

TOWN OF SUPERIOR
RESOLUTION NO. R-12
SERIES 2018

A RESOLUTION OF BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING THE FINAL PLAT, FINAL DEVELOPMENT PLAN AND ASSOCIATED DEVELOPMENT IMPROVEMENT AGREEMENT FOR LOT 1, BLOCK 1, DISCOVERY OFFICE PARK, CASE NOS. FP-2018-01 & FDP-2018-01

WHEREAS, Aweida Properties, Inc. ("Applicant") owns and would like to develop certain property legally described as Lot 1, Block 1, Discovery Office Park (the "Property");

WHEREAS, Applicant has filed an application for approval of a Final Plat and Final Development Plan (the "FDP") for the Property (the "Application");

WHEREAS, Section 16-8-50 of the Superior Municipal Code (the "Code") requires a public hearing and decision by the Board of Trustees on the Final Plat;

WHEREAS, Section 16-10-40 of the Code requires a public hearing and decision by the Board of Trustees on the FDP;

WHEREAS, the specific approval criteria for the Final Plat are set forth in Section 16-8-50 of the Code;

WHEREAS, the specific approval criteria for the FDP are set forth in Section 16-10-40(b) of the Code;

WHEREAS, on January 16, 2018, the Planning Commission held a properly-noticed public hearing on the Application and recommended that the Board of Trustees approve the Application, with conditions;

WHEREAS, on February 12, 2018, the Board of Trustees held a properly-noticed public hearing on the Application; and

WHEREAS, the Board of Trustees, upon reviewing the recommendation of the Planning Commission, hearing the statements of staff and the public, and giving due consideration to the matter, finds and determines as provided below.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

Section 1. The Board of Trustees hereby finds and determines that the Application meets all of the applicable criteria set forth in the Code and is consistent with the Town of Superior Comprehensive Plan.

Section 2. The Board of Trustees hereby approves the Application, subject to the following conditions, all of which shall be fully satisfied within 60 days of approval of this Resolution:

A. Applicant shall make minor technical and redline corrections to plans as identified by Town staff;

B. The Final Plat shall be recorded prior to the recording of the FDP;


C. The maintenance, repair, and replacement responsibilities for shared elements of residential structures shall be addressed via covenants enforceable by a metropolitan district with jurisdiction over the Property or via agreements between the respective owners required by Developer prior to sale of the residential units;

D. Applicant shall amend the FDP to limit the amount of bedrooms per residential unit to four (4); and

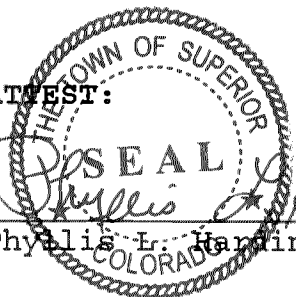

E. Applicant shall execute and record the Development Improvement Agreement approved herein.

Section 3. The Development Improvement Agreement between the Town and Aweida Properties, Inc. is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Development Improvement Agreement on behalf of the Town.

ADOPTED this 12th day of February, 2018.



Clint Folsom, Mayor

ATTEST:



Phyllis L. Hardin, Town Clerk

DEVELOPMENT IMPROVEMENT AGREEMENT

THIS DEVELOPMENT IMPROVEMENT AGREEMENT (the "Agreement") is entered into as of this ~~23rd~~ ^{28th} day of February, 2018 (the "Effective Date"), by and between THE TOWN OF SUPERIOR, COLORADO, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, Colorado (the "Town"), and Aweida Properties, Inc., a Colorado corporation with an address of 500 Discovery Parkway, Suite 300, Superior, Colorado 80027 ("Developer") (each individually a "Party" and collectively the "Parties").

WHEREAS, Developer is the owner of the real property more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Developer wishes to develop the Property (the "Project");

WHEREAS, on February 12, 2018, the Board of Trustees, after holding all necessary public hearings and having received a recommendation of approval from the Planning Commission, approved the Final Development Plan (the "FDP") and Final Plat for the Property;

WHEREAS, the Town and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the Town in connection with its approval of the Project, and that such matters are necessary to protect, promote and enhance the public health, safety and welfare of the Town.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by Developer in connection with the Public Improvements for the FDP. All conditions in this Agreement are in addition to any requirements of the Superior Municipal Code, state law and other Town ordinances, and are not intended to supersede any requirements contained therein.

