

**SUBDIVISION IMPROVEMENT AGREEMENT
BETWEEN
THE TOWN OF LOS GATOS
AND
SUMMERHILL 50 LGSR LLC

LOS GATOS, CALIFORNIA**

This agreement, made and entered into effective upon the last date this document is signed by the parties hereto, by and between the TOWN OF LOS GATOS, a municipal corporation of the State of California, hereinafter "Town," and SUMMERHILL 50 LGSR LLC, after this called "Subdivider," whose principal place of business is 6101 Bollinger Canyon Road, Suite 425, San Ramon, CA 94583.

WITNESSETH

WHEREAS, a Final Map (hereinafter "Map") of Tract 10657 (the "Subdivision") owned by Subdivider and commonly known as "Solana," has been filed with the Town, which Map is incorporated herein by reference;

WHEREAS, the Conditions of Approval of the Subdivision Application (M-23-009) require the Subdivider to construct and complete certain off-site public improvements. The improvement plans dated [MONTH] [DAY], [YEAR] ("Improvement Plans") were submitted and approved by the Town under Encroachment Permit Application Number EN25-150. These approved improvements are hereinafter referred to as "Required Improvements";

WHEREAS, the Subdivider has prepared, and the Town Engineer has approved, Improvement Plans for the completion of the Required Improvements in connection with the Subdivision. The approved Improvement Plans ("Plans") are on file in the Office of the Town Engineer and are incorporated into this agreement by this reference, along with any changes or modifications as may be required by the Town Engineer or designee due to errors, omissions, or changes in conditions;

WHEREAS, Subdivider recognizes that, by approval of the Map for Subdivision, Town has conferred substantial rights upon Subdivider, including the right to sell, lease, or finance lots and/or condominiums within the Subdivision. As a result, Town will be damaged to the extent of the cost of installation of these Required Improvements by Subdivider's failure to perform its obligations to commence construction of the Required Improvements by the time established in this agreement. The Town shall be entitled to all remedies available to it pursuant to this agreement and law in the event of default by Subdivider; and

WHEREAS, Subdivider has asked Town to review and approve the Map and accept the dedications therein offered, subject to and on condition that the Subdivider, prior to issuance of a building permit for the Required Improvements, enter into this agreement with the Town, and provide the Town with such security for performance and insurance and all other things as required by this agreement;

NOW, THEREFORE, to insure satisfactory performance by Subdivider of these obligations, and in consideration of the approval of the Map, the parties now agree as follows:

1. PERFORMANCE OF WORK

Subdivider agrees to furnish, construct and install at Subdivider's own expense the Required Improvements. The Plans and specification of the Required Improvements may be modified by the Subdivider as the Subdivision progresses, subject to prior written approval of the Town Engineer.

2. WORK; SATISFACTION OF TOWN ENGINEER

All the work on the Required Improvements is to be done at the places, of the materials, and in the manner and at the grades shown upon approved Plans and specifications and the Town's Ordinances, Improvement Standards and Specifications, to the satisfaction of the Town Engineer.

3. TIME OF COMPLETION. Work shall be completed within two (2) years from the date of this agreement, subject to extension due to force majeure event as set forth in this Agreement.

4. INSPECTION BY TOWN

Subdivider shall at all times provide safe access for inspection by the Town to all parts of the Required Improvements and to all places where the Required Improvements are in preparation.

5. SURVEY MONUMENTS

Subdivider shall install all Subdivision monuments required by law prior to recordation of the Notice of Acceptance.

6. DEDICATION OF EASEMENTS OR RIGHT-OF-WAY

The Town acknowledges that Subdivider has offered to the Town public right of way easements, public access easement (PAE), Public Service easement (PSE), and emergency vehicle access easement (EVAE) as shown on the Map.

7. PERMITS; COMPLIANCE WITH LAW.

Subdivider shall, at Subdivider's expense, obtain all necessary permits and licenses for the Required Improvements and give all necessary notices and pay all fees and taxes required by law. In the performance of this Agreement, Subdivider shall comply with all applicable laws, ordinances, regulations, and rules of all governmental agencies with jurisdiction, including, but not limited to, the provisions of the Government Code and the applicable provisions of the Labor Code of the State of California.

8. REVERSION TO ACREAGE

If none of the Required Improvements have been made within the time required pursuant to this Agreement, subject to allowable extensions, the Town may initiate proceedings for reversion to acreage of the land which is the subject of this Agreement pursuant to Government Code Section 66499.16 and Subdivider shall bear all applicable costs.

9. IMPROVEMENT SECURITY

Concurrently with the execution of this agreement, the Subdivider shall furnish the Town:

- a. **Faithful Performance Security:** Pursuant to California Government Code section 66499.3(a) Subdivider shall, before the release of the Map by the Town for filing for record and as a condition precedent to the recordation of it, furnish to the Town and file with the Town Clerk cash, an instrument of credit, or a bond as provided by the Subdivision Map Act, in a form approved by the Town Attorney, securing performance by Subdivider of all work shown on the Plans and completion within the agreed time. The security shall be in the amount of one hundred percent (100%) of the total estimated cost of the Required Improvements, as determined by the Director. The amount of cash, instrument of credit or bond shall be \$477,895.

