

**CITY OF SALINAS**  
**SUBDIVISION IMPROVEMENT AGREEMENT**

**DATE OF AGREEMENT:** \_\_\_\_\_

**NAME OF SUBDIVIDER:** BMCH CALIFORNIA, LLC  
(hereinafter "Subdivider")

**NAME OF SUBDIVISION:** Monte Bella Phase 5A No. of Lots: 85  
(hereinafter "Subdivision")

**TENTATIVE MAP RESOLUTION OF APPROVAL NO.:** 18392 (TM No. 03-02)  
(hereinafter "Resolution of Approval")

**IMPROVEMENT PLANS APPROVED ON:** \_\_\_\_\_  
(hereinafter "Improvement Plans")

**ESTIMATED TOTAL COST OF IMPROVEMENTS:** \$1,963,240  
(including water Improvements & monuments in public right-of way)

**ESTIMATED TOTAL COST OF MONUMENTATION:** Included in \$1,963,240

**SECURITY**  
**BOND NOS:** \_\_\_\_\_

**SURETY** \_\_\_\_\_

- OR -

**IRREVOCABLE STAND-BY LETTER OF CREDIT NO.** \_\_\_\_\_  
**FINANCIAL INSTITUTION:**

- OR -

**CASH/CERTIFICATE OF DEPOSIT, AGREEMENT DATED:** \_\_\_\_\_

**FINANCIAL INSTITUTION:** \_\_\_\_\_

This agreement is made and entered into by and between the City of Salinas, a municipal corporation of the State of California, hereinafter referred to as "City," and Subdivider.

**RECITALS**

A. Subdivider has presented to the City for approval and recordation, a final subdivision map of a proposed subdivision pursuant to the provisions of the Subdivision Map Act of the State of California and the City's ordinances and regulations relating to the filing, approval and recordation of subdivision maps. The Subdivision Map Act and the City's ordinances and regulations relating to the filing, approval and recordation of subdivision maps are collectively referred to in this agreement as the "Subdivision Laws."

B. A tentative map of the subdivision has been approved, subject to the Subdivision Laws and to the requirements and conditions contained in the "Resolution of Approval." The Resolution of Approval is on file in the office of the City Clerk and is incorporated into this agreement by reference.

C. The Subdivision Laws establish as a condition precedent to the approval of a final map that Subdivider must have complied with the Resolution of Approval and must have either (1) completed, in

compliance with City standards, all of the improvements and land development work required by the Subdivision Laws or the Resolution of Approval or (2) have entered into a secured agreement with City to complete the improvements and land development within a period of time specified by the City.

D. In consideration of approval of a final map of the subdivision by the City Council, Subdivider desires to enter into this agreement, whereby Subdivider promises to install and complete, at Subdivider's own expense, all the public improvement work required by City in connection with the proposed subdivision. Subdivider has secured this agreement by improvement security required by the Subdivision Laws and approved by the City Attorney.

E. Complete "Improvement Plans" for the construction, installation and completion of the improvements have been prepared by Subdivider and approved by the City Engineer. The Improvement Plans for the Subdivision referenced previously in this agreement are on file in the Office of the City Engineer and are incorporated into this agreement by this reference. All references in this agreement to the Improvement Plans shall include reference to any specifications for the improvements as approved by the City Engineer.

F. An estimate of the cost of construction of the public improvements and performing land development work in connection with the improvements according to the Improvement Plans has been made and has been approved by the City Engineer. The estimated amount is stated on Page 1 of this agreement. The basis for the estimate is attached as Exhibit "A" to this agreement.

G. The City has adopted standards for the construction and installation of improvements within the City. The Improvement Plans have been prepared in conformance with the City standards in effect on the date of the Resolution of Approval.

H. All public improvement monuments, street signs, and stakes as specified on the final map are to be completed prior to final formal acceptance by the City Council. Individual property monuments must be installed within one year from final Council acceptance of said subdivision.

I. Subdivider recognizes that by approval of the final map for Subdivision, City has conferred substantial rights upon Subdivider, including the right to sell, lease, or finance lots within the Subdivision. As a result, City will be damaged to the extent of the cost of installation of the improvements by Subdivider's failure to perform its obligations to commence construction of the improvements by the time established in this agreement. The City shall be entitled to all remedies available to it pursuant to this agreement in the event of a default by Subdivider. It is specifically recognized that the determination of whether a reversion to acreage or rescission of the Subdivision constitutes an adequate remedy for default by the Subdivider shall be within the sole discretion of City.

