

TOWN OF SUPERIOR
RESOLUTION NO.R-47
SERIES 2019

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT WITH RC SUPERIOR, LLC

WHEREAS, on August 12, 2019, the Board of Trustees approved the application of Thrive Home Builders, LLC for two final plats and a final development plan for the property legally described as Lot 1, Block 14 and Lot 1, Block 15 of the Superior Town Center (the "Property"); and

WHEREAS, the Board of Trustees wish to approve the related Subdivision Improvement Agreement between the Town and RC Superior, LLC concerning development of the Property.

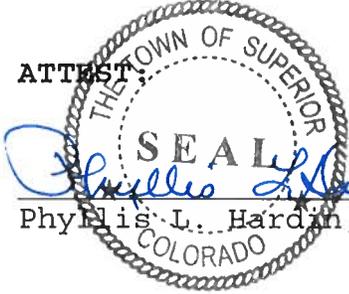
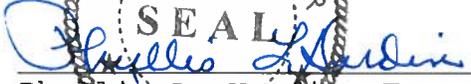
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

Section 1. The Subdivision Improvement Agreement between the Town and RC Superior, LLC is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 26th day of August, 2019.



Clint Folsom, Mayor

ATTEST,



Phyllis L. Hardin, Town Clerk

SUBDIVISION IMPROVEMENT AGREEMENT

THIS SUBDIVISION IMPROVEMENT AGREEMENT (this "Agreement") is made and entered into as of August 26, 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 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 6 for Superior Town Center Block 14 (the "FDP #6") and Final Development Plan 7 for Superior Town Center Block 15 (the "FDP #7") (collectively, 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 3 hereof for FDP #6 shall be performed on or before June 30, 2021. The obligations of Developer in Section 3 hereof for FDP #7 shall be performed on or before December 31, 2024. 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.

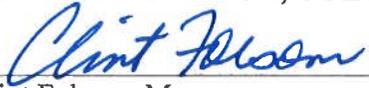
h. Recordation. This Agreement shall be recorded in the real estate records of the Clerk and Recorder for the County of Boulder, State of Colorado, and shall be a covenant running with the Property.

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

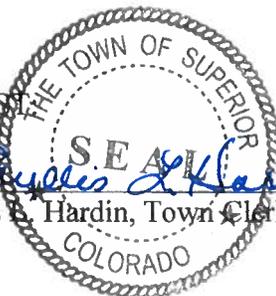
j. Governmental Immunity. Nothing herein shall be construed as a waiver of any protections or immunities the Town or its employees, officials or attorneys may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

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

TOWN OF SUPERIOR, COLORADO



Clint Folsom, Mayor

ATTEST



Phyllis 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

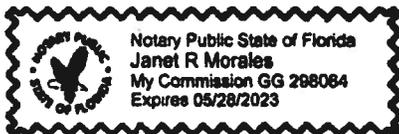
By: *[Signature]*
Name: Marvin M. Shapiro
Title: President

STATE OF FLORIDA)
) ss.
COUNTY OF Orange)

This instrument was acknowledged before me this 5 day of August, 2019, by Marvin Shapiro, as President of 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, 2023



Janet R Morales
Notary Public

EXHIBIT A
Estimated Costs

Downtown Superior Block 14
Public Improvement Agreement
Exhibit B Civil Opinion of Probable Cost
 July 12, 2019
 JN: 17014.01

Utilities	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
Connect to Existing Main (Water)	2	EA	\$3,500.00	\$7,000
8" C-900 CL 150	536	LF	\$35.00	\$18,760
8" - 90° Bend	6	EA	\$750.00	\$4,500
8" x 8" Tee Fitting	2	EA	\$750.00	\$1,500
8" Gate Valve	2	EA	\$2,000.00	\$4,000
3/4" Water Service w/ Meter Pit	8	EA	\$1,750.00	\$14,000
Divert Existing 3/4" Water Service (Include Walk Repairs)	11	EA	\$750.00	\$8,250
Connect to Existing Main (Sanitary)	1	EA	\$2,500.00	\$2,500
8" SDR-35 PVC w/ 6" Underdrain	542	LF	\$55.00	\$29,810
5' Dia. Manhole (0-12' Depth)	8	EA	\$3,500.00	\$28,000
4" Service w/ wye, cap, bend	26	EA	\$2,500.00	\$65,000
			Utility Subtotal	\$183,320

Street Improvements	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
Alley Curb Cut / Approach	37	SY	\$120.00	\$4,440
Type 2 Curb and Gutter	67	LF	\$18.00	\$1,206
5' Concrete Walk	328	SF	\$4.00	\$1,310
Signage	8	EA	\$500.00	\$4,000
			Street Subtotal	\$10,956

Street Improvements	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
Demo Alley Apron	1,332	SF	\$5.00	\$6,660
Demo Curb & Gutter	67	LF	\$12.00	\$804
			Demolition Subtotal	\$7,464

Total Cost \$201,740

Downtown Superior Block 15

Puplic Improvement Agreement

Exhibit B Civil Opinion of Probable Cost

July 12, 2019

JN: 17014.01

Utilities	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
Connect to Existing Main (Water)	2	EA	\$3,500.00	\$7,000
8" C-900 CL 150	401	LF	\$35.00	\$14,035
8" x6" - 90° Reducing Bend	2	EA	\$750.00	\$1,500
8" x 8" Tee Fitting	1	EA	\$750.00	\$750
8" Gate Valve	2	EA	\$2,000.00	\$4,000
Fire Hydrant Assembly	2	EA	\$5,250.00	\$10,500
3/4" Water Service w/ Meter Pit	18	EA	\$1,750.00	\$31,500
Connect to Existing Main (Sanitary)	2	EA	\$2,500.00	\$5,000
8" SDR-35 PVC w/ 6" Underdrain	542	LF	\$55.00	\$29,810
5' Dia. Manhole (0-12' Depth)	8	EA	\$3,500.00	\$28,000
4" Service w/ wye, cap, bend	28	EA	\$2,500.00	\$70,000
			Utility Subtotal	\$202,095
Street Improvements	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
Alley Curb Cut / Approach	37	SY	\$120.00	\$4,440
Street Light (Post) Remove and Relocate	1	EA	\$2,500.00	\$2,500
Signage	8	EA	\$500.00	\$4,000
			Street Subtotal	\$10,940
Demolition	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
Remove Waterline	11	LF	\$25.00	\$275
Abandon Sanitary (In-Place)	20	LF	\$15.00	\$300
			Demolition Subtotal	\$575
			Total Cost	\$213,610