

CONDITIONAL ASSIGNMENT OF WARRANTIES AND GUARANTIES

FOR VALUE RECEIVED, FC 5M H1 EXCHANGE, LLC, a Delaware limited liability company and FC 5M M2 EXCHANGE, LLC, a Delaware limited liability company, (each a “**5M Subdivider**” and together, “**5M Subdividers**”), do hereby conditionally assign to the City and County of San Francisco (acting by and through its agencies, boards, departments, and commissions) (collectively, “**City**”), to the extent permissible, all of the rights, title, and interest in and to any and all warranties and guaranties (individually a “**Warranty**”, and collectively, “**Warranties**”) applicable to the improvements set forth in Exhibit A and incorporated herein by this reference (the “**Acquisition Facilities**”).

This Conditional Assignment of Warranties and Guaranties (the “**Assignment**”) is being made in connection with Section 7 and Exhibit F of the 5M Project Block H1 (Phase 1) Public Improvement Agreement, dated June 4, 2019, and the 5M Project Block M-2 (Phase 2) Public Improvement Agreement, dated December 20, 2019 (each, a “**PIA**”).

The parties hereto agree that if the City or any of its respective successors and/or assigns exercise any right of repair, warranty, guaranty, or other right against either 5M Subdivider, if any, with respect to an Acquisition Facility which is also the subject of a Warranty, the 5M Subdivider, at its option, without any requirement that it do so, may enforce the Warranty. If the 5M Subdivider elects to enforce the Warranty, the 5M Subdivider shall provide notice to the City within ten (10) business days of receipt of notice that the City or any of its respective successors and/or assigns are exercising a right of repair, warranty, guaranty, and/or similar right with respect to the Acquisition Facility. If the 5M Subdivider fails to perform the work, as required by the PIA, demanded by the City following a reasonable opportunity to cure, the City shall have the sole right and privilege to enforce the Warranty. Sixty (60) days following receipt of the notice from the City shall be considered a reasonable opportunity to cure, unless the applicable work is not capable of being fully performed within such 60-day period, in which event the 5M Subdivider must have commenced a cure within such 60-day period and work diligently to complete the work within a reasonable time thereafter.

This Assignment shall be binding upon and inure to the benefit of the successors and assigns of the 5M Subdividers and the City.

A notice or communication under this Assignment by any party to any other party 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 City:

Director of Public Works
City and County of San Francisco
49 South Van Ness Avenue, Suite 1600
San Francisco, CA 94103
Reference: 5M Project

With a copy to:

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

And in the case of a notice or communication to the 5M Subdividers:

FC 5M H1 EXCHANGE, LLC
c/o Brookfield Properties
685 Market Street, Suite 500
San Francisco, CA 94105
Attn: James Ostrom

FC 5M M2 EXCHANGE, LLC
c/o Brookfield Properties
685 Market Street, Suite 500
San Francisco, CA 94105
Attn: James Ostrom

with a copy to:

Brookfield Properties
250 Vesey Street, 15th Floor
New York, New York 10281
Attn: Laurinda Martins

Perkins Coie LLP
505 Howard Street, Suite 1000
San Francisco, CA 94105
Attn: Garrett Colli

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 Assignment 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.

This Assignment may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument.

The terms of this Assignment may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

The waiver or failure to enforce any provision of this Assignment shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of California.

Nothing in this Assignment shall be construed in any way to alter, amend or otherwise relieve the 5M Subdividers of their warranty or guaranty responsibilities, with respect to any improvements, under the 5M Project documents or subsequent permits.

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed as of the ___ day of _____, 2022.

FC 5M H1:

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

DocuSigned by:
By: James Ostrom EVP
Name: James Ostrom
Its: Authorized Signatory

FC 5M M2:

FC 5M M2 EXCHANGE, LLC,
a Delaware limited liability company

DocuSigned by:
By: James Ostrom EVP
Name: James Ostrom
Its: Authorized Signatory

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

DocuSigned by:
By: Carla Short
Name: Carla Short
Its: Interim Director of Public Works

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

DocuSigned by:
By: Austin Yang
Name: Austin Yang
Its: Deputy City Attorney

Exhibit A

Acquisition Facilities

The facilities include the Phase 1 and Phase 2 Public Infrastructure constructed or installed by or on behalf of the 5M Subdividers pursuant to Street Improvement Permit Nos. 18IE-0725 and 18IE-0726, approved on March 18, 2021, as modified by Instructional Bulletin (“IB”) #1, dated September 4, 2021, and IB #2, dated June 23, 2021, for said improvements, and the improvement plans and specifications described therein.