

**EXHIBIT D**

RECORDING REQUESTED BY  
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL  
City Clerk's Office  
17575 PEAK AVENUE  
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO  
GOVERNMENT CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

**SUBDIVISION IMPROVEMENTS AGREEMENT**

**BARLEY PLACE LLC**

**BARLEY PLACE - TRACT NO. 10239**

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **Barley Place LLC**, a Delaware Corporation ("Subdivider"), is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for **Tract No. 10239**, the subdivision known as **Barley Place** ("Map").
2. City desires, as part of the conditions of approval ("Conditions") of the Final Tract Map or Parcel Map ("Final Map"), that certain improvements be installed by Subdivider ("Improvements") as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "**Improvement Plans for Barley Place, Tract No. 10239**" ("Plans").
3. Subdivider has been unable to complete, prior to filing of the Final Map, all of the improvements required by City to the satisfaction of the City Engineer.
4. Subdivider is required by the terms of the Morgan Hill Municipal Code ("Municipal Code"), to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer and to post certain securities to secure the completion of the Improvements.
5. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.

6. This Agreement is executed pursuant to California Government Code 66410, et seq., and Chapter 17.32 of the Municipal Code in order to provide for the manner in which Improvements shall be constructed and completed.

**NOW, THEREFORE**, and in consideration of the approval of the Map, and in order to ensure satisfactory performance by Subdivider of Subdivider's obligations under the Conditions, the Subdivision Map Act, and applicable ordinances of the City, the parties hereto, for themselves, their successors, and assigns, hereby agree as follows:

**Section 1. Incorporation by Reference**

The Development Agreement between Subdivider and City, if applicable, Subdivider's Map application, the Conditions, the Map, all Plans as referenced in Section 2 below and all items submitted to the Planning Department, Planning Commission and City Council, all are incorporated herein by reference. In the event of any inconsistency between their representations in any incorporated documents and this Agreement, this Agreement shall govern.

**Section 2. Construction of Improvements**

(a) Subdivider shall construct to the approval of the City, and as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled "**Improvement Plans for Barley Place, Tract No. 10239**".

(b) Acquire and dedicate, or pay the cost of acquisition by the City, of all rights-of-way, easements, and other interests in real property for the construction or installation of the Improvements, free and clear of all liens and encumbrances.

(c) Survey Monumentation:

(1) Subdivider shall place survey monumentation as described on the Map.

(2) Subdivider shall replace or repair all survey monumentation that is destroyed or damaged as a result of Subdivider's activities. Any such repair or replacement shall be to the satisfaction and subject to the approval of the City.

**Section 3. Modification of Plans**

Subdivider agrees that, if during the construction of the Improvements, it is determined by the City that revisions to the Plans are necessary in the interest of the public, Subdivider will undertake such design and construction changes required by the City. Said changes, if any, shall be confined to the premises owned by Subdivider.

**Section 4. Security**

(a) Pursuant to California Government Code 66499.3(a), and the Municipal Code, Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to at

least one hundred percent (100%) of the estimated construction cost of the Improvements as security guaranteeing the faithful performance of the Improvements and this Agreement (“Performance Bond”).

Improvements and the City Engineer’s Estimated Costs of Improvements as of January 2016 are attached hereto as Exhibit “A”.

The Performance Bond shall be in a form substantially the same as Exhibit “B”.

(b) Pursuant to California Government Code 66499.3(b), Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to one hundred percent (100%) of the estimated construction cost of the Improvements (as listed in Section 4(a) above) as security guaranteeing the payment to the contractors, subcontractors and persons furnishing labor, materials, or equipment in connection with this Agreement (“Labor and Materials Bond”). The Labor and Materials Bond shall be in a form substantially the same as Exhibit “C”.

(c) Subdivider shall, upon acceptance of the Improvements by the City Council of the City, furnish a surety bond in an amount equal to fifty percent (50%) of the estimated construction cost of the Improvements (as listed in Section 4(a) above) to secure the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof against any defective work or labor performed, or defective materials furnished by the Subdivider.

