivider consistent with the terms of the Development Agreement, including, without limitation, in obtaining applicable approvals required for the construction of the Required Infrastructure.

(j) Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by another party, or the failure by a party to exercise its rights

upon the default of another party, shall not constitute a waiver of such party's right to insist upon and demand strict compliance by the other party with the terms of this Agreement thereafter.

(k) Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity, other than the City and the Subdivider, any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Agreement contained by or on behalf of the City or the Subdivider shall be for the sole and exclusive benefit of the named parties.

(l) Amendment. This Agreement may be amended, from time to time, by written supplement or amendment hereto and executed by the City and the Subdivider. The Director of Public Works is authorized to execute on behalf of the City any amendment that the Director determines is in the City's best interests and does not materially increase the City's obligations or materially diminish the City's rights under this Agreement.

(m) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

(n) Interpretation of Agreement. Unless otherwise provided in this Agreement or by applicable law, whenever approval, consent or satisfaction is required of the Subdivider or the City under to this Agreement, it shall not be unreasonably withheld or delayed. Nothing in this Agreement limits the scope of review and certification of completed improvements required under the Subdivision Code. Captions used in this Agreement are for convenience or reference only and shall not affect the interpretation or meaning of this Agreement.

This Agreement shall in no way be construed to limit or replace any other obligations or liabilities which the parties may have in the Development Agreement.

9. Insurance. Subdivider shall, at all times prior to Acceptance of the Required Infrastructure, comply with the insurance requirements set forth in the Development Agreement and/or any applicable Permit to Enter. Subdivider shall furnish to the City, from time to time upon request by the City's Risk Manager, a certificate of insurance (and/or, upon request by the

City's Risk Manager, a complete copy of any policy) regarding each insurance policy required to be maintained by Subdivider.

10. Recording.

(a) Recording Agreement. The Parties to this Agreement acknowledge that this Agreement shall be recorded against the title of the Property.

(b) Purpose and Effect of Recording. This Agreement shall be recorded for the purpose of providing constructive notice to any future owner of the Property of Subdivider's obligations and responsibilities under Sections 2 and 7, respectively. This Agreement shall not be interpreted as creating a lien or security interest against any parcel against which it is recorded, or to effect any secured interest now or in the future, as the obligations hereunder are personal to Subdivider and its successors and assigns as may be authorized under this Agreement.

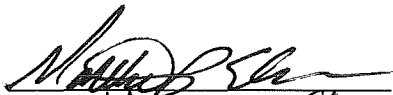
(c) Notice of Termination. At the time all the obligations and requirements specified in this Agreement are fully satisfied as determined by the Director of Public Works and affected City departments, the Parties shall record a Notice of Termination, a draft form of which is contained in Exhibit H. Subdivider may request the Director's authorization to record a Notice of Termination with respect to an individual parcel. In evaluating such a request, approval of which shall be in the Director's reasonable discretion, the Director shall consider with respect to Required Infrastructure necessary to serve the parcel, whether: (i) all Required Infrastructure has been completed and accepted by the City; (ii) all corresponding bond amounts have been released; (iii) all defects and punch list items have been addressed; and (iv) all warranty and guarantee periods have terminated.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Subdivider have executed this Agreement in one or more copies as of the day and year first above written.

SUBDIVIDER

FC 5M H1 EXCHANGE, LLC,
a Delaware limited liability company

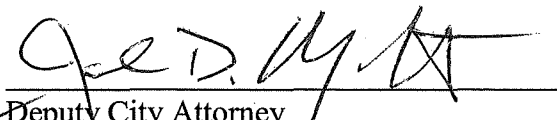
By: 
Name: MATTHEW ELSSESSER
Its: EXECUTIVE VICE PRESIDENT

CITY AND COUNTY OF SAN FRANCISCO

By: Mohammed Nuru
Its: Director of Public Works

APPROVED AS TO FORM:

DENNIS J. HERRERA
CITY ATTORNEY



Deputy City Attorney

EXHIBIT A

INFRASTRUCTURE PER PLANS AND SPECIFICATIONS

Improvement Plans and Specifications prepared by BKF Engineers entitled
"5M - Phase 1 - 415 Natoma Street (H1 building - Office) & 110 5th Street (Mary Court East
Open Space)", and dated May 10, 2019.

EXHIBIT B

INTENTIONALLY OMITTED

IMPROVEMENT PLAN COST ESTIMATES – SEE SECTION 3(a).]

