

MISSION BAY SOUTH BLOCKS 29-32
PUBLIC IMPROVEMENT AGREEMENT

This Mission Bay South Blocks 29-32 Public Improvement Agreement for construction of certain public improvements (the "**Agreement**") is entered into this ____ day of _____, 2016, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation of the State of California (the "**City**") and GSW ARENA LLC, a Delaware limited liability company ("**Subdivider**"), with reference to the following facts.

Except as specifically defined herein, capitalized terms shall have the meaning given in the Subdivision Code of the City and County of San Francisco for the Mission Bay Project Area, including the Mission Bay Subdivision Regulations (the "**Code**"), or the Mission Bay South Redevelopment Plan (the "**Redevelopment Plan**"), or the Redevelopment Plan's implementing documents.

RECITALS

A. Catellus Development Corporation, a Delaware corporation ("**Catellus**"), was the owner of certain property, including Block 8722 Lot 1 as shown in that certain Final Map entitled "Mission Bay Transfer Map filed for record on July 19, 1999 in Book Z of Maps, at Pages 97-119" and Lot 8 as described in that certain Quitclaim Deed recorded on December 11, 2002 as Instrument No. 2002-H309023 (the "**Property**"). Effective on December 1, 2003, Catellus merged with and into Catellus Operating Limited Partnership, a Delaware corporation ("**COLP**"). Effective December 31, 2003, COLP contributed certain properties, including the Property, and all of its right, title, interest and obligations with respect thereto, to Catellus Land and Development Corporation ("**CLDC**"). CLDC, as seller, and ARE-SAN FRANCISCO NO. 16, LLC, a Delaware limited liability company ("ARE-SF 16"), as buyer, entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated October 1, 2004 (the "ARE PSA"), pursuant to which CLDC transferred the Property and all of its right, title, interest

and obligations with respect thereto to ARE-SF 16 [Please provide City with documentation]. On October 28, 2010, ARE transferred the Property, and all of its right, title, interest and obligations with respect thereto, to Bay Jacaranda No. 2932, LLC, a Delaware limited liability company ("**Jacaranda**"). On October 9, 2015, Jacaranda transferred the Property, and all of its right, title, interest and obligations with respect thereto, to Subdivider.

B. The Redevelopment Agency of the City and County of San Francisco (the "Former Agency") and Catellus Development Corporation, a Delaware corporation ("Catellus") entered into that certain The Mission Bay South Owner Participation Agreement dated as of November 16, 1998 and recorded December 3, 1998 as Document No. 98-G477258-00 in the Official Records (as amended from time to time, the "**South OPA**").

C. On February 1, 2012, the Former Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("**AB 26**"), codified in relevant part in California's Health and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, 153 Cal.4th 231 (2011). On June 27, 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) ("**AB 1484**") (together, AB 26 and AB 1484, as amended from time to time, are referred to as the "**Redevelopment Dissolution Law**"). Pursuant to the Redevelopment Dissolution Law, all of the Former Agency's assets and obligations were transferred to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California (the "**Successor Agency**"), commonly known as the Office of Community Investment and Infrastructure. Accordingly, the Successor Agency assumed the obligations under the Mission Bay South Redevelopment Plan and the South OPA, which remain in effect.

D. Under the Redevelopment Dissolution Law, a successor agency has the continuing obligation, subject to certain review by an oversight board and the State of

California's Department of Finance ("**DOF**"), to implement "enforceable obligations" which were in place prior to the suspension of such redevelopment agency's activities on June 28, 2011, the date that AB 26 was approved. The Redevelopment Dissolution Law defines "enforceable obligations" to include bonds, loans, judgments or settlements, and any "legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy" (Cal. Health & Safety Code § 34171(d)(1)(e)), as well as certain other obligations, including but not limited to requirements of state law and agreements made in reliance on pre-existing enforceable obligations. The South OPA meets the definition of "enforceable obligations" under the Redevelopment Dissolution Law.

E. In connection with the transfer of the Property from CLDC to ARE, CLDC, ARE and the Successor Agency entered into that certain Assignment, Assumption and Release Agreement, dated October 29, 2004 and recorded as Instrument No. 2004-H841649-00 in the Official Record (as the same has been assigned from time to time, the "**Master Developer Assignment**"). Through the Master Developer Assignment, FOCIL MB, LLC ("**FOCIL**") assumed the obligation of CLDC under the ARE PSA to be responsible for constructing certain public infrastructure within the existing and future public streets adjacent to (but not within) the Property.