- b. **Payment Security:** Subdivider shall furnish to the Town and file with the Town Clerk cash, an instrument of credit, or a bond as provided by the Subdivision Map Act, in a form approved by the Town Attorney, securing the obligations for payment to the contractor, subcontractors and to persons renting equipment or furnishing labor or materials for the completion of the Required Improvements. The security shall be in the amount of one hundred percent (100%) of the total estimated cost of the Required Improvements, as determined by the Director. The amount of cash, instrument of credit or bond shall be \$477,895.
- c. **Guarantee and Warranty Security:** It is further agreed that a “guarantee and warranty security” in the amount of ten (10%) percent of the total estimated cost of the Required Improvements for a period of one (1) year following their completion and acceptance by the Town against any defective work or labor done, or defective materials furnished, by the Subdivider. This limitation on the security does not shorten any time during which the Town may act to enforce the Subdivider’s obligations under the terms of this agreement, nor shorten any time during which Town may bring an action in an appropriate court regarding the subject or performance of this agreement.
- d. **Monument Security:** It is further agreed that a “monument security” in the amount of one hundred percent (100%) of the total estimated cost of the installation of survey monuments in the Subdivision within the period of time specified in the Surveyor’s Statement on the approved Final Map. The amount of cash, instrument of credit or bond shall be \$26,000.
- e. Any bonds submitted as security pursuant to this section shall be executed by a surety company authorized to transact a surety business in the State of California.
- f. No change, alteration, or addition to the terms of this agreement or the Plans and specifications incorporated herein shall in any manner affect the obligation of the sureties, except as otherwise provided by the Subdivision Map Act.
- g. The securities shall be irrevocable, shall not be limited as to time except as to the one (1) year guarantee and warranty period) and shall provide that they may be released, in whole or part, only upon the written approval of the Director and as provided in **Section 10-Release of Security**. All securities provided pursuant to this agreement shall expressly obligate the surety for any extension authorized by the Town for Subdivider’s completion of the Required Improvements, whether or not the surety is given notice of such an extension by the Town.

10. RELEASE OF SECURITY

- a. **Guarantee and Warranty Security:** Any unused portion of the guarantee and warranty security shall be released one (1) year after acceptance of the Required Improvements by the Town Council. The amount to be released shall first be reduced by the amount deemed necessary by the Town to correct any defects in the Required Improvements that are known or believed by the Town to exist at the end of the guarantee and warranty period.
- b. **Payment Security:** Security securing the payment to the contractor, his or her subcontractors, and to persons furnishing labor, materials or equipment shall, after acceptance of the work, be reduced to an amount equal to the total timely claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the legislative body and, if no such claims have been timely recorded, the security shall be released in full.
- c. **Faithful Performance Security:** The faithful performance security shall be released upon acceptance of the Required Improvements by the Town Council.

- d. **Monument Security:** The monument security may be released upon acceptance of the required monument installation by the Director.

11. TOWN MAY REQUIRE ADDITIONAL SECURITY

If during the course of performance, the Town considers that the total estimated cost of the Required Improvements or work to be performed hereunder makes it necessary to have the Subdivider post additional security, the Town may require, at Subdivider's election, either an additional cash deposit, letter of credit or a surety bond guaranteeing performance. The condition of the security shall be that if the Subdivider fails to perform its obligation under this Agreement, the Town may, in the case of a cash bond or letter of credit, act for Subdivider using the proceeds, or in the case of a surety bond, require the sureties to perform the obligations of the Agreement.

12. INDEMNIFICATION AND HOLD HARMLESS

Subdivider does expressly agree to protect, defend, indemnify and hold harmless (hereinafter, "hold harmless") the Town, its elected and appointed officials, employees and agents (hereinafter, the "Town"), from any and all loss or damage, and from any and all liability, including cost of defense, for any and all loss or damage, and from any and all suits, actions or claims filed or brought by any or all persons or person (hereinafter, "Claim") because of or resulting from the acts by Subdivider of any and all things required of Subdivider by this agreement, or because of or arising or resulting from the failure or omission by Subdivider to do any and all things necessary to and required by this agreement or by law, or arising or resulting from the negligent acts by Subdivider, Subdivider's agents, employees or subcontractors of any and all things required to be done by this agreement, or arising or resulting from any dangerous or defective condition arising or resulting from any of the above said acts or omissions of Subdivider, Subdivider's agents or employees. Subdivider shall not be required to hold harmless (as described above) the Town for Claims caused or arising out of the sole negligence or willful misconduct of the Town.

13. INSURANCE

Subdivider shall furnish to the Town and file with the Town Clerk evidence of, and at all times during the performance of its obligations under this agreement maintain, the insurance described in **Exhibit A**.

