

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

San Francisco Public Utilities Commission
City and County of San Francisco
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attn: Real Estate Director

WITH A CONFORMED COPY TO:
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property



Doc # **2022089706**

City and County of San Francisco
Joaquin Torres, Assessor – Recorder

9/26/2022	1:31:14 PM	Fees	\$0.00
Pages 14	Title 087 AM	Taxes	\$0.00
Customer 022		Other	\$0.00
		SB2 Fees	\$0.00
		Paid	\$0.00

(Space above for Recorder's use only)

EASEMENT DEED

Free recording in accordance with California
Government Code Section 27383.

(SFPUC Facility Easement)

(Portion of Block 3725, Lot 127)

44 MARY STREET

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, FC 5M M2 Exchange, LLC, a Delaware limited liability company (“Grantor”), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City” or “Grantee”), acting by and through its Public Utilities Commission (“SFPUC”), a facility easement in, across, and through Grantor’s real property, which is located in San Francisco, California, and described in the legal description attached as Exhibit A (the “Easement Description”) and depicted on the attached as Exhibit B (the “Easement Area”), which shall be referred to hereinafter as the “Easement.”

1. Nature of Easement. The Easement is a perpetual non-exclusive easement in gross including (a) the right to construct, inspect, install, operate, maintain, repair, restore, remove, replace, alter, expand, and reconstruct, from time to time, at Grantee’s option, within the Easement Area, SFPUC-owned concrete foundations for lighting, streetlight poles, underground electric power facilities and all necessary or desirable substructures, accessories and appurtenances thereto, including, without limitation, wires, fibers, cables, conductors, conduits, switches and vaults (collectively, “Grantee’s Facilities”); (b) the right to excavate and to access Grantee’s Facilities from the surface of the ground, with not less than thirty feet (30’) of vertical clearance above the surface to permit the installation and removal of Grantee’s Facilities from the surface; (c) the right of ingress to and egress from, for Grantee’s and its representatives’ agents’, employees’, officers’, suppliers’, consultants’, contractors’, and subcontractors’ (collectively, “Grantee’s Agents”) vehicles and equipment, the Easement Area over the lands of Grantor; (d) the right to a three foot (3’), unobstructed clearance from the streetlight pole, as depicted on Exhibit B, to allow Grantee and Grantee’s Agents sufficient room to repair construct, inspect, install, operate, maintain, repair,

restore, remove, replace, alter, expand, and reconstruct Grantee's Facilities from time to time; and (e) the right to place temporary electrical facilities and equipment aboveground when needed in connection with any emergency or repair work, as needed to maintain continuous street lighting service (provided that any such temporary above-ground electrical facilities or equipment shall be maintained only so long as needed to address the emergency or perform the repair work). The Easement Area is a portion of Grantor's real property, as described in the legal description attached to this Agreement as Exhibit C (the "**Property**").

2. Grantor's Reserved Rights. Grantor, on behalf of itself, its agents, contractors, subcontractors, suppliers, consultants, employees, invitees or other authorized persons acting for or on behalf of Grantor, including, but not limited to, any lessee and its tenants (collectively, "**Grantor's Agents**"), reserves the right to use the Property and the Easement Area, in any way not inconsistent with the above grant of Easement, subject to the following:

a. Grantor shall not use the Easement Area or permit the same to be used for any purpose or in any manner that will interfere with the proper use, function, maintenance, repair, replacement of, or access to any of Grantee's Facilities.

b. Grantor shall not use the Easement Area for the erection of any improvement that will damage, interfere with, or endanger the proper use, function, maintenance, repair or replacement of any of Grantee's Facilities without the prior written authorization of the SFPUC General Manager (the "**General Manager**").

c. In the event that Grantor elects to construct and maintain fences on or around the Easement Area, Grantor shall provide for Grantee's immediate right of access to the Easement Area without prior notice or authorization to Grantor. Fence design, location, and construction method for any fence that Grantor locates on or over Grantee's Facilities shall require the General Manager's prior written consent.

