

**TOWN COUNCIL
TOWN OF GYPSUM, STATE OF COLORADO**

**RESOLUTION NO. 14
(SERIES 2024)**

**A RESOLUTION APPROVING THE FIFTH AMENDMENT
TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR THE
SIENA LAKE PLANNED UNIT DEVELOPMENT**

WHEREAS, the Town of Gypsum, Colorado ("Town"), is a home rule municipality of the State of Colorado, duly organized and existing under Article XX of the Colorado Constitution and the Gypsum Home Rule Charter effective October 21, 1982; and

WHEREAS, the Town of Gypsum has the power and authority to adopt regulations regarding the subdivision of land and to enjoin any such subdivision which does not comply with such regulations, pursuant to Sections 31-23-214 and 31-23-216, C.R.S.; and

WHEREAS, the Town Council of the Town of Gypsum ("Council") has adopted Chapter 18.08 of the Gypsum Municipal Code (G.M.C.) governing planned unit developments; and

WHEREAS, Siena Lake, LLC (the "Developer") is the owner of real property located within the Siena Lake Planned Unit Development;

WHEREAS, the Town and Developer's predecessor or Town and Developer previously entered into a Subdivision Improvement Agreement, First Amendment to Subdivision Improvement Agreement, Second Amendment to Subdivision Improvement Agreement, Third Amendment to Subdivision Improvement Agreement, and Fourth Amendment to Subdivision Improvement Agreement (collectively, the "SIA"); and

WHEREAS, the SIA obligates the Developer to provide certain infrastructure improvements and facilities to serve the Siena Lake Planned Unit Development and mitigate the impact of the project on the Town and requires certain improvements be constructed; and

WHEREAS, Developer has completed a portion of the improvements and wishes to further amend the Subdivision Improvement Agreement for the Siena Lake Planned Unit Developer to modify the timing for construction of certain required improvements within the Fourth Amended Final Plat.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Gypsum, Colorado, as follows:

1. Incorporation of Recitals and Findings. The above Recitals and Findings of the Town Council are hereby incorporated into this Resolution.
2. Approval of Fifth Amendment to the Subdivision Improvement Agreement. The Fifth Amendment to the Subdivision Improvement Agreement attached hereto as **Exhibit A** and incorporated herein is hereby approved.
3. Effective Date. This Resolution shall become effective immediately upon adoption by the Town Council.
4. Severability. If any part, section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

Approved and Resolved this 13th day of August, 2024, at a regular meeting of the Town Council of the Town of Gypsum, Colorado by a vote of 5 in favor and 1 against.

EXHIBIT A
FIFTH AMENDMENT TO SIA

**FIFTH AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT
SIENA LAKE PLANNED UNIT DEVELOPMENT
FOR THE R1/R2 ZONE DISTRICTS**

This Fifth Amendment to Subdivision Improvement Agreement Siena Lake Planned Unit Development for the R1/R2 Zone Districts ("Fifth Amendment") is entered into this 4 day of SEPTEMBER, 2024 between the Town of Gypsum, a home-rule municipal corporation (the "Town" or "Gypsum") and Siena Lake, LLC ("Developer") and amends, with respect to the Siena Lake Property (defined herein), the Subdivision Improvement Agreement, Siena Lake Planned Unit Development ("Agreement") between the Town and Red Table Ventures, LLC, dated August 14, 2018 and recorded at Reception No. 202003559 in the offices of Eagle County Clerk and Recorder, the First Amendment to Subdivision Improvement Agreement/ Siena Lake Planned Unit Development ("First Amendment") recorded at Reception No. 202003560 between the Town and Red Table Ventures, LLC, the Second Amendment to Subdivision Improvement Agreement/Siena Lake Planned Unit Development between the Town of Gypsum and Siena Lake, LLC, dated June 22, 2021 and recorded at Reception No. 202116534 ("Second Amendment"), the Third Amendment to Subdivision Improvement Agreement/Siena Lake Planned Unit Development between the Town and Siena Lake, LLC, dated August 25, 2021 and recorded at Reception No. 2022-10-790 ("Third Amendment") and the Fourth Amendment to Subdivision Improvement Agreement/Siena Lake Planned Unit Development between the Town and Siena Lake, LLC, dated August 23, 2022 and recorded at Reception No. 202214452 ("Fourth Amendment", and the First, Second, Third and Fourth Amendments collectively referred to as the "SIA" or "Subdivision Improvement Agreement"). The Town and Developer may each be referred to singularly as a "Party" and jointly as the "Parties".