14. NO WAIVER BY TOWN

Inspecting of the work or materials, or approval of work or materials, or a statement by an official, agent, or employee of the Town indicating the work complies with this Agreement, or acceptance of all or any portion of the work or materials, or payments thereof, or any combination of all of these acts shall not relieve Subdivider of its obligation to fulfill this Agreement; nor is the Town by these acts prohibited from bringing an action for damages arising from the failure to comply with this Agreement.

15. TIME EXTENSIONS

- a. If performance of this agreement actually should be delayed by inclement weather, riots, strikes, lockouts, fires, earthquakes, floods and conditions resulting therefrom, subcontractor delays, labor shortages, material shortages or delays, Town delays, or for other reasons beyond the control of the Subdivider, the time for the construction of same may be extended by the Town Engineer for such period of time as is reasonable.
- b. Requests for extension of the commencement and/or completion date shall be in writing and delivered to the Town in the manner hereinafter specified for service of notices. An extension of time, if any, shall be granted only in writing.

- c. In the event the Town extends the time of commencement and/or completion of the Required Improvements, such extension shall be granted in writing by the Town to the Subdivider pursuant to this agreement, and/or without relieving or releasing those providing an improvement security pursuant to this agreement. The surety or sureties, if any, in executing the securities shall be deemed to have expressly agreed to any such extension of time.
- d. In granting any extension of time, the Town may require new or amended improvement security in amounts increased to reflect increases in the costs of constructing the incomplete Required Improvements, taking into account all Required Improvements that have been completed.

16. MAINTENANCE OF PUBLIC INFRASTRUCTURE

The Subdivider shall maintain all Required Improvements (streets, sidewalks, right-of-way, street light, storm drainage facility, sanitary sewer, etc.) in a safe and usable condition at all times during construction. Should any Required Improvements become unsafe, unusable or inoperable because of the Subdivider's activities, the Subdivider shall immediately cease all work on the Subdivision until the public infrastructure is made safe and usable, for which the Subdivider shall be solely responsible.

Subdivider shall repair or replace Required Improvements and monuments shown on the map and Improvement Plans which have been destroyed or damaged prior to final acceptance of the completed work and improvements by the Town Council.

17. WARRANTY OF WORK

Subdivider expressly warrants and guarantees all work performed and all materials used for a period of one year after completion and final acceptance by the Town Council. Subdivider shall maintain and perform or cause to be performed repairs, additions, or corrective work necessitated by Subdivider's omission or deficient performance for one year after acceptance. If the Subdivider fails to act promptly or in accordance with this agreement, or if the exigencies of the situation require repairs or replacements to be made before the Subdivider can be notified, then the Town may, at its option, make the necessary repairs or replacements or perform the necessary work, and Subdivider shall pay the Town the actual cost of such repairs plus fifteen percent (15%) within thirty (30) days of the date of billing for such work by Town.

18. DEFAULT BY SUBDIVIDER

- a. Default of Subdivider shall include, but not be limited to:
 - (1) Subdivider's failure to timely commence construction of Required Improvements under this agreement;
 - (2) Subdivider's failure to complete construction of the Required Improvements within the time period provided by this Agreement or any extensions thereof;
 - (3) Subdivider's failure to timely cure any defect in the Required Improvements during the one (1) year guaranty and warranty period where such failure continues beyond thirty (30) days after written notice thereof from the Town, or if such failure is not susceptible to cure within such 30-day period, Subdivider has not commenced to cure within such 30-day period and does not thereafter continue to diligently proceed to cure;

(4) Subdivider's failure to perform substantial construction work for a period of 30 consecutive calendar days after commencement of the work, for reasons other than force majeure events;

(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 by Subdivider's lender: or

(7) Subdivider's failure to perform any other obligation under this agreement within thirty (30) days after written notice thereof from the Town, or if such failure is not susceptible to cure within such 30-day period, Subdivider has not commenced to cure within such 30-day period and does not thereafter continue to diligently proceed to cure.

b. The Town reserves all remedies available to it at law or in equity for breach of Subdivider's obligations under this agreement.

c. The Town shall have the right, without limitation of other rights or remedies, to draw upon or utilize any improvement security furnished hereunder to mitigate Town's damages in the event of Subdivider's default.

(1) The Town may serve written notice of any default upon the surety on any surety bond furnished as improvement security hereunder, and request that the surety take over and complete the Required Improvements. If the surety, within 7 business days after service of such notice of default, does not give the Town written notice of its intention to perform this Agreement, or does not commence performance within 5 business days after notice to Town of its intention to perform, the Town may take over the work and prosecute the same to completion, by contract or by other method the Town deems advisable, for the account and at the expense of the Subdivider and its surety.

(2) Subdivider acknowledges that the estimated total costs and Required Improvement security amounts set forth herein may not reflect the actual cost of construction or installation of the Required Improvements and, consequently, Town's damages for Subdivider's default shall be measured by the cost of completing the Required Improvements. If the damages incurred by the Town in taking over and completing the Improvements exceed the principal amount of the Required Improvement security, then the Subdivider shall reimburse the Town in the amount of such excess damages.