d. Grantor may plant low shrubs in the Easement Area, provided that their roots or underground growth shall not have the potential to damage Grantee's Facilities. Grantor shall not plant trees or plants with invasive roots in the Easement Area except in movable planters.

e. Grantor shall not cause or allow any structures of any kind to be constructed, placed or maintained on, over, under, along, within, or across the Easement Area.

f. No excavation, grading, installation of improvements or any activity that has the potential to compromise the integrity of the concrete foundation or the stability of the light pole shall occur on the Easement Area without the prior written consent of the City. Upon completion of any approved excavation, grading, installation of improvements within or around the Easement Area (including, but not limited to, any Major Work or Ordinary Maintenance and Repair) by Grantor, Grantor shall, at its cost, backfill the excavation and restore the surface as follows: Where the disturbed surface area is paved, Grantor shall restore the surface area with the same paving treatment that existed prior to the excavation (e.g., City-standard concrete or pavers as applicable).

g. Grantor shall indemnify, defend (with counsel reasonably approved by Grantee and Grantee's Agents), and hold Grantee harmless from and against any cost, expense,

liability, damage to property or injury or death of any person caused by Grantor's negligence or willful misconduct (or that of Grantor's Agents) in the observation or performance of any terms, covenants, or conditions contained herein to be observed or performed by Grantor, hereunder. Notwithstanding anything herein to the contrary, this Section 2(g) shall survive the expiration and termination of this Easement

h. The Grantee's Facilities that are located underground require a minimum 18" depth of cover. Grantor must not decrease the depth of cover over the Grantee's Facilities that are located underground.

i. Grantor shall not allow any portion of the Easement Area to be designated as the sole accessible path of travel through the Property or as the sole accessible ingress or egress from any adjacent property.

3. Grantee's Use of the Easement.

a. Grantee's rights under this Deed may be exercised by Grantee's Agents.

b. Grantee will own Grantee's Facilities installed in the Easement Area and will bear all responsibility to operate, maintain and repair the same at its sole cost, except to the extent any damage or cost is caused or necessitated by Grantor or Grantor's Agents, in which case Grantor shall bear such proportional cost and repair or pay for such damage, at Grantee's discretion. Grantee may elect to repair such damage at Grantor's cost, or may elect to witness Grantor's repair work. Any cost incurred by the Grantee that is caused or necessitated by Grantor or Grantor's Agents shall be invoiced to Grantor within twelve (12) months of the date the cost is incurred. Grantor shall remit payment to the Grantee within sixty (60) days of receiving an invoice.

c. Prior to commencing any Major Work, as defined below, Grantee shall provide Grantor with at least sixty (60) days' prior written notice. Prior to commencing any Ordinary Maintenance and Repair, as defined below, that requires excavation in the Easement Area, Grantee will provide Grantor with at least fifteen (15) days' prior written notice. Notwithstanding the foregoing, in the event of an emergency, Grantee shall not be obligated to provide Grantor with any notice. The term "**Major Work**" means work in the Easement Area that cannot be reasonably expected to be completed within three (3) consecutive days. The term "**Ordinary Maintenance and Repair**" means work in the Easement Area that can be reasonably expected to be completed within three (3) consecutive days.

d. In undertaking work within the Easement Area, Grantee shall use reasonable efforts to (i) complete all construction, maintenance or repair activities in an expeditious and diligent manner; and (ii) minimize disruption to Grantor's use of Grantor's land adjoining the Easement Area. Grantee shall not be liable in any manner, and Grantor hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Grantee's entry onto or use of the Easement Area, except to the extent resulting directly from the gross negligence or willful misconduct of Grantee or its contractors or agents, or Grantee's breach of its covenants in this Deed.

e. Upon completion of any construction, maintenance or repair involving excavation within or around the Easement Area (including, but not limited to, any Major Work or

