

**TOWN OF SUPERIOR
BOARD OF TRUSTEES
RESOLUTION NO. R-83
SERIES 2021**

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING A FINAL PLAT AND FINAL DEVELOPMENT PLAN FOR BLOCK 26, BLOCK 27, AND CENTRAL PARK CIRCLE OF DOWNTOWN SUPERIOR (CASE NOS. FP-2021-01 AND FDP-2021-01)

WHEREAS, Ranch Capital, LLC, and Remington Homes (collectively, "Applicants") wish to develop certain property located within the Town of Superior, generally described as Block 26, Block 27, and Central Park Circle of Downtown Superior (the "Property");

WHEREAS, the Applicant has filed an application for approval of a final plat (the "Final Plat") and a final development plan (the "Final Development Plan") to subdivide and develop the Property (the "Application");

WHEREAS, Sections 16-8-50 and 16-10-40 of the Superior Municipal Code (the "Code") require a public hearing and recommendation by the Planning Commission and determination by the Board of Trustees on the Final Plat and Final Development Plan, respectively;

WHEREAS, the specific approval criteria for a final plat are set forth in Section 16-8-50 of the Code;

WHEREAS, the specific approval criteria for the Final Development Plan is set forth in Section 16-10-40(b) of the Code;

WHEREAS, on August 3, 2021, the Planning Commission held a properly-noticed public hearing on the Application and approved the Application, with conditions;

WHEREAS, on August 23, September 13 and October 25, 2021, 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:

A. Within 90 days of the adoption of this Resolution, the Applicant shall make minor technical and redline corrections to plans as identified by Town staff;

B. The allowance for fourth bedrooms dependent on parking in the public right-of-way shall be eliminated; and

C. The Final Plat shall be recorded prior to the recording of the Final Development Plan.

Section 3. The Subdivision Improvement Agreement between the Town and Ranch Capital, LLC, and Remington Homes 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 Subdivision Improvement Agreement on behalf of the Town.

ADOPTED this 25th day of October, 2021.



ATTEST:


Patricia Leyva, Town Clerk


Clint Folsom, Mayor

SUBDIVISION IMPROVEMENT AGREEMENT

THIS SUBDIVISION IMPROVEMENT AGREEMENT (this “Agreement”) is made and entered into as of this 25th day of October, 2021 (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 4 for Superior Town Center Blocks 26 through 27, inclusive, Phase 2.

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 shall be performed on or before December 31, 2022, with respect to all of the Public Improvements except for the irrigation and landscape work shown on **Exhibit A**. The irrigation and landscape Public Improvements shall be performed on or before December 31, 2024. Proper application for acceptance of the Public Improvements shall be made on or before the applicable deadline. The applicable 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 one or more letters 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.

e. 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:



Patricia Leyva, Town Clerk


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 1 day of December, 2020, 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: 1/22/22




Notary Public

EXHIBIT A
Estimated Costs

EXHIBIT A
Estimated Costs

Exhibit A					
STC Block 26/27 - Estimate of Public Infrastructure Cost					
11/18/2020					
					Number of Residential Lots: 24
					Public
Item #	Item	Unit	Unit Cost	Quantity	Total Cost
	Mobilization	LS	3%	1	\$27,525
	EARTHWORK				
	Riprap at Inlet	CY	\$50.00	15.6	\$781
	Over-Excavation @ 5' below roadway	CY	\$3.00	completed	
				<i>Subtotal Earthwork</i>	\$781
	SUBGRADE TREATMENT				
	Fly Ash Treated Subgrade	TON	\$250	392	\$97,931
				<i>Subtotal Subgrade</i>	\$97,931
	CURB DRAINS				
	6" Diameter HDPE Underdrain (Behind Curb)	LF	\$20	1844	\$36,880
				<i>Subtotal Curb Drains</i>	\$36,880
	CONCRETE				
	Curb and 24" Gutter	LF	\$20	1848	\$36,960
	Concrete Sidewalk and Paths	SY	\$80	1111	\$88,844
	Concrete Pans and Alley	SY	\$110	57	\$6,270
	Sidewalk Chases	EA	\$3,000	26	\$78,000
	Concrete wall in Tract	CY	\$600	17	\$10,111
				<i>Subtotal Concrete</i>	\$220,186
	ASPHALT PAVING				
	HMA SX (75) PG-64-22 (0% MAX. RAP) 2.0" Thick	TON	\$84	321	\$26,989
	HMA S (75) PG-64-22 (20% MAX. RAP) 2.0" Thick	TON	\$79	321	\$25,383
	HMA SG (75) PG-64-22 (20% MAX. RAP) 3.5" Thick	TON	\$74	562	\$41,608
				<i>Subtotal Asphalt</i>	\$93,980
	DOMESTIC WATER				
	8" Blue C900 DR14 PVC Pipe w/ Tracer Wire	LF	\$46	920	\$42,320
	8" Gate Valve	EA	\$2,500	3	\$7,500
	Fire Hydrant Assembly (Tee, Valve, DIP, Hydrant)	EA	\$7,800	2	\$15,600
	Blow Off	EA	\$2,500	1	\$2,500
	Water Service with Meter Pit (including one on west side of First Ave.)	EA	\$2,500	23	\$57,500
				<i>Subtotal Domestic Water</i>	\$125,420
	SANITARY SEWER				
	8" Green SDR 26 PVC	LF	\$42	924	\$38,808
	6" SDR 26 PVC underdrain	LF	\$31	804	\$24,924
	5' Manhole	EA	\$8,500	5	\$42,500
	Sanitary Service	EA	\$1,600	23	\$36,800
				<i>Subtotal Sanitary</i>	\$79,300

**STC Block 26/27 - Estimate of Public Infrastructure Cost
11/18/2020**

Number of Residential Lots: 24
Public

Item #	Item	Unit	Unit Cost	Quantity	Total Cost
STORM SEWER					
	15" Class III RCP Pipe	LF	\$44		\$0
	18" Class III RCP Pipe	LF	\$95	37	\$3,515
	24" Class III RCP Pipe	LF	\$120	54	\$6,480
	42" Class III RCP Pipe	LF	\$220	207	\$45,540
	6' Manhole	EA	\$9,500	1	\$9,500
	10' Type R Inlet	EA	\$8,500	3	\$25,500
	Triple Type D inlet	EA	\$15,000	1	\$15,000
			<i>Subtotal Storm</i>	\$105,535	
EROSION CONTROL					
	Rock Construction Entrance	EA	\$1,000	1	\$1,000
	Concrete Washout Area	EA	\$500	1	\$500
	Inlet Protection	EA	\$200	6	\$1,200
	Galor Guard	LF	\$2	1582	\$3,164
			<i>Subtotal Erosion Control</i>	\$5,864	
MISCELLANEOUS					
	4" PVC Sleeves	LF	\$18	404	\$7,272
	Sign Posts	EA	\$137	18	\$2,466
	Traffic Signs	EA	\$137	18	\$2,466
	Street Lights	EA	\$2,500	15	\$37,500
	Light Controller	EA	\$20,000	existing	
	Electrical Conduit	LF	\$20	1848	\$36,960
	Street Striping	ALLOW	\$2,000	1	\$2,000
			<i>Subtotal Misc.</i>	\$88,664	
LANDSCAPE					
	Sod - (ROW)	SF	\$1.40	3265	\$4,571
	Trees - (ROW, and Tract H)	EA	\$500	40	\$20,000
	Trees - (front yard)	EA	\$500	21	\$10,500
			<i>Subtotal Landscape</i>	\$35,071	
Total Hard Costs					\$980,869