(d) Pursuant to Government Code 66499.9, any liability upon the security given for faithful performance of any act or agreement shall be limited to:

(1) The performance of the work covered by the Agreement or the performance of the required act.

(2) The performance of any changes or alterations in such work provided that all changes or alterations do not exceed ten percent of the original estimated cost of the Improvements.

(3) The guarantee and warranty of the work for a period of one year following completion and acceptance thereof against any defective work or labor done or defective materials furnished in the performance of the Agreement or the performance of the act.

(4) Costs and reasonable expenses and fees, including reasonable attorneys’ fees.

(e) The surety on each bond and the form thereof shall be satisfactory to the City. The surety shall be furnished by a surety company authorized to write the same in the State of California and that is approved and accepted by the City’s risk manager.

(f) Subdivider agrees to furnish any bonds required by the State or County for Improvements outside the City’s jurisdiction.

(g) The release of any securities shall be governed by the provisions of Government Code Section 66499.7.

## **Section 5. Inspections**

At least fifteen (15) calendar days prior to the commencement of any work hereunder, Subdivider shall notify the City in writing of the fixed start date of construction so that the City shall be able to provide inspection services. Subdivider shall at all times maintain proper facilities and provide safe access to all parts of the work site(s) for City inspections, including any workshops or plants where work related to the Improvements is being conducted.

Subdivider shall pay and reimburse City for all expenses incurred by City for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. City Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

## **Section 6. Timing of Performance**

Subdivider agrees to perform and complete all Improvements within eighteen (18) months from the date of the recording of the Final Map; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by the Subdivider stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between the Subdivider and the City that any extension granted shall in no way affect the validity of this Agreement or release the surety (ies) on any bond attached hereto or the financial institution guaranteeing the same. Subdivider further agrees to maintain the securities described in Section 4 above in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by the City

## **Section 7. Work Performance and Warranty**

(a) Subdivider shall construct, at Subdivider's own expense, all of the Improvements in a good and workmanlike manner, and furnish all required materials incident thereto, in accordance with the Plans and to the satisfaction of the City, including any changes required by the City which in the City's opinion are necessary to complete the Improvements.

(b) All work shall be conducted and completed in accordance with the Plans and federal, state, Municipal Code, laws, ordinances, and regulations. For any Improvements partially completed prior to this Agreement, Subdivider agrees to complete the Improvements in accordance with this Agreement.

(c) Neither Subdivider, nor any of Subdivider's agents or contractors in connection with Subdivider's obligations under this Agreement are, or shall be considered to be, employees or agents of City.

(d) The work performance for the Improvements shall not be deemed complete until such time as such Improvements have been accepted for maintenance by the City.

(e) Subdivider warrants that: (1) it has investigated the work to be performed under this agreement, (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should Subdivider discover any conditions materially differing from those inherent in the Improvements or work or as represented by the City, it shall immediately inform City and shall not proceed, except at Subdivider's risk, until written instructions are received from City.

(f) Subdivider guarantees and warrants the work required by this Agreement and agrees to remedy any defects in the Improvements or work arising from faulty or defective materials or construction occurring within twelve (12) months after its acceptance. Following notice, Subdivider shall, without delay or cost to City, repair, replace, or construct any defective or unsatisfactory portion of the Improvements. City may, at its sole option, perform the repair or replacement itself if Subdivider or its surety has failed to commence repair within twenty (20) days after City has mailed written notice to Subdivider. In such event, Subdivider or its surety agrees to pay the cost of repair and replacement to the City, plus fifteen percent; and the City may recover such costs as a lien against the Subdivision. City may proceed immediately to make repairs should an emergency arises.

### **Section 8. Acquisition and Dedication of Easements or Rights-of-Way**

(a) No construction or installation of the Improvements shall be commenced before:

(1) The offer of dedication to City of appropriate rights-of-way, easements, or other interests in real property for the Improvements, which offer of dedication shall be irrevocable and remain open pursuant to California Government Code Section 66477.2, and authorization from the property owner to allow construction or installation of Improvements, or

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

(3) The issuance by a court of competent jurisdiction pursuant to state Eminent Domain Law of an order of possession.