2. Construction of Improvements.

a. All public improvements associated with the FDP (the "Public Improvements") shall be installed and completed at the expense of Developer, and dedicated or conveyed to the Town. The complete list of Public Improvements associated with the FDP and the estimated costs of these improvements are set forth in **Exhibit B**, attached hereto and incorporated herein by this reference (the "Estimated Costs"). The Public Improvements shall be constructed in a workmanlike manner accordance with the applicable plat and associated construction documents drawn according to applicable regulations and construction standards for such improvements.

b. The Town may make reasonable engineering observations at Developer's expense. Observation, acquiescence in or approval by any engineering inspector of the construction of physical facilities at any particular time shall not constitute the approval by the Town of any portion of such Public Improvements.

c. Developer shall provide all necessary engineering designs, surveys, field surveys and incidental services related to the construction of the Public Improvements at its sole cost and expense, including reproducible "as-built" drawings certified accurate by a professional engineer registered in the State of Colorado.

d. Developer shall construct, or cause to be constructed, all necessary water and sanitary sewer facilities in accordance with the rules and regulations of Superior Metropolitan District No. 1 ("SMD#1"). All facilities shall be dedicated, constructed, and maintained in accordance with SMD#1's rules and regulations and subject to any agreements between Developer, the Town and SMD#1. In addition, Developer shall install a detention pond on Outlot B, and following completion of the detention pond and final acceptance by the Town, Developer shall convey Outlot B to the Town by special warranty deed.

e. Developer shall construct, or cause to be constructed, drainage improvements in accordance with the rules and regulations of the Town. All drainage improvements within the public rights-of-way shall be dedicated to the Town and thereafter maintained by the Town. All drainage improvements on private property shall be maintained by Developer.

f. Developer shall install, or cause to be installed, all necessary parking improvements and access drive improvements in accordance with the FDP.

g. To the extent any construction traffic damages any Town streets, Developer shall be responsible for repair of such damage or the reconstruction of such streets, as the Town determines appropriate.

h. Construction of the Public Improvements shall be completed on or before December 31, 2020, and proper application for acceptance of the Public Improvements shall be made on or before such date.

3. Applicable Law. Developer shall comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

4. Warranty. Developer shall warrant any and all Public Improvements for a period of 2 years from the date the Town grants probationary acceptance of the Public Improvements. The warranty period shall extend to the date final acceptance is granted in writing by the Town. Developer shall be responsible for scheduling the necessary inspections for probationary and final acceptance. Specifically, but not by way of limitation, Developer shall warrant that:

- a. The title conveyed is marketable and its transfer rightful;
- b. All Public Improvements dedicated or conveyed are free from any security interest or other lien or encumbrance; and
- c. All Public Improvements dedicated or conveyed are free of defects in materials or workmanship for a period of 2 years, as stated above.

5. Performance Guarantee. To secure the construction and installation of the Public Improvements, Developer shall provide a letter of credit or alternate security pursuant to Chapter 16, Article XV of the Superior Municipal Code based on the Estimated Costs.

a. Approval of the FDP shall be contingent upon Developer's provision of the Performance Guarantee within 30 days of the Effective Date. Failure of Developer to provide the Performance Guarantee shall negate the Town's approval of the FDP.

b. Developer shall not start the construction of any public or private improvement on the Property, including without limitation staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the Town has received and approved the Performance Guarantee.

c. The purpose of the Estimated Costs is solely to determine the amount of security. No representations are made as to the accuracy of these estimates, and Developer agrees to pay the Actual Costs of all such Public Improvements, regardless of the Estimated Costs.

d. The Estimated Costs may increase in the future. Accordingly, the Town reserves the right to review and adjust the Estimated Costs on an annual basis. Adjustments shall be made according to changes in the Construction Costs Index as published by the Engineering News Record. If the Town adjusts the Estimated Costs, the Town shall give written notice to Developer. Developer shall, within 30 days after receipt of said written notice, provide the Town with a new or amended Performance Guarantee in the amount of the adjusted Estimated Costs. If Developer fails to provide a new or amended Performance Guarantee, the Town may exercise the remedies provided for in Section 9 hereof; provided, however, that prior to increasing the amount of the Performance Guarantee, the Town shall give credit to Developer for all Public Improvements which have actually been completed, so that the amount of the Performance Guarantee relates to the cost of required Public Improvements not yet constructed.

e. If the Public Improvements are not constructed or completed within the period of time specified by Section 2 hereof, the Town may draw on the Performance Guarantee of credit to complete the Public Improvements. If the Performance Guarantee is to expire within 14 calendar days and Developer has not yet provided a satisfactory replacement, or completed the

Public Improvements, the Town may draw on the Performance Guarantee and either hold such funds as security for performance of this Agreement or spend such funds to finish the Public Improvements or correct problems with the Public Improvements as the Town deems appropriate. If the Town has drawn on the Performance Guarantee, and a satisfactory replacement guarantee is provided or the Public Improvements have been completed, then the Town will release any funds received as a result of its draw on the Performance Guarantee within a reasonable period of time, or within 10 calendar days of a request by Developer.

f. Upon completion of construction and compliance with all conditions and requirements within the required time and the written approval of the Town, the Performance Guarantee may be reduced to the amount of 25% of the total actual cost of construction and installation of the Public Improvements. The reduced Performance Guarantee shall be held by the Town during the 2-year warranty period.

