

**TOWN OF SUPERIOR
RESOLUTION NO. R-2
SERIES 2019**

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING A FINAL PLAT, FINAL DEVELOPMENT PLAN, EASEMENT AGREEMENT AND SUBDIVISION IMPROVEMENT AGREEMENT FOR SUPERLOT A AND OUTLOT G, BLOCK 25, SUPERIOR TOWN CENTER (CASE NOS. FP-2018-08, FP-2018-05)

WHEREAS, RC Superior, LLC owns certain real property legally described as Superlot A and Outlot G, Block 25, Superior Town Center (the "Property");

WHEREAS, RC Superior, LLC and Remington Homes (collectively the "Applicants") have filed an application for approval of a final plat (the "Final Plat") and final development plan (the "FDP") to subdivide the Property and develop the Property with 75 dwelling units on 5.388 acres (the "Application");

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

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

WHEREAS, Sections 16-8-50 and 16-10-40 of the Code require a public hearing and recommendation by the Planning Commission on the Final Plat and FDP;

WHEREAS, on December 18, 2018, the Planning Commission held a properly-noticed public hearing on the Application and recommended that the Board of Trustees approve the Application;

WHEREAS, Sections 16-8-50 and 16-10-40 of the Code also require a public hearing by the Board of Trustees prior to approval concerning the Final Plat and FDP;

WHEREAS, on January 14, 2019, 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 which shall be satisfied within 60 days of the date of this Resolution:

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

B. The Final Plat shall include required utility easements on the Property.

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

D. RC Superior, LLC shall execute the Subdivision Improvement Agreement approved in Section 3 and record it concurrently with the Final Plat;

E. Upon the transfer of ownership of the Property from RC Superior, LLC to Remington Homes at Downtown Superior, LLC, Remington Homes at Downtown Superior, LLC shall execute and record the Easement Agreement approved in Section 4; and

F. All improvements shown on the FDP on outlots shall be constructed by RC Superior, LLC or the STC Metropolitan District No. 1 (the "District"), and shall be maintained by the District.

Section 3. The Subdivision Improvement Agreement between the Town and RC Superior, LLC is hereby approved in substantially the form attached hereto, provided that the cost of the outlot improvements shall be added to Exhibit A (Estimated Costs), and subject to final approval by the Town Attorney.

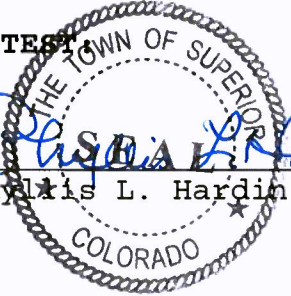
Section 4. The Easement Agreement between the Town and Remington Homes at Downtown Superior, LLC is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 14th day of January, 2019.

Clint Folsom
Clint Folsom, Mayor

ATTEST

Phyllis L. Hardin
Phyllis L. Hardin, Town Clerk

The seal of the Town of Superior, Colorado, is circular with a rope-like border. The text "THE TOWN OF SUPERIOR" is written along the top inner edge, and "COLORADO" is written along the bottom inner edge. A small star is positioned at the bottom center of the seal.

SUBDIVISION IMPROVEMENT AGREEMENT

THIS SUBDIVISION IMPROVEMENT AGREEMENT (this "Agreement") is made and entered into as of ~~May~~^{January} 14, 2019 (the "Effective Date") by and between the TOWN OF SUPERIOR, COLORADO, a Colorado municipality (the "Town") and RC SUPERIOR, LLC, a Delaware limited liability company ("Developer") (each a "Party" and collectively the "Parties").