(3) The Town may, without liability for doing so, take possession of, and utilize in completing the Required Improvements, such materials, appliances, plant and other property belonging to the Subdivider as may be on the site of the work and necessary for the performance of the work. Subdivider hereby consents to entry by the Town and its forces, including contractors, upon any real property in the subdivision owned by the Subdivider or any assignee of this Agreement, in the event the Town elects to maintain or complete the work on the Required Improvements following Subdivider's default.

(4) Subdivider acknowledges and agrees that, upon approval of the Map for the Subdivision, Town will confer substantial rights upon the Subdivider, including the right to sell, lease, or finance lots within the Subdivision, and that such approval constitutes the final act necessary to permit the division of land within the Subdivision. As a result, Town will be damaged to the extent of the cost of construction or installation of the Improvements upon Subdivider's failure to perform its obligations under this Agreement.

(5) The Town's failure to take an enforcement action with respect to a default, or to declare a default or breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of the Subdivider.

(6) If the Town sues to compel Subdivider's performance of this Agreement, or to recover damages or costs incurred in completing or maintaining the work on the Required Improvements, Subdivider agrees to pay all reasonable attorney fees and other costs and expenses of litigation incurred by the Town in connection therewith, even if Subdivider subsequently resumes and completes the work.

19. TIME OF ESSENCE

Time is of the essence in this Agreement.

20. ASSIGNMENT OF AGREEMENT

Neither this Agreement, nor any part of it, is assignable by Subdivider without the written consent of the Town, which shall not be unreasonably withheld or delayed.

21. HEIRS, SUCCESSORS, AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties.

22. SUBDIVIDER NOT AGENCY OF THE TOWN

Neither Subdivider nor any of Subdivider's agents or contractors are or shall be considered to be agents of Town in connection with the performance of Subdivider's obligations under this Agreement.

23. NOTICES

Notices regarding this agreement shall be given as follows and shall be considered effective upon either personal delivery or five (5) days following deposit in the U.S. Mail:

To SUBDIVIDER: SUMMERHILL 50 LGSR LLC
6101 Bollinger Canyon Road, Suite 425
San Ramon, CA 94583

and

SummerHill 50 LGSR LLC
777 California Avenue
Palo Alto, CA 94304
Attn: General Counsel

To TOWN: Parks and Public Works Department
Town of Los Gatos
41 Miles Avenue
Los Gatos, California 95030

Any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

24. SEVERABILITY

If any term of this agreement is held invalid by a court of competent jurisdiction, the remainder of this agreement shall remain in effect.

25. ENTIRE AGREEMENT AND AMENDMENT

This agreement constitutes the complete and exclusive statement of the agreement between the Town and Subdivider. No verbal agreement or conversation with any officer, agent, or employee of the Town, either before, during or after the execution of this agreement, shall affect or modify any of the terms or obligations contained in the agreement. There are no intended third party beneficiaries to this Agreement.

26. PAYMENT OF OUTSTANDING FEES

Prior to acceptance of Required Improvements for permanent maintenance by the Town, Subdivider shall pay all outstanding fees that are due in accordance with this agreement and the Town Code of the Town of Los Gatos.

27. GOVERNING LAW

This Agreement shall be interpreted under, and enforced by, the laws of the State of California. Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Santa Clara.

28. ACTIONS TO ENFORCE

If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to reasonable attorneys' fees, expert witness fees and costs, in addition to any other relief to which they may be entitled.

29. REIMBURSEMENT OF ATTORNEYS FEES

In the event of any third party claim or legal challenge to any action taken by the Town with regard to any procedure or aspect of this agreement, including approval or environmental review process, the Town may choose to defend the claim or action with the prior written approval of the Subdivider, the Subdivider, if it has consented to the defense of the claim or action, agrees to reimburse the Town for attorneys' fees, expert witness fees, and any other costs the Town may incur in connection with its retention of legal counsel, and for any award of court costs and fees against the Town.

30. MORTGAGEE PROTECTION

No breach of this agreement shall defeat or render invalid the lien of any deed of trust or mortgage recorded against all or any portion of the Subdivision. Except where the Lender has received prior written notice of Subdivider's default hereunder and an opportunity to cure such default, in accordance with and pursuant to this Agreement, no lender taking title to all or any portion of the Subdivision through foreclosure or deed in-lieu of foreclosure shall be liable for any defaults or monetary obligations of Subdivider arising prior to acquisition of possession of such property by such lender. The foreclosing lender shall have the right to find a substitute developer to assume the obligation of Subdivider, which substitute shall be considered for approval by Town pursuant to this agreement, which approval shall not be unreasonably withheld, conditioned or delayed. Town agrees to provide any lender who has recorded a deed of trust or mortgage against all or any portion of the Solana project of which Town has been given notice (each, a "Lender") with written notice of any default relating to the Subdivider and/or the Solana project given by Town to Subdivider. Town agrees that, notwithstanding anything to the contrary contained in this Agreement, Lender shall have an additional sixty (60) days from the date Lender receives notice of a default to cure any such default, provided that Lender shall not have any obligation to cure any such default.

