

Introduced by

OFFICE OF THE CITY CLERK

Approved for Form and Legality

2007.11.25 PM 6:57

F. Faiz

Councilmember

City Attorney

## OAKLAND CITY COUNCIL

Resolution No. 80387 =          C.M.S.

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### RESOLUTION CONDITIONALLY APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT WITH SIENA HOMES LLC FOR THE FINAL MAP FOR TRACT 7396 FOR THE SIENA HILL SUBDIVISION FOR CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS AT 4301 KELLER AVENUE

**WHEREAS**, the developer of a single-family residential subdivision project, Siena Homes Group LLC, a California limited liability company (no. 200519010054), is the Subdivider of a four (4) acre vacant parcel identified by the Alameda County Assessor as APN 040A-3457-033-01, by the Alameda County Recorder as Tract 7396, and by the City of Oakland as 4301 Keller Avenue; and

**WHEREAS**, the Subdivider has acquired by purchase for valuable consideration the real property comprising Tract 7396; and

**WHEREAS**, the Subdivider has previously applied to the City of Oakland to subdivide said parcel comprising Tract 7396 into thirty-two (32) residential lots for individual ownership and construction of single-family dwellings; and

**WHEREAS**, the Planning Commission of the City of Oakland approved the land use permit (PUDF05081) and environmental review determination (ER020012) on March 5, 2005, and the Tentative Map for Tract 7396 on June 17, 2005, which proposed a subdivision of the vacant parcel into thirty-two (32) residential lots for individual ownership; and

**WHEREAS**, the Council of the City of Oakland approved the formation of a Geologic Hazards Abatement District (GHAD), which included the proposed subdivision, by Resolution no. 80058 CMS on July 18, 2006; and

**WHEREAS**, the Secretary of the Planning Commission of the City of Oakland has certified to the Council of the City of Oakland that the Planning Commission approved the Tentative Map for Tract 7396, upon which the Final Map for Tract 7396 is based; and

**WHEREAS**, the City Engineer of the City of Oakland has determined that

- the Final Map for Tract 7396, attached hereto as *Exhibit A*, is substantially the same as the Tentative Map approved by the Planning Commission, and
- the Final Map complies in all manners with the provisions of the California Government Code (Section 66400, et seq. - Subdivision Map Act), and the City of Oakland's local ordinance (Municipal Code Title 16 - Subdivisions); and

**WHEREAS**, the City Engineer has further determined that the Final Map is technically correct and accurately delineates the metes and bounds of the thirty-two (32) proposed lots and the proposed on-site public and private easements, the limits of which have been established by field survey and can be re-established from the monuments, property corners, radii, bearings, and distances shown on the Final Map for Tract 7396; and

**WHEREAS**, the Subdivider has employed a competent and qualified design professional, who is licensed by the State of California to practice civil engineering, to prepare plans and specifications for the construction of required surface and subsurface public infrastructure improvements within the existing public right-of-way of Keller Avenue and the proposed on-site public easement; and

**WHEREAS**, the City Engineer has approved infrastructure permit (PX0500056) and the Subdivider's plans and specifications for construction of the required public infrastructure improvements, included with *Exhibit B* and attached hereto; and

**WHEREAS**, the Council of the City of Oakland has approved by Resolution no. 80237 CMS on October 31, 2006, an encroachment (permit ENMJ 0505132) within the public right-of-way along Keller Avenue for the locating of a retaining wall to support up-slope earthwork on which said infrastructure improvements will be constructed; and

**WHEREAS**, at the time of approval of the Final Map by the Council of the City of Oakland, the Subdivider will not have commenced nor competed construction of the required public infrastructure improvements, and consequently the City Engineer will not have approved the construction of nor issued a Certificate of Completion for the required improvements; and

**WHEREAS**, pursuant to Government Code section 66462 and Municipal Code section 16.20.100, the Subdivider may record a Final Map before completing construction of required public infrastructure improvements by entering into an agreement with the City giving assurance that the required improvements will be completed within a determinate period of time; and