F. A tentative map, entitled "Tentative Final Map 8593" for the proposed subdivision was approved by the Director (the "**Director**") of San Francisco Public Works ("**Public Works**"), acting as the Advisory Agency, subject to certain requirements and conditions contained in the conditions of approval dated November 12, 2015 as Public Works Order No. 184,253. On December 8, 2015, in Motion No. M15-0179, the Board of Supervisors rejected an appeal of the tentative map and upheld the tentative map decision and made findings under the California Environmental Quality Act. As part of the environmental findings, the Board of Supervisors identified mitigation measures that are applicable to the work contemplated in this Agreement and are conditions on the work provided in accordance with this Agreement. The tentative map and conditions of approval are referenced herein as "**Tentative Map**".

G. Pursuant to the provisions of the Code relating to the filing, approval, and recordation of subdivision maps, Subdivider submitted to the City, for approval and recordation, a Final Map entitled: "Final Map No. 8593" (the "**Final Map**"). The Final Map is a final map for development purposes for the Property.

H. The Code provides that before a final subdivision map or parcel map is approved by the City, the subdivider shall either have installed and completed all of the public improvements required by the City and detailed in the plans and specifications approved by the Director, or in the alternative, the subdivider shall have entered into an agreement with the City to install and complete, free of liens, all of such public improvements within a definite period of time as prescribed by the City, which agreement shall be guaranteed by approved improvement security to insure the performance of the work pursuant to the requirements of the Code.

I. Subdivider has requested that the Final Map be approved prior to the completion of construction and installation of the public improvements required by the conditions of approval of the Tentative Map and which are a part of or appurtenant to the above mentioned subdivision, including the improvements retained by FOCIL as described in Recital E above. Consistent with the Excluded Rights and Obligations retained by FOCIL under the Master Developer Assignment and as more particularly described in the ARE PSA, FOCIL is undertaking as an obligation to Subdivider (as assignee of certain provisions of the ARE PSA) the obligations relating to or arising hereunder in connection with the required infrastructure.

J. Subdivider, in consideration of the approval and recordation of the Final Map by the City, desires to enter into this Agreement providing that Subdivider shall install and complete, or cause to be installed and completed, the Required Infrastructure, as defined below, in connection with the proposed subdivision as depicted on the applicable Plans and Specifications (as those terms are defined below).

K. FOCIL and the Agency have agreed to the Financing Plan for the financing, among other things, of the acquisition, construction and installation of Infrastructure, as more particularly defined in the Infrastructure Plan. FOCIL and

Agency have entered into an Acquisition Agreement in accordance with the Financing Plan, for the payment for and acquisition by the City of the Acquisition Facilities and Components of Acquisition Facilities (as same are defined therein), in accordance with the South OPA.

L. On December 15, 2015, the Board of Supervisors adopted Ordinance No. 231-15, which it delegated to the Director the right to: (A) accept the required but as yet unfinished public improvements when such improvements have been constructed in accordance with the Project Plans and Specifications and all City codes, regulations, standards, and Mission Bay South Redevelopment Plan and Plan Documents governing this development and such improvements are ready for their intended use; (B) acknowledge the Conditional Assignment of Warranties and Guaranties on behalf of the Board of Supervisors in accordance with the Mission South Acquisition Agreement when the Director of Public Works determines that the improvements have been inspected and are ready for their intended uses; (C) dedicate to public use the lot known as Assessor Block 8722/Lot 7 and designate it for street and roadway purposes, and accept the improvements thereon for City maintenance and liability purposes; and (D) take all other official acts necessary for or related to acceptance of the public improvements.

M. This Agreement also sets forth Subdivider's obligation to maintain and repair the Required Infrastructure until Accepted by the City, subject to the applicable warranty period.

NOW, THEREFORE, in order to ensure satisfactory performance of Subdivider's obligations under the Code, and in consideration of the approval and recordation by the City of the Final Map (including the dedications related thereto), the implementation of the conditions of approval of the Tentative Map, and other valuable consideration, Subdivider and City agree as follows:

1. Subdivider's Obligations.

(a) Required Infrastructure. Subdivider shall in a good and workmanlike manner furnish all necessary materials and complete the public infrastructure improvements described in the approved Improvement Plans as defined in Exhibit "A" to this Agreement and in conformity with Section 1(b) hereof at Subdivider's own expense (the "Required Infrastructure").