If a Lender or an affiliate of such Lender succeeds to the interest of Subdivider through foreclosure or deed in-lieu of foreclosure, then the time periods for performance of Subdivider's obligations set forth in this agreement (if any) shall be extended for a period of time reasonable under the circumstances to permit such Lender or such affiliate to perform Subdivider's obligations under this agreement.

Copies of notices of default sent to Subdivider shall also be sent to Lender at:

Wells Fargo Bank, National Association
401 B Street, Suite 100
San Diego, CA 92101
Attn: John Wickenhiser
Loan No.: 0000101863

Copies to:

Wells Fargo Bank, National Association
600 South 4th Street, 10th Floor
Minneapolis, MN 55415
Attn: Agency CRE creloanservicingoperations@wellsfargo.com
Loan No.: 0000101863

and

Wells Fargo Bank, National Association
10 S. Wacker Drive, 20th Floor
Chicago, IL 60606
Attn: Gloria Juarez
Loan No.: 0000101863

TOWN OF LOS GATOS

DATE: _____

TOWN MANAGER

ATTEST:

DATE: _____

CLERK ADMINISTRATOR

APPROVED AS TO FORM:

DATE: _____

TOWN ATTORNEY

RECOMMENDED BY:

DATE: _____

DIRECTOR OF PARKS AND PUBLIC WORKS

DRAFT

SUBDIVIDER

SUMMERHILL 50 LGSR LLC,
a California limited liability company

By: SummerHill LGL Venture LLC,
a Delaware limited liability company,
its Sole Member

By: SummerHill LGL Venture Manager LLC,
a Delaware limited liability company,
its Managing Member

By: SummerHill Homes LLC,
a California limited liability company
Its Manager

By: _____ DATE: _____

Its: _____

By: _____ DATE: _____

Its: _____

FAITHFUL PERFORMANCE BOND

**BOND NUMBER:
PREMIUM:**

WHEREAS, the Town of Los Gatos, State of California (hereinafter called "Town"), and SUMMERHILL 50 LGSR LLC (herein designated as "Principal") have entered an agreement by which Principal agrees to install and complete certain designated public improvements, which agreement, dated [MONTH] [DAY], 20____, and identified as the "Subdivision Improvement Agreement" is hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of the Subdivision Improvement 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 Town, in the penal sum of **four hundred seventy seven thousand, eight hundred and ninety five (\$477,895)** 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, formally by these presents.

The condition of this obligation is such that if the above bounded Principal, 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 Subdivision Improvement 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 Town, its officers, agents and employees, as therein stipulated, and this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

Principal and Surety further agree that, upon Town's final approval of the work, ten percent (10%) of this bond shall remain in effect to guarantee the repair and/or replacement of defective materials and/or construction, one (1) year after Town's final acceptance of the work, unless Principal posts a separate warranty bond instead.

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 Town in successfully enforcing such obligation, all to be taxed as costs and included in any judgement 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 any way 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 Subdivision Improvement Agreement or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on [MONTH] [DAY], 20____.

PRINCIPAL:

SUMMERHILL 50 LGSR LLC,
a California limited liability company

By: SummerHill LGL Venture LLC,
a Delaware limited liability company,
its Sole Member

By: SummerHill LGL Venture Manager LLC,
a Delaware limited liability company,
its Managing Member