**WHEREAS**, pursuant to Government Code section 66462 and Municipal Code section 16.20.100 as a condition precedent to approval of the Final Map, the Subdivider has executed a Subdivision Improvement Agreement, attached hereto as *Exhibit C*, assuring the timely construction, unconditional warrantee, and prescribed maintenance of all required public infrastructure improvements; and

**WHEREAS**, pursuant to Government Code section 66499 et seq. and Municipal Code section 16.20.100, the Subdivider has deposited securities in the form of surety bonds, included by reference with *Exhibit C*, and in sufficient amounts, as estimated by the City Engineer, to secure the Subdivider's performance under *Exhibit B* as:

- a guarantee that the required public infrastructure improvements will be constructed in accordance with the approved plans and specifications, and as a
- guarantee that the contractor and his subcontractors and all persons renting equipment or furnishing labor and materials will receive full payment, and as a
- warrantee that the required public infrastructure improvements will perform as designed and intended, and as a

- guarantee that the Subdivider will maintain the required public infrastructure improvements for the duration prescribed Subdivision Improvement Agreement; and

**WHEREAS**, that upon City Attorney's approval for form and legal sufficiency of the Subdivision Improvement Agreement and the surety bonds, the City Administrator is authorized to execute the Subdivision Improvement Agreement on behalf of the City of Oakland; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA) have been complied with and on March 2, 2005, the Planning Commission certified the EIR(ER020012), and adopted CEQA Findings in connection with the approval of the Siena Hill project; and

**WHEREAS**, the City Council hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project, and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines 15162(a)(3); and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied; now, therefore, be it

**RESOLVED:** That the Subdivision Improvement Agreement with Siena Homes LLC for the Final Map for Tract 7396, as conditioned herein, does comply with the California Environmental Quality Act; and be it

**FURTHER RESOLVED:** That the Subdivision Improvement Agreement is hereby conditionally approved; and be it

**FURTHER RESOLVED:** That the City Attorney's review and approval of the Agreement and the surety bonds securing the Subdivider's performance under the Agreement shall be obtained prior to execution of the Agreement by the City Administrator on behalf of the City of Oakland; and be it

**FURTHER RESOLVED:** That the City Clerk is hereby directed to file the executed Subdivision Improvement Agreement concurrently with the fully endorsed Final Map for Tract 7396 for simultaneous recordation by the Alameda County Recorder; and be it

**FURTHER RESOLVED:** That upon recommendation of the City Engineer, the City Administrator is further authorized, without returning to City Council, to extend the time period designated in the Subdivision Improvement Agreement for completion of the public infrastructure improvements upon demonstration of good cause by the Subdivider, as determined by the City Administrator at his or her sole discretion.

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 6 2007, 2007

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, ~~REID~~, and  
PRESIDENT DE LA FUENTE - 7

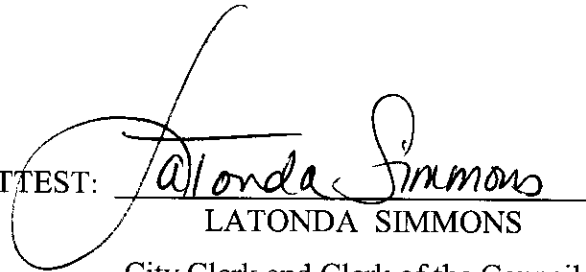
NOES - 0

ABSENT - 0

ABSTENTION 0

Excused - Reid - 1

ATTEST:

