

CHRISTY SPORTS PLANNED UNIT DEVELOPMENT AGREEMENT

THIS CHRISTY SPORTS PLANNED UNIT DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this 3rd day of October, 2017 by and between the TOWN OF DILLON, a Colorado municipal corporation (hereinafter referred to as “Dillon” or the “Town”) and 817 Dillon Road, LLC, a Colorado Limited Liability Company (hereinafter referred to as the “Developer”).

WHEREAS, Developer has submitted a Level IV development application for the Christy Sports Planned Unit Development (the “**Christy Sports PUD**”) for the real property owned by Developer and legally described as follows:

Lot 42R, Ptarmigan Trail Estates Unit 1, according to the Replat of Lots 41 & 42 Ptarmigan Trail Estates, Unit 1 recorded December 10, 1996 as Reception No. 529981, County of Summit, State of Colorado, as more particularly described on the ALTA/NSPS land title survey prepared for the Property by Aztec Consultants and dated August 19, 2015, copies of which are attached hereto, marked as Exhibit “K,” and incorporated herein by reference (the “**Property**”); and

WHEREAS, Developer desires to construct a new building and associated parking on the Property, (the “**Development**”); and

WHEREAS, Developer has submitted a Level IV Development Permit Application and a site plan for all common site plan improvements necessary for the Development, a copy of which is attached hereto, marked as Exhibit “A,” and incorporated herein by reference (the “**Site Plan**”); and

WHEREAS, Developer has also submitted a set of site construction documents which include site layout, grading, erosion control, drainage, utility plan and detail sheets for the Development, copies of which are attached hereto, marked as Exhibit “B,” and incorporated herein by reference (the “**Development Plan**”); and

WHEREAS, Developer has also submitted a set of architectural building elevations, a color rendering and floor plans for the Development, copies of which are attached hereto, marked as Exhibit “C,” and incorporated herein by reference (the “**Architectural Plan**”); and

WHEREAS, Developer has also submitted a set of landscape plans and details for the Development, copies of which are attached hereto, marked as Exhibit “D,” and incorporated herein by reference (the “**Landscape Plan**”); and

WHEREAS, Developer ~~will submit~~ ~~has also submitted~~ a metes and bounds legal property description for the public sidewalk snow storage easement and a sketch of the public sidewalk snow storage easement for the Development prior to issuance of a Building Permit, ~~copies of which are attached hereto, marked as Exhibit “E,” and incorporated herein by reference (the “Public Snow Storage Easement”);~~ and

WHEREAS, Developer has also submitted a detailed list of the public improvements and an estimated cost of public improvements required for the Development, copies of which are attached hereto, marked as Exhibit “G,” and incorporated herein by reference (the **“Improvements and Estimated Cost of Improvements”**); and

WHEREAS, the Christy Sports PUD has been reviewed by the Town of Dillon Planning and Zoning Commission, and approved by the Planning and Zoning Commission pursuant to Resolution PZ10-17, Series of 2017, following a public hearing held on September 6, 2017; and

WHEREAS, the Christy Sports PUD has been reviewed by the Town of Dillon Town Council (**“Town Council”**), and approved by the Town Council pursuant to Resolution __-17, Series of 2017 following a public hearing held on October 3, 2017; and

WHEREAS, the Town Council has attached certain additional Conditions of Approval to the approval of the Christy Sports PUD ~~application~~, as such are stated and set forth in Town Council Resolution __-17, Series of 2017 (**“Conditions of Approval”**), a copy of which Resolution is attached hereto, marked as Exhibit “H,” and incorporated herein by reference (the **“Resolution and Conditions of Approval”**); and

WHEREAS, the approval of the Christy Sports PUD requires that the Developer enter into this Agreement with the Town to ensure that the Christy Sports PUD requirements as set forth herein, the Conditions of Approval and the requirements of the Development are complied with, and requiring that the Developer provide certain assurances that the public improvements associated with the Development are completed.

NOW, THEREFORE, in consideration of the foregoing, and the mutual promises contained herein, the parties hereto promise, covenant and agree as follows:

SECTION I. CONDITIONS:

A. DEVELOPER OBLIGATIONS AND IMPROVEMENTS:

1. Developer shall design, construct, install, and pay for, according to the Town approved plans set forth in Exhibits “A,” “B,” “C,” and “D,” all common Site Plan public improvements as specifically set forth in Section 1.A.3., herein below and on Exhibit “A,” and approved as the Christy Sports PUD, such Site Plan public improvements hereinafter referred to as the **“Improvements.”** The Improvements shall be constructed in accordance with the Site Plan, Development Plan, Architectural Plan and Landscape Plan. In addition the Developer shall install all new utilities, including drainage facilities as approved by the Town as a component of the Development, and relocate existing utilities as necessary and as directed by the Town to complete the work. These utility and drainage improvements and relocations shall be in accordance with the Development Plan,

Landscape Plan and the Town of Dillon Construction Specifications (as defined herein, below).