Ordinary Maintenance and Repair) by Grantee, Grantee shall, at its cost, backfill the excavation and restore the surface in accordance with the terms of this Section. Where the disturbed surface area is paved with concrete, Grantee shall restore the area with three-inch (3") thick Portland cement concrete or its cost equivalent. Where the disturbed surface area is paved with pavers or other enhanced paving treatment, Grantee will coordinate with Grantor to allow for Grantor to restore the enhanced paving treatment; provided, however, that if Grantor fails to respond within three (3) business days or to complete such restoration within ten (10) business days, Grantee will restore the area with three-inch (3") thick asphalt. Grantee shall not be liable for damage to, or required to restore, any other improvements or vegetation within the Easement Area. Grantee shall not be responsible for the cost of removing, restoring or replacing any improvements previously installed by Grantor pursuant to the General Manager's authorization as described in **Section 2** (Grantor's Reserved Rights) above. In an emergency, Grantee may remove any such improvements without notice, liability, or obligation to replace the same. In a non-emergency, Grantee shall provide a minimum of ten (10) business days' notice to Grantor to remove such improvements prior to Grantee commencing work within the Easement Area.

f. Notwithstanding the foregoing subsection 3(e) above, or any contrary provision contained herein, Grantee may remove any improvements that may damage or interfere with Grantee's Facilities or impede access thereto without any notice, liability, or obligation to replace the same. The foregoing sentence shall not apply to any improvements constructed pursuant to improvement plans previously reviewed and approved by Grantee.

g. Grantee shall indemnify, defend (with counsel reasonably approved by Grantor and Grantor's Agents), and hold Grantor harmless from and against any cost, expense, liability, damage or injury to property or persons caused by Grantee's negligence or willful misconduct (or that of Grantee's Agents) in the exercise of the rights granted to, or reserved by, Grantee, hereunder. Notwithstanding anything herein to the contrary, this Section 3(g) shall survive the expiration and termination of this Easement.

4. Restoration. If the surface of the Easement Area is disturbed by Grantee's use of the Easement, Grantee shall, at Grantor's election, restore the surface to Base Conditions or the cost equivalent. "**Base Conditions**" is defined as three-inch (3") thick Portland cement concrete, for areas paved with City-standard concrete, and three-inch (3") thick asphalt for areas paved with pavers or other enhanced hardscape. Special finishes, structures, and surface improvements (including irrigation lines) removed or damaged in connection with Grantee's activities performed in accordance with the terms of this Easement will not be replaced by Grantee. Grantee shall not be held liable for any damage to plants, vegetation or any other surface improvement aside from Base Conditions or the cost equivalent in the Easement Area that may occur as a result of Grantee's activities performed in accordance with the terms of this Easement.

5. Condition of Easement Area. Grantee accepts its rights in the Easement Area in its current "as is" condition without any warranty (express or implied) by Grantor. Grantor and Grantee shall conduct all of their respective activities within the Easement Area in a manner such that the Easement Area remains in a good, safe condition.

6. Notices, Demands and Communications. Whenever any notice or any other communication is required or permitted to be given under any provision of this Deed (as, for

example, where a party is permitted or required to “notify” the other party), such notice or other communication shall be in writing, signed by or on behalf of the party giving the notice or other communication, and shall be deemed to have been given on the earliest to occur of (i) the date of the actual delivery, or (ii) if mailed, on the delivery date shown on the return receipt, in each case to the respective address(es) of the party to whom such notice is to be given as set forth below, or at such other address of which such party shall have given notice to the other party as provided in this Section 5. Legal counsel for any party may give notice on behalf of such party.