6. Nuisance Conditions. Developer shall prevent the existence of any nuisances by way of its construction activities, as nuisances are defined by the Superior Municipal Code. If the Town determines that a nuisance exists, Developer shall be subject to the provisions of the Superior Municipal Code regarding the abatement of nuisances and the cost assessed therefor. If the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the Town, the Town may, upon 30 days' notice under this Agreement, draw upon the Performance Guarantee to pay the cost of abating the nuisance, including any expenses and penalties incurred under the Superior Municipal Code. The Town may exercise this right in addition to, or in lieu of, the withholding of permits or certificates of occupancy. The decision to draw on the Performance Guarantee shall be within the sole discretion of the Town.

7. Indemnification.

a. Developer hereby agrees to indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from or on account of any act or omission of Developer, or of any other person or entity for whose act or omission Developer is liable, with respect to construction of the Public Improvements (the "Claims"); and Developer shall pay any and all judgments rendered against the Town as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim arising out of or related to Claims.

b. Developer shall pay all property taxes on property underlying the Public Improvements to be dedicated to the Town before acceptance by the Town, and shall indemnify and hold harmless the Town for any such property tax liability related thereto.

8. Waiver. In executing this Agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on Developer as set forth herein, and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement. Developer expressly agrees that the Town cannot be legally bound by the representations of any of its officers or agents or their designees, except in accordance with the Superior Municipal Code and the laws of the State of Colorado.

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9. Vested Rights. The FDP constitutes a site specific development plan as defined in C.R.S. § 24-68-101, *et seq.*, and Chapter 16 of the Superior Municipal Code, and shall create vested property rights for 3 years from the date of the Board's approval of the FDP, provided that all required procedures are followed. The FDP shall include the language required by C.R.S. § 24-68-102(4)(a) and Section 16-12-50 of the Superior Municipal Code. Developer shall be responsible for publication of the notice required by C.R.S. § 24-68-103(c).

10. Breach and Remedies.

a. If Developer breaches this Agreement, the Town may take such action as permitted or authorized by law, this Agreement or the ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare. The remedies include, but are not limited to:

- i. The refusal to issue any building permit or certificate of occupancy;
- ii. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;
- iii. A demand that the security given for the completion of the Public Improvements be paid or honored; or
- iv. Any other remedy available at law or in equity.

b. Unless necessary to protect the immediate health, safety and welfare of the Town, or to protect the interest of the Town with regard to the Performance Guarantee, the Town shall provide Developer 30 days' written notice of its intent to take any action under this Section, during which Developer may cure the breach and prevent further action by the Town.

c. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

11. Miscellaneous.

a. Assignment. This Agreement shall not be assigned by Developer in whole or in part without the prior written authorization of the Town.

b. Governing Law and Venue. The laws of the State of Colorado shall govern this Agreement, and the exclusive venue for any legal proceeding arising out of this Agreement shall be Boulder County, Colorado.

c. No Third-Party Beneficiaries. There are no intended third-party beneficiaries to this Agreement.

d. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

e. Governmental Immunity. Nothing herein shall be construed as a waiver of any protections or immunities the Town or its employees, officials or attorneys may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

f. No Joint Venture. Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

g. Notice. Notices under this Agreement shall be sufficiently given if sent by regular U.S. mail, postage prepaid, to the address on the first page of this Agreement.

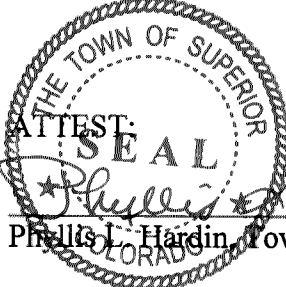
h. Integration. This Agreement, together with all exhibits attached hereto, constitute the entire understanding and agreement of the Parties, integrates all the terms and conditions mentioned herein or incidental thereto, and supersedes all negotiations or previous arrangements between the Parties with respect to any and all of the subject matter hereof.

i. Recordation. This Agreement shall be recorded in the real estate records of the Clerk and Recorder for the County of Boulder, State of Colorado, and shall be a covenant running with the Property.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF SUPERIOR

Clint Folsom
Clint Folsom, Mayor

The seal is circular with a double-line border. The outer ring contains the text "THE TOWN OF SUPERIOR" at the top and "COLORADO" at the bottom. The inner circle contains the word "SEAL" in the center, with "ATTEST:" above it and a star on either side. Below the seal, the name "Phyllis J. Hardin" is written in cursive and underlined, followed by "Phyllis J. Hardin, Town Clerk" in a plain font.