WHEREAS, Developer is developing the Superior Town Center Property (the "Property") as a mixed-use project (the "Project");

WHEREAS, the Town approved a Planned Development Plan/Zone District Plan (the "Original PD Plan") in Ordinance No. O-3, Series 2012 adopted October 22, 2012; a first amendment to the Original PD Plan in Ordinance No. O-6, Series 2013, adopted on August 20, 2013 (the "First PD Plan Amendment"); a second amendment to the Original PD Plan in Ordinance No. O-4, Series 2014, adopted on May 27, 2014 (the "Second PD Plan Amendment"); and a third amendment to the Original PD Plan in Ordinance No. O-1, Series 2016, adopted on April 18, 2016 (the "Third PD Amendment"); and a fourth amendment to the Original PD Plan in Ordinance No. O-4, Series 2018, adopted on April 9, 2018 (collectively, the "PD Plan");

WHEREAS, the Parties entered into a Development Agreement dated March 11, 2013 (the "Development Agreement") that set forth the terms and conditions under which the Public Improvements necessary to serve the Project will be financed and constructed and set forth certain other rights and obligations of the Parties relating to the Project;

WHEREAS, the Development Agreement requires that a subdivision improvement agreement be executed for each Final Development Plan ("FDP") for the Project in which Public Improvements will be constructed, whether or not there is a subdivision of property; and

WHEREAS, the Project is being developed in several phases, and this Agreement addresses the rights and obligations of the Town and Developer with respect to the Public Improvements associated with the Final Development Plan 3 for Superior Town Center Block 25 Phase 2 (the "FDP").

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, 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 (the "Code"), state law and other Town ordinances, and are not intended to supersede any requirements contained therein.
2. **Definitions.** Capitalized terms not otherwise defined herein shall have the same meaning as provided in the Development Agreement.

3. Construction.

a. All Public Improvements associated with the FDP that are to be dedicated to the Town shall be installed and completed at the expense of Developer and dedicated or conveyed to the Town. The Parties acknowledge that the Town is already the fee owner of the real property underlying such Public Improvements, but the ownership shall not affect any of Developer's obligations under this Agreement. The complete list of Public Improvements associated with the FDP and the estimated costs of these improvements are set forth on **Exhibit A**, attached hereto and incorporated herein by this reference (the "Estimated Costs"). The Public Improvements associated with the FDP shall be constructed in accordance with construction documents drawn according to applicable regulations and construction standards for such improvements and the PD Plan.

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.

4. Completion and Acceptance. The obligations of Developer in Section 4 hereof shall be performed on or before December 31, 2019. Proper application for acceptance of the Public Improvements shall be made on or before such deadline. Such deadline may be extended by mutual agreement of the Parties, or because of an event of Force Majeure. Sections 5.3 and 5.4 of the Development Agreement and Sheet PI 1.0 of the PD Plan shall govern the acceptance of the Public Improvements by the Town.

5. Warranty. Developer shall warrant and guarantee the Public Improvements as set forth in Section 5.3 of the Development Agreement.

6. 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 Code based on the Estimated Costs set forth in **Exhibit A**.

a. 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.

b. 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.

c. 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 this Agreement; 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.

d. If the Public Improvements are not constructed or completed within the period of time specified by this Agreement, the Town may draw on the Performance Guarantee of credit to complete the Public Improvements. If the Performance Guarantee is to expire within 14 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 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.

7. 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 to mitigate a Nuisance Condition as discussed herein shall be within the sole discretion of the Town.

8. Indemnification. 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 ("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.

9. Fees. Developer shall pay the fees associated with the FDP as set forth in Section 9 of the Development Agreement.

10. Breach.

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, including without limitation:

- 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. 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 approving 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.

12. Miscellaneous.

a. Modification. This Agreement shall not be modified, except by subsequent written agreement of the Parties.

b. Integration. This Agreement and any attached exhibits constitute the entire Agreement between Developer and the Town with respect to the Public Improvements necessary to serve the Project in the FDP, superseding all prior oral or written communications, except the Development Agreement and the PD Plan.

c. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

d. Severability. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the Parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

e. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the District Court in and for the County of Boulder, State of Colorado.

f. Force Majeure. Developer will be entitled to an extension of time for Force Majeure as set forth in Section 14.10 of the Development Agreement.

g. Assignment. Assignment of this Agreement shall be governed by Section 8.3 of the Development Agreement.

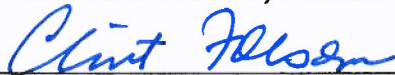
h. Recordation. This Agreement shall be recorded in the real estate records of the Clerk and Recorder for the County of Boulder, State of Colorado, and shall be a covenant running with the Property.

i. Third Parties. There are no intended third-party beneficiaries to this Agreement.