(b) Except as otherwise provided by this Agreement, City rejects all lands, rights-of-way, and easements offered for dedication on the Final Map of the Subdivision. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with Government Code Section 66477.2. All such offers may be accepted by City in its sole discretion at any later date without further notice to Subdivider as provided by law. By way of explanation only, it is the current intention of City to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.

(c) Nothing in this Section 8 shall be construed as authorizing or granting an extension of time to Subdivider.

### **Section 9. Indemnity**

Subdivider hereby agrees to save harmless and indemnify, including, without limitation, City's defense costs (including reasonable attorney's fees), from and against any and all suits, actions, or claims, of any character whatever, brought for, or on account of any injuries or damages sustained by any person or

property resulting or arising, or alleged to have resulted or arisen, from Subdivider or Subdivider's contractors, subcontractors, agents, or employees activities, omissions or operations pursuant to this Agreement. Should City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, Subdivider will defend City, (at City's request and with counsel satisfactory to City) and will indemnify City for any judgment rendered against it or any sums paid out in settlement or otherwise.

Subdivider shall defend, indemnify, and hold harmless the City and its elective and appointive boards, officials, officers, agents, employees and volunteers from any claim, action, or proceeding to review, set aside, void, or annul an approval of the City concerning the Map and acts made in respect thereof, provided any such action is brought within the time period provided for in California Government Code 66499.37.

City shall promptly notify the Subdivider of any claim, action, or proceeding, and cooperate fully in the defense of any claim, action, or proceeding.

It is expressly understood and agreed that this Subsection (a) will survive termination of this Agreement.

## **Section 10. Insurance**

No later than ten days following issuance of the notice of award, Subdivider is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Subdivider and its Subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by the City. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. If Subdivider fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, City may, at its sole discretion, purchase such coverage at Subdivider's expense and deduct the cost from payments due to Subdivider, or terminate the Agreement for default. Subdivider further understands that the City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Subdivider, at any time as deemed necessary to protect the interests of the City.

(a) Policies and Limits. The following insurance policies and limits are required for this Agreement:

- (1) Commercial General Liability Insurance ("CGL"): Subdivider shall maintain CGL and shall include coverage for liability arising from Subdivider's or its Subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least five million dollars (\$5,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

b. CGL policy must include contractor's protected coverage, blanket contractual, and completed operations.

(2) Workers' Compensation Insurance and Employer's Liability: Subdivider shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If Subdivider is self-insured, Subdivider must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(3) Automobile Liability: Subdivider shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Subdivider does not own automobiles, then Subdivider shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(4) Pollution (Environmental) Liability: The performance of Subdivider's work or service under this Agreement involves handling of hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials. Subdivider shall procure and maintain Pollution Liability covering the Subdivider's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(b) Required Endorsements. Subdivider shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the City of

Morgan Hill and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

- a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;
- c. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(c) Subcontractors. Subdivider must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 10, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

(d) Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

(e) Certificates. Subdivider shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Subdivider's agreement with the City shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten days written notice must be made to City. Certificates, including renewal certificates, may be mailed electronically to [riskmgmt@morganhill.ca.gov](mailto:riskmgmt@morganhill.ca.gov) or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

City of Morgan Hill  
Attn: Risk Management  
17575 Peak Avenue  
Morgan Hill, CA 95037

## Section 11. Permits and Requisite Fees

(a) Subdivider shall pay all current fee obligations in the total amount of **\$TBD** due under City Resolution No. 5592, as amended, in accordance with the Department of Public Work fee schedule, as follows:

- (1) **\$TBD** payable at the time of recording of the Final Map, and

(2) **\$TBD** payable on a pro-rata basis for each individual lot in the Subdivision prior to final inspection of each and every residence.