  
LATONDA SIMMONS

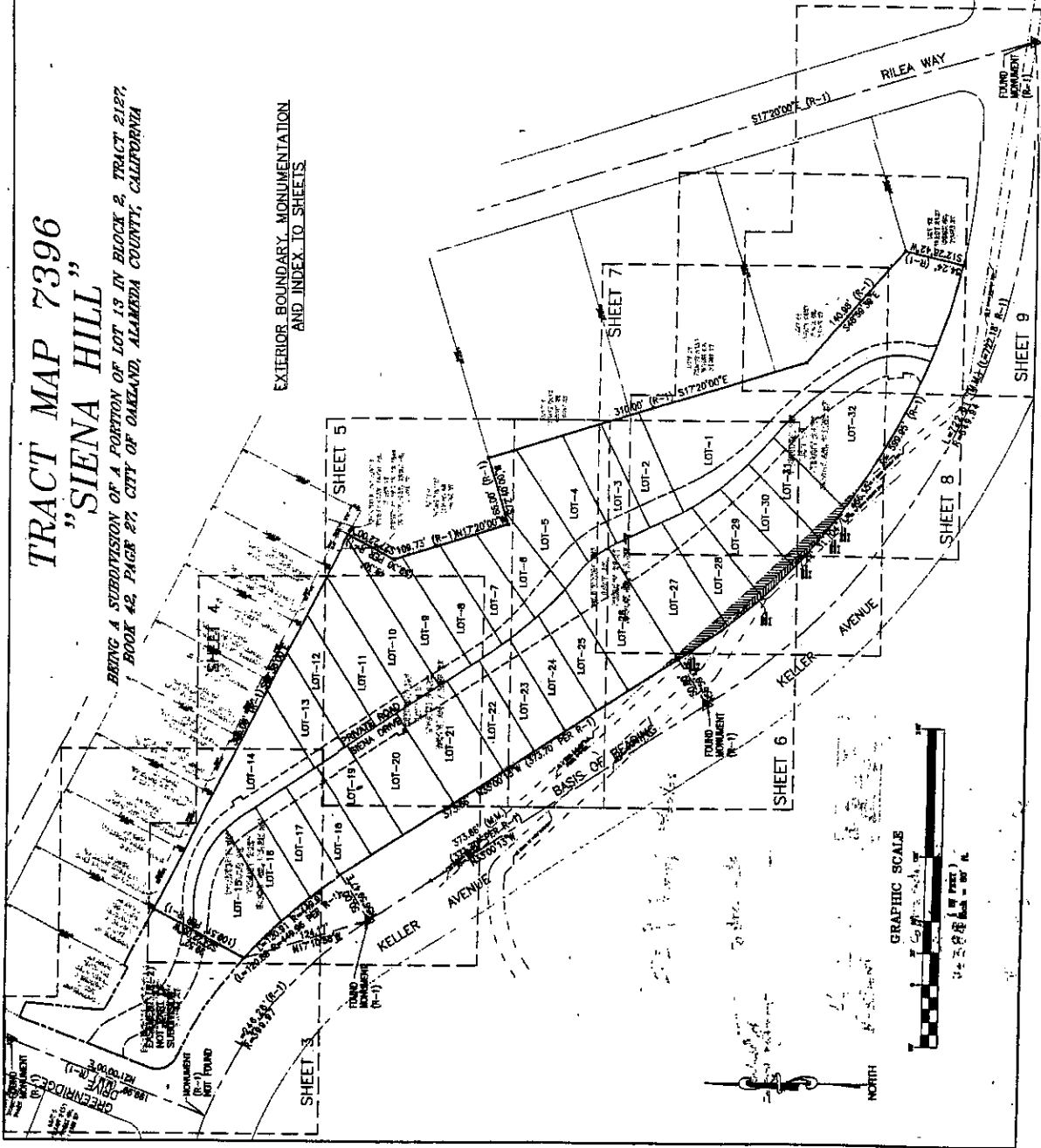
City Clerk and Clerk of the Council  
of the City of Oakland, California



# TRACT MAP 7396 "SIENA HILL"

BRING A SUBDIVISION OF A PORTION OF LOT 13 IN BLOCK 2, TRACT 2127, BOOK 42, PAGE 27, CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