NOW, THEREFORE, in consideration of the approval and recordation by the City Council of the final map of the Subdivision, Subdivider and City agree as follows:

1. Subdivider's Obligations to Construct Improvements. Subdivider shall:

a. Comply with all the requirements of the Resolution of Approval and any amendments thereto, and with the provisions of the Subdivision Laws.

b. Complete, at Subdivider's own expense, all the public improvement work required by the Resolution of Approval in conformance with approved Improvement Plans within one (1) year following the date of this Agreement (subject to extension in accordance with Section 22); provided however, that the improvements shall not be deemed to be completed until accepted by City Council as provided in Section 17 herein.

c. Furnish the necessary materials for the completion of the public improvements in conformity with the Improvement Plans.

d. Acquire and dedicate all rights-of-way, easements, and other interests in real property for construction and installation of the public improvements, or pay the cost of acquisition incurred by City. All rights-of-way, easements, and other interests in real property shall be free and clear of liens and encumbrances. The Subdivider's obligations with regard to acquisition by City of off-site rights-of-way, easements, and other interests in real property shall be subject to a separate agreement between Subdivider and City. Subdivider shall also be responsible for obtaining any public or private sanitary sewer, drainage, and/or utility easements or authorization to accommodate the Subdivision.

e. Commence construction of the improvements by the time established in Section 22 of the agreement and complete the improvements by the deadline stated in Section 1(b) above, subject to extension in accordance with Section 22.

f. Install all subdivision public improvement monuments required by law prior to formal final acceptance of the public improvements by the City. Individual property monuments shall be installed within one year of said acceptance.

g. Install permanent street name signs conforming to City standards. Said permanent street name signs shall be installed before formal acceptance of the improvements by the City.

h. Comply with all of the requirements in the special provisions attached hereto and incorporated herein by reference as Exhibit "B."

2. Acquisition and Dedication of Easements or Rights-of-Way. If any of the public improvement and land use development work contemplated by this agreement is to be constructed or installed on land not owned by City or Subdivider, no construction or installation shall be commenced before:

a. The offer of dedication to City of appropriate rights-of-way, easements or other interests in real property, and appropriate authorization from property owner to allow construction or installation of the improvements or work, or

b. The dedication to, and acceptance by, the City of appropriate rights-of-way, easements or other interests in real property, as determined by the City Engineer, or

c. The issuance by a court of competent jurisdiction pursuant to the State Eminent Domain Law

of an order of possession. Subdivider shall comply in all respects with the order of possession.

Nothing in this Section 2 shall be construed as authorizing or granting an extension of time to Subdivider.

3. Security. Subdivider shall at all times guarantee Subdivider's performance by furnishing to City and maintaining good and sufficient security as required by the Subdivision Laws on forms approved by City for the purposes and in the amounts as follows:

a. To assure faithful performance of this agreement in regard to said improvements in an amount of 100% of the estimated cost of the improvements; and

b. To secure payment to any contractor, subcontractor, person renting equipment, or furnishing labor and materials for the improvements required to be constructed and installed pursuant to this agreement in the additional amount of 50% of the estimated cost of the improvements; and

c. To guarantee or warranty the work done pursuant to this agreement for a period of one (1) year following acceptance thereof by City against any defective work or labor done or defective materials furnished in the additional amount of 25% of the estimate cost of said improvements; and

d. Subdivider shall also furnish to City good and sufficient security in the amount of 100% of the estimated cost of setting subdivision monuments as stated previously in this agreement in Section 1f for a period of one year plus thirty (30) days from formal acceptance by the City Council.

The securities required by this agreement shall be kept on file with the City Clerk. The terms of the security documents referenced on page 1 of this agreement are incorporated into this agreement by this reference. If any security is replaced by another approved security, the replacement shall: 1) comply with all the requirements for security in this agreement, 2) be provided to the City Engineer to be filed with the City Clerk, and upon filing, 3) be deemed to have been made a part of and incorporated into this agreement. Upon provision of a replacement security with the City Engineer and filing of a replacement security with the City Clerk, the former security may be released.

4. Alterations to Improvement Plans.

a. Any changes, alterations or additions to the Improvements Plans, not exceeding 10% of the original estimated cost of the improvements, which are mutually agreed upon by the City and Subdivider shall not relieve the improvement security given for faithful performance of this agreement. In the event such changes, alterations, or additions, exceed 10% of the original estimated cost of the improvements, Subdivider shall provide improvement security for faithful performance as required by Section 3 of the agreement for 100% of the total estimated cost of the improvement as changed, altered, or amended, minus any completed partial releases allowed by Section 6 of this agreement.

b. The Subdivider shall construct the improvements in accordance with City standards in effect at the time of adoption of the resolution of approval. City reserves the right to modify the standards

applicable to the Subdivision and this agreement, up to the time of installation of the applicable improvements, when necessary to protect the public safety or welfare or comply with applicable Federal or State law or City zoning ordinances. If Subdivider requests and is granted an extension of time for completion of the improvements, City may apply the standards in effect at the time of the extension.

5. Inspection. Subdivider shall at all times maintain proper facilities and safe access for inspection of the public improvements by City inspectors and to the shops wherein any work is in preparation. Upon completion of the work the Subdivider may request a final inspection by the City Engineer, or the City Engineer's authorized representative. If the City Engineer, or the designated representative, determines that the work has been completed in accordance with this agreement, then the City Engineer shall certify the completion of the public improvements to the City Council. No improvements shall be finally accepted by the City Council unless all aspects of work have been inspected and completed in accordance with the Improvement Plans. When applicable law requires an inspection to be made by the City at a particular stage of the work of constructing and installing such improvements, City shall be given timely notice of Subdivider's readiness for such inspection and Subdivider shall not proceed with additional work until the inspection has been made and the work approved. Subdivider shall bear all costs of inspection and certification. No improvements shall be deemed completed until accepted by the City Council pursuant to Section 18 herein.