(b) Other Obligations. Per the Tentative Map Conditions of Approval, SFPUC Wastewater Enterprise, Condition 3, "Subdivider shall comply with Mitigation Measure M-C-UT-4: Fair Share Contribution for Mariposa Pump Station Updates that requires the Subdivider to pay its fair share for improvements to the Mariposa Pump Station and associated wastewater facilities required to provide adequate sewer capacity within the project area and serve the project as determined by the SFPUC. The contribution shall be in proportion to the wastewater flows from the proposed project relative to the total design capacity of the upgraded pump station(s). The City will record a Notice of Special Restrictions on the property that requires that the parties enter an agreement for the payment for the Fair Share Contribution and agreement for a formula for the calculation thereof. The NSR shall be recorded prior to the closing on the sale of any lot to a third party other than the owner as shown on the final map or the first TCO, whichever first occurs.

(c) Completion. Subdivider shall complete the Required Infrastructure within two (2) years following the recordation of the Final Map, and in all cases prior to the issuance of the first certificate of occupancy for any structure on the Property. The periods of time provided in this Section 1(d) may be extended upon application by Subdivider and approval by the Executive Director of the Successor Agency and the Director of Public Works. In reviewing such application for an extension of time, the Executive Director of the Successor Agency and the Director of Public Works shall consider reasonable construction methodology, scheduling, access and storage requirements for each adjacent project.

(d) As-Built Plans. Following the completion of the Required Infrastructure, Subdivider shall furnish to Public Works and, if requested, the City Department of Building Inspection, as-built plans of the Required Infrastructure in both electronic in autocad format acceptable to the Director and paper formats and any reports required by any related Plans and Specifications.

(e) Stormwater Treatment. Stormwater Treatment shall meet, to the extent applicable, all Federal, State and Local regulations, including any applicable requirements of the NPDES Phase II General Permit (August 2004), and SFPUC Stormwater Design Guidelines (January 2010) as may be amended or revised. Such requirements shall be met through acceptable Best Management Practices ("BMPs") and a Stormwater Control Plan, as applicable, and as approved by the SFPUC through further design and development.

(f) SFPUC Cooperation. SFPUC has requested FOCIL to undertake the design and construction of a portion of a new SFPUC project described as the Bay Corridor Transmission and Distribution ("BCTD") at SFPUC expense, which includes electrical ducts, vaults and appurtenances within portions of 16th Street, Illinois Street and Terry Francois Boulevard fronting or in proximity to the Property. In the event that SFPUC and FOCIL enter into an agreement governing the parties' respective obligations with respect to the design, construction and reimbursement for the BCTD, Subdivider will, at SFPUC's cost and at no cost to Subdivider, cooperate with both parties as reasonably necessary to allow completion of the BCTD concurrently with the Required Infrastructure and in accordance with the terms of such agreement.

2. Improvement Security.

(a) Security for the Required Infrastructure. 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 and any co-obligees designated therein, substantially in the form attached as Exhibit "B", which shall be acceptable to the City Attorney, securing the installation and completion of the Required Infrastructure as follows (collectively, the "Security"):

(i) A performance bond in the amount of Seventeen Million Three Hundred Eighty-Three Thousand Two Hundred Fourteen and 00/100 Dollars (\$17,383,214.00) (100% of the estimated "hard" cost of completion of construction and installation of the Required Infrastructure and reasonable additional contingencies, changes and modifications thereto) to secure the satisfactory performance of Subdivider's obligation to complete the Required Infrastructure; and

(ii) A labor and material bond in the amount of Eight Million Six Hundred Ninety-One Thousand Six Hundred Seven and 00/100 Dollars (\$8,691,607.00) (50% of the estimated "hard" cost of completion of construction and installation of Required Infrastructure, and reasonable additional contingencies, changes and modifications thereto) to secure payment to Subdivider's contractor, and to subcontractors and persons furnishing labor, materials, equipment or services, for construction or installation of the Required Infrastructure.

(b) Other Acceptable Security. In lieu of providing any of the Security described in Sections 2(a) or 3(c), Subdivider may, subject to the approval of the Director, provide a deposit or other security as described in Section 66499 of the Government Code. Security shall be provided hereunder only to the extent that the projected Acquisition Funds are reasonably determined by the Director (in consultation with the Successor Agency, as appropriate), to be insufficient (in time or amount) to pay the expected Acquisition Prices of the Acquisition Facilities.

(c) Use of Security. If, after commencement thereof, any portion of the Required Infrastructure is not completed within the time periods specified in Section 1(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 provided for such portion of the Required Infrastructure may, by resolution of the Board of Supervisors, be used by the City for completion of such Required Infrastructure in accordance with the applicable Plans and Specifications and for correction of such deficiencies.