EXTERIOR BOUNDARY, MONUMENTATION  
AND INDEX TO SHEETS



- LEGEND:**
- ▲ FOUND STREET MONUMENT
  - △ STREET MONUMENT TO BE SET
  - ⊗ 1/4" PLYWOOD
  - ⊗ 1/2" PLYWOOD
  - ⊗ 3/4" PLYWOOD
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  - ⊗ 9672" PLYWOOD
  - ⊗ 9696" PLYWOOD
  - ⊗ 9720" PLYWOOD
  - ⊗ 9744" PLYWOOD
  - ⊗ 9768" PLYWOOD
  - ⊗ 9792" PLYWOOD
  - ⊗ 9816" PLYWOOD
  - ⊗ 9840" PLYWOOD
  - ⊗ 9864" PLYWOOD
  - ⊗ 9888" PLYWOOD
  - ⊗ 9912" PLYWOOD
  - ⊗ 9936" PLYWOOD
  - ⊗ 9960" PLYWOOD
  - ⊗ 9984" PLYWOOD
  - ⊗ 10008" PLYWOOD

MAP OF TRACT 2127, BOOK 42, PAGE 27  
EASEMENT, SERIES NO. 2004-20578 AND  
AMENDMENT, SERIES NO.  
EMILIO OUTCLAIM DEED, SERIAL NO. 2005-133228  
EMILIO OUTCLAIM DEED, SERIAL NO. 2005-133229  
DEED TO OUTCLAIM DEED, SERIAL NO. 2005-133230  
DEED TO OUTCLAIM DEED, SERIAL NO. 2005-133231  
19, 1982, REEL 519, PAGE 315, INSTRUMENT NO.  
AT72298, ALAMEDA COUNTY RECORDS  
BASIS DE BEARINGS.

THE MONUMENTS LOCATED IN KELLER AVENUE AS SHOWN  
ON THIS MAP ARE THE MONUMENTS LOCATED ON THE  
COUNTY, CALIFORNIA, FILED MAY 28, 1980 IN BOOK 42  
OF MAPS, PAGE 27, ALAMEDA COUNTY RECORDS.

**A.C.K.** Engineering  
800 Main St. #5  
Vallejo, Ca. 94590  
PH: 707-848-9818  
FAX: 707-844-2443

PROFESSIONAL ENGINEER IN CIVIL  
STATE OF CALIFORNIA  
No. 10000  
Exp. 12/31/05



recording requested by:

**CITY OF OAKLAND**

when recorded mail to:

City of Oakland  
CEDA - Building Services  
Dalziel Administration Building  
250 Ogawa Plaza - 2nd Floor  
Oakland, CA 94612  
Attn: City Engineer

**EXHIBIT C**

----- space above for Recorder's use only -----

APPROVED FOR FORM AND LEGALITY

\_\_\_\_\_  
CITY ATTORNEY

**SUBDIVISION IMPROVEMENT AGREEMENT**

**Deferred Construction of Public Infrastructure Improvements**

**4301 Keller Avenue - Siena Hill**

**Final Map - No. 7396**

This Agreement is between Siena Homes LLC (DEVELOPER), a California limited liability company (no. 200519010054), and its successors or assigns, affiliated companies or corporations, parent companies or corporations, or partners, and the **City of Oakland** (CITY), a California municipal corporation.

**RECITALS**

The DEVELOPER is the owner in fee title and subdivider of an originally subdivided and undeveloped lot located within the corporate limits of the CITY, which is identified by the Alameda County Assessor as parcel number 040A-3457-033-01 and by the CITY as 4301 Keller Avenue, who has presented a proposed Final Map, which is identified by the Alameda County Recorder as No. 7396, to the Council of the CITY that proposes a subdivision of this platted land into thirty-two (32) developable lots.