(3) All fees payable pursuant to this Subsection (a) constitutes valid and due consideration for the City's approval of the final Map, and amounts set forth are estimates that are subject to change prior to the issuance of building permit(s), subject to resolution or ordinance of the City Council of the City.

(b) Subdivider shall, at its expense, obtain all necessary permits and licenses for the construction of the Improvements, give all necessary notices, and pay all fees and taxes required by law.

(c) Subdivider shall obtain a City of Morgan Hill Business License.

(d) Subdivider agrees to procure, at its expense, any necessary permits for Improvements outside the City's jurisdiction.

### **Section 12. On-Site Supervision**

Subdivider shall designate an on-site supervisor, satisfactory to the City, who shall be on the work site(s) at all times during the construction of the Improvements, and who has the authority to act on behalf of the Subdivider when communicating with City personnel.

### **Section 13. Waiver**

Waiver by City or Subdivider of any breach of any of the provisions of the Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of the same or any other provision of this Agreement. Acceptance by City of any work by Subdivider shall not be a waiver of any of the provisions of this Agreement.

**Section 14. Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

a. Address of Subdivider is as follows:  
Barley Place LLC  
c/o Tom Burrill, Division President  
4750 Willow Road, Suite 150  
Pleasanton, CA 94588

b. Address of City is as follows:

Public Works Director  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037

With a copy to:

City Clerk  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037

## **Section 15. Noncompliance**

If City determines that Subdivider is in violation of any federal, state, County or City laws, ordinances, rules, regulations, and requirements, and/or the terms and provisions of this Agreement, it may issue a cease and desist order, stop work order, or other action the City deems necessary.

## **Section 16. Notice of Breach and/or Default**

The City may serve written notice upon Subdivider and surety of breach of this Agreement or of any portion thereof, and default of Subdivider for any of the following circumstances:

- (a) Subdivider refuses or fails to complete the Improvements as required in Section 6 above.
- (b) Subdivider refuses or fails to perform or cure any defects in the Improvements as required in Section 7.
- (c) Subdivider is insolvent, is subject to a receivership, or files any petition in bankruptcy, either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days.
- (d) The commencement of a foreclosure action against the Subdivision or any portion thereof, or any conveyance in lieu of or in avoidance of foreclosure.
- (e) Subdivider or any of Subdivider's contractors, subcontractors, agent, or employees materially violates any of the provisions of this Agreement and not cure the violation within a reasonable time.

## **Section 17. Performance by Surety or City**

- (a) In the event of a material breach and/or default by Subdivider, Subdivider's surety shall have the duty to take over and complete the Improvements.
- (b) If the surety, within a reasonable time after receiving notice of Subdivider's default does not provide City written notice to take over the performance of this Agreement or if the surety does not commence performance thereof within the time specified in such notice to City, City may take over the construction of the Improvements and prosecute the same to completion, by contract or by any method City may deem advisable, on behalf and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages incurred by City thereby. In such event, City, without liability for so doing, may take possession of and utilize to complete the Improvements such materials, appliances, and other property belonging to Subdivider as may be on the work site(s) and necessary therefore.
- (c) City shall have the right to draw upon or utilize the appropriate security provided for in Section 4 to recover costs and damages to the City damages. The right of the City to draw upon or utilize the security is additional and not in lieu of any other remedy available to the City at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, City damages for Subdivider's default shall be measured by the cost of completing the required Improvements.

(d) Failure of Subdivider to comply with terms of this Agreement shall constitute consent to filing by City of a notice of violation against all lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedies provided in this Subsection (d) is in addition to and not in lieu of other remedies available to the City.

(e) In the event that Subdivider fails to perform any obligation under this Agreement, Subdivider agrees to pay all costs and expenses incurred by the City in securing performance of such obligation, including the costs of suit and reasonable attorney's fees.

(f) The failure by the City to take an 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 subsequent default or breach.

### **Section 18. Successors in Interest**

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the final map of the Subdivision and shall constitute a covenant running with the land and an equitable servitude upon the real property within the Subdivision. It shall be the responsibility of City to cause the executed Agreement to be recorded.