6. Release of Securities. The securities required by this agreement shall be released as follows:

a. Security given for faithful performance of any act, obligation, work or agreement shall be released upon the final completion and acceptance of the act or work, subject to the provisions of subsection (b) hereof.

b. The City Engineer may release a portion of the security given for faithful performance of improvement work as the improvement progresses upon application thereof by the Subdivider, provided, however, that no such release shall be for an amount less than 25% of the total improvement security given for faithful performance of the improvement work and that the security shall not be reduced to an amount less than 50% of the total improvement given for faithful performance until final completion and acceptance of the public improvements. In no event shall the City Engineer authorize a release of the improvement security, which would reduce the security to an amount below 100% of that required to guarantee the completion of the improvement work and any other obligation imposed by this agreement.

c. Security given to secure payment to the contractor, subcontractors, and to persons furnishing labor, materials or equipment shall, at six (6) months after the completion and acceptance of the work, be reduced to an amount equal to no less than 125% of the total claimed by all claimants for whom liens have been filed and of which notice has been given to the City, plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured by the security. The balance of the security shall be released upon the settlement of all claims and obligations for which the security was given.

d. No security given for the guarantee or warranty for work shall be released until the expiration of the warranty period and until any claims filed during the warranty period have been settled. As provided in Section 10, the warranty period shall not commence until final acceptance of all the work and improvements by the City Council.

e. The City may retain from any security released, an amount to sufficiently cover costs and reasonable expenses and fees, including reasonable attorney's fees.

7. Injury to Public Improvements, Public Property or Public Utilities Facilities. Subdivider shall replace or repair, or have replaced or repaired, as the case may be, all public improvements, public utility facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this agreement. Subdivider shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

Furthermore, until such time as the improvements are accepted by City, Subdivider shall be responsible for, and bear the risk of loss to, any of the improvements constructed or installed. Until such time as all improvements required by this agreement are fully completed and accepted by City, Subdivider shall be responsible for the care, maintenance of, and any damage to such improvements. City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or improvements specified in this agreement prior to the completion and acceptance of the work or improvements, except to the extent caused by an employee, representative or agent of the City. All such risks shall be the responsibility of and are hereby assumed by Subdivider.

8. Permits. Subdivider shall, at Subdivider's expense, obtain all necessary permits and licenses for the construction and installation of the improvements, give all necessary notices and pay all fees and taxes required by law.

9. Default of Subdivider.

a. Default of Subdivider shall include, but not be limited to any of the following that remains uncured for a period in excess of the notice period in Section 9(b):

- (1) Subdivider's failure to timely commence construction of improvements under this agreement;
- (2) Subdivider's failure to timely complete construction of the improvements;
- (3) Subdivider's failure to timely cure any defect in the improvements;
- (4) Subdivider's failure to perform substantial construction work for a period of 20 calendar days after commencement of the work;

- (5) Subdivider's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Subdivider fails to discharge within 30 days;
- (6) The commencement of a foreclosure action against the subdivision or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or,
- (7) Subdivider's failure to perform any other obligation under this agreement.

b. The City reserves to itself all remedies available to it at law or in equity for breach of Subdivider's obligations under this agreement. The City shall have the right, subject to this Section, to draw upon or utilize the appropriate security to mitigate the City's damages in the event of default of Subdivider. The right of the City to draw upon or utilize the security is additional to and not in lieu of any other remedy available to City. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the improvements and, therefore, City's damages for Subdivider's default shall be measured by the cost of completing the required improvements. The sums provided by the improvement security may be used by City for the completion of the public improvements in accordance with the improvement plans and specifications contained herein; provided, however, there is no requirement for Subdivider to increase the bond amount based on the actual cost of construction.

In the event of Subdivider's default under this agreement, Subdivider authorizes City to perform such obligation twenty (20) days after mailing written notice of default to Subdivider and Subdivider's surety, and agrees to pay the entire cost of such performance by City.

City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost of damages occasioned City thereby. In such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plants and other property belonging to Subdivider as may be on the site of the work and necessary for performance of the work.

c. Failure of Subdivider to comply with the terms of this agreement shall constitute consent to the filing by the City of a notice of violation against all the lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedy provided by this subsection is in addition to, and not in lieu of, other remedies available to City. Subdivider agrees that the choice of remedy or remedies for Subdivider's breach shall be in the discretion of City.

d. In the event that Subdivider fails to perform any obligation hereunder, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligations, including but not limited to fees and charges of architects, engineers, attorneys, other professionals, and court costs.

e. The failure of City to take enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of

Subdivider.

10. Warranty. Subdivider shall guarantee or warranty the work done pursuant to this agreement for a period of one (1) year after final formal acceptance of this subdivision by the City Council against any defective work or labor done or defective materials furnished. If within the warranty period any work or improvement or part of any work or improvement done, furnished, installed or constructed by Subdivider fails to fulfill any of the requirements of this agreement or the improvement plans or specifications referred to herein, Subdivider shall without delay and without cost to the City repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider fail to act promptly or in accordance with this requirement, Subdivider hereby authorizes City, at City's option to perform the work twenty (20) days after mailing written notice of default to Subdivider and to Subdivider's surety, and agrees to pay the cost of such work by City. Should the City determine that an urgency requires repairs or replacements to be made before Subdivider can be notified, City may, in its sole discretion, make the necessary repairs or replacement or perform the necessary work and Subdivider shall pay to City the cost of such repairs.