RECITALS

A. WHEREAS, Developer is the owner of the real property (the "Siena Lake Property") identified on Exhibit A attached hereto and incorporated herein located in the Town of Gypsum, Colorado, which encompass the R1 and R2 Zone Districts within the Siena Lake PUD; and

B. WHEREAS, Red Table Ventures, LLC assigned the Agreement and First Amendment to Siena Lake, LLC, which was approved by the Town pursuant to Resolution No. 30 (series 2020); and

C. WHEREAS, the Agreement, First Amendment, Second Amendment, Third Amendment, and Fourth Amendment obligate the Developer to provide certain infrastructure, improvements and facilities to serve the Siena Lake Planned Unit Development ("PUD") and mitigate the impact of the Project on the Town and require certain improvements be constructed; and

D. WHEREAS, Developer has begun construction of the infrastructure within the area of the PUD within the Fourth Amended Final Plat ("Phase I") and is requesting at this time to modify certain terms and update timelines for certain Required Improvements.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Amendment of Section 19(b)(1) of the Agreement and Section 4 of the Fourth Amendment. Section 19(b)(1) of the Agreement and Section 4 of the Fourth Amendment is deleted in its entirety and amended to read as follows:

Acceleration/Deceleration Lanes. Within five (5) business days of full execution of the Fifth Amendment, Developer shall pay to the Town a cash-in-lieu fee equal to \$773,213.69, which is the estimated cost of construction in 2022 of the acceleration and deceleration lanes at the intersection of Siena Lake Parkway and Cooley Mesa Road. In addition to all other remedies available to the Town, all building permits, temporary certificates of occupancy and certificates of occupancy will be withheld until such amount is paid in full. Following payment of the cash-in-lieu, Developer may submit a request for release of Improvement Escrow Proceeds in the amount of \$349,661.00, which was previously allocated to such construction. Developer and Town will follow the process set forth in the Improvement Escrow Proceeds Agreement for release of such amount.

2. Amendment of Exhibit G of the Fourth Amendment Related to Sequence 1. Exhibit G of the Fourth Amendment is amended by deletion and replacement of the requirements related to Sequence 1 to read as follows:

Sequence 1:

- 4 model homes on Lot 10 through 13 have received building permits prior to completion of Required Improvements.
- Hillside Park shall be completed prior to the issuance of the 41st building permit for the Project, but no later than September 30, 2026. Beginning October 1, 2026, or upon application for the 41st building permit, whichever occurs first, building permits will be withheld for all portions of the Project until the park is completed.
- The Spearstone Avenue Emergency Access shall be constructed no later than September 30, 2024. No temporary certificates of occupancy or permanent certificates of occupancy will be issued until the emergency access, including: (i) the storm drainage down the hill, (ii) the culvert under Cooley Mesa Road, (iii) Gravel or roto mill from Cooley Mesa Road south up to the future Sequence 4 paved road location, (iv) bollards at Cooley Mesa, and (v) any other related improvements, are completed, inspected, and approved by the Town.
- Pumphouse structure and non-potable irrigation system for Sequence 1 shall be completed no later than September 30, 2024. No temporary certificates of occupancy or permanent certificates of occupancy will be issued until the pumphouse structure and non-potable irrigation system for Sequence 1 is completed, inspected, and approved by the Town. No landscaping shall be installed on any lot, except the four (4) model homes on Lot 10 through 13, until this infrastructure is approved.
- Except as set forth above, all other Required Improvements within Sequence 1 must be completed, approved, and, if required by the Town, conveyed to the Town prior to issuing any building permits. However, following payment of the cash-in-lieu fee for

the accel/decel lanes described above, Developer may submit and be issued up to 40 additional building permits, above the 4 building permits already issued for model homes within Sequence 1, prior to completion of Required Improvements within Sequence 1. No temporary certificates of occupancy or certificates of occupancy will be issued until all the Required Improvements within Sequence 1 are completed, approved and conveyed to the Town (as required).

3. **Plat Amendment.** Developer has determined that a number of lots within Sequences 1-4 are not buildable due to steep slopes and has not extended all Required Improvements to such lots. No later than September 30, 2024, Developer shall submit to Gypsum an application for a plat amendment to vacate and/or replat all non-buildable lots in Filing 1.

4. **Covenants Running with the Land.** All provisions contained in this Fifth Amendment touch and concern the Siena Lake Property, constitute covenants running with the land, shall be binding upon the Developer and their successors and assigns forever.

5. **Successors and Assigns.** The Agreement and this Fifth Amendment shall be binding upon and shall benefit future owners of all portions of the Siena Lake Property.

6. **Miscellaneous.** In the event any conflict between the Agreement, First Amendment, Second Amendment, Third Amendment, Fourth Amendment, with respect to the Siena Lake Property, this Fifth Amendment shall control. Except as specially modified in this Agreement, First Amendment, Second Amendment, Third Amendment and Fourth Amendment shall remain in full force and effect. The Agreement as amended by the First, Second, Third, Fourth and this Fifth Amendment, shall constitute the complete and entire agreement among the parties with respect to the Siena Lake Property.

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