

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:



City and County of San Francisco
Director of Property
25 Van Ness Avenue, Suite 400
San Francisco CA 94108

**EASEMENT AGREEMENT
(Public Sidewalk Easement)**

This Easement Agreement ("**Agreement**") is made by and between FC 5M H1 EXCHANGE, LLC, a Delaware limited liability company ("**Grantor**") and the City and County of San Francisco, a charter city and county ("**Grantee**"), dated for reference purposes as of May 6, 2019.

RECITALS

A. Grantor is the owner of that certain real property situated in the City and County of San Francisco, State of California, described as follows ("**Burdened Property**"):

Lot 1 of the Assessor's Block 8725, of that certain map entitled Phase 1 Final Map 8731 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. Being a Portion of 100 Vara Block 381 City and County of San Francisco, State of California, Recorded in Book ___ of Maps at Pages ___ to ___, inclusive in the Office of the Recorder of the City and County of San Francisco ("**Final Map**").

B. Grantee desires an easement for pedestrian access, ingress and egress for public sidewalk purposes over that portion of the Burdened Property described on Exhibit A (Legal Description) and shown on Exhibit A-1 (Plat Map) (the "**Easement Area**"), as an appurtenance to adjoining sidewalk areas owned by Grantee.

C. Grantor made an irrevocable offer of dedication of an easement to the Grantee on the Final Map for public sidewalk purposes, subject to the terms set forth in this Agreement, and Grantee accepted said offer.

D. This Agreement is entered into by Grantor and Grantee in order to provide the terms and conditions of the sidewalk easement across the Easement Area. All references in this Agreement to "**Grantor**" shall mean the then-existing fee owner of the Burdened Property, as changed from time to time, during its period of ownership.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt of which each of the parties hereto does hereby acknowledge, the parties hereto do hereby agree as follows:

1. Grant of Public Sidewalk Easement. Subject to the provisions of this Agreement, Grantor hereby grants to Grantee and its officers, employees, and agents, for the general benefit of the public, a nonexclusive, irrevocable easement solely for pedestrian access, passage, ingress and egress for public sidewalk purposes ("**Public Sidewalk Easement**"), over the Easement Area. The horizontal limits of the Easement Area are shown on Exhibit A and Exhibit A-1. The vertical limits of the Easement Area shall extend from the surface level of the private sidewalk to a height of eight (8) feet above said sidewalk surface. The Easement Area and the sidewalk and curb improvements shall be subject to the provisions of San Francisco Public Works Code Sections 706 et seq., or any successor ordinance concerning sidewalk maintenance.

2. Limitation on Use. Grantee acknowledges that the Public Sidewalk Easement is nonexclusive, and Grantor shall have the right to use the Easement Area in a manner that will not unreasonably impede the pedestrian use of the Easement Area for sidewalk purposes (i.e., that provides an unobstructed path of travel that is free from physical obstructions, excepting those improvements that have been approved for placement within the Easement Area by the Grantee). Nothing in this Agreement shall prevent Grantor from (a) constructing or installing any Required Infrastructure under the Public Improvement Agreement 5M Project Block H1 (Phase 1), or (b) performing such work as may reasonably be required to repair or maintain the Easement Area and Burdened Property, including any work to repair or maintain any utility facility located on the Burdened Property. Grantor shall maintain the Easement Area in good condition and repair, consistent with Public Works Code Section 706 (or any successor ordinance).

3. Term of Easement.

(a) Term. The Public Sidewalk Easement shall be perpetual, unless terminated in accordance with this Section 3.

(b) Termination. The Public Sidewalk Easement shall terminate, as to all or applicable portions of the Easement Area upon the earliest to occur of: (i) a written determination by the Grantee's Director of Public Works that the Public Sidewalk Easement (or a portion thereof) is no longer required by Grantee; and (ii) a written acceptance by Grantee, signed by both the Director of Property and the Director of Public Works, of a substitute easement that provides reasonable alternative access to the public. The access provided by any such alternative must, in the reasonable judgment of the Director of Public Works, be substantially equivalent in all respects (including, without limitation, the ease and ability to travel across any substitute easement area and continued access to all properties directly served by the easement or portion thereof being terminated, either alone or in conjunction with other access) to the easement or portion thereof being terminated. Upon any such termination, the parties agree to prepare, execute, and record a document reflecting the termination (and, if

applicable, the replacement easement). For Grantee, any such document shall be signed by the Director of Property (without action by the Board of Supervisors). The Public Sidewalk Easement shall not terminate before any such recordation.