If to Grantor, to: FC 5M M2 Exchange, LLC
430 Natoma Street
San Francisco, CA 94103
Attn: Swathi Bonda

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

If to City, to: San Francisco Public Utilities Commission
General Manager
525 Golden Gate Avenue, 13th Floor
San Francisco, California 94102

with a copy to: San Francisco Public Utilities Commission
Real Estate Services Division
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director

and with a copy to: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton R. Goodlett Place
San Francisco, California 94102
Attn: Real Estate/Finance Team

7. Abandonment of Easement. Grantee may, at its sole option, abandon the Easement by recording a quitclaim deed. Except as otherwise provided in this Deed, upon recording such quitclaim deed, the Easement and all rights, duties and liabilities hereunder shall be terminated and of no further force or effect. No temporary nonuse of the Easement Area or other conduct, except for recordation of the quitclaim deed as provided in this Section shall be deemed abandonment of the Easement.

8. Exhibits. The exhibits referenced in and attached to this Deed are incorporated into and made a part of this Deed.

9. Runs with the Land. The conditions and covenants contained in this Deed shall run with the land, burden the Easement Area and be binding on and inure to the benefit of Grantor and Grantee and their respective agents, successors and assigns unless earlier terminated by written agreement of the parties or their respective successors and assigns.

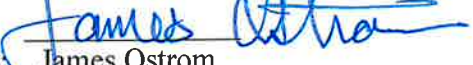
10. Counterpart Signatures. This instrument may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

[Continued]

Executed as of this 22 day of April, 2022.

GRANTOR:

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

By: 
Name: James Ostrom
Title: Authorized Signatory

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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 April 22, 2022 before me, Julie Garduno
(insert name and title of the officer)

personally appeared James Ostram
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



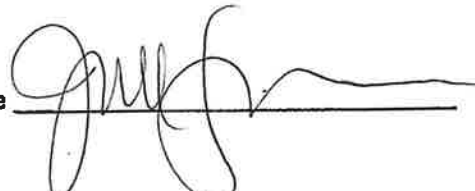
Signature  (Seal)

EXHIBIT A

Description of Easement Area

"STREETLIGHT EASEMENT AREA"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF LOT 2, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "FINAL MAP 10101, 5M PROJECT, PID 8731-PHASE NO. 2" FILED DECEMBER 23, 2019 IN BOOK 138 OF CONDOMINIUM MAPS, AT PAGES 27-29, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL ONE

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF MARY STREET (20.00 FEET WIDE), DISTANT THEREON 108.30 FEET NORTHWESTERLY FROM THE MOST EASTERLY CORNER OF SAID LOT 2; THENCE NORTHWESTERLY ALONG SAID LINE OF MARY STREET 6.00 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 0.60 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 6.00 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 0.60 FEET TO THE POINT OF BEGINNING.

PARCEL TWO

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF MARY STREET (20.00 FEET WIDE), DISTANT THEREON 11.90 FEET NORTHWESTERLY FROM THE MOST EASTERLY CORNER OF SAID LOT 2; THENCE NORTHWESTERLY ALONG SAID LINE OF MARY STREET 6.00 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 4.15 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 6.00 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 4.15 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK 3725



EXHIBIT B

Plat of Easement Area



MAP REFERENCES

- 1. "FINAL MAP 8731, 5M PROJECT, PID 8731-PHASE NO. 1" FILED JUNE 11, 2019 IN BOOK 136 OF CONDOMINIUM MAPS, AT PAGES 7-12.
- 2. "FINAL MAP 10101, 5M PROJECT, PID 8731-PHASE NO. 2" FILED DECEMBER 23, 2019 IN BOOK 138 OF CONDOMINIUM MAPS, AT PAGES 27-29.