11. Subdivider Not Agent of City. Neither Subdivider nor Subdivider's agents, contractors, or subcontractors are or shall be considered to be agents of the City in connection with the performance of Subdivider's obligations under this agreement.

12. Environmental Warranty. Prior to the acceptance of any dedications or improvements by City, Subdivider shall certify and warrant that neither the property to be dedicated nor Subdivider are in violation of any environmental law and neither the property to be dedicated nor the Subdivider are subject to any existing, pending, or threatened investigation by any federal, state or local governmental authority under or in connection with environmental law. Neither Subdivider nor any third party will use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any hazardous substance except in compliance with all applicable environmental laws. Subdivider has not caused or permitted the release of, and has no knowledge of the release or presence of, any hazardous substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated. Subdivider's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated. Subdivider shall give prompt written notice to City at the address set forth herein of:

a. Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated;

b. Any claims made or threatened by any third party against City or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and,

c. Subdivider's discovery of any occurrence or condition on any property adjoining in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to

be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

13. Other Agreements. Nothing contained in this agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other subdividers for the apportionment of costs of water and sewer mains, or other improvements pursuant to the provisions of the City ordinances providing therefore, nor shall anything in this agreement commit City to any such apportionment..

14. Subdivider's Obligation to Warn Public During Construction. Until final acceptance of the improvements, Subdivider shall give good and adequate warning to the public of each and every dangerous condition existent in said improvements, and will take reasonable actions to protect the public from such dangerous condition.

15. Fees. Subdivider agrees to pay to City each of the fees set forth in Exhibit "C" attached hereto and incorporated herein by reference.

16. Vesting of Ownership. Upon formal final acceptance of the work by City and recordation of the Resolution of Acceptance of Public Improvements, ownership of the improvements constructed pursuant to this agreement shall vest in City.

17. Final Acceptance of Work. Acceptance of work on behalf of City shall be made by the City Council upon recommendation of the City Engineer after final completion and inspection of all improvements. The City Council shall act upon the Engineer's recommendation within sixty (60) days from the date the City Engineer certifies that the work has been finally completed, as provided in Section 5. Such acceptance shall not constitute a waiver of defects by City.

18. Indemnity/Hold Harmless. City or any officer or employee thereof shall not be liable for any injury to persons or property occasioned by reasons of the acts or omissions of Subdivider, its agents, employees, contractors and subcontractors in the performance of this agreement. Subdivider further agrees to protect, defend, indemnify and hold harmless City, its officials, boards and commissions, and members thereof, agents, and employees from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of Subdivider, its agents, employees, contractors and subcontractors in the performance of this agreement, except for such claims, demands, causes of action, liability, or loss arising out of the sole active negligence of the City, its officials, boards commissions, the members thereof, agents, and employees, including all claims, demands, causes of action, liability, or loss because of or arising out of, in whole or in part, the design or construction of the improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said Subdivision, and the public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design and construction of public drainage systems, streets and other public improvements. Acceptance by the City of the improvements shall not constitute an assumption by the City of any

responsibility for any damage or taking covered by this Section. City shall not be responsible for the design or construction of the property to be dedicated or the improvements pursuant to the approved improvement plans or map, regardless of any negligent action or inaction taken by the City in approving the plans or map, unless the particular improvement design was specifically required by City over written objection by Subdivider submitted to the City Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design.

After acceptance of the improvements, the Subdivider shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect; however, Subdivider shall not be responsible for routine maintenance. Provisions of this paragraph shall remain in full force and effect for one (1) year following the acceptance by the City of the improvements. It is the intent of this section that Subdivider shall be responsible for all liability for design and construction of the improvements installed or work done pursuant to this agreement and that City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or inspecting any work or construction. The improvement security shall not be required to cover the provisions of this Paragraph.

Subdivider shall reimburse the City for all costs and expenses (including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs) incurred by City in enforcing the provisions of this section.

19. Personal Nature of Subdivider's Obligations. All of Subdivider's obligations under this agreement are and shall remain the personal obligations of Subdivider notwithstanding a transfer of all or any part of the property within the Subdivision subject to this agreement, and Subdivider shall not be entitled to assign its obligations under this agreement to any transferee of all or any part of the property within the Subdivision or any other third party without the express written consent of the City.

20. Sale or Disposition of Subdivision. Subdivider may request a novation of this agreement and a substitution of security. Upon approval of the novation and substitution of securities, the Subdivider may request a release or reduction of the securities required by this agreement. Nothing in the novation shall relieve the Subdivider of the obligations under Section 18 for the work or improvement done by Subdivider.

21. Time is of the Essence. Time is of the essence in the performance of this agreement.

22. Time for Commencement of Work: Time Extensions. **Subdivider shall commence substantial construction of the improvements required by this agreement not later than three (3) months after the date of this agreement. In the event good cause exists as determined by the City Engineer, the time for commencement of construction or completion of the improvements hereunder may be extended for a period or periods not exceeding a total of two additional years. The extension shall be executed in writing by the City Engineer.** Any such extension may be granted without notice to Subdivider's surety and shall not affect the validity of this agreement or release the surety or sureties

on any security given for this agreement. The City Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension. As a condition of such extension, the City Engineer may require Subdivider to furnish new security guaranteeing performance of this agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by the City Engineer. Notwithstanding the foregoing, in the event of a delay resulting from an act of City, act of God, by storm or inclement weather, strikes, boycotts or similar political actions which prevent the conducting of work, which Subdivider could not have reasonably foreseen, and furthermore were not caused by or contributed to by Subdivider, any deadline set forth in this Agreement shall automatically be extended by the period of such delay.