2. Developer shall grant a Public Sidewalk Snow Storage Easement, as legally described on Exhibit “E,” to the Town by separate instrument, in the form marked Exhibit “F,” attached hereto and incorporated herein by this reference (the “**Public Sidewalk Snow Storage Easement Form**”). The utility easement shall be signed by the Developer and granted to the Town at the time of approval of the Christy Sports PUD by the Town Council.

3. Developer shall construct the following Improvements on the Development Property in accordance with the Site Plan and the Development Plan, as such plans are set forth on Exhibits “A” and “B,” at Developer’s sole cost.

- a. Remove the existing concrete curb & gutter and concrete sidewalks necessary for the installation of new concrete curb cuts along Little Dam Street. Replace old curb cut locations with curb and gutter and concrete sidewalk to match existing and proposed improvements at each end of the work.
- b. Install a new water service and fire line to the proposed building and remove and replace existing asphalt, concrete curb and gutter and asphalt pavement within Town right-of-Way.
- c. Install a new storm sewer connection to the existing storm sewer main in Little Dam Street and remove and replace existing asphalt, concrete curb and gutter and asphalt pavement within Town right-of-Way.
- d. Install a sanitary sewer connection to the existing sanitary sewer main in Little Dam Street and remove and replace existing asphalt, concrete curb and gutter and asphalt pavement within Town right-of-Way.
- e. Remove and replace existing Type 13 area inlet and replace with Type R inlet to properly align with the curb and gutter.

4. Developer shall modify the Site Plan, Development Plan, Construction Plan, Architectural Plan (Exhibits “A,” “B,” “C,” and “D”) in accordance with the additional Conditions of Approval placed on the Development by the Town Council ~~in Resolution. —17, Series of 2017, as referenced in Exhibit “H”.~~

5. Developer shall provide traffic control plans, devices, advanced warning signs, and flaggers in conformance with the most current Manual of Uniform Traffic Control Devices (“**MUTCD**”) and per Town requirements for any work in Town rights-of way, and for hauling operations into and out of the Development and the Property.

6. Developer shall provide and install all erosion control best management practices (“**BMP**”) as shown on the approved grading and drainage plans, contained in Exhibit “B”. Developer shall maintain all erosion control devices on a daily basis. Developer shall remove all material, dirt and debris tracked onto Town streets by 4:00 p.m. each day. Developer shall pay a Five Hundred Dollar (\$500.00) per day fine for each day tracked material is left on Town streets past 6:00 p.m.

7. All construction as required herein shall be performed in accordance with the Town of Dillon Construction Specifications, adopted by the Town, which construction specifications are on file at the Town of Dillon (the “**Town of Dillon Construction Specifications**”).

8. Water and Sewer Equivalent Residential Units. The Developer shall pay all applicable water tap and sewer tap fees for the total number of Equivalent Residential Units (“**EQRs**”) required for the Development prior to issuance of a building permit.

The water tap and sewer tap fees shall be the then current water tap and sewer tap fees adopted by the Town in Section 19 of the Town of Dillon Municipal Code (“**Code**”) at the time of payment.

9. Grading & Excavation Permit. The Developer shall obtain a grading and excavation permit prior to commencing construction.

10. Affordable Housing Development Impact Fee. The Developer shall pay all required affordable housing development impact fees prior to the issuance of a building permit. The fee shall be based on the then current fees adopted by Summit County Government at the time of payment.

11. If the ~~project~~-area of disturbance on the property is over one (1) acre in size, the Developer shall obtain the required “Storm Water Discharge Associated with Construction Activities” Permit issued by the Colorado Department of Public Health and Environment. The Developer shall submit a copy of this permit from the state as well as the erosion control plan to the Town Engineer prior to starting construction of the Development.

