

**TOWN OF SUPERIOR  
RESOLUTION NO. R-7  
SERIES 2022**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF  
SUPERIOR APPROVING THE SECOND AMENDMENT TO SUBDIVISION  
IMPROVEMENT AGREEMENT WITH RC SUPERIOR AND CARMEL  
PARTNERS REALTY VII, LLC**

**WHEREAS**, the Town, RC Superior LLC and Carmel Partners Realty VII, LLC are parties to a Subdivision Improvement Agreement dated December 9, 2019, which was recorded with the Boulder County Clerk and Recorder on February 18, 2020, at Reception No. 03766665 (the "SIA");

**WHEREAS**, on December 14, 2020, the Town approved an Amendment to Subdivision Improvement Agreement (the "First Amendment") dated, which was recorded with the Boulder County Clerk and Recorder on January 5, 2021 at Reception No. 03847508; and

**WHEREAS**, the parties to the SIA and the First Amendment wish to amend the SIA again to allow for an assignment of the SIA to the Wells Fargo bank (the construction lender) in limited circumstances, as described in the attached Second Amendment to Subdivision Improvement Agreement.

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

**Section 1.** The Second Amendment to the Subdivision Improvement Agreement with Carmel Partners Realty VII, LLC is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

**ADOPTED this 24<sup>th</sup> day of January, 2022.**

DocuSigned by:  
*Clint Folsom*  
03847D2E402D482...

\_\_\_\_\_  
Clint Folsom, Mayor

**ATTEST:**

DocuSigned by:  
*Patricia Leyva*  
43DC4CB2FC674BB...

\_\_\_\_\_  
Patricia Leyva, Town Clerk

## SECOND AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT

THIS SECOND AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT (the "Amendment") is made and entered into as of this 24<sup>th</sup> day of January, 2022, by and among the TOWN OF SUPERIOR, COLORADO, a Colorado municipality (the "Town"), RC SUPERIOR LLC, a Delaware limited liability company ("Developer"), CARMEL PARTNERS REALTY VII, LLC, a Delaware limited liability company ("Carmel"), and CP VII SUPERIOR, LLC, a Delaware limited liability company ("Owner") (each a "Party" and collectively the "Parties").

### RECITALS

A. The Town and Developer are parties to a Development Agreement dated March 11, 2013 (the "DA").

B. The Town, Developer and Carmel are parties to a Subdivision Improvement Agreement dated December 9, 2019, which was recorded with the Boulder County Clerk and Recorder on February 18, 2020, at Reception No. 03766665, as amended by an Amendment to Subdivision Improvement Agreement (the "First Amendment") dated December 14, 2020, which was recorded with the Recorder on January 5, 2021 at Reception No. 03847508 (collectively, the "SIA").

C. The Parties desire to enter into this Amendment in order to enable Owner to obtain a construction loan to finance the development of the land subject to the SIA.

### AMENDMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree to amend the Agreement as follows:

1. Assignment and Assumption. Carmel hereby assigns to Owner the entire, right, title and interest of Carmel in, to and under the SIA. Owner hereby accepts such assignment and hereby assumes all obligations of Carmel in the SIA. The Town hereby consents to such assignment and assumption.

2. Performance Guarantee. Each of the Town and Developer acknowledges and agrees: (a) that Wells Fargo Bank, National Association or its designee (collectively, the "Lender Parties") may complete any Public Improvements that are not timely completed by Developer; and (b) that the Town will treat such performance by any of the Lender Parties as though performed by Developer.

3. Travel Plan and Parking. The Town acknowledges and agrees that the Lender Parties may perform Owner's obligations under Sections 12 and 13 of the SIA and the Town will treat such performance by any of the Lender Parties as though performed by Owner.

4. Representations. The Town represents and warrants to Owner that, as of the Effective Date and to the Town's actual knowledge:

(a) The SIA has not been previously amended, assigned or otherwise modified, except as set forth in Recital B.

(b) Pursuant to the First Amendment, Developer's rights and obligations under Sections 12 and 13 of the SIA were assigned by Developer to Carmel, Carmel accepted such assignment and assumed such obligations, and Town consented to such assignment and assumption.

(c) There is no default under the SIA in the payment of any sums or in the observance or performance of any other covenant or condition to be observed or performed by any party thereunder.

(d) No legal or other challenges to the SIA or the development contemplated thereby exist or have been threatened in writing.

5. Lender Parties.

(a) The Lender Parties are intended third party beneficiaries of this Amendment and, to the extent any of the Lender Parties elects to undertake performance as described in Sections 2 and 3 above, the SIA.

(b) In connection with any breach of the SIA by Developer (as opposed to any breach of the SIA by Carmel or Owner), the Town agrees that it shall not exercise the remedies set forth in Section 10.a.i. or ii. of the SIA (the refusal to issue any building permit or certificate of occupancy or the revocation of any building permit previously issued for any Phase under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party) against any portion of the land subject to the SIA that is owned by Owner; provided, however, in the event of such a breach of the SIA by Developer, the foregoing provisions of this Section 5(b) shall not limit the Town's right to exercise any remedies set forth in the SIA against any portion of the land subject to the SIA that is not owned by Owner.