23. No Vesting of Rights. Performance by Subdivider of this agreement shall not be construed to vest Subdivider's rights with respect to any change in any zoning or building law or ordinance.

24. Notices. All notices required or provided for under this agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed as follows unless a written change is filed with the City:

Notice to City:                      Assistant Public Works Director/City Engineer  
   City of Salinas  
   200 Lincoln Avenue  
   Salinas, CA 93901

Notice to Subdivider:              BMCH California, LLC  
   99 Almaden Blvd. Suite 400  
   San Jose, CA 95113  
   Attention: James W. Fletcher, Division President  
   Phone No.: (408) 207-9405

Notice to Surety:                    \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_

25. Compliance With Laws. Subdivider, its agents, employees, contractors, and subcontractors shall comply with all federal, state and local laws in the performance of the improvements and land development work required by this agreement. Subdivider acknowledges that Subdivider, not the City, is responsible for determining applicability of and complying with all local, state and federal laws, including but not limited to provisions of the California Labor Code, Public Contract Code and Government Code. The City makes no express or implied representation as to the applicability or inapplicability of any such laws to this Agreement or the parties' respective rights or obligations hereunder, including but not limited to payment of prevailing wages, competitive bidding, subcontractor listing, or similar or different matters. Subdivider further acknowledges that the City shall not be liable or responsible in law or equity for any failure by Subdivider to comply with any such laws, regardless of whether the City knew, could have

known, or should have known of the need for such compliance or whether the City failed to notify Subdivider of the need for such compliance.

26. Severability. The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

27. Captions. The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction or meaning of any provisions of this agreement.

28. Litigation. In the event that suit is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorney's fees.

29. Incorporation of Recitals. The recitals to this agreement are hereby incorporated into the terms of this agreement.

30. Entire Agreement. This agreement constitutes the entire agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties.

31. Interpretation. This agreement shall be interpreted in accordance with the laws of the State of California.

32. Jurisdiction. Jurisdiction of all disputes over the terms of this agreement shall be in the County of Monterey, State of California.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this agreement is executed by the parties as of the date hereinabove first written.

SUBDIVIDER: *(Signatures must be in blue ink)*

BMCH CALIFORNIA, LLC, a Delaware limited liability company

BY: \_\_\_\_\_

NAME: JAMES W. FLETCHER

ITS: DIVISION PRESIDENT

CITY OF SALINAS:

\_\_\_\_\_  
JOE GUNTER, MAYOR

ATTEST:

(Proof of authorization for Subdivider's signatures  
required and must be attached)

\_\_\_\_\_  
PATRICIA BARAJAS, CITY CLERK

Recommended for Approval:

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FRANCISCO A. AGUAYO, PE,  
INTERIM CITY ENGINEER

**Approved as to Form:**

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CHRIS CALLIHAN, CITY ATTORNEY

**EXHIBIT "A"**

SUBDIVISION IMPROVEMENT AGREEMENT

See Attached

(Improvements Cost)

**BOND ESTIMATE**  
**MONTE BELLA - DETENTION / INFILTRATION BASIN IMPROVEMENTS**  
City of Salinas  
Based on plans prepared by Mackay & Soms dated 02-27-2017

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
<b><u>A. STREET WORK</u></b>					
1.	7,000	CY	Rough Grading	3.00	\$21,000
2.	10,800	SF	Finish Grading (Roadways & Headwalls)	0.40	\$4,320
3.	1,428	SF	Pavement Basin Access Road (3"AC/10"AB)	3.25	\$4,640
4.	9,147	SF	All Weather Perimeter Access Road (13" AB )	2.25	\$20,580
5.	32	SF	Pavement Remove & Replace (6" AC/15" AB)	5.50	\$180
6.	102	SF	Under Driveway (Apron/Sidewalk) (4" AB)	0.72	\$70
<b>ESTIMATED TOTAL STREET WORK:</b>					<b>\$50,790</b>
<b><u>B. CONCRETE WORK</u></b>					
1.	152	SF	6" PCC Driveway/Sidewalk	5.00	\$760
2.	50	SF	4" Sand Under Sidewalk	1.00	\$50
3.	16	LF	Standard 6" Curb & Gutter (2.125' Wide)	15.00	\$240
<b>ESTIMATED TOTAL CONCRETE WORK:</b>					<b>\$1,050</b>
<b><u>C. STORM DRAIN WORK</u></b>					
1.	1	EA	Storm Drain Manholes	4,000.00	\$4,000
2.	1	EA	Head Wall Structure (A)	12,000.00	\$12,000
3.	1	EA	Head Wall Structure (B)	6,000.00	\$6,000
4.	69	LF	48" HDPE Storm drain pipe	100.00	\$6,900
5.	25	LF	20" HDPE Storm drain pipe	45.00	\$1,130
<b>ESTIMATED TOTAL STORM DRAIN WORK:</b>					<b>\$30,030</b>
<b><u>D. EROSION CONTROL</u></b>					
1.	1	LS	Erosion Control	6,500.00	\$6,500
<b>ESTIMATED TOTAL GRADING WORK:</b>					<b>\$6,500</b>
<b><u>E. MISCELLANEOUS</u></b>					
1.	54,620	SF	Landscaping	3.00	\$163,860
<b>ESTIMATED TOTAL MISC. CONSTRUCTION:</b>					<b>\$163,860</b>