3. Construction of Required Infrastructure.

(a) Permits and Fees. Subdivider shall not perform any work subject to this Agreement until all required permits have been obtained for the portion of work involved, and all applicable fees, including inspection and testing fees, have been paid.

(b) Extensions.

(i) Extensions Generally. If any of the Required Infrastructure is not completed within the time periods specified in Section 1(d), the Subdivider may request extensions of time, by submission of a request(s) to the Director. A request shall be in writing, state adequate evidence to justify the extension, and shall be made not less than thirty (30) days prior to expiration of the applicable time period set forth in this Agreement or any extension thereof. The Director shall in good faith attempt to determine within such time whether an extension of time shall be granted. 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 period for completion under this Agreement shall be automatically extended for the period during which a request for an extension is pending a determination by the Director or for any "**Unavoidable Delay**" as provided in Section 3(b)(ii) and in Section 8(c). The Director shall not unreasonably withhold or delay 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 as provided in the Code Section 1451.1.C(3). No extension approved hereunder shall relieve the surety's liability on the bond to secure the faithful performance of this Agreement.

(ii) The periods of time for performance under this Agreement shall be extended for Unavoidable Delay, as provided below, and as further provided in Section 8(c), associated with permit processing, including, without limitation, permit processing and obtaining permits and approvals from all other agencies with jurisdiction, such as, as applicable, Caltrans and resource agencies, and for Unavoidable Delays associated with construction, provided that Subdivider has acted diligently and in good

faith to avoid foreseeable delays in performance, to remove the cause of the delay, or to develop a reasonable alternative means of performance. The period of extension for Unavoidable Delay shall not be less than the period of such delay. Once a determination of Unavoidable Delay has been made, the Subdivider shall provide the City with monthly status reports so the Director can assess whether the Unavoidable Delay is appropriate or whether the delay period should be modified.

(iii) The provisions in this Section 3(b) are in addition to and not a limitation of any other provision for extensions in this Agreement.

(c) Revisions to Plans and Specifications. Requests by the Subdivider for revisions, modifications or amendments to the approved Plans and Specifications ("Plan Revision") shall be submitted in writing to the Director (with a copy to the Director's designee and, if requested, to the Successor Agency). If the Plan Revision is acceptable to the Director (or the Director's designee) and the Successor Agency, as required, and is substantially consistent with the Plans, Plan Documents and Tentative Map, the Director (or the Director's designee) shall initial the proposed Plan Revision. Construction in accordance with any Subdivider-proposed Plan Revision shall not commence until the Plan Revision has been received and approved by the Director (or the Director's designee).

(i) Notwithstanding the foregoing, prior approval by the Director (or the Director's designee) of Plan Revisions shall only be required for such Plan Revisions which in any way materially alter the quality or character or expected future maintenance costs of the Required Infrastructure, involve an amount equal to the greater of five percent (5%) of the amount of the bid for the portion of the Required Infrastructure involved or \$50,000, or are not substantially consistent with the Plans, Plan Documents and Tentative Map. The cost of the Plan Revision shall be evidenced through submittal of copies of supplemental agreements with contractors. The Director (or the Director's designee) shall approve or deny all such Plan Revisions for which such approval is required hereunder. Any denial shall be in writing, and within ten (10) business days of receipt by the Director (or the Director's designee), state the reasons

for denial and the actions, if any, that the Director (or the Director's designee) in good faith believes can be taken to obtain later approval. Any such Plan Revision properly submitted to the Director (or the Director's designee) and not denied in writing by the Director (or the Director's designee) within such 10 day period shall be deemed to be approved in the form submitted for purposes of this Agreement.

(ii) If the proposed Plan Revision includes a change which will require a non-material change (within the meaning of the Interagency Cooperation Agreement) to the Infrastructure Plan then in effect, the Subdivider shall not proceed with such affected portion of the work without the prior written authorization (or conditional authorization) from the Director (or the Director's designee). The Director shall in good faith attempt to determine, within ten (10) business days of receipt of the proposed Plan Revision, whether to approve, conditionally approve or deny the proposed Plan Revision. The Director's failure to respond within such ten (10) day period, however, shall not constitute either an approval or denial of the application, provided that the Director shall respond in good faith within a reasonable time thereafter. The proposed Plan Revision may be performed pending final review and approval of a non-material change to the Infrastructure Plan, provided either that (1) adequate Security is still available (2) adequate other acceptable Security has been provided or separate Security is deemed unnecessary in accordance with Section 2(b), or (3) additional security is provided, if Security provided hereunder has been otherwise released, for both the proposed Plan Revision and, if deemed reasonable and appropriate by the Director, for any subsequent modification (or removal) of the proposed Plan Revision that may be required by a subsequent action, if any is necessary, approving, denying or modifying the proposed non-material change.