EXHIBIT C

**DOCUMENTS TO BE SUBMITTED CONCURRENT WITH PUBLIC
IMPROVEMENT AGREEMENT –**

1. [Note: Encroachment and maintenance agreement to follow]
2. Bonding to complete the improvements
3. Approved Street Improvement Plan
4. Offers of Improvements
5. Offer of Dedication (sidewalk ramp areas)
6. Sidewalk easement agreement (sidewalk ramp area)

EXHIBIT D

**OUTSTANDING TENTATIVE MAP CONDITIONS OF
APPROVAL/DEFERRED INFRASTRUCTURE**

I. Deferred Improvements

1.	Northeast corner of Minna Street (at Mary Street) pedestrian curb ramp	To be separately bonded, and completed at the earlier of: (i) time of sidewalk improvements associated with a future phase, on North side of Minna Street adjacent to the Chronicle (M1) Building, as described in the Development Agreement or (ii) the sub-sidewalk encroachment structure (per Street Encroachment Agreement recorded January 12, 1967 at Book 109, Page 871) is modified (or removed) to allow installation of the curb ramp on the northeast quadrant of Minna Street without interference with such sub-surface encroachment structure.
2.	Southeast corner of Minna Street (at Mary Street) pedestrian curb ramp at Mary Court East.	To be bonded and completed with deferred improvement (1) above.
3.	Crosswalk striping connecting curb ramps described in (1) and (2) above.	To be bonded and completed with deferred improvement (1) above.
Note: Deferred Improvements 1-3 above may be completed after and will not affect completion and acceptance of the Phase One Required Infrastructure.		

II. Deferred Conditions

Public Works Conditions 1, 2 and 3 to the Revised Tentative Map.

These conditions relate to property or permits of 5M Project, LLC. In accordance with 5M Project LLC letter dated April 25, 2019 to Bruce Storrs, City and County Surveyor, the requirements of these conditions to be, as and to the extent required, addressed by 5M Project LLC within 120 days after recordation of the Phase One Final Map. If it is not reasonably practicable to fully satisfy all of the requirements of said conditions during said 120 day period, the Director may extend the time to complete any outstanding elements, including until the filing of the phase three final map by 5M Project, LLC, or its successor.

EXHIBIT E

**DOCUMENTS TO BE SUBMITTED CONCURRENT WITH REQUEST FOR
NOTICE OF COMPLETION**

1. Developer Request Letter for Determination of Completeness (“DOC”)
2. Contractor Substantial Completion Letter
3. Civil Engineer Completion Notice
4. Geotechnical Engineer Completion Letter
5. Landscape Architect Completion Notice
6. Construction Manager Completion Notice
7. City Final Punch-list Approval
8. [Utility Conformance Letter] **not applicable**
9. As-Built Plan Approval
10. Recordable form of Notice of Completion
11. Survey Monuments
12. Test Reports
13. [Joint Trench Conduits mandrel test] **not applicable**
14. Confirmation of Removal of all Non-Compliance Reports (“NCR”)
15. Confirmation of all Change Orders/Instructional Bulletins
16. [Confirmation from City that Spare Parts have been provided (as applicable)] **not applicable**
17. [Operation and Maintenance Manuals] **not applicable**
18. NOC Recommendation from Public Works

EXHIBIT F

**DOCUMENTS TO BE SUBMITTED CONCURRENT WITH REQUEST FOR
ACCEPTANCE**

1. Developer Request for Acceptance Letter
2. Lien Notification to General Contractor and Subs
3. [Utility Bill of Sale] **not applicable**
4. 3rd Party Reimbursement Checks-Copies
5. Assignment of Warranties and Guaranties
6. Sidewalk Easement Agreements (as applicable)
7. Mechanic's Lien Guarantee
8. Modified Offers of Improvements (as applicable)
9. Updated Grant Deed (as applicable)

EXHIBIT "G-1"

FORM: FAITHFUL PERFORMANCE BOND
5M Project – Block H1 (Phase 1)
Required Infrastructure

Whereas, the Board of Supervisors of the City and County of San Francisco, State of California, and FC 5M H1 Exchange LLC (hereafter designated as "**Principal**") have entered into that certain Public Improvement Agreement 5M Project Block H1 (Phase 1), dated May 9, 2019 (the "**Agreement**"), which is hereby referred to and made a part hereof, whereby Principal agrees to install and complete certain designated public improvements identified therein as the Required Infrastructure; and

Whereas, Principal is required under the terms of the Agreement to furnish a bond for the faithful performance of the Agreement;