**SUMMARY**

A	STREETWORK	\$50,790
B	CONCRETE WORK	\$1,050
C	STORM DRAIN WORK	\$30,030
D	EROSION CONTROL	\$6,500
E	MISCELLANEOUS	<u>\$163,860</u>
TOTAL ESTIMATED IMPROVEMENT COST:		<b>\$245,730</b>

## **NOTES**

1. This estimate is prepared as a guide only and is subject to possible change. It has been prepared to a standard of accuracy which, to the best of our knowledge and judgment, is sufficient to satisfy our understanding of the purposes of this estimate. MacKay & Somps makes no warranty, either expressed or implied, as to the accuracy of this estimate.
2. This estimate does not consider the following:
  - a. Land costs, acquisition of Right of Way, easements, and/or rights of entry.
  - b. Fees for assessment, lighting & landscaping, GHAD, Mello Roos districts or the like.
  - c. Fencing, and hand rails
  - d. Costs associated with trench shoring.
  - e. City fees.
  - f. Phased construction or out of regular sequence construction.
  - g. Tree preservation systems.
  - h. Landscaping & associated design costs
  - i. Financing and overhead charges.
  - j. Costs associated with Endangered Species and Wildlife Conservation.
  - k. Cost associated with Corps of Engineers, Fish and Game, Fish and Wildlife and Wetlands
  - l. Costs associated with overexcavation of unsuitable material.
3. Costs presented herein represent an opinion based on historical information. No provision has been made for inflation.
4. As noted above this estimate does not include costs associated with right-of-way acquisition or temporary grading/construction easements.

Prepared by the firm of  
**MACKAY & SOMPS**

**BOND ESTIMATE**  
**MONTE BELLA - PHASE 5A IMPROVEMENT PLANS**  
City of Salinas

Based on plans prepared by Mackay & Soms dated 02-27-2017 showing 85 Units

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
<b><u>A. STREET WORK</u></b>					
1.	21,300	CY	Rough Grading	3.00	\$63,900
2.	115,650	SF	Finish Grading Public Streets	0.40	\$46,260
3.	9,155	SF	Finish Grading Driveway Apron/Cuts	0.40	\$3,660
4.	32,582	SF	Pavement Section (Connector - 4.5"AC/15"AB)	4.75	\$154,760
5.	79,930	SF	Pavement Section (Residential - 3"AC/10"AB)	3.25	\$259,770
6.	10,540	SF	4" AB Under Driveway Apron	0.72	\$7,590
7.	14,310	SF	4" AB under standard 6" Curb & Gutter	0.72	\$10,300
8.	7	EA	Pavement Reflectors at Fire hydrants	25.00	\$180
9.	8	EA	Street Name Sign	250.00	\$2,000
10.	9	EA	Stop sign, stop bar and legend	500.00	\$4,500
11.	20	EA	Standard City street monuments	500.00	\$10,000
12.	1	LS	Striping/Pavement Markings	20,630.00	\$20,630
<b>ESTIMATED TOTAL STREET WORK:</b>					<b>\$583,550</b>
<b><u>B. CONCRETE WORK</u></b>					
1.	5,426	LF	Standard 6" Curb & Gutter (2.125' wide)	15.00	\$81,390
2.	1,096	LF	Deepened Curb & Gutter (2.125' wide)	30.00	\$32,880
3.	1,128	LF	Planter Wall	15.00	\$16,920
4.	9,155	SF	6" PCC Driveways	5.00	\$45,780
5.	28,181	SF	4" Concrete Sidewalk	4.00	\$112,720
6.	28,181	SF	4" Sand Cushion	1.00	\$28,180
7.	16	EA	Accessible Ramp	1,500.00	\$24,000
<b>ESTIMATED TOTAL CONCRETE WORK:</b>					<b>\$341,870</b>
<b><u>C. STORM DRAIN WORK</u></b>					
1.	9	EA	Storm Drain Manholes	4,000.00	\$36,000
2.	23	EA	Drain Inlet	2,000.00	\$46,000
3.	880	LF	24" HDPE Storm drain pipe	50.00	\$44,000
4.	81	LF	15" HDPE Storm drain pipe	40.00	\$3,240
5.	521	LF	12" HDPE Storm drain pipe	35.00	\$18,240
6.	4	EA	Connect to existing Storm Drain	500.00	\$2,000
<b>ESTIMATED TOTAL STORM DRAIN WORK:</b>					<b>\$149,480</b>

**D. SEWER WORK**

1.	9	EA	Sewer Manholes	4,000.00	\$36,000
2.	20	LF	10" Sewer pipe	50.00	\$1,000
3.	873	LF	8" Sewer pipe	45.00	\$39,290
4.	1,824	LF	6" Sewer pipe	40.00	\$72,960
5.	87	EA	Sanitary Sewer Laterals (incl. 2 in Phase 5B)	1,200.00	\$104,400