(iii) If the proposed Plan Revision includes a change which will require a material amendment (within the meaning of the Interagency Cooperation Agreement) to the Infrastructure Plan then in effect, the Subdivider shall not proceed with such affected portion of the work without the prior written authorization (or conditional authorization) from the Director (or the Director's designee). The Director shall in good faith attempt to determine, within fifteen (15) business days of receipt of

the proposed Plan Revision, whether to approve, conditionally approve or deny the proposed Plan Revision. The Director's failure to respond within such fifteen (15) day period, however, shall not constitute either an approval or denial of the application, provided that the Director shall respond in good faith within a reasonable time thereafter. The Director may, in the exercise of the Director's reasonable discretion, suspend performance of the affected portion of the work pending approval of the proposed material Infrastructure Plan amendment, or may allow the Plan Revision to be performed by the Subdivider, at Subdivider's own risk, pending final review and approval of the proposed Infrastructure Plan amendment, subject to such conditions as the Director may reasonably determine are appropriate. Any such conditional authorization to proceed with the proposed Plan Revision may include, without limitation, ensuring that there is (1) adequate Security still available, (2) adequate other acceptable security has been provided (or separate security is deemed unnecessary) in accordance with Section 2(b), or (3) additional security is provided, if Security provided hereunder has been otherwise released, for the proposed Plan Revision and, if deemed reasonable and appropriate by the Director, for any subsequent modification (or removal) of the proposed Plan Revision that may be required by a subsequent action approving, denying or modifying the proposed material amendment.

(iv) Any Infrastructure Plan amendments or other related documentation required because of a Plan Revision shall be processed with reasonable promptness as determined by the parties. Infrastructure Plan amendments may be processed separately or joined with other proposed amendments.

(v) Plan revisions shall be accompanied by drawings and specifications and other related documents showing the proposed Plan Revision so as to adequately describe the proposed change and the cost and affect thereof.

(d) Subdivider shall, at no cost to the City, cause all new or replacement electricity distribution facilities, telephone, community cable, and other distribution facilities located on the subject property to be placed underground. Prior to issuance of any street or building permits for Infrastructure, the site plans must

demonstrate that underground utilities and structures are designed to accommodate future settlement. All utilities, vaults, splice boxes and appurtenances shall be placed underground, subject to approval by the Director.

(e) Subdivider shall, at no cost to the City, cause the contractor(s) to obtain all permits, including but not limited to special traffic permits, and plan for and cooperate with:

- (i) the MUNI construction project on Third Street;
- (ii) the Block 33-34 Project on Third Street, 16th Street and Illinois Street.
- (iii) All work shall be planned to accommodate the Giants Schedule and
- (iv) All work shall be planned to accommodate existing traffic including but not limited to other construction projects in Mission Bay including the City closure of the Third Street Bridge.

4. Release of Security. The Security, or any portion thereof, not required to (i) secure completion of Subdivider's obligations for constructing or installing the Required Infrastructure to which such Security relates or (ii) satisfy claims by contractors, subcontractors, and/or persons furnishing materials or equipment in connection with the Required Infrastructure to which such Security relates shall be released to Subdivider, or its successors in interest, or reduced, as follows:

(a) One Year Warranty Bond. Upon the Director's completeness determination in accordance with Section 5(a), the performance bond or other security in the amount provided in Section 2(a)(i) (as the same may be adjusted from time to time in accordance with the terms hereof), as applicable, shall be reduced to ten percent (10%) of the original amount for the purpose of warranting repair of any defect in the applicable Required Infrastructure which defect occurs during the applicable Warranty Period (as defined below).

(b) Payment Claims. If at the time of the Director's completeness determination made in accordance with Section 5(a), any claims by any contractor, subcontractor or person furnishing labor, materials or equipment to the Subdivider have been filed against the City, then the labor and materials bond Security shall only be

reduced to an amount equal to the amount of all such claims filed or to 10% of the original amount whichever is greater.

(c) Partial Release. Notwithstanding the release provisions in Section 4(a) and 4(b), 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 accordance with Section 5(a) hereof to an amount determined by the Director that is not less than the Actual Cost of an Acquisition Facility or a Component thereof for a completed Acquisition Facility or Component. Prior to the date that the conditions set forth in Section 4(d) 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.