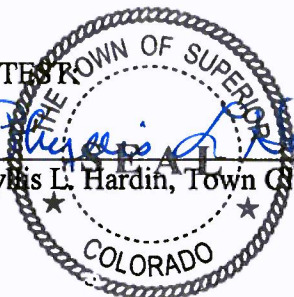

j. Governmental Immunity. Nothing herein shall be construed as a waiver of any protections or immunities the Town or its employees, officials or attorneys may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

WHEREFORE, the Parties have executed this Agreement as of the Effective Date.

TOWN OF SUPERIOR, COLORADO



Clint Folsom, Mayor


ATTEST


Phyllis L. Hardin, Town Clerk-Treasurer

RC SUPERIOR, LLC, a Delaware limited liability company

By: Superior Town Center ASLI VII Holdings, LLC, a Delaware limited liability company, its sole Member

By: Avanti Strategic Land Investors VII, L.L.L.P., a Delaware limited liability limited partnership, its sole Member

By: Avanti Properties Group II, L.L.L.P., a Delaware limited liability limited partnership, its Managing General Partner

By: Avanti Management Corporation, a Florida corporation, its sole General Partner

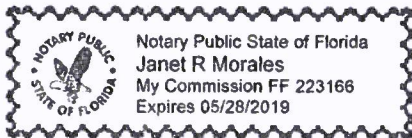
By: 
Name: Marvin M. Shapiro
Title: President

STATE OF FLORIDA)
) ss.
COUNTY OF Orange)

This instrument was acknowledged before me this 3 day of May, 2019, by Marvin Shapiro President Avanti Management Corporation, a Florida corporation, the sole General Partner of Avanti Properties Group II, L.L.L.P., a Delaware limited liability limited partnership, the Managing General Partner of Avanti Strategic Land Investors VII, L.L.L.P., a Delaware limited liability limited partnership, the sole Member of Superior Town Center ASLI VII Holdings, LLC, a Delaware limited liability company, the sole member of RC Superior, LLC, a Delaware limited liability company, on behalf of the company.

Witness by hand and seal.

My commission expires: May 28, 2019



Janet R Morales
Notary Public

EXHIBIT A
Estimated Costs

Exhibit A Public Improvements (Town and District Infrastructure)

STC FDP3 Phase 2 Block 25 Phase 2

2/21/2019

Item #	Item	Unit	Unit Cost	Quantity	Total Cost
	ASPHALT / OLD RAIL WAY				
	ASPHALT PAVEMENT	LS	\$32,334	1	\$32,334
	SUBGRADE TREATMENT	LS	\$80,328	1	\$80,328
			<i>Subtotal Asphalt</i>	\$112,662	
	CONCRETE				
	CURB AND GUTTER	LS	\$22,281	1	\$22,281
	CONCRETE CROSS PANS	LS	\$4,057	1	\$4,057
	CONCRETE LANES	LS	\$218,106	1	\$218,106
	CONCRETE SIDEWALKS	LS	\$115,080	1	\$115,080
	RAMP	LS	\$24,344	1	\$24,344
	CONCRETE STAIRS	LS	\$65,000	1	\$65,000
			<i>Subtotal Concrete</i>	\$448,868	
	MISC.				
	WALLS	LS	\$60,515	1	\$60,515
	TRAFFIC CONTROL SIGNS	LS	\$25,611	1	\$25,611
	SITE LIGHTING	LS	\$322,024	1	\$322,024
	UTILITY SLEEVES	LS	\$23,036	1	\$23,036
			<i>Subtotal Concrete</i>	\$431,186	
	STORM DRAINAGE SYSTEM				
	STORM SYSTEM	LS	\$226,235	1	\$226,235
	CURB UNDERDRAIN	LS	\$23,329	1	\$23,329
			<i>Subtotal Storm</i>	\$249,564	
	DOMESTIC WATER				
	8" Blue C900 DR14 PVC Pipe w/ Tracer Wire	LF	\$55	1092	\$60,060
	8" Gate Valve	EA	\$2,450	3	\$7,350
	Fire Hydrant Assembly (Tee, Valve, DIP, Hydrant)	EA	\$7,700	3	\$23,100
	Blowoff Assembly	EA	\$3,181	0	\$0
	Water Service with Meter Pit	EA	\$2,500	41	\$102,500
			<i>Subtotal Domestic Water</i>	\$193,010	
	SANITARY SEWER				
	8" Green SDR 26 PVC Pipe	LF	\$56	916	\$51,315
	6" Sanitary Underdrain Pipe	LF	\$35	916	\$32,072
	5' Manhole	EA	\$3,650	7	\$25,550
	Sanitary Service	EA	\$1,600	52	\$83,200
	Underdrain Service	EA	\$1,000	52	\$52,000
			<i>Subtotal Sanitary</i>	\$244,137	
	LANDSCAPE AND IRRIGATION				
	Per MIG	LS	\$229,404	1	\$229,404
	PER Hydrosystems	LS	\$117,142	1	\$117,142
			<i>Subtotal Lighting and Irrigation</i>	\$117,142	
	Total Hard Costs				\$2,025,973