**ESTIMATED TOTAL SEWER WORK: \$253,650**

**E. ELECTRICAL/JOINT TRENCH**

1.	20	EA	Single arm conduit & boxes	3,500.00	\$70,000
2.	4,316	LS	Joint Trench (Length of Improvements)	60.00	\$258,960

**ESTIMATED TOTAL ELECTRICAL WORK: \$328,960**

**F. EROSION CONTROL**

1.	1	LS	Erosion Control	60,000.00	\$60,000
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**ESTIMATED TOTAL GRADING WORK: \$60,000**

**G. MISCELLANEOUS**

1.	22,090	SF	Landscaping (Street Scape)	5.00	\$110,450
2.	7,210	SF	Curb Extension Bioretention Cell	20.00	\$144,200
3.	3,309	SF	Landscaping (Common Lot)	3.00	\$9,930
4.	3	EA	Temporary Street Lights	3,500.00	\$10,500
5.	3	SF	Temporary Barricades	1,500.00	\$4,500
6.	78	LF	Retaining Wall w/ Fence (24" Max. Retaining)	40.00	\$3,120
7.	314	LF	Retaining Fence (12" Max. Retaining)	20.00	\$6,280

**ESTIMATED TOTAL MISC. CONSTRUCTION: \$288,980**

**SUMMARY**

A	STREETWORK	\$583,550
B	CONCRETE WORK	\$341,870
C	STORM DRAIN WORK	\$149,480
D	SEWER WORK	\$253,650
E	ELECTRICAL/JOINT TRENCH	\$328,960
F	EROSION CONTROL	\$60,000
G	MISCELLANEOUS	\$288,980

**ESTIMATED IMPROVEMENT COST: \$1,717,510**

## **NOTES**

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2. This estimate does not consider the following:
  - a. Land costs, acquisition of Right of Way, easements, and/or rights of entry.
  - b. Fees for assessment, lighting & landscaping, GHAD, Mello Roos districts or the like.
  - c. Fencing, and hand rails
  - d. Costs associated with trench shoring.
  - e. City fees.
  - f. Phased construction or out of regular sequence construction.
  - g. Tree preservation systems.
  - h. Landscaping & associated design costs
  - i. Financing and overhead charges.
  - j. Costs associated with Endangered Species and Wildlife Conservation.
  - k. Cost associated with Corps of Engineers, Fish and Game, Fish and Wildlife and Wetlands
  - l. Costs associated with overexcavation of unsuitable material.
3. Costs presented herein represent an opinion based on historical information. No
4. As noted above this estimate does not include costs associated with right-of-way

Prepared by the firm of  
**MACKAY & SOMPS**

## **EXHIBIT 'B'**

### **SUBDIVISION IMPROVEMENT AGREEMENT**

MONTE BELLA PHASE 5A

(Subdivision)

BMCH CALIFORNIA, LLC

(Subdivider)

### **SPECIAL PROVISIONS**

Subdivider shall:

- A. Provide a computer diskette (compatible with the City's CAD system) of subdivision and improvement plan information to the Department of Engineering and Transportation prior to the City Council consideration of this Agreement.
- B. Furnish to the City of Salinas public utility easements behind the public right-of-way to the extent necessary for construction and maintenance of the larger-type utility vaults and cabinets. Where feasible, these vaults and cabinets will be located relatively close to the back of walkways, generally between two driveways on the garage side of the two homes. Utility vaults and cabinets larger than two feet by four feet in outside dimensions shall generally not be located within the street right-of-way. If such large vaults and cabinets must be located in the public landscape easement or in the street right-of-way, they are subject to prior approval by the City. The smaller, "standard," utility boxes may be installed in the street right-of-way, subject to the approval of the City Engineer, provided they are centered between the back of curbs and the front of sidewalks, or behind the sidewalk (for sidewalk adjacent to curb) in the P.U.E., and are not clustered in such a manner as to leave so little open space for landscaping as to encourage the future home owner to pave the remaining park strip with concrete. All boxes, cabinets and vaults are to be set carefully to: 1) conforms to the sidewalk and curb grades, 2) respect the required drainage, and 3) align along one edge with the street right-of-way. Such vaults, cabinets and boxes shall generally be separated by approximately five feet (5') center to center from each other, and five feet (5') clear of street trees, street lights, water meters and fire hydrants. Said utility facilities shall be installed below grade unless otherwise approved in writing by the City Engineer.
- C. Obtain approval of the subdivision public improvements, including street tree planting plan, but excluding streetscape plan for arterial streets and open space areas, by the City Engineer, or his designee, prior to the issuance of the first Certificate of Occupancy for this subdivision. Said City

Engineer's approval shall not constitute formal acceptance. Landscaping improvements shall be completed at the time that all public improvements are submitted to the City Council for formal acceptance. The Certificate of Occupancy for the final residential unit shall not be issued until the City Council has formally accepted all public improvements.