As a condition precedent to the approval of the proposed Final Map, the CITY requires the irrevocable dedication of public right-of-way and public easements shown on the map. In addition, the CITY requires the construction of public infrastructure improvements off-site in the CITY right-of-way and on-site in dedicated right-of-way and easements that customarily includes grading, paving, striping and lettering, curbs, gutters and sidewalks, trees, landscaping and irrigation, retaining walls, storm drains and sanitary sewers, street name and public transportation signs, survey monuments, electricity, communication, water, and natural gas utility mains and branch piping and wiring, fire hydrants, street light electroliers, traffic control and curb parking signs, signals and meters, and all appurtenances thereto.

The DEVELOPER has asked the CITY and local public utility companies to accept the permanent maintenance of the required public infrastructure improvements shown on the construction plans accompanying permit number PX 0500056 and included in *Exhibit A*, attached hereto.



Construction of the required public infrastructure improvements, however, has not commenced nor been accepted by the CITY. Consequently and in consideration of the approval of the proposed Final Map and acceptance of the irrevocable offers of dedication of public right-of-way and easements and acceptance of the permanent maintenance of the required public infrastructure improvements, the parties desire to establish an Agreement binding the DEVELOPER to complete the required improvements within the time duration set forth in paragraph 4 below.

**THEREFORE**, it is agreed as follows:

**1. Approval of Parcel Map**

Approval of the proposed Final Map No. 7396 by the CITY shall be conditioned upon recordation of this Agreement with the Alameda County Recorder, as well as DEVELOPER's satisfactory performance of its obligations specified in this Agreement, as determined by the CITY.

**2. Construction of Improvements**

The DEVELOPER shall construct all required off-site and on-site public infrastructure improvements in strict accordance with all permits, specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth below in paragraph 3, Special Conditions.

**3. Special Conditions**

The DEVELOPER shall comply with the special conditions as follows:

**A.** Public infrastructure improvements shall conform with the performance criteria specified in Oakland Municipal Code Chapter 16.16 - Design Standards and in Standard Details for Public Works Construction 2002 Edition and Standard Specifications for Public Works Construction 2002 Edition.

**B.** The time duration for the completion of required public infrastructure improvements, as set forth in paragraph 4 below, shall include allowance for construction workday delays attributable to consecutive and intermittent inclement weather, as has been recorded by the United States Weather Bureau for the CITY and surrounding area and seasonally averaged for the previous ten years.

**C.** Hours, days, and months of operation and control of public nuisance conditions for the construction of required public infrastructure improvements shall conform with the requirements of all CITY Conditions of Approval for the project and the Oakland Municipal Code, including section 15.04.780 and subsections 3304.6 and 3304.11. No work shall be performed on Saturdays or Sundays or holidays nor commence before 8:00 am local time nor be performed after 5:00 pm local time without the written authorization of the City Engineer.

**D.** Performance standards for the construction of required public infrastructure improvements shall comply with the requirements of Oakland Municipal Code chapter 17.120 and with regional, state, and federal regulations for "Best Management Practices" for erosion and sedimentation control.

**E.** In order to safeguard life, public and private property, and to ensure that the work will be carried out in an orderly manner in conformance with all regulations and without creating a public nuisance, the City Engineer may add to, remove, or change these Special Conditions from time to time during the duration of the permit as he or she deems reasonably necessary.

**4. Completion of Improvements**

**A.** All construction of required public infrastructure improvements shall be completed by the DEVELOPER within one (1) year of the date of recordation of this Agreement, except those required

improvements for which another completion date is stated in *Exhibit A* or set forth above in paragraph 3, Special Conditions. Construction shall not be deemed complete until the public infrastructure permit has been finalized and an unconditional Certificate of Completion has been issued by the City Engineer.

B. The City Administrator may extend the time for completion of the required public infrastructure improvements. Upon consultation with the City Engineer, the City Administrator shall be the sole and final judge as to whether or not good cause has been shown to entitle the DEVELOPER to an extension under this paragraph 4B.

C. An extension may be granted without notice to the DEVELOPER's surety, and extensions so granted shall not relieve the surety's liability on any of the bonds required by this Agreement.