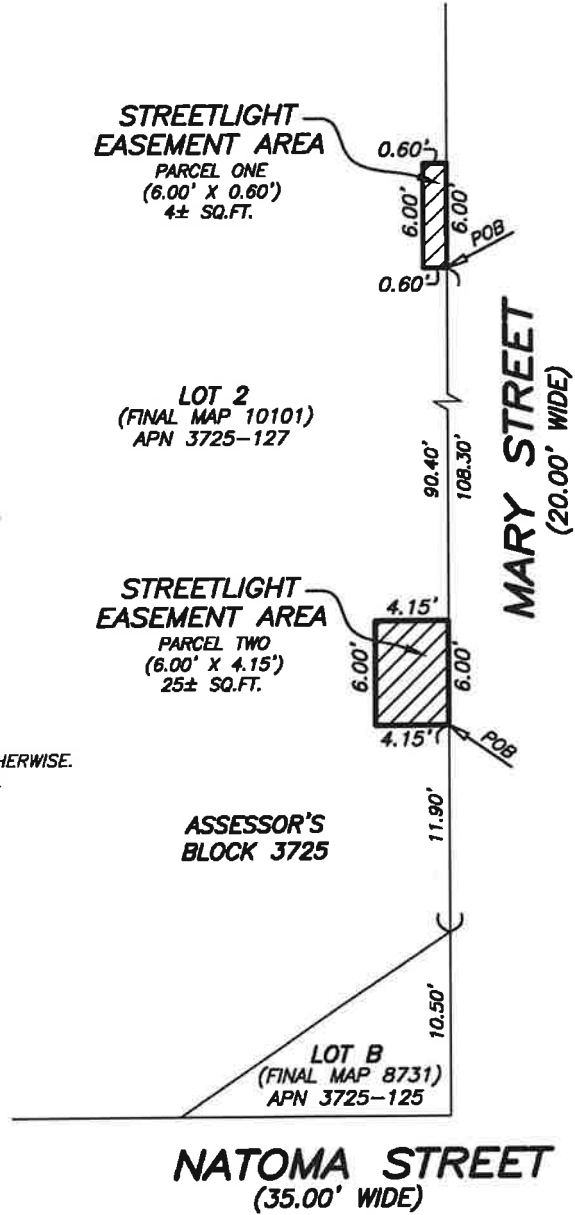
LEGEND

APN ASSESSOR'S PARCEL NUMBER
POB POINT OF BEGINNING

 EASEMENT AREA

GENERAL NOTES

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



ASSESSOR'S BLOCK 3725
SAN FRANCISCO, CA.

SUBJECT: **STREETLIGHT EASEMENT**

BY DR CHKD. DR DATE 11-29-21 NOT TO SCALE 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

EXHIBIT C

Description of Grantor's Property

Lots 2, B and C, as shown and delineated on the Final Map 10101, filed December 23, 2019, in Book 138 of Condominium Maps, Pages 27-29.

APN: Lots 125, 126, 127, Block 3725

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this Easement Deed, dated April 22, 2022, to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Ordinance No. 206-15, approved December 1, 2015, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: September 15, 2022

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: COUNTER SIGNED
Andrico Q. Penick
Director of Property

RECOMMENDED by San Francisco Public Utilities Commission

By: Dennis Herrera
6649F304C40A4DA
Dennis J. Herrera
General Manager

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: Vincent Brown
DocuSigned by:
5D88F562E4274BB
Vincent L. Brown
Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:


By: Katharine Anderson
DocuSigned by:
9B46266D6122465
Katharine S. Anderson, PLS
City and County Surveyor

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this Easement Deed, dated April 22, 2022, to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' ^{Ordinance} Resolution No. 206-15, approved December 1, 2021, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: September 15, 2022

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 
Andrico Q. Penick
Director of Property

RECOMMENDED by San Francisco Public Utilities Commission

By: COUNTERSIGNED
Dennis J. Herrera
General Manager

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: COUNTERSIGNED
Vincent L. Brown
Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:

By: COUNTERSIGNED

ACKNOWLEDGMENT

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 September 15, 2022 before me, Rachel Gosiengfiao, notary public
(insert name and title of the officer)

personally appeared Andrico Q. Penick
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 Rachel Gosiengfiao (Seal)