- D. Indemnify the City as provided in Section 66474.9(b)(1) of the Government Code, as amended.
- E. Obtain all required encroachment permits from each government agency or political subdivision controlling connections, access, or crossing of any facilities within this subdivision and comply with all requirements set forth in such permits.
- F. Prohibit or refuse to allow any utility company or others, to construct gas lines, water mains, or other underground facilities until Subdivider has rough-graded all streets and easement areas within 0.2 of a foot of finished subgrade, and utility plans have been provided to the City Engineer.
- G. Have water mains and fire hydrants installed and functioning before any combustible construction begins. Proper access for fire protection vehicles shall also be provided. At a minimum, this access shall comply with the Salinas Fire Chief's letter dated August 25, 1995 to Property Developers and Owners (Subject: Fire Service Access Road for Construction Sites.) Remaining utilities shall be installed and functioning prior to issuance of any certificates of occupancy.
- H. Coordinate and install Street Light System, complete with metal poles, pole numbers, electroliers and wiring with Pacific Gas & Electric Company. Said Street Light System shall be dedicated to the City of Salinas upon formal final acceptance of subdivision. Subdivider shall pay all street light energy costs prior to public improvement acceptance.
- I. Make accessible to each lot the following public utilities: water, gas, cable television, electricity, and telephone communications.
- J. Grade, excavate, and provide erosion control of all building lots to drain properly and according to the grading plan to be approved by the City Engineer, and to conform with the City's Grading and Erosion Control Resolution No. 19244, City Standard Plan 52, NPDES requirements, and the project's SWPPP/NOI Permit.
- K. Install landscape and irrigation for public/private open space, streetscape, and pedestrian corridors,

plans for which shall be reviewed and approved by both the Deputy City Manager/City Engineer and the Maintenance Services Director. Maintain all subdivision public landscaping and related irrigation systems for a period of three months (90 days) after Council acceptance of the public improvements.

- L. Provide the City Engineer with complete and corrected "RECORD" drawings before acceptance of public improvements, both as reproducible drawings and computer diskettes complying with City format specifications. Delivery of the drawings shall not relieve the Subdivider of the responsibility of furnishing any additional information required by the City Engineer.
- M. Have all work within the public rights-of-way meet the requirements of the most recent edition of the City of Salinas Design Standards and Standard Specifications.
- N. Provide the City with a copy of videotape inspections of the sanitary and storm drain sewer systems upon their completion and rectify any problems identified by the City. The video taping of the storm drain sewer system shall be done just prior to formal acceptance to ensure said system is problem free and clear of debris. Sanitary sewer system shall be air tested per City requirements prior to street construction. Further, all applicable PVC and HDPE pipe installed must be mandrel tested (95%), and all deficiencies corrected.
- O. Provide the City, when applicable, emergency access easements to the subdivision to ensure secondary access is available to public safety personnel and equipment. Emergency access roads must be of an all weather type construction (minimum six inches of base rock) and be no less than 20 feet wide. The vertical clearance over the access road shall be no less than 13 feet 6 inches. The access road shall be extended to within 150 feet of all portions of the exterior walls of the first story of any building. The design of the access road shall be such that it will readily accommodate an imposed load of 75,000 lbs. Such design shall be certified by a licensed Soils or Civil Engineer. A letter of certification may be required for the Fire Department, Bureau of Fire Prevention. Access roads in excess of 150 feet long shall be provided with approved provisions for the turning around of Fire Department apparatus. The turning radius shall not be less than 60 feet and of a configuration as approved by the Fire Marshal. Emergency access roads shall not be obstructed at any time. Failure to construct an approved roadway, maintain such a roadway or to maintain an unobstructed roadway shall be reason to issue a stop work order. Periodic inspections will be made by the Fire Department for compliance.

EXHIBIT "C"

SUBDIVISION IMPROVEMENT AGREEMENT

MONTE BELLA PHASE 51

(Subdivision/Unit No.)

BMCH CALIFORNIA, LLC

(Subdivider)

FEES REQUIRED

Subdivider shall:

- A. Pay an annexation fee of \$-0- per acre to City for \_\_\_\_\_ acres in this subdivision. Said total fee is NO Dollars (\$0) and shall be paid in full prior to City Council consideration of the final map. – NOT APPLICABLE TO MONTE BELLA 5A.
- B. Reimburse City for its engineering and administrative costs in connection with the subdivision such as map checking and plan review. These costs are to be paid prior to Council's consideration of this Agreement.
- C. Reimburse the City for its costs in providing Subdivision Improvement Inspection. The Subdivider shall pay Subdivision Improvement Inspection costs of four and one half percent (4.5%) of the first \$247,162 of costs of construction of public improvements in the subdivision and three percent (3%) of the cost in excess of \$247,162. The amount attributable to this subdivision is SIXTY TWO THOUSAND SIX HUNDRED AND FIVE Dollars (\$62,605) and shall be paid prior to Council's consideration of this agreement.
- D. Pay all development fees at the time of issuance of building permits, except for the Street Tree Fee. City shall waive Street Tree Fees provided that the Subdivider agrees to install all street trees with root barriers in conjunction with the improvements specified herewith in section 1 of the Agreement and initials below accordingly. Otherwise, the Subdivider shall pay the current Street Tree Development Fee in effect at the time a building permit is issued.

\_\_\_\_\_  
(initial) I hereby agree to install all required street trees within the subdivision at the locations shown on the improvement plans and as required in the field, per City standards. I further understand that homes will not be approved for occupancy until applicable trees are installed at said home's frontage.