D. In the event that an extension is granted, DEVELOPER agrees to promptly extend the term of all surety bonds securing its performance under this Agreement, and/or provide additional bonds or other surety acceptable to the CITY. All such bonds and/or other surety are subject to review and approval by the City Attorney for legal sufficiency, and if no bonds or other surety acceptable to the City Attorney are provided to secure DEVELOPER's performance, the extension shall be void.

**5. Acceptance of Dedications and Ownership of Improvements**

Upon final approval of the public infrastructure improvement permit and unconditional issuance of a Certificate of Completion, all irrevocable offers of dedication of public rights-of-way and public easements will be accepted by the CITY, and all improvements required by this Agreement shall become the sole property of the CITY. The CITY will subsequently accept the permanent maintenance of these improvements as set forth below in paragraphs 7, Maintenance, and 8, Guarantee and Warranty.

**6. Responsibility for Dedications and Improvements**

Until the Certificate of Completion is unconditionally issued, the DEVELOPER shall give good and adequate warning to the public of each and every defective or dangerous condition existing or arising within all public right-of-way and public easements offered for dedication and shall adequately protect the public from said unsafe conditions. Warning to and protection of the public shall remain the sole responsibility and expense of the DEVELOPER until such time as the Certificate of Completion is unconditionally issued.

**7. Maintenance of Improvements**

Until one (1) year has elapsed following unconditional issuance of the Certificate of Completion, the DEVELOPER shall maintain the construction of the required public infrastructure improvements and shall immediately perform or cause to be performed at its sole expense all necessary repairs, replacements, additions, or other corrective actions.

**8. Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise**

Until one (1) year has elapsed following the unconditional issuance of the Certificate of Completion, the DEVELOPER warrants that the required public infrastructure improvements, including the equipment and materials provided for the required improvements, are and will be free from defects and guarantees that the construction of the required improvements is and will be free from deficiencies and that the required improvements will perform satisfactorily in accordance with the specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in paragraph 3, Special Conditions. DEVELOPER further warrants that its design professionals are competent, that their analyses are adequate, and that their designs will meet or exceed the applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in paragraph 3, Special Conditions.

If at any time before the expiration of the guarantee and warrantee period specified herein said designs prove to be inadequate in any respect, as determined by the City Engineer, the DEVELOPER shall make changes at its sole expense necessary to assure conformance with said standards and criteria.

**9. Inspection of Construction**

Inspection of the construction and equipment and materials, or approval of the construction and equipment and materials inspected, or statement by any officer, agent, or employee of the CITY indicating the construction and equipment and materials, or any part thereof, comply with the requirements and conditions of this Agreement, or acceptance of the whole or any part of the construction and materials, or payments thereof, or any combinations, or any combination, or all of these acts shall not relieve the DEVELOPER of its obligation to fulfill this Agreement as prescribed herein; nor shall the CITY be thereby estopped from bringing any action for damages arising from the failure of the DEVELOPER to comply with any of the requirements and conditions of this Agreement.

**10. Payment of Fees and Penalties and Accrued Interest**

Prior to issuance of the Certificate of Completion and prior to acceptance by the CITY of the on-site and off-site required public infrastructure improvements for permanent maintenance, the DEVELOPER shall pay all fees and penalties and accrued interest to the CITY and other Public Agencies that remain unpaid. Interest on amounts owed to the CITY shall accrue at the rates set forth in its Master Fee Schedule and from date that the fees and penalties are assessed and shall continue until full payment is received, whether or not any conditions of this Agreement are extended or modified.

**11. Reversion to Acreage**

If the DEVELOPER fails to perform its obligations under this Agreement, DEVELOPER, as the subdivider, consents to the reversion to acreage of the land which is the subject to this Agreement pursuant to Government Code section 66499.16 and to bear all applicable costs.

**12. Property Acquisition**

If the DEVELOPER is unable to acquire property required for the construction of required improvements, the DEVELOPER agrees to execute the standard CITY Contract for Real Property Acquisition to provide for acquisition through eminent domain.

