DEVELOPMENT AGREEMENT
(Superior Town Center – Marshall Bridge)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of this ____ day of _______________, 2019 (the "Effective Date") by and between the TOWN OF SUPERIOR, COLORADO (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 as a mixed-use project (the "Project");

WHEREAS, the Town approved a Planned Development Plan/Zone District Plan for the Project (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 ("PDA1"); a second amendment to the Original PD Plan in Ordinance No. O-4, Series 2014, adopted on May 27, 2014 ("PDA2"); and a third amendment to the Original PD Plan in Ordinance No. O-1, Series 2016, adopted on April 18, 2016 ("PDA3"); a fourth amendment to the Original PD Plan in Ordinance No. O-4, Series 2018, adopted on April 9, 2018 ("PDA4"); and a fifth amendment to the Original PD Plan in Ordinance No. ____, Series 2019, adopted on December 9, 2019 ("PDA5") (collectively, PDA1, PDA2, PDA3, PDA4, and PDA5 constitute the "PD Plan");

WHEREAS, the Parties entered into a Development Agreement dated March 11, 2013 (the "DA") setting forth the terms and conditions under which the Public Improvements necessary to serve the Project will be constructed; and

WHEREAS, one of the Public Improvements to be constructed is a bridge over Coal Creek to extend Marshall Road (the "Bridge") at an estimated cost of $2,000,000 (the "Bridge Cost").

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 and Interpretation. The purpose of this Agreement is to supplement the DA; this Agreement is not an amendment of the DA. If there is a conflict between the conditions, covenants, reservations, and restrictions set forth in this Agreement and those set forth in the DA, the conditions, covenants, reservations, and restrictions of the DA shall control. Capitalized terms not otherwise defined herein shall the same meaning as provided in the DA.

2. Construction. With input from the Town, Developer shall prepare all applications and related plans for the construction of the Bridge in compliance with the PD Plan. Developer shall construct and install the Bridge in accordance with the FDP, the PD Plan and all applicable ordinances, codes, and regulations. Developer shall complete construction of the Bridge on or before December 31, 2021 (the "Deadline"). The Deadline may be extended by mutual agreement of the Parties or because of an event of Force Majeure.
3. **Deadlines.** The design and construction of the Bridge shall comply with the following deadlines (collectively, the “Deadlines”):

   a. Developer shall submit to the Town a complete application for a final development plan for the Bridge (the “FDP”) on or before April 30, 2020 (the “FDP Application Deadline”).

   b. Developer shall commence construction of the Bridge on or before January 13, 2021 (the “Construction Deadline”).

   c. Developer shall complete construction of the Bridge on or before December 31, 2021 (the “Completion Deadline”).

   d. Any Deadline may be extended by mutual agreement of the Parties or because of an event of Force Majeure, and the extended deadline shall become the new Deadline for purposes of this Agreement.

   a-e. Each Deadline is contingent upon the Town Board of Trustees approving the FDP on or before July 13, 2020. If such approval does not occur by such date, each Deadline shall be extended for the number of days after July 13, 2020 that the FDP is approved. By way of example, if the FDP is approved on July 27, 2020, all Deadlines will be extended by 14 days.

4.**3. Guaranty.** If Developer fails to comply with the FDP Application Deadline or the Construction Deadline set forth in Section 3 hereof, Developer shall provide the Town with a guaranty for construction of the Bridge in the amount of $2,000,000.00 (the “Total Guaranty”). In the event that Developer met the Construction Deadline but failed to comply with the Completion Deadline, Developer shall provide the Town with a guaranty for construction of the Bridge in the amount of one hundred and twenty five percent (125%) of a third party engineer’s estimate of the remaining costs to complete construction of the Bridge (the “Completion Guaranty”) (Total Guaranty and Completion Guaranty collectively referred to as the “Guaranty”). If the Bridge is not constructed by the Deadline, subject to any extensions mutually agreed upon and events of Force Majeure, Developer shall provide the Town with a guaranty for construction of the Bridge (the “Guaranty”). The amount of the Guaranty shall be the difference between the Bridge Cost and the total reasonable costs expended by Developer on the construction of the Bridge as of the Deadline. Within 7 days after the missed Deadline, Developer shall deposit the Total Guaranty or the Completion Guaranty, as applicable, with the Town in cash or other immediately available funds. The Town may either draw on the Bridge Guarantee to complete the Bridge, or direct Developer to complete the Bridge and hold the Guaranty as security for performance of this Agreement. If the Town holds the Guaranty as security for performance, upon completion of the Bridge by Developer, the Town will release any funds remaining in the Guaranty (“Remaining Funds”) within a reasonable period of time.
5.4. **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 Bridge, superseding all prior oral or written communications, except the DA 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 DA.

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

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.

j. **Termination.** This Agreement shall terminate upon termination of the DA.

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: __________________________

Marvin M. Shapiro, President

STATE OF FLORIDA )
    ) ss.
COUNTY OF ________________)

This instrument was acknowledged before me this ___ day of ____________, 2019, by
Marvin M. 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.

My commission expires: __________________________

Notary Public