(c) In connection with any breach of the SIA by Carmel or Owner, the Town agrees that it shall not exercise the remedies set forth in Section 10.a.i. or ii. of the SIA (the refusal to issue any building permit or certificate of occupancy or the revocation of any building permit previously issued for any Phase under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party), or any similar remedy, against any portion of the land subject to the SIA that is owned by Owner, unless or until the Town shall have delivered written notice of such breach to Owner at the addresses and in the manner provided in this Amendment below, and the Lender Parties shall have failed to cure such breach within the applicable time period set forth in Section 5(d) below. For the avoidance of doubt, in the event of any breach of the SIA by Carmel or Owner, the foregoing provisions of this Section 5(c) shall not limit the Town's right to exercise any remedies set forth in the SIA on account of such breach (including, without limitation, a demand that the Performance Guaranty be paid or

honored, any action for monetary damages or any action for specific performance), other than the remedies set forth in Section 10.a.i. or ii. of the SIA, or any similar remedy.

(d) If the breach of the SIA by Carmel or Owner is the failure to pay any sum of money, the Lender Parties shall have thirty (30) days following the date the Town duly delivers its notice of default to Owner to cure such breach by paying or causing to be paid such some of money, together with any applicable late fee or interest payable thereon pursuant to the terms and conditions of the SIA

(e) If the breach of the SIA by Carmel or Owner cannot be cured by the payment of money, the Lender Parties shall have ninety (90) days following the date the Town duly delivers its notice of default to Owner to cure such breach, provided, however, if the curing of such breach reasonably requires the Lender Parties to be in possession of the portion of the land subject to the SIA that is owned by Owner, such ninety (90) day period shall be extended to include the reasonable period of time required by the Lender Parties to obtain such possession with due diligence, so long as the Lender Parties commence obtaining such possession within such ninety (90) day period and thereafter continues to use due diligence to obtain such possession and perform whatever acts may be reasonably required to cure such breach.

6. Miscellaneous.

(a) Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings assigned to such terms in the SIA.

(b) Except as amended herein, the SIA shall remain unmodified and in full force and effect in accordance with its terms.

(c) This Amendment may be executed in two or more counterparts, a complete set of which shall constitute a single original.

(d) The notices required to be delivered by the Town to Owner pursuant to Section 5(c) above shall be in writing and shall be given by e-mail to the email addresses set forth below (and a copy of each such notice given by e-mail may also be delivered personal delivery or sent to the addresses set forth below by certified mail, postage prepaid, return receipt requested, or by reputable overnight courier for next business day delivery, prepaid, receipt acknowledged). Notices shall be deemed delivered, (i) in the case of notices by e-mail, when sent, (ii) in the case of notices by personal delivery, upon delivery, (iii) in the case of notice by overnight courier, on the earlier of the date of actual receipt or the date of receipt marked on the acknowledgement of receipt; and (iv) in the case of notice by mail, three (3) days after mailing. Rejection or refusal to accept or the inability to deliver because of change of address (including change of e-mail address) of which no notice was given by Owner to Town shall be deemed to be delivered as of the date such notice was e-mailed, deposited in the mail or delivered to the courier, as applicable.

CP VII SUPERIOR, LLC  
c/o Carmel Partners  
1000 Sansome Street, First Floor

San Francisco, CA 94111  
Attn: Dennis Markus  
Email: [dmarkus@carmelpartners.com](mailto:dmarkus@carmelpartners.com)

and

CP VII SUPERIOR, LLC  
c/o Carmel Partners  
1000 Sansome Street, First Floor  
San Francisco, CA 94111  
Attn: Matthew Golden, General Counsel  
Email: [mgolden@carmelpartners.com](mailto:mgolden@carmelpartners.com)

and

Cox, Castle & Nicholson LLP  
2029 Century Park East, Suite 2100  
Los Angeles, CA 90067  
Attn: Adriana A. Vesci, Esq.  
Email: [avesci@coxcastle.com](mailto:avesci@coxcastle.com)

Owner may change its addresses to which notices should be sent to it by giving the Town written notice of the new addresses in the manner set forth in the Development Agreement.

*[remainder of page left blank; signatures follow]*

WHEREFORE, the Parties have executed this Amendment as of the date first set forth above.

**TOWN OF SUPERIOR, COLORADO,**

DocuSigned by:  
*Clint Folsom*  
03847D2E402D482...

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Clint Folsom, Mayor

ATTEST:

DocuSigned by:  
*Patricia Leyva*  
43DC4CB2FC674BB...

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Patricia Leyva, Town Clerk

**CARMEL PARTNERS REALTY VII, LLC, a  
Delaware limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2022 before me, \_\_\_\_\_  
(insert name and title of the officer),

personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

[Seal]

**CP VII SUPERIOR, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 202\_ before me, \_\_\_\_\_  
(insert name and title of the officer),

personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

[Seal]



**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: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, as \_\_\_\_\_ 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.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public