4. Condition of the Burdened Property; As Is.

(a) Except as otherwise expressly set forth in this Agreement, (1) Grantor makes no representation or warranty regarding the current physical condition of the Burdened Property, and (2) Grantee accepts the Easement Area granted in its "as is" physical condition. Nothing in this Agreement shall be construed in any way to alter, amend, or otherwise relieve Grantor or Grantee of any of their respective responsibilities with regard to the physical condition of the Burdened Property (including without limitation, responsibilities with regard to environmental investigation and remediation) set forth in any document, instrument or other agreement.

5. No City Liability; Indemnity. Grantee, by acceptance of the Public Sidewalk Easement, shall not be liable for any injury or damage to any person happening on or about the Easement Area or the Burdened Property, or for any property or other damage on or about the Burdened Property, except only such injury or damage as is caused by the willful misconduct or active negligence of Grantee. Grantor shall defend, hold harmless and indemnify Grantee for all claims and losses resulting from (i) any personal injury or property damage occurring in the Easement Area (except to the extent caused by the willful misconduct or active negligence of City), and (ii) any default by Grantor under this Agreement. In no event shall Grantee's approval of any design or specification, or issuance of any permit, create any liability relative to the Burdened Property or be deemed an act of negligence or misconduct under this section.

6. Enforcement. Grantee, but not the general public, shall have all rights and remedies at law and in equity in order to enforce 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 Grantee under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

6. Time. Time is of the essence of each and every part of this Agreement.

7. Amendment. This Agreement may be amended or otherwise modified only in writing signed and acknowledged by Grantor and Grantee.

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

9. 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.

10. 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.

11. Notice. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier 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. For the convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed below or such other numbers as may be provided from time to time.

Grantor: FC 5M H1 EXCHANGE, LLC
c/o Brookfield Properties
875 Howard Street, Suite 330
San Francisco, California 94107
Attention: James Ostrom
Telefacsimile: (415) 836-5988

with copies to: Brookfield Properties
127 Public Square, Suite 3200
Cleveland, OH 44114
Attention: General Counsel
Telefacsimile: (216) 263-6206

Grantee: Director of Department of Public Works
Department of Public Works
City and County of San Francisco
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attention: [Infrastructure Task Force]
Telefacsimile: (415) 554-6177

with copies to: Office of the City Attorney
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attention: Public Works – General Counsel
Telefacsimile: (415) 554-4755

and to: Director of Real Estate
Real Estate Department
25 Van Ness Avenue, Suite 400
San Francisco, California 94108
Telefacsimile: (415) 552-9216

Any mailing address or telefacsimile number 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. A person may not give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, or a telefacsimile copy of the notice.

12. Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, including without limitation successors-in-interest of Grantor's fee interest in any of the Burdened Property.

13. Representations and Warranties. Grantor represents, warrants and covenants to Grantee the following:

(a) Good Standing. Grantor is a partnership duly organized, validly existing and in good standing under the laws of the State of California.

(b) Authority. Grantor is the sole fee owner of the Burdened Property, and Grantor has full power and authority to enter into this Agreement and to consummate the transactions contemplated by it. This Agreement has been duly authorized by all necessary action on the part of Grantor and no other action on the part of Grantor is necessary to authorize the execution and delivery of this Agreement.

14. Exclusive Benefit of Parties. The provisions of this Agreement are for the exclusive benefit of Grantor and Grantee and their successors, 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 Grantee.

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 that is the subject matter of this Agreement.

17. Compliance With Laws. Grantor shall comply with all applicable laws, statutes, ordinances, rules and regulations of federal, state and local authorities with respect to its use of the Easement Area.

18. Burden on Land. The Public Sidewalk Easement 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 Easement Area.

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

20. Notices Concerning Use. Grantor reserves the right to record, post and publish notices as referred to in Section 813, 1008 and 1009 of the California Civil Code; provided, that such notices shall not affect the rights and obligations of Grantor and Grantee hereunder and, where appropriate, any such notice shall include recognition of the provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on May 6, , 2019.