By: SummerHill Homes LLC,
a California limited liability company
Its Manager

By: _____

Its: _____

By: _____

Its: _____

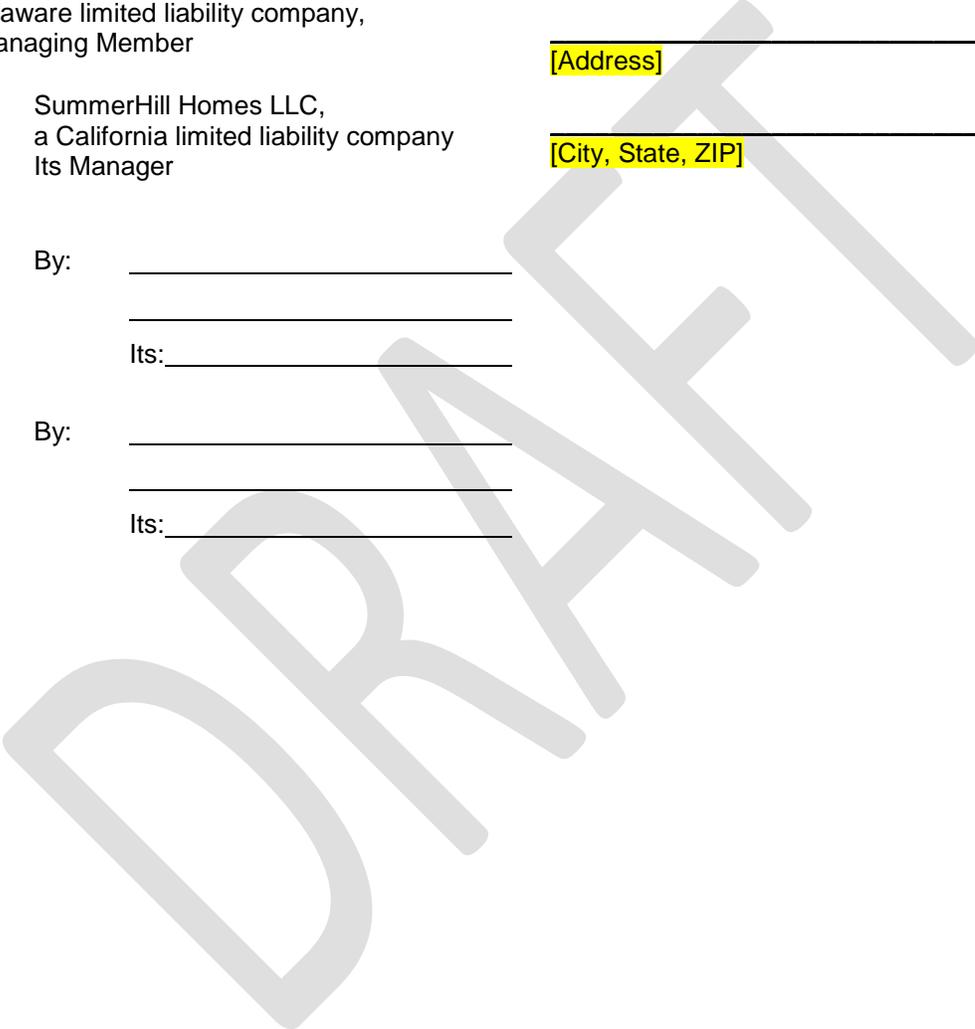
SURETY:

[PRINCIPAL]

By: _____
Its: _____

[Address]

[City, State, ZIP]



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 _____)

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

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

WITNESS my hand and official seal.

Signature _____

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 _____)

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

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

WITNESS my hand and official seal.

Signature _____

LABOR AND MATERIALS BOND

**BOND NUMBER:
PREMIUM:**

WHEREAS, the Town of Los Gatos, State of California (hereinafter called "Town"), and SUMMERHILL 50 LGSR LLC (hereinafter designated as "Principal") have entered an agreement whereby Principal agrees to install and complete certain designated public improvements, which agreement, dated [MONTH] [DAY], 20____, and identified as the "Subdivision Improvement Agreement" is hereby referred to and made a part hereof; and

WHEREAS, under the terms of the Subdivision Improvement Agreement, Principal is required, before entering upon the performance of the work, to file a good and sufficient payment bond with the Town 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, said Principal and the undersigned as Corporate Surety are held firmly bound unto the Town and all contractors, subcontractors, laborers, material suppliers and other persons employed in the performance of the Subdivision Improvement Agreement and referred to in the aforesaid Civil Code in the sum of **four hundred seventy seven thousand, eight hundred and ninety five (\$477,895)** for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount herein above 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 Town in successfully enforcing such 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 hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Subdivision Improvement 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.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on [MONTH] [DAY], 20____.

PRINCIPAL:

SUMMERHILL 50 LGSR LLC,
a California limited liability company

By: SummerHill LGL Venture LLC,
a Delaware limited liability company,
its Sole Member

By: SummerHill LGL Venture Manager LLC,
a Delaware limited liability company,
its Managing Member