12. Parking Space Use Restrictions. The commercial parking spaces located on the Development Property may not be used for the storage of any vehicle or non-vehicle items, including, but not limited to storage sheds, trailers, boats, kayaks, ATVs or recreational equipment, construction equipment or any other vehicle or non-vehicle items not specifically branded and related to the principal business. ~~This parking space use restriction must be included in all ownership association documents created for the Development. All ownership association documents created for the Development shall be presented to the Town upon their~~

~~adoption, but no later than the issuance of the first Certificate of Occupancy for the Development.~~

13. Prior to the issuance of a grading and excavation permit or a building permit for the Development, the Developer shall submit the following updated Development Plans, Site Plans, and construction plans for the Development to the Town for review and approval:

- a. Final Storm Water Detention Pond plan and profiles, and associated outlet details showing an appropriately sized orifice plate, and a detailed final drainage report for the Development project. These drawings shall be prepared by a Colorado Licensed civil engineer.
- b. Final Limits of Work plans for adjacent roads showing the limits of street asphalt and concrete removal for the installation of water, sewer and storm sewer services to the Property. This work will also require the submittal of a detailed traffic control plan.

14. Exterior Lighting

- a. All exterior lighting shall have full cutoff light fixtures.
- b. The height of Parking Lot Light fixtures shall not exceed 15' as measured from the bottom surface of the light fixture lens to the ground directly below the fixture.

15. Off-Street Parking.

- a. The Development shall provide a total of Thirty-Six (36) parking spaces, which will also include two (2) accessible parking spaces in conformance with federal law.

B. USES ALLOWED:

The Developer shall be allowed the following uses in the Development:

1. All uses allowed in the underlying Commercial (C) zoning district.

C. BUILDING HEIGHTS ALLOWED:

The Developer shall be allowed the following building heights in the Development:

1. The Building shall not exceed forty two and one-half feet (42.5') in height as measured ~~by~~ in accordance with the procedure set forth in the Code.

D. YARD SETBACKS ALLOWED:

The Developer shall be allowed the following setbacks in the Development:

1. The yard setback along Little Dam Street shall be a minimum of ten feet (10').
2. The yard setback along U.S. Highway 6 shall be a minimum of twenty feet (20').
3. The yard setback along W. Anemone Trail shall be a minimum of ten feet (10').
4. Roof Overhangs, Eaves and canopies shall be allowed to extend four (4) feet into setbacks. ~~typically.~~ The roof at the northwest corner of the building shall be allowed to project six and one-half feet (6.5') into the setback.

E. PARKING LOT DESIGN STANDARDS:

The Developer shall be allowed the following parking lot grades in the Development:

1. Parking Lot grades shall not exceed Six percent (6%).
2. Off Street Parking Regulations set forth in Section 16-6 of the Code, as in effect at the time of issuance of the building permit, shall govern and control, except as modified by this Agreement.
3. The Drive aisle between parking rows shall be a minimum of twenty four feet (24') wide.

F. LANDSCAPING REQUIREMENTS:

The Developer shall meet or exceed the following minimum landscaping requirements:

1. The street tree requirement for the Development~~this project~~ will be based on the property frontage along Little Dam Street which is 360.36' long. A minimum of six (6) Spruce Trees and eighteen (18) deciduous trees shall be planted to meet the street tree requirement, or a minimum total of twenty-four (24) trees.
2. The parking lot tree requirement for the Development~~this project~~ will require eight (8) additional trees, two (2) of which shall be spruce trees.

3. Trees shall be planted at the sizes and species as required in Section 16-6-60 of the Code, as in effect at the time of issuance of the building permit, shall govern and control.
4. Interior parking lot islands are not required.

G. BUILDING MATERIALS ALLOWED:

The Developer shall be allowed the following building materials in the Development:

1. Buildings materials shall consist of the materials and colors shown on the Architectural Plan.

H. ARCHITECTURAL DESIGN ALLOWED:

The Developer shall be allowed the following architectural design in the Development:

1. The Architectural design shall be as set forth on Exhibit "C."

I. SIGNAGE ALLOWED:

The Developer shall be allowed the following signage in the Development:

1. Individual building signs shall conform to the requirements of Section 16-11 of the Code, as in effect at the time of issuance of the individual sign permit. Each sign requires a separate sign permit.

~~2. A freestanding sign is not allowed.~~

~~3.~~2. The Development shall be allowed three (3) tenant signs to be mounted on the building as follows:

- a) The Development shall be allowed one (1) tenant sign on the east side (parking lot side) of the building with a maximum size of seventy-five (75) square feet.
- b) The Development shall be allowed one (1) tenant sign on the north side (U.S. Highway 6 side) of the building with a maximum size of thirty-five (35) square feet.
- c) The Development shall be allowed one (1) tenant sign on the west side (W. Anemone Trail side) of the building with a maximum size of eighty-five (85) square feet.