### **Section 19. Effective Date**

This Agreement shall be effective as of the date and year first above written.

### **Section 20. Amendment of Agreement**

This Agreement may only be amended by mutual consent of the original parties or their successors in interest, provided that any such amendment is executed in writing by the parties to be bound thereby. Copies of any such amendments shall be sent to surety(ies).

### **Section 21. Execution**

By signing this Agreement, the person signing states that he or she is authorized to enter into contracts on behalf of Subdivider. The undersigned, on behalf of Subdivider, binds Subdivider, its partners, successors, executors, administrators, and assigns with respect to the terms and conditions of this Agreement.

### **Section 22. Non-Liability of Officials and Employees of the City.**

No official or employee of City shall be personally liable for any default or liability under this Agreement.

### **Section 23. Law to Govern: Venue**

The law of the State of California shall govern this Agreement. In the event of litigation between the parties, the action must be filed in the Santa Clara County Superior Court.

### **Section 24. Limitations Upon Subcontracting and Assignment.**

Neither this Agreement or any portion shall be assigned by Subdivider without prior written consent of City.

**Section 25. Miscellaneous**

(a) Compliance with Law: Subdivider shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

(b) Non-Discrimination. Subdivider covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, ancestry, or sexual orientation in any activity pursuant to this Agreement.

(c) Conflict of Interest and Reporting. Subdivider shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

(d) Time of Essence. Time is of the essence in the performance of this Agreement.

(e) Interpretation. This Agreement shall be interpreted as though prepared by both parties.

(f) Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

**IN WITNESS THEREOF**, these parties have executed this Agreement on the day and year shown below.

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND** (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

**CITY OF MORGAN HILL**

**"Subdivider"  
Barley Place LLC, a Delaware corporation**

By: \_\_\_\_\_  
Steve Rymer, City Manager

By: \_\_\_\_\_  
Print Name: Tom Burrill, Division  
President

Date: \_\_\_\_\_

Date: \_\_\_\_\_  
(If a Corporation must be)  
Chairperson of the Board,  
President, or Vice President

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(If a Corporation must be) Secretary,  
Assistant Secretary, Chief Financial Officer  
or Assistant Treasurer

**ATTEST:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

\_\_\_\_\_  
Michelle Wilson, Deputy City Clerk

Date: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Gary Baum, Interim City Attorney

Date: \_\_\_\_\_

**EXHIBIT "A"**

**IMPROVEMENTS AND**

**ESTIMATED COSTS OF IMPROVEMENTS**

**AS OF APRIL 2016**

<b>Schedule II - Streets and Earthwork (Public)</b>				
	<b>Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Total</b>
1	2" AC grind and overlay	3548 SF	\$2	\$7,096
2	Trench restoration	6 EA	\$1,500	\$9,000
3	Existing sidewalk removal	1 LS	\$1,000	\$1,000
4	Driveway apron removal/installation	2 EA	\$2,000	\$4,000
5	Signing and striping	1 LS	\$5,000	\$5,000
6	Traffic control	1 LS	\$5,000	\$5,000
7	Underground existing overhead electric	160 LF	\$303	\$48,480
 <b>Schedule III - Water (Public)</b>				
	<b>Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Total</b>
1	6" D.I.P. Water Main	140 LF	\$38	\$5,320
2	4" D.I.P. Water Main	132 LF	\$30	\$3,960
3	Fire hydrant assembly (installed)	1 EA	\$3,600	\$3,600
4	Relocate ex. DDCVA and FDC	1 LS	\$5,000	\$5,000
5	1 1/2" irrigation service w/ backflow preventor	1 EA	\$1,800	\$1,800
6	1" Copy City Standard. Single water service	18 EA	\$1,250	\$22,500
			Sub Total	\$121,756
			10% Contingency	\$12,176
			<b>Total</b>	<b>\$133,932</b>