By: SummerHill Homes LLC,
a California limited liability company
Its Manager

By: _____

Its: _____

By: _____

Its: _____

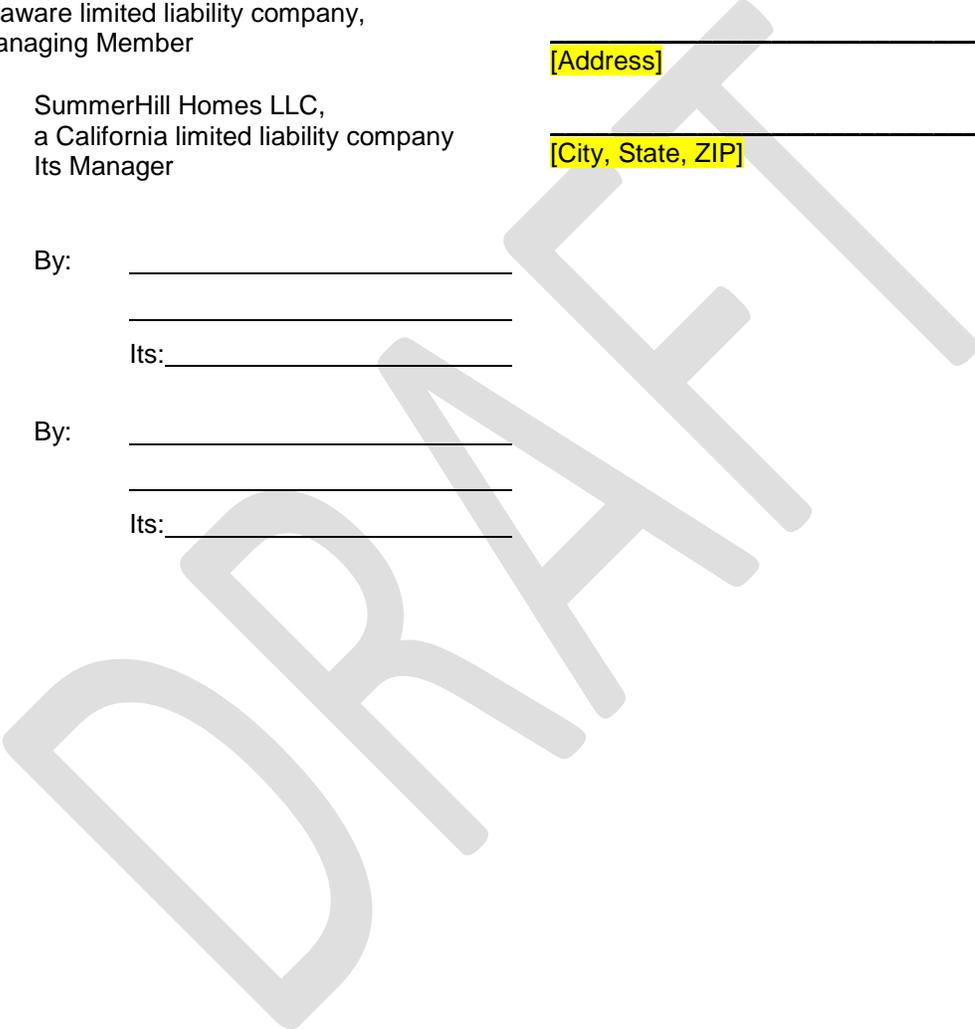
SURETY:

[PRINCIPAL]

By: _____
Its: _____

[Address]

[City, State, ZIP]



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 _____)

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

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

WITNESS my hand and official seal.

Signature _____

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Signature _____

SUBDIVISION MONUMENTS BOND

**BOND NUMBER:
PREMIUM:**

WHEREAS, the Town of Los Gatos, State of California (hereinafter called "Town"), and SUMMERHILL 50 LGSR LLC (hereinafter designated as "Principal") have entered an agreement whereby Principal agrees to install and complete certain designated public improvements, which agreement, dated [MONTH] [DAY], 20____, and identified as the Subdivision Improvement Agreement, is hereby referred to and made a part hereof;

WHEREAS, said Principal is required, under the terms of said agreement, to furnish a subdivision monuments bond; and

WHEREAS, under the terms of said agreement, Principal has submitted for approval to the Town a final map, filed with the Town, with a certificate thereon by the engineer or surveyor responsible for survey for the final map stating that some or all of the monuments will be set in the positions indicated on the final map on or before specified later date; that pursuant to Sections 66495-66498 of the Subdivision Map Act, the Town requires that the subdivider furnish to the Town a bond in an amount equal to the estimated cost of setting such monuments not already set prior to recording of the final map, guaranteeing payment of the cost thereof;

NOW, THEREFORE, we, the Principal and _____, as Surety, are held and firmly bound unto the Town in the amount of **twenty six thousand (\$26,000)** lawful money of the United States, for the payment of which sum well and truly be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally.

The condition of this obligation is such that if the monuments are set on or before [MONTH] [DAY], 20____, and the engineer or surveyor setting the final monuments shall have been paid, then this obligation shall become null and void. Otherwise it shall be and remain in full force and effect.

As part of this obligation secured hereby and in addition to the amount of deposit specified above, it is agreed that we shall pay the costs and reasonable expenses and fees, including reasonable attorney's fees, if any, incurred by the Town in successfully enforcing such obligation against us, all to be taxed as costs and included in any judgment rendered.

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 hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said 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.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named, on [MONTH] [DAY], 20____.