(d) Release of Remaining Security. The remaining Security shall be released when all of the following have occurred with respect to the applicable Required Improvement:

(i) the expiration of the Warranty Period or, with respect to any specific claim of defects or deficiency in the Required Infrastructure timely made pursuant to Section 4(a), one (1) year following the date that such deficiency was corrected or waived in writing; and

(ii) if any claims identified in Subsection 4(b) above have been filed against the City, all such claims have been satisfied or withdrawn, or otherwise secured, by bond or other security approved by the Director (or the Director's designee).

Nothing herein shall be construed to mean that the Subdivider is responsible under the warranty bond or otherwise for the repair, replacement, restoration, or maintenance of Required Infrastructure damaged by the actions of third parties, including, without limitation, the owners or developers of adjacent projects, their agents,

employees, contractors, subcontractors, invitees or licensees, and no actions by any such parties shall affect Subdivider's responsibilities or the release of the Security.

5. Completion and Acceptance.

(a) Director's Inspection. Upon request from the Subdivider for a completeness determination, the Director shall promptly determine whether the Required Infrastructure, or portion or Component 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 determination is that it does meet such requirements, the applicable Required Infrastructure, or portion thereof, shall be deemed complete. If the determination is that it does not meet such requirements, the Director shall, in such determination notice, identify with particularity the reasons therefor.

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

(i) The Required Infrastructure, or portion or Component thereof, which is requested by the Subdivider in accordance with Section 5(a) to be accepted, has been completed;

(ii) The Required Infrastructure, or portion or Component thereof, has been inspected by the Director in accordance with Subsection 5(a) above and found by the Director to be ready for its intended use and completed substantially in accordance with the Plans and Specifications, and applicable City Regulations, and the Director has certified to the Board of Supervisors that all of the Required Infrastructure which the City is requested to accept has been so satisfactorily completed; and

(iii) The Director, in accordance with the authority delegated under the Board Delegation Ordinance, accepts the applicable Required Infrastructure, or portion thereof, for public use and maintenance subject to the provisions of San

Francisco Administrative Code Section 1.52 and Subdivider's maintenance and warranty obligations under Sections 6(a) and 7(a), respectively, hereof.

(c) Acceptance and Dedications. The Final Map includes certain offers of dedication as more particularly set forth therein. In addition, Offers of Dedication for the Required Infrastructure will be necessary for Acceptance.

The Director shall accept, conditionally accept or reject such offers of dedication upon the Director's determination in accordance with Section 5(b) of completion of the Required Infrastructure, or portion or Component thereof. Subdivider will coordinate with the City and assist in the City's process for dedication and Acceptance of 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 associates with on-site and off-site development; and (ii) executing easement agreements and grant deeds as required by the conditions of approval for the Tentative Map.

6. Subdivider's Responsibility for Disposition of Existing Utilities and Maintenance of Required Infrastructure.

(a) Existing Utilities. In the event any existing water lines, sanitary sewer and storm drain facilities (collectively, "Existing Utilities") are found within the vacated public utility easements located on the Property, such Subdivider shall relocate, abandon and/or remove such Existing Utilities to the satisfaction of the SFPUC when the Required Infrastructure has been completed. Further, the Subdivider shall abandon and/or remove, to the satisfaction of the Director of Public Works, any abandoned private storm systems found within portion of the Property that will be dedicated as public property or right-of-way.

(b) Maintenance. Until Accepted, Subdivider shall be responsible for the maintenance and repair of the Required Infrastructure. Thereafter, the City shall assume the responsibility of operating and maintaining the Required Infrastructure, or

portion thereof, subject to the limitations in Section 5(b)(iii) above, and Subdivider's obligations under Section 7(a) of this Agreement.

(c) Protection of Required Infrastructure. In order to protect the Required Infrastructure from damage until such time as the 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 constructed or maintained which is determined by the Director to adversely affect public health or safety, or the ingress and egress of emergency vehicles.

7. Warranty and Indemnity.

(a) Warranty. Acceptance of Required Infrastructure by the City shall not constitute a waiver of defects by the City. 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 of one (1) year following the completion of the Required Infrastructure (or applicable portion thereof) to the satisfaction of the Director in accordance with Section 5(a) above, and (2) in the case of plant materials and trees, one (1) year from the date the Director receives certification from the City Construction Manager that the trees have passed a plant establishment period as set forth in the Plans and Specifications (each of the foregoing time periods, the "**Warranty Period**"). During the Warranty Period, Subdivider shall, as necessary, and upon receipt of a request in writing from the Director that the work be done, correct, repair or replace any defects in the Required Infrastructure at its own expense. During the Warranty Period, should Subdivider fail to act with reasonable promptness to make such correction, repair or replacement, or should an emergency require that correction, repair or replacement be made before Subdivider can be notified (or prior to Subdivider's ability to respond after notice), City may, at its option, provided that notice thereof is provided to Subdivider, make the necessary 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 Subdivider's reduced performance bond (or separate warranty bond in the same amount) as described in Section 4, to secure performance of Subdivider's foregoing warranty obligations.