LANDSCAPE AND IRRIGATION DETAIL

Exhibit A Public Improvements (Town and District Dedicated)					
STC FDP3 Phase 2 Block 25 Phase 2					
1/31/2019					
Item #	Item	Unit	Unit Cost	Quantity	Total Cost
IRRIGATION					
	Turf Spray Irrigation	SF	1.25	4050	\$5,063
	Native Spray Irrigation	SF	1.00	36225	\$36,225
	Pern. Spray Irrigation	SF	1.50	2624	\$3,936
	Shrub Bed Drip Irrigation	SF	2.25	14780	\$33,255
	Sleeving -4"	LF	12.47	800	\$9,976
	Sleeving -2"	LF	10.47	2740	\$28,688
			<i>Subtotal Irrigation</i>	\$117,142	
LANDSCAPE					
	2.5" Caliper Shade Tree	EA	650.00	22	\$14,300
	2" Caliper Ornamental Tree	EA	650.00	28	\$18,200
	10' Height Evergreen Tree	EA	750.00	12	\$9,000
	12' Height Evergreen Tree	EA	825.00	5	\$4,125
	5-Gallon Deciduous Shrub	EA	50.00	689	\$34,450
	5-Gallon Evergreen Shrub	EA	50.00	194	\$9,700
	5-Gallon Ornamental Grass	EA	35.00	585	\$20,475
	1-Gallon Perennial	EA	16.00	646	\$10,336
	1-Gallon Vine	EA	20.00	18	\$360
	Wood Chip Mulch	SF	0.75	658	\$494
	Shrub Bed Mulch (Rock) with Weed Barrier	SF	1.50	25000	\$37,500
	Metal Edger	LF	4.50	1100	\$4,950
	Sodding with Finish Grading and Soil Prep	SF	1.00	6000	\$6,000
	Landscape Boulder	EA	500.00	12	\$6,000
	Seat Boulder	EA	500.00	5	\$2,500
	Native Grass Seeding with Finish Grading & Soil Prep	AC	14000.00	0.85	\$11,900
	Topsoil and Soil Preparation for Shrub Beds (Import & Place)	CY	5.00	463	\$2,315
	Mail Kiosk	EA	1800.00	6	\$10,800
	Seating: Concrete Seatwall	LF	270.00	25	\$6,750
	Seating: Steel Bench	EA	2000.00	2	\$4,000
	Seating: Adirondack Chairs	EA	750.00	6	\$4,500
	Site Furnishings: Bicycle Rack	EA	250.00	4	\$1,000
	Site Furnishings: Trash Receptacle	EA	1500.00	3	\$4,500
	Site Furnishings: Recycle Receptacle	EA	1500.00	3	\$4,500
	Site Furnishings: Dog Waste Bag Station	EA	150.00	5	\$750
			<i>Subtotal Landscape</i>	\$229,404	
Total Hard Costs					\$346,547

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") is made and entered into this 14th day of January, 2019 (the "Effective Date"), by and between Remington Homes at Downtown Superior, LLC, a Colorado limited liability company with a business address of 5740 Olde Wadsworth Boulevard, Arvada, Colorado 80002, Remington Homes SF Superior LLC, a Colorado corporation with a business address of 5740 Olde Wadsworth Boulevard, Arvada, Colorado 80002 (collectively, "Remington"), and the Town of Superior, a Colorado municipal corporation with the address of 124 East Coal Creek Drive, Superior, Colorado 80027 (the "Town") (each, individually, a "Party" and collectively, the "Parties").