PRINCIPAL:

SUMMERHILL 50 LGSR LLC,
a California limited liability company

By: SummerHill LGL Venture LLC,
a Delaware limited liability company,
its Sole Member

By: SummerHill LGL Venture Manager LLC,
a Delaware limited liability company,
its Managing Member

By: SummerHill Homes LLC,
a California limited liability company
Its Manager

By: _____

Its: _____

By: _____

Its: _____

SURETY:

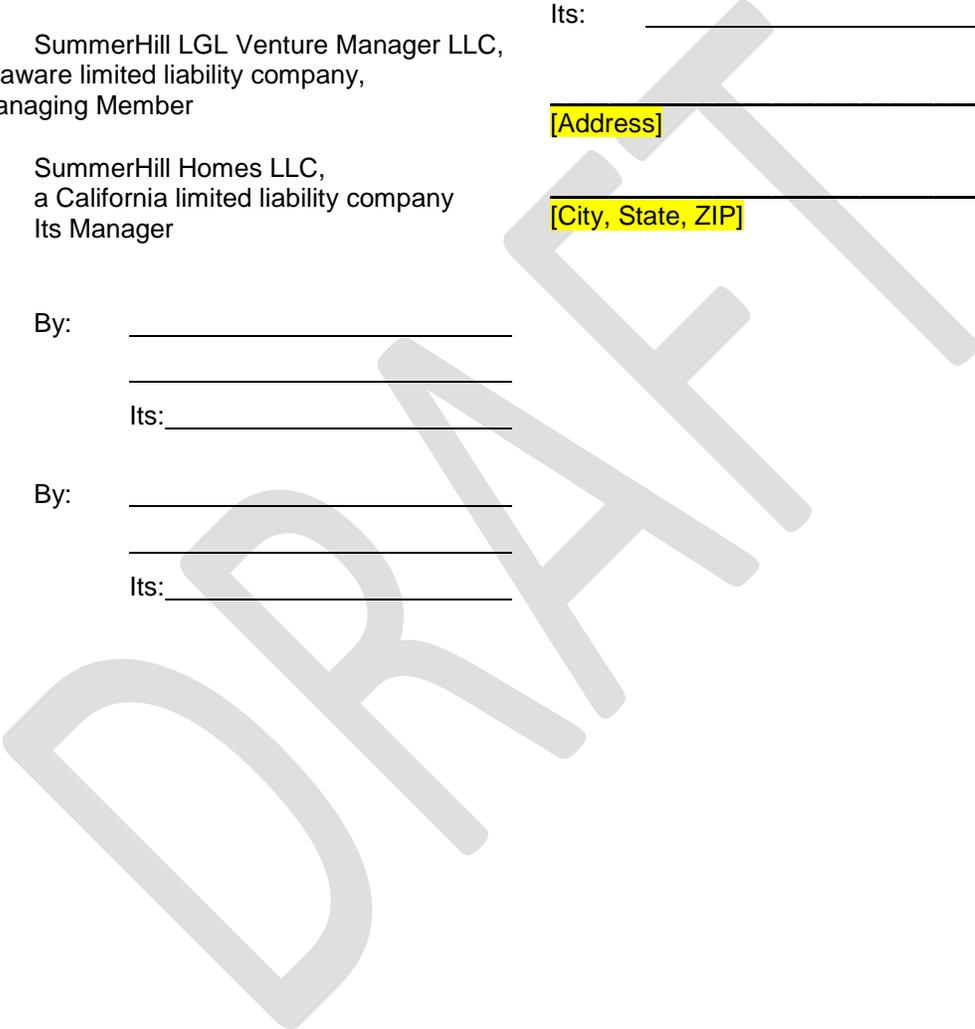
[PRINCIPAL]

By: _____

Its: _____

[Address]

[City, State, ZIP]



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State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

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Signature _____

EXHIBIT A

INSURANCE REQUIREMENTS

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Offices form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form GC 0001).
2. Insurance Services Office form number CA 0001(Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Worker's Compensation insurance as required by the Labor Code of the State of California and Employers Liability Insurance.

B. BEGINNING OF WORK

Subdivider shall maintain limits no less than:

1. General Liability: \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Comprehensive General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the Town. At the option of the Town, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officers, official, employees and volunteers; or the Subdivider shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. OTHER INSURANCE PROVISION

The policies are to contain, or be endorsed to contain the following provision:

1. General Liability and Automobile Liability Coverages
 - a. The Town, its officers, official, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Subdivider, products and completed operation of the contracts, premises owned, occupied or used by the Subdivider, or automobiles owned, leased, hired or borrowed by the Subdivider. The coverage shall contain no special limitation on the scope of protection afforded to the Town, its officers, officials, employees, or volunteers.

- b. The Subdivider's insurance coverage shall be primary insurance as respects the Town, its officer, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees, or volunteers shall be excess of the Subdivider's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provision of the policies shall not affect coverage provided to the Town, its officers, officials, employees, or volunteers.
- d. The Subdivider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, employees, or volunteers for losses arising from work performed by the Subdivider for the Town.

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that the coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail return receipt required, has been given to the Town.

E. ACCEPTABILITY OF INSURERS

Insurance is to be place with insurers with a Best's rating of no less than **B+**.

F. VERIFICATION OF COVERAGE

Subdivider shall furnish the Town with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the Town. Where, by statute, the Town's workers' compensation-related forms cannot be used, equivalent forms approved by the State Insurance Commissioner are to be substituted. All certificates and endorsements are to be received and approved by the Town before work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, at any time.

G. SUBCONTRACTORS

Subdivider shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.