**13. Security**

The DEVELOPER shall present to the CITY surety bonds, in a form satisfactory to the City Attorney, issued by a corporate surety authorized to issue said security in the State of California as follows:

A. Before execution of this Agreement, the following securities shall be presented:

1. **Faithful Performance Bond** in a face amount not less than \$ 324,608.00, which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the on-site and off-site public infrastructure improvements, to secure faithful performance of this Agreement by the DEVELOPER; and

2. **Labor and Materials Bond** in a face amount not less \$ 162,304.00, which is one-half (fifty percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure payment by the DEVELOPER to its contractor, subcontractors, laborers and materialmen furnishing supervision, labor, materials and equipment engaged in the construction pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act.

B. Before final approval of the public infrastructure permit, the following security shall be presented:

**Maintenance Bond** in a face amount not less than \$ 81,152.00, which is one-quarter (twenty-five percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure faithful performance of paragraphs 7, Maintenance, and 8, Guarantee and Warrantee, above. This Maintenance Bond shall remain in effect for not less than one year after the date of the unconditional issuance of the Certificate of Completion of the required public infrastructure improvements.

C. Pursuant to Government Code section 66499.4, the obligation guaranteed by each bond shall include costs and reasonable expenses and fees, including reasonable attorney fees and expert witness fees, incurred by the CITY in successfully enforcing said obligations and shall be in addition to the face amount of each bond.

**14. Alternative Security**

In lieu of the bonds required above in paragraph 13, Security, alternative securities may be substituted by the DEVELOPER in a form provided by Government Code Section 66499.3 and subject to review and approval by the City Attorney.

**15. Hold Harmless**

The DEVELOPER shall indemnify, defend and hold the CITY and its officers, officials, employees, representatives, agents and volunteers harmless against any and all claims, injuries, damages, losses and suits, including attorney fees and expert witness fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages directly caused by the sole gross negligence of the CITY and its officers, official, employees, representative, agents, or volunteers.

Not in limitation of the foregoing, DEVELOPER further agrees to defend and protect the CITY and its officers, officials, employees, representatives, agents and volunteers from all liability or claim because of, or arising out of the use of any patent or patented articles in the construction of said improvements.

DEVELOPER waives all claims and recourse against the CITY, including, without limitation, the right of contribution for loss or damage to persons or property, arising from, growing out of, or in any way connected with or incident to the work performed or failed to be performed under this Agreement, except claims and recourse arising directly from the sole gross negligence of the CITY and its officers, officials, employees, representatives, agents or volunteers.

This indemnification clause shall survive the termination of this Agreement.

**16. Insurance Required**

DEVELOPER shall procure and maintain for the duration of the Agreement sufficient insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the DEVELOPER and his agents, representatives, employees or subcontractors.

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto."

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

**B. Minimum Limits of Insurance**

1. **Commercial General Liability** insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability, Operations, Products and Completed Operations, Owners and Contractors Protective Liability, and/or XCU coverage, when applicable, with limits not less than **\$2,000,000.00** combined single limit per occurrence for bodily damage, personal injury and property damage. The limits of insurance shall apply separately to this project or location. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof.

2. **Automobile Liability** with limits not less than **\$2,000,000.00** combined single limit per accident for bodily injury and property damage.

3. **Worker's Compensation** insurance as required by the laws of the State of California with limits not less than **\$1,000,000.00**. Statutory coverage may include Employers Liability coverage. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

4. **Professional Liability/ Errors/ Omissions** insurance with limits not less than **\$1,000,000.00**.

5. **Builders' Risk/ Course of Construction** insurance covering all risks of loss with limits not less than the completed value of the project with no coinsurance penalty provisions. The CITY shall be named as loss payee under this policy. The insurer shall waive all rights of subrogation against the CITY.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either

1. the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the CITY and its officers, officials, employees, agents and volunteers, or

2. the DEVELOPER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**D. Other Insurance Provisions**

The general and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

1. The CITY and its officers, officials, employees, representatives, agents and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the DEVELOPER, products and completed operations of the DEVELOPER; premises owned, occupied or used by the DEVELOPER, or automobiles owned, leased, hired or borrowed by the DEVELOPER. The coverage shall contain no special limitations on the scope of protection afforded to the CITY and its officers, officials, employees, representatives, agents, and volunteers.