WHEREAS, Remington owns certain real property located more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, pending approval by the Town, Remington intends to construct residential townhomes and single-family homes on the Property (the "Project");

WHEREAS, in the Final Subdivision Plat of Lot 1, Block 25, Discovery Office Park/Superior Town Center Replat No. 2, recorded in the office of the Boulder County Clerk and Recorder on March 25, 2019, at Reception No. 03703842 (the "Plat"), a utility easement was dedicated to the Town along the alleys and each lot's rear boundary (collectively, the "Easement");

WHEREAS, the Project's rear exterior finishes and townhome building and single-family home projections will encroach into the Easement; and

WHEREAS, because the encroachments will not interfere with the primary purpose of the Easement, the Town is willing to accommodate the encroachments under the terms and conditions of this Agreement.

NOW, THEREFORE, for the consideration of the above recitals and as hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Purpose and Scope.** The purpose of this Agreement is to allow for certain features of the townhome buildings and single-family homes on the Property to encroach into the Easement as illustrated in **Exhibit B**, attached hereto and incorporated herein by this reference.
2. **Easement.** Subject to the terms of this Agreement, the Town hereby grants to Remington and its successors a permanent, nonexclusive easement to allow the rear exterior finish materials (the "Exterior Finish Encroachments") and rear townhome building and single-family home projections (the "Building Projection Encroachments") (collectively, the "Encroachments") to encroach over the Easement, as more particularly described on **Exhibit C**, attached hereto and incorporated herein by this reference.
3. **Easement Area.** The Encroachments will exist on the rear of the residential townhome buildings constructed within Lots 44-100, and on the rear of the single-family homes within Lots

26-43, of the Final Subdivision Plat of Lot 1, Block 25, Superior Town Center Replat No. 2, as depicted on **Exhibit B** (the "Easement Area"). Prior to issuance of a certificate of occupancy for a residential townhome or single-family home with any Encroachments, Remington shall provide the Town with accurate locations of all of the Encroachments for that residential townhome or single-family home in the form of "as-built" drawings, and the actual locations of the Encroachments shall become the Easement Area for purposes of this Agreement.

4. Agreement to Run with Land.

a. Remington shall, at its own cost, record this Agreement within 60 days of approval of the Plat in the office of the Boulder County Clerk and Recorder. All provisions of this Agreement, including the benefits, burdens and covenants, are intended to run with the land.

b. Subsequent purchasers of the individual residential townhomes and single-family homes benefitted by this Agreement (successors in title) shall be obligated to comply with all terms, conditions and covenants of this Agreement without further notice from or action by the Town. All benefits, burdens and covenant obligations of Remington shall be binding upon and inure to the benefit of Remington's successors. Upon transfer of title to any residential townhome or single-family home in the Easement Area, the successor(s) shall assume all of Remington's benefits, burdens and covenant obligations under this Agreement, and Remington's benefits, burdens and covenant obligations under this Agreement (as to that residential townhome or single-family home only) shall cease and terminate.

5. Use of Easement Area.

a. The Easement Area shall be used solely and exclusively to allow for the Encroachments as defined in Exhibit C. The use of the Easement Area shall at all times comply with all applicable federal, state and local rules and regulations.

b. Remington and its successors acknowledge that the Easement Area is primarily intended for use by the Town and utility providers. The use of the Easement Area by Remington and its successors shall not interfere with these primary uses of the Easement.

c. The Town shall not be liable for damage to the Encroachments caused by or occurring in connection with any activity in the Easement Area by the Town or its agents or representatives, any utilities or their agents or representatives, or the public; provided, however, that the Town shall use reasonable efforts to avoid damaging the Encroachments.