(b) Indemnity. Subdivider agrees that subject to the warranty provisions on Subdivider's obligations set forth in Section 7(a), Subdivider shall indemnify, defend and hold the City and each of the City's Agencies, together with their commissioners, directors, officers, employees, agents, successors and assigns (collectively, "City Indemnified Parties"), harmless from and against any and all Losses arising out of the breach of this Agreement by the Subdivider, the Subdivider's or any of its contractors', agents', consultants' or representatives' negligent or defective construction of the Required Infrastructure constructed or installed by the Subdivider under this Agreement, the Subdivider's non-payment under contracts between the Subdivider and its consultants, engineers, advisors, contractors, subcontractors or suppliers in the provision of such Required Infrastructure, or any claims of persons employed by the Subdivider or its contractors, agents, consultants or representatives to construct such Required Infrastructure, in all cases subject to the terms, conditions, exceptions (including, without limitation, the exception for negligence or willful acts or omissions of the indemnified party) and limitations contained in the South OPA and the Interagency Cooperation Agreement, as applicable, and further provided that any demand for indemnification hereunder with respect to negligent or defective construction must be brought, if at all, within two (2) years after the related Required Infrastructure, or portion therefor, is determined to be complete by the Director in accordance with Section 5(a) hereof.

The 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 Indemnified Parties.

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. The City shall notify Subdivider of the time of recordation and provide a conformed copy of the Final Map to Subdivider. In the event the Final Map is not recorded, 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 or the Agency.

(c) Unavoidable Delay. All time periods in this Agreement shall be extended for Unavoidable Delay in accordance with this Section. A party who is subject to Unavoidable Delay in the performance of an obligation hereunder, or in the satisfaction of a condition to the other party's performance hereunder, shall be entitled to a postponement of the time for performance of such obligation or satisfaction of such condition during the period of enforced delay attributable to an event of Unavoidable Delay. If repair, replacement, or reconstruction of any Required Infrastructure (or any portion thereof) or any other public improvements is necessitated by Unavoidable Delay, then the time period for completion of the applicable work as provided in this Agreement shall be extended as provided in this Section, including any periods required for redesign, mobilization and other construction related requirements and such repair, replacement or reconstruction shall, as necessary, be reflected in a Plan Revision or an extension agreement (as provided in the Subdivision Code Section 1451.1.(c)(3)) in accordance with this Agreement. The Unavoidable Delay provision set forth in this Section shall not apply, however, unless (i) the party seeking to rely upon such provisions shall have given notice to the other party, within thirty (30) days after obtaining knowledge of the beginning of an enforced delay, of such delay and the cause or causes thereof, to the extent known, and (ii) the party claiming the Unavoidable Delay must at all times be acting diligently and in good faith to avoid foreseeable delays

in performance, to remove the cause of the delay or to develop a reasonable alternative means of performance.

(d) Attorneys' Fees. Should either party hereto institute any action or proceeding in court 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, actual court costs and 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 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(d) 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 actually 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.

(e) 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 Manager
Telefacsimile: (415) 554-6944

With copies to:

Successor Agency to the Redevelopment Agency of the
City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn: Mission Bay Project Manager
Telefacsimile: (415) 749-2585

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: John Malamut
Reference: Mission Bay South
Telefacsimile: (415) 554-4757

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

GSW Arena LLC
1011 Broadway
Oakland, California 95607
Attention: David Kelly, Esq.

With copies to:

Gibson, Dunn & Crutcher LLP
555 Mission Street
San Francisco, California 94105
Attn: Neil Sekhri
Telefacsimile: (415) 374-8435

FOCIL-MB, LLC
c/o Mission Bay Development Group, LLC
410 China Basin Street
San Francisco, California 94158

Attention: Mr. Seth Hamalian and Legal Department
Telefacsimile: (415) 355-6692

For the convenience of the parties, copies of notice may also be given by telefacsimile.

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 Mission Bay – 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 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 party may not give official or binding notice by telefacsimile.

(iii) Any notice or request for review, consent or other determination or action by the Director that could be subject to deemed approval under any provision of this Agreement shall display prominently on the envelop enclosing such request (if any) and the first page of such request, substantially the following words:

"MISSION BAY INFRASTRUCTURE: IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED."