**EXHIBIT "B"**  
**PERFORMANCE BOND**  
**(100% of Engineer's Estimate)**

Bond No.: \_\_\_\_\_  
Premium: \_\_\_\_\_

Whereas, The City Council of the City of Morgan Hill, State of California, and \_\_\_\_\_ (hereinafter designated as "principal") have entered into a Subdivision Improvement Agreement:

**BARLEY PLACE LLC**  
**BARLEY PLACE – TRACT 10239**

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated \_\_\_\_\_, 2016, and identified as **BARLEY PLACE - TRACT 10239**, is hereby referred to and made a part hereof; and  
Whereas, Said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and \_\_\_\_\_, as surety, are held and firmly bound unto the City of Morgan Hill hereinafter called ("City"), in the penal sum of **one hundred thirty three thousand nine hundred thirty two dollars (\$133,932)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The Surety's office is located at \_\_\_\_\_,

Telephone No. \_\_\_\_\_; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number are as follows:

License No.: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_

The non-resident agent for the Surety, if any, is a party to the transaction:

Name of non-resident agent: \_\_\_\_\_

Non-resident agent's office address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_  
\_\_\_\_\_

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said 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 their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such 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 or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Principal

By:  
\_\_\_\_\_  
Surety

By:  
\_\_\_\_\_  
Attorney-in Fact

By:

\_\_\_\_\_  
California Resident Agent

By:

\_\_\_\_\_  
Non-resident Agent - Attorney-in-Fact

APPROVED AS TO BONDING COMPANY:

\_\_\_\_\_  
Karl Bjarke, Public Works Director

Date:

\_\_\_\_\_

APPROVED AS TO FORM:

By:

\_\_\_\_\_  
Gary Baum, Interim City Attorney

Date:

\_\_\_\_\_

(Acknowledgment on following page.)

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

State of **California**  
County of **Santa Clara**

On \_\_\_\_\_ 2016, before me, \_\_\_\_\_ a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**  
County of **Santa Clara**

On \_\_\_\_\_ 2016, before me, \_\_\_\_\_ a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

**EXHIBIT "C"**  
**LABOR AND MATERIAL BOND**  
**(100% of Engineer's Estimate)**

Bond No.:

Premium: \_\_\_\_\_  
\_\_\_\_\_

Whereas, the City Council of the City of Morgan Hill, State of California, and [ENTER Subdivider NAME] (hereinafter designated as "the principal") have entered into a Subdivision Improvement Agreement:

**BARLEY PLACE LLC**  
**BARLEY PLACE – TRACT 10239**

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated \_\_\_\_\_, 2016, and identified as **BARLEY PLACE - TRACT 10239**, is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Morgan Hill 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, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto the City of Morgan Hill and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code in the sum of **one hundred thirty three thousand nine hundred thirty two dollars (\$133,932)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City of Morgan Hill in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein 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.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety's office is located at \_\_\_\_\_,

Telephone No. \_\_\_\_\_; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number as follows:

License No.:

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

The following non-resident agent, if any, for the Surety is a party to the transaction:

Name of non-resident agent: \_\_\_\_\_,

Non-resident agent's office address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

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 same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Principal

By:  
\_\_\_\_\_  
Surety

By:

\_\_\_\_\_  
Attorney-in Fact

By:

\_\_\_\_\_  
California Resident Agent

By:

\_\_\_\_\_  
Non-resident Agent - Attorney-in-Fact

APPROVED AS TO BONDING COMPANY:

\_\_\_\_\_  
Karl Bjarke, Public Works Director

Date:

\_\_\_\_\_

APPROVED AS TO FORM:

By:

\_\_\_\_\_  
Gary Baum, Interim City Attorney

Date:

\_\_\_\_\_

(Acknowledgment on following page.)

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

State of **California**  
County of **Santa Clara**

On \_\_\_\_\_ 2016, before me, \_\_\_\_\_ a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

State of **California**  
County of **Santa Clara**

On \_\_\_\_\_ 2016, before me, \_\_\_\_\_ a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)