6. Maintenance.

a. Remington and its successors shall, at their own expense, keep and maintain in good repair all Encroachments at all times.

b. The Town shall not be obligated to perform additional or different types of maintenance in the Easement Area than is typically done in other utility easements.

7. Damage. Remington and its successors shall be responsible for all damage to any Town-owned property, easement or right-of-way arising out of the existence, maintenance or use of the Encroachments. If the Encroachments fail for any reason and such failure causes damage to any other public or private property, Remington or its successors shall promptly repair such damage at no cost to the Town.

8. Indemnification. Remington and its successors agree to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, the Encroachments, or the use of the Easement Area.

9. Insurance. Remington and its successors, for the period of their respective ownership of the Property, shall carry and maintain liability insurance sufficient to cover the obligations and risks associated with this Agreement.

10. Miscellaneous.

a. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

b. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligations of this Agreement.

c. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

d. Third Parties. There are no intended third-party beneficiaries to this Agreement.

e. Notice. Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement. Notice to any successor of Remington shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the successor at the address on file with the Boulder County Clerk and Recorder.

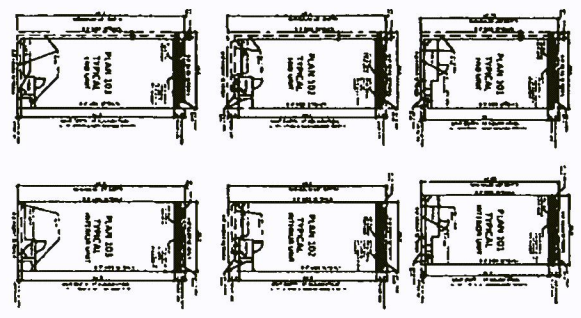
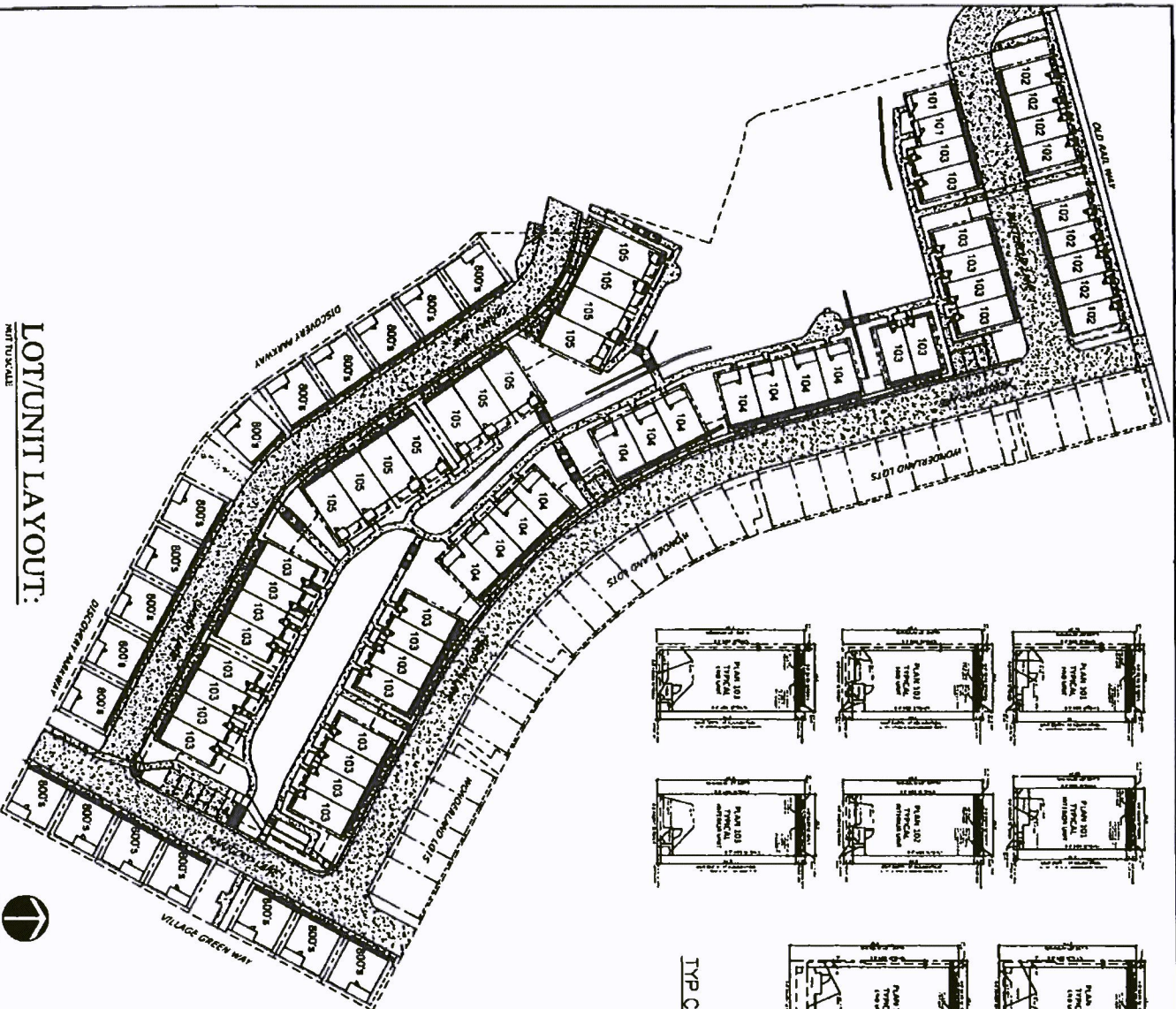
f. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