(f) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and upon such transfer, the Subdivider shall be released from its obligations hereunder. Any such assignment 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. Any such assignee shall be afforded all of the rights of Subdivider hereunder, including the right to enter upon property owned by the City in order to perform its obligations hereunder. Upon the effective date of any such assignment, City shall release Subdivider, as assignor, from all obligations hereunder accruing from and after the effective date of such assignment.

(g) Interagency Cooperation Agreement. The City shall cooperate with the Subdivider consistent with the terms of the Interagency Cooperation Agreement, including, without limitation, in obtaining applicable approvals required for the construction of the Required Infrastructure. The City shall use reasonable efforts to obtain the compliance by Agency and affected City departments with the provisions of the Interagency Cooperation Agreement as they affect the inspection and Acceptance by the City of Required Infrastructure.

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

(i) Parties in Interest. Except as set forth in Section 9(f), 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 City and the Subdivider.

(j) Amendment. This Agreement may be amended, from time to time, by written supplement or amendment hereto and executed by both the City and the Subdivider. The Director 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.

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

(l) Interpretation of Agreement. Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction is required of the Subdivider or the City pursuant to this Agreement, it shall not be unreasonably withheld or delayed. Captions used in this Agreement are for convenience or reference only and shall not affect the interpretation or meaning of this Agreement.

(m) Other Requirements. Subdivider shall comply with any applicable requirements of Attachment H, Mission Bay South Program in Diversity/Economic Development Program, to the South OPA.

This Agreement shall in no way be construed to limit or replace any other obligations or liabilities which the parties may have in the Plan and Plan Documents, including the South OPA, the Land Transfer Agreements, the Interagency Cooperation Agreement or any Permit to Enter issued in accordance therewith.

9. Insurance. Subdivider shall, at all times prior to Acceptance of the Required Infrastructure, comply with the insurance requirements set forth in any Permit to Enter issued by the Successor Agency in accordance with the South OPA or by the City in accordance with the Interagency Cooperation Agreement, or otherwise in accordance with any other applicable City Regulations. Subdivider shall furnish to the Successor Agency and the City, from time to time upon request by Agency's or the


City's Risk Manager, a certificate of insurance (and/or, upon request by the Successor Agency or the City's Risk Manager, a complete copy of any policy) regarding each insurance policy required to be maintained by the Subdivider under any Permit to Enter issued by the Successor Agency in accordance with the South OPA or by the City in accordance with the Interagency Cooperation Agreement, or otherwise in accordance with any other applicable City Regulations.

[SIGNATURE PAGE FOLLOWS]

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

“SUBDIVIDER”

GSW ARENA LLC,
a Delaware limited liability company

By: 
Name: David Kelly
Title: General Counsel

“CITY”

CITY AND COUNTY OF SAN FRANCISCO

Name:
Title: Director of the Department of Public Works

APPROVED AS TO FORM:

DENNIS J. HERRERA
CITY ATTORNEY

John Malamut
Deputy City Attorney

Exhibit "A"

Plans and Specifications

Improvement Plans and Specifications prepared for FOCIL MB, LLC by Freyer and Laureta, Inc., entitled "Mission Bay Blocks 29-32 Public Improvements Permit Set", with Job Number 42037C, dated November 1, 2016.

Exhibit "B"

Form: Faithful Performance Bond
Blocks 29-32
Required Infrastructure

Whereas, the Board of Supervisors of the City and County of San Francisco, State of California, and GSW ARENA LLC (hereafter designated as "**Principal**") have entered into that certain Mission Bay South Blocks 29-32 Public Improvement Agreement, dated _____, 2016 (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 _____ Dollars (\$ _____ .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 _____, 201__.

"PRINCIPAL"

"SURETY"

GSW ARENA LLC,
a [Delaware] limited liability company

By: _____
Name:
Title:

By: _____
Its: _____

Address: _____

Telephone: _____

Facsimile: _____

Labor and Material Bond

Blocks 29-32

Required Infrastructure

Whereas, the Board of Supervisors of the City and County of San Francisco, State of California, and GSW ARENA LLC (hereafter designated as "**Principal**") have entered into that certain Mission Bay South Block 1 Public Improvement Agreement, dated _____, 2016 (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 _____ Dollars (\$ _____ .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 _____, 2016.

"PRINCIPAL"

"SURETY"

GSW ARENA LLC,
a [Delaware] limited liability company

By: _____
Name:
Title:

By: _____
Its: _____

Address: _____

Telephone: _____

Facsimile: _____