SECTION II. CONSTRUCTION SCHEDULE:

A. Developer shall construct and complete the Development in a timely manner. This shall require that the Developer begin construction within twenty-four (24) months of the date, set forth above, of this Agreement, and continue without interruption until completed. Failure to begin such construction within twenty-four (24) months of the date of this Agreement or failure to continue construction without interruption until completed shall cause the Christy Sports PUD approval to be rescinded and this Agreement to terminate and become null and void unless such failure is due to force majeure, acts of God or for good cause as determined by the Town Manager in his/her sole discretion.

B. No building permits for the Development shall be issued until the Developer has delivered to the Town a performance guarantee (“**Performance Guarantee**”) in the form of a letter of credit, in the form as set forth on Exhibit “I,” attached hereto and incorporated herein by this reference, guaranteeing the construction of the Improvements (the “**Letter of Credit**”). No building permits for the Development shall be issued until the Developer has complied with all applicable requirements as set forth herein, with all Code requirements, and has paid all fees and costs due and owing to the Town in relation to the Development.

C. The Improvements shall be completed prior to, or concurrent with, the construction of any buildings within the Development, and no Certificates of Occupancy shall be issued by the Town until all Improvements are completed and accepted by the Town, and all requirements of this Agreement complied with by Developer.

SECTION III. DEVELOPER’S OBLIGATION NOT CONTINGENT:

The Developer’s obligation to complete the Improvements shall become binding upon the Developer upon the date of this Agreement, shall be independent of any obligations of the Town that may be contained herein, and shall not be conditioned upon the sale or completion of any lot or any buildings within the Development.

SECTION IV. CONSTRUCTION STANDARDS; WARRANTY PERIOD:

A. The Improvements shall be constructed in accordance with all applicable laws, ordinances, codes, the Code, regulations and standards, including without limitation, the Town of Dillon Construction Specifications, Street Standards, Water Department Standards, Silverthorne-Dillon Joint Sewer Authority and Sanitation District Standards, Landscaping Standards of the Town of Dillon, and all applicable Town and local jurisdiction’s ordinances, laws and standards.

B. Warranty Period for Improvements. The Developer shall assure the satisfactory construction and maintenance of the Improvements for a period of one (1) year after the date of their final approval and acceptance by the Town, as set forth in Section IX, below (the “**Warranty Period**”). The Performance Guarantee shall serve for such Warranty Period, as set forth in Sections VII and VIII, below.

SECTION V. COMPLIANCE WITH APPLICABLE LAWS:

The Developer shall comply with all applicable laws, ordinances, rules, the Code and regulations then in effect and as they may be amended from time to time.

SECTION VI. COMPLIANCE WITH DEVELOPMENT PERMIT:

The Developer shall strictly comply with the terms, conditions, limitations and requirements of the Development Permit issued by the Town.

SECTION VII. PERFORMANCE GUARANTEE:

The estimated cost of constructing the Improvements required in Section I.A., above, and are itemized and set forth on Exhibit "G." The actual cost of constructing the Improvements required in Section I.A., and itemized on Exhibit "G," shall be finally determined by the Developer and agreed to by the Town prior to the issuance of any permits for this Development. Accordingly, in conformance with Code requirements, prior to issuance of any permits for the Development, the Developer shall post an irrevocable Letter of Credit issued by a qualified lending institution acceptable to the Town, in the form as set forth on Exhibit "I," in the agreed upon amount of the cost of constructing the Improvements with the Town as a guarantee of the performance of its obligations under this Agreement. Said Letter of Credit shall be in a minimum amount of One Hundred Twenty percent (120%) of the estimated cost of constructing the Improvements and shall be for an initial term of not less than one year, renewable automatically for additional one year periods unless notice is given to the Town sixty days in advance of non-renewal. No permit of any kind shall be issued by the Town prior to the Developer delivering to the Town the irrevocable Letter of Credit as required herein.

SECTION VIII. RELEASE OR REDUCTION OF PERFORMANCE GUARANTEE; MAINTENANCE OF IMPROVEMENTS:

A. The Town will not accept the required Improvements, nor release a Performance Guarantee, until the Town Engineer has indicated that all required Improvements have been satisfactorily completed and until the Developer's engineer has certified to the Town Engineer, through submission of detailed as-built plans of the Development Improvements, that all Improvements have been installed in accordance with the approved construction plans for the Development and are ready for dedication to the Town or other appropriate agencies. No Performance Guarantee or Letter of Credit will be released prior to the expiration of the Warranty Period.

B. A Performance Guarantee may be reduced by the Town upon actual completion of Improvements and then only in the ratio that the Improvements completed bear to the total Improvements of the Development. In no event shall a Performance Guarantee be reduced below twenty percent (20%) of the principal amount until all Improvements have been completed, the Warranty Period has been met and the Improvements have been accepted by the Town. Partial release of the Letter of Credit may be made