g. Modification. This Agreement may only be modified upon written agreement of the Parties.

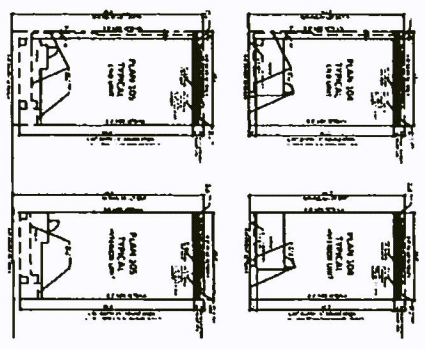
EXHIBIT A
Legal Description

Lots 26 through 100, Final Subdivision Plat of Lot 1, Block 25 of Discovery Office Park/Superior Town Center Replat No. 2, being a Replat of Outlot G of Lot 1, Block 25 of Discovery Office Park/Superior Town Center Replat, and Superlot A, Block 25 of Discovery Office Park/Superior Town Center Replat No. 3, Situate in the West Half of Section 19, Township 1 South, Range 69 West of the 6th P.M., Town of Superior, County of Boulder, State of Colorado.

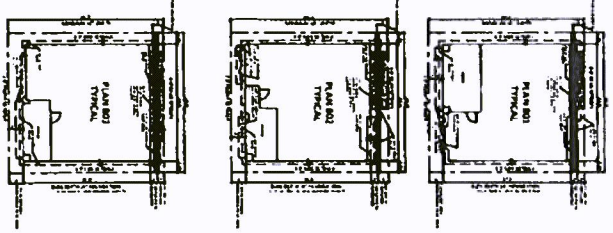
LOT/UNIT LAYOUT:
MFT TOX-KAL



TYPICAL SETBACKS TOWNHOMES



TYPICAL SETBACKS SINGLE FAMILY



Utility Easement

Exhibit B

EXHIBIT C Encroachments

Exterior Finish Encroachments include siding, trim, sheathing, stone, brick, downspouts, gutters, and other similar items permanently affixed to and integrated with the exterior of the townhome buildings and single-family homes as approved for construction by the Town.

- Exterior Finish Encroachments are allowed up to the height of the townhome building's and single-family home's roof levels.
- Exterior Finish Encroachments shall not extend more than 6" over rear 3' utility easement.

Building Projection Encroachments include bay windows, garage and window canopies, building cornices, roof eaves and roof overhangs and other similar items permanently affixed to and integrated with the exterior of the townhome buildings and single-family homes as approved for construction by the Town.

- Projection Encroachments are only allowed at heights of 10' above grade and up to a maximum height of the townhome building's and single-family home's roof levels.
- Projection Encroachments shall not extend more than 2' over rear 3' utility easement.