Now, therefore, we, Principal and the undersigned, as corporate surety (hereinafter "**Surety**"), are held and firmly bound unto the **City and County of San Francisco** (hereafter called "**City of San Francisco**") in the penal sum of Eight Hundred Forty-Eight Thousand Dollars (\$848,000.00) lawful money of the United States, for the payment of which we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that the obligation shall become null and void if the above-bounded Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to, abide by, well and truly keep, and perform the covenants, conditions, and provisions in the agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to his or their true intent and meaning, and shall indemnify and save harmless the City of San Francisco, its officers, agents, and employees, as therein stipulated; otherwise, this obligation shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees, incurred by the City of San Francisco in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement, the work to be performed thereunder, or the specifications accompanying the agreement shall in any way affect its obligations on this bond. The Surety hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the agreement, the work, or the specifications.

In witness whereof, this instrument has been duly executed by Principal and Surety on May 7, 2019.

"PRINCIPAL"

FC 5M HI EXCHANGE LLC,
a Delaware limited liability company

By: 

Name: Matthew P. Elsesser

Title: Vice President

"SURETY"

Berkley Insurance Company

By: 

Cathy L. Woodruff

Its: Attorney-In-Fact

Address: Berkley Insurance Company

475 Steamboat Road

Greenwich, CT 06830

Telephone: (203) 542-3800

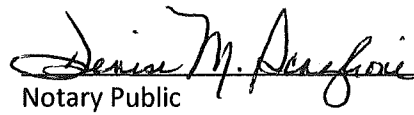
Facsimile: N/A

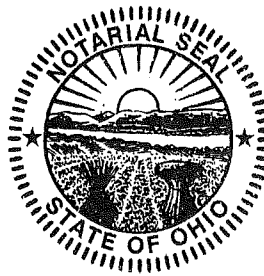
STATE OF OHIO }
 } SS:
COUNTY OF CUYAHOGA}

On May 9, 2019, before me, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared MATTHEW P. ELSESSER, known to me to be the Vice President of FC 5M H1 EXCHANGE LLC, a Delaware limited liability company, the Company described in and that executed the within and foregoing instrument, and known to me to be the person who executed the same instrument on behalf of said Company, and he duly acknowledged to me that such Company executed same.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my official seal, the day and year stated in this Certificate above.

My Commission Expires:
4-23-2022


Notary Public



DENISE M SCAGLIONE
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES
04-23-2022

EXHIBIT "G-2"

**LABOR AND MATERIAL BOND
5M Project - Block H-1 (Phase 1)
Required Infrastructure**

Whereas, the Board of Supervisors of the City and County of San Francisco, State of California, and FC 5M H1 EXCHANGE LLC (hereafter designated as "**Principal**") have entered into that certain **Public Improvement Agreement 5M Project Block H1 (Phase 1)**, dated May 9, 2019 (the "**Agreement**"), which is hereby referred to and made a part hereof, whereby Principal agrees to install and complete certain designated public improvements identified therein as the Required Infrastructure; and

Whereas, under the terms of the Agreement, Principal is required before entering upon the performance of the work to file a good and sufficient payment bond with the City and County of San Francisco to secure the claims to which reference is made in Title 15 (commencing with section 3082) of Part 4 of Division 3 of the Civil Code of the State of California;

Now, therefore, we, the Principal and the undersigned, as corporate Surety (hereinafter "**Surety**"), are held and firmly bound unto the City and County of San Francisco and all contractors, subcontractors, laborers, material men, and other persons employed in the performance of the agreement and referred to in Title 15 of the Civil Code in the sum of Four Hundred Twenty-Four Thousand Dollars (\$424,000.00), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that Surety will pay the same in an amount not exceeding the amount set forth. If suit is brought on this bond, Surety will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City and County of San Francisco, in successfully enforcing the obligation, to be awarded and fixed by the Court, to be taxed as costs, and to be included in the judgment rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.


If the condition of this bond is fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the agreement shall in any manner affect its obligations on this bond. The Surety hereby waives notice of any such change, extension, alteration, or addition.

In witness whereof, this instrument has been duly executed by Principal and Surety on May 7, 2019.