CITY AND COUNTY OF SAN FRANCISCO
a charter city and county

By: _____
ANDRICO PENICK
Director of Real Estate

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

By: Matthew Elbesser
Name: Matthew Elbesser
Its: EXECUTIVE VICE PRESIDENT

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By: John Malamut
JOHN MALAMUT
Deputy City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

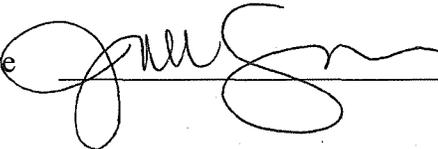
State of California)
County of San Francisco)

On May 6, 2019, before me, Julie Garduno, a Notary Public, personally appeared Matthew Elssesser, 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 

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 San Francisco)

On _____, before me, _____, a Notary Public, 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 _____

EXHIBIT A
[Easement Area]

Legal Description

S-9166
1-4-19
PAGE 1 OF 1

LEGAL DESCRIPTION

"PUBLIC SIDEWALK EASEMENT"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

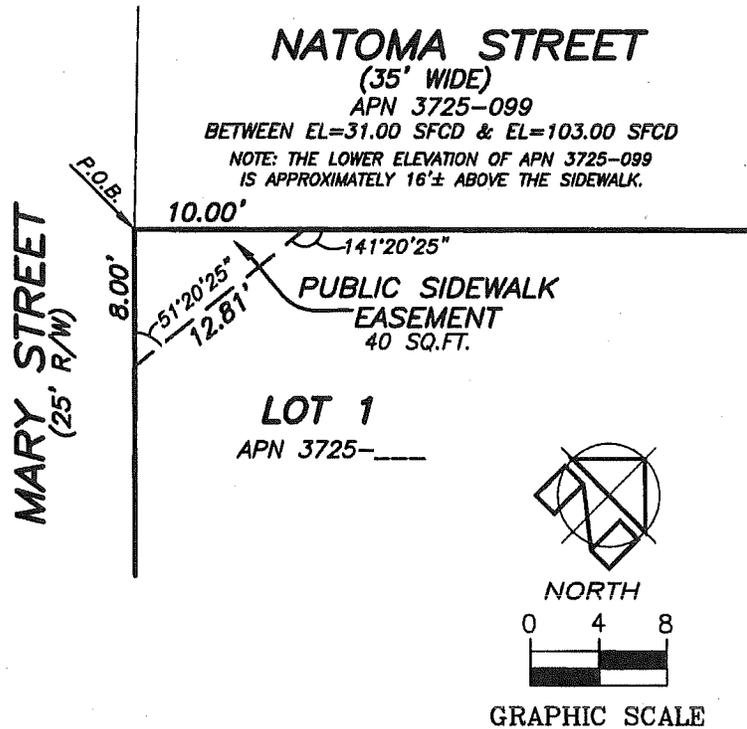
BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF NATOMA STREET (35 FEET WIDE) WITH THE NORTHEASTERLY LINE OF MARY STREET (25 FEET WIDE); THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF NATOMA STREET 10.00 FEET; THENCE AT A DEFLECTION ANGLE OF 141°20'25" TO THE RIGHT, 12.81 FEET TO A POINT ON SAID NORTHEASTERLY LINE OF MARY STREET DISTANT THEREON 8.00 FEET SOUTHEASTERLY FROM SAID SOUTHEASTERLY LINE OF NATOMA STREET; THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE OF MARY STREET 8.00 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 381



EXHIBIT A-1
[Easement Area]

Plat Map



LEGEND

P.O.B. POINT OF BEGINNING
 SFC D OLD SAN FRANCISCO CITY DATUM

GENERAL NOTES

1. ALL ANGLES ARE 90 DEGREES UNLESS NOTED OTHERWISE.
2. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

SUBJECT: PUBLIC SIDEWALK EASEMENT

BY DR CHKD. BR DATE 1-4-19 SCALE 1"=8' SHEET 1 OF 1 JOB NO. S-9166

MARTIN M. RON ASSOCIATES, INC.
 LAND SURVEYORS

859 HARRISON STREET
 SAN FRANCISCO, CA. 94107
 (415) 543-4500

S-9166/DWG/SIDEWALK EASEMENT S-9166 Phase 1 FM.dwg

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this easement agreement 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 Real Estate