2. The DEVELOPER's insurance coverage shall be primary insurance as respects the CITY and its officers, officials, representatives, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY and its officers, officials, employees, representatives, agents, or volunteers shall be excess of the DEVELOPER's insurance and shall not contribute with it.

3. Any failure to comply with reporting provisions of the policies required by this clause, including breaches of warranties, shall not affect coverage provided to the CITY and its officers, officials, employees, representatives, agents, and volunteers.

4. The DEVELOPER'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.

5. The insurer shall agree to waive all rights of subrogation against the CITY and its officers, officials, employees, representatives, agents, and volunteers for losses arising from work performed by the DEVELOPER for the CITY.

6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except for non-payment of premium, by either party, except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the CITY. In the event the policy is canceled for non-payment of premium, ten (10) days prior written notice, as stated above, will be given.

#### **E. Acceptability of Insurers**

If the insurance company providing coverage is licensed to do business in the State of California, the company shall have an A.M. Best rating of not less than A:VII. However, if the insurance company is not licensed to do business in California, the A.M. Best rating shall not be less than A+:X. The maximum A.M. Best rating is A++:XV.

#### **F. Verification of Coverage**

DEVELOPER shall furnish the CITY 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 Commercial General Liability endorsement shall be a form CG 20 10 (or proprietary equivalent), attached to this form. The Commercial Automobile Liability endorsement shall be a form CA 20 48, attached to this document. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time. A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT.

#### **G. Subcontractors**

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

### **17. Participation in Benefit Districts**

The DEVELOPER shall participate in all Benefit Districts formed by the CITY prior to the execution of this Agreement and shall pay the prorated fee due the CITY under the terms of Benefit District or Districts as applied to the real property covered by this Agreement.

**18. Actions to Enforce**

If any action at law or in 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 costs and reasonable expenses and fees, including reasonable attorneys' fees and expert witness fees, in addition to any other relief to which they may be entitled.

**19. Beneficiaries, Heirs, Assigns, and Successors In Interest**

This Agreement pertains to and runs with the real property included within Final Map No. 7396, which land is expressly agreed to benefit from the privileges granted to DEVELOPER under this Agreement, and binds the beneficiaries, heirs, assigns, and successors in interest of the DEVELOPER.

**20. Attachments**

The following documents are incorporated into this Agreement by reference:

CITY permits: Public Infrastructure PX 0500056 Planning PUDF050081, PUD02217  
G.H.A.D. Building  
Grading GR 0500061 Encroachment ENMJ 05132

Resolutions: \_\_\_\_\_ CMS \_\_\_\_\_ CMS

Subdivision: Final Map No. 7396 City Engineer's Estimate of the Cost of Improvements

Insurer: \_\_\_\_\_ Surety: \_\_\_\_\_

**21. Constructive Notice**

DEVELOPER shall cause this Agreement to be filed for recordation in the Official Records of Alameda County within five (5) calendar days following execution by the CITY.

**22. Effective Date**

This Agreement shall not become effective until recorded as provided in paragraph 21 above.

IN WITNESS WHEREOF, the DEVELOPER has caused its name to be subscribed hereto, and the CITY has caused its name to be affixed hereto on the dates indicated below.

**SIENA HILL LLC \***

**CITY OF OAKLAND**

\_\_\_\_\_  
signature

\_\_\_\_\_  
signature

\_\_\_\_\_  
name

**DEBORAH EDGERLY**  
City Administrator

\_\_\_\_\_  
title

\_\_\_\_\_  
date

\_\_\_\_\_  
date

\* notarized acknowledgment required