ATTEST:
SEAL
Phyllis J. Hardin
Phyllis J. Hardin, Town Clerk

Handwritten initials, possibly "JH", in the bottom right corner.

AWEIDA PROPERTIES, INC.

By: [Signature]

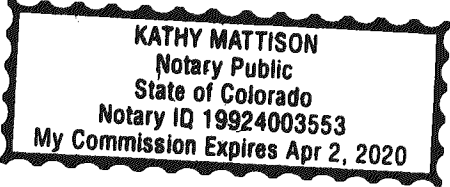
STATE OF Colorado)
) ss.
COUNTY OF Boulder)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 8 day of February, 2018, by Dan Aweida as the President of Aweida Properties, Inc.

My commission expires: 4/2/2020

(SEAL)

[Signature]
Notary Public



**EXHIBIT A
LEGAL DESCRIPTION**

Lots 1-20, Parcel A, and Outlot B, Block 1, Discovery Office Park/Superior Town Center Replat
No. 3



**EXHIBIT B
PUBLIC IMPROVEMENTS**

DISCOVERY OFFICE PARK - FDP3					
2/1/2018					
EXHIBIT A ENGINEER'S ESTIMATE - PUBLIC IMPROVEMENTS					
Item #	Item	Qty	Unit	Unit Cost	Total Cost
	EARTHWORK				
	ABC access road to pond	448	SY	\$5	\$2,238
	CONCRETE				
	Concrete Walkways	32	SY	\$35	\$1,124
	ADA Ramps	2	EA	\$1,000	\$2,000
	Concrete Paving (Pond Ramp)	99	SY	\$42	\$4,149
	Curb and Gutter (west curb return)	40	LF	\$15	\$600
	V pan at walls	315	LF	\$30	\$9,450
	Cross Pans	60	SY	\$91	\$5,441
	STORM SEWER				
	24" Class III RCP Pipe	40	LF	\$75	\$3,000
	18" Class III RCP Pipe	158	LF	\$48	\$7,585
	5' Manhole	3	EA	\$3,189	\$9,567
	10' Type R Inlet	2	EA	\$3,934	\$7,868
	Type C Inlet	1	EA	\$3,000	\$3,000
	24" Flared End Section	1	EA	\$1,000	\$1,000
	Pond Forebay, Trickle Channel, Outlet and Micropool	1	EA	\$25,000	\$25,000
	Connect to existing inlet at Discovery	1	EA	\$4,000	\$4,000
	SANITARY SEWER				
	8" Green SDR 26 PVC Pipe	1,092	LF	\$42	\$45,306
	6" Sanitary Sewer Underdrain main	930	LF	\$31	\$28,458
	4' MH	2	EA	\$2,000	\$4,000
	5' MH	6	EA	\$2,500	\$15,000
	6' MH W/Platform	3	EA	\$4,500	\$13,500
	5' Drop Manhole	1	EA	\$4,500	\$4,500
	Connect to Existing at McCaslin	1	EA	\$1,500	\$1,500
	Connect to Existing in Discovery	1	EA	\$6,000	\$6,000
	DOMESTIC WATER				
	8" Blue CS90 DR14 PVC Pipe w/ Tracer Wire	876	LF	\$28	\$24,528
	8" Gate Valve	4	EA	\$1,700	\$6,800
	Wet Tap (west end in Discovery)	1	EA	\$3,500	\$3,500
	Fire Hydrant Assembly (Tee, Valve, DIP, Hydrant)	2	EA	\$6,100	\$12,200
	RETAINING WALLS				
	Wall A (Pond Lower)	2,226	SF	\$40	\$89,040
	Wall B (Pond Upper)	1,297	SF	\$40	\$51,880
	Wall B Fence	265	LF	\$40	\$10,600
	LIGHTING				
	BY STC METRO - NOT INCLUDED				
	LANDSCAPE (OUTLOT B)				
	DECIDUOUS TREES	3	EA	\$704	\$2,112
	ORNAMENTAL TREES	13	EA	\$384	\$4,992
	DECIDUOUS SHRUBS	14	EA	\$45	\$627
	EVERGREEN SHRUBS	71	EA	\$45	\$3,181
	SEEDING FOR NATIVE GRASSES	20,484	SF	\$1	\$19,685
	Irrigation Tap	1	EA	\$2,000	\$2,000
	Irrigation Controller	1	EA	\$9,600	\$9,600
	IRRIGATION: NATIVE GRASS AREAS	20,484	SF	\$1	\$10,488
	MISCELLANEOUS				
	Traffic Signs	2	EA	\$150	\$300
	Total				\$455,758