"PRINCIPAL"

FC 5M HI EXCHANGE LLC,
a Delaware limited liability Company

By: 
Name: Matthew P. Elsesser
Title: Vice President

"SURETY"

Berkley Insurance Company

By: 
Cathy L. Woodruff
Its: Attorney-In-Fact

Address: Berkley Insurance Company

475 Steamboat Road

Greenwich, CT 06830

Telephone: (203) 542-3800

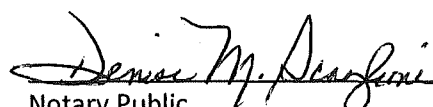
Facsimile: N/A

STATE OF OHIO }
 } SS:
COUNTY OF CUYAHOGA }

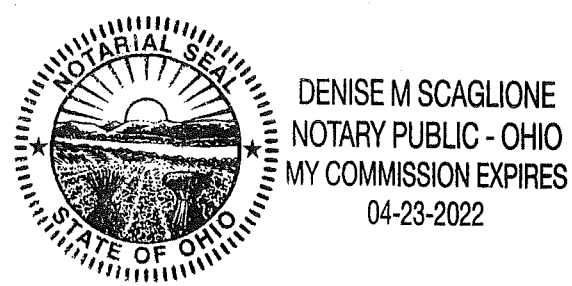
On May 9, 2019, before me, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared MATTHEW P. ELSESSER, known to me to be the Vice President of FC 5M H1 EXCHANGE LLC, a Delaware limited liability company, the Company described in and that executed the within and foregoing instrument, and known to me to be the person who executed the same instrument on behalf of said Company, and he duly acknowledged to me that such Company executed same.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my official seal, the day and year stated in this Certificate above.

My Commission Expires:
4-23-2022



Notary Public



State of OH }
County of Cuyahoga } ss:

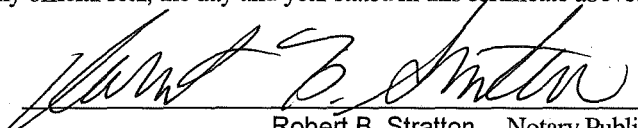
On 5/7/2019, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared

Cathy L. Woodruff

known to me to be Attorney-in-Fact of Berkley Insurance Company the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires My Commission Has No Expiration Date Section 147.03 O.R.C.


Robert B. Stratton Notary Public



ROBERT B. STRATTON
Attorney At Law
NOTARY PUBLIC
STATE OF OHIO
My Commission Has
No Expiration Date
Section 147.03 O.R.C.

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: Cathy L. Woodruff of Marsh USA, Inc. of Cleveland, OH its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed Fifty Million and 00/100 U.S. Dollars (U.S.\$50,000,000.00), to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 19th day of July, 2017.

Attest:

(Seal)

By Ira S. Lederman
Executive Vice President & Secretary

Berkley Insurance Company

By Jeffrey M. Hafter
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 19th day of July, 2017, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C. RUNDBAKEN
NOTARY PUBLIC
MY COMMISSION EXPIRES
APRIL 30, 2019

Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 7th day of May, 2019

(Seal)

Vincent P. Forte

WARNING - Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and verification instructions (on reverse) must be in blue ink.

EXHIBIT G-3

MONUMENT BOND

BOND NO.: 0209212
PREMIUM: \$175.00
Effective Date: May 7, 2019

MONUMENTATION BOND FOR SUBDIVISIONS

KNOW ALL MEN BY THESE PRESENTS THAT

WHEREAS, FC 5M H1 EXCHANGE LLC, a Delaware limited liability company, hereinafter called subdivider, is the developer of that certain subdivision commonly known as 5M Project Block H1 (Phase 1), and

WHEREAS, all monumentations have not yet been set related to 5M Project Block H1 (Phase I) San Francisco CA for said subdivision.

NOW, THEREFORE, we the Subdivider, as Principal, and Berkley Insurance Company as surety are held and firmly bound unto the City and County of San Francisco ("City") in the sum of twenty-five thousand dollars (\$25,000) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, if any or all or either of them, shall fail to pay any engineer or surveyor for the setting up of the monuments of the character and number and in the amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon the Bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the Judgment therein rendered.

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED that this bond shall ensure to the benefit of any and all persons, companies, and corporations entitled to file claims against it.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

And the said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the above referenced letter of agreement, or to the work to be performed thereunder, shall in any way affect its obligations on the Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Agreement or contract.

IN WITNESS WHEREOF this Instrument has been duly executed by the Principal and Surety above named on this 7th day of May, 2019.

PRINCIPAL

FC 5M HI EXCHANGE LLC,
a Delaware limited liability company

By: Matthew P. Elsesser

Name: Matthew P. Elsesser

Title: Vice President

SURETY

Berkley Insurance Company

By: Cathy L. Woodruff

Name: Cathy L. Woodruff

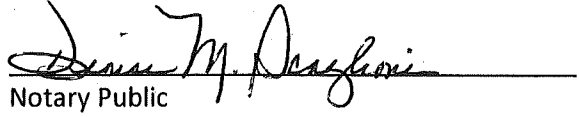
Title: Attorney-In-Fact

STATE OF OHIO }
 } SS:
COUNTY OF CUYAHOGA}

On May 9, 2019, before me, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared MATTHEW P. ELSESSER, known to me to be the Vice President of FC 5M H1 EXCHANGE LLC, a Delaware limited liability company, the Company described in and that executed the within and foregoing instrument, and known to me to be the person who executed the same instrument on behalf of said Company, and he duly acknowledged to me that such Company executed same.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my official seal, the day and year stated in this Certificate above.

My Commission Expires:
4-23-2022


Notary Public



DENISE M SCAGLIONE
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES
04-23-2022

State of OH }
County of Cuyahoga } ss:

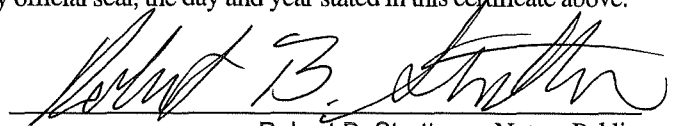
On 5/7/2019, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared

Cathy L. Woodruff

known to me to be Attorney-in-Fact of Berkley Insurance Company the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires My Commission Has No Expiration
Date Section 147.03 O.R.C.


Robert B. Stratton Notary Public



ROBERT B. STRATTON
Attorney At Law
NOTARY PUBLIC
STATE OF OHIO
My Commission Has
No Expiration Date
Section 147.03 O.R.C.

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: *Cathy L. Woodruff of Marsh USA, Inc. of Cleveland, OH* its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Fifty Million and 00/100 U.S. Dollars (U.S.\$50,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 19th day of July, 2017.

Attest:
By [Signature]
Ira S. Lederman
Executive Vice President & Secretary

Berkley Insurance Company
By [Signature]
Jeffrey M. Hafter
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 19th day of July, 2017, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA G. RUNDBAKEN
NOTARY PUBLIC
MY COMMISSION EXPIRES
APRIL 30, 2019

[Signature]
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 7th day of May, 2019.

(Seal)

[Signature]
Vincent P. Forte

WARNING - Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and verification instructions (on reverse) must be in blue ink.

EXHIBIT H

FORM NOTICE OF TERMINATION

RECORDING REQUESTED BY:

Bruce Storrs
City and County Surveyor
Department of Public Works
875 Stevenson Street, 4th Floor
San Francisco, CA 94103

WHEN RECORDED MAIL TO:

Property Owner
Street
City, State, Zip
Attention: Property Owner/person requesting

Space Above This Line for Recorder's Use

NOTICE OF TERMINATION AND RELEASE
OF
Public Improvement Agreement
(DOC-_____)

Insert Date

NOTICE OF TERMINATION AND RELEASE
OF
Public Improvement Agreement
(DOC- _____)

Notice is hereby given that the Public Improvement Agreement dated _____ and recorded _____ (Document No. _____, Receipt No. _____, Reel _____ Image _____) is hereby TERMINATED and RELEASED as it pertains to the real property situated on Assessor's Block _____ Lot _____ commonly known as [insert street address] (AKA _____) between _____ Street and _____ Street in the City and County of San Francisco (the "City"), State of California, and more fully described in Exhibit "A" to this Notice of Termination and Release (hereinafter referred to as the "Property").

The Public Improvement Agreement ("Agreement") was recorded to provide notice to future owners of the Property that the Subdivider, as defined therein is subject to certain public improvement and maintenance obligations relating to Final Map No. _____, recorded _____, in the Official Records of the City, as Document No. _____. Subdivider has completed the aforementioned public improvement obligations and satisfied the maintenance obligations per the Agreement as confirmed by the Director of the Department of Public Works based on _____. The Agreement is attached hereto as Exhibit "B".

The Agreement is hereby terminated.

Dated: _____ in San Francisco, California

OWNER

By: _____ By: _____

[Note owners signatures need to be notarized.]

APPROVED

Department of Public Works [or other affected Department]

By: _____
Director

APPROVED AS TO FORM

Dennis J. Herrera, City Attorney

By: John Malamut, Deputy City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to is situated in the City and County of San Francisco, State of California, and is described as follows:

[insert – final map lot description prior to execution]

Assessor's Lot ____; Block ____

EXHIBIT "B"

PUBLIC IMPROVEMENT AGREEMENT

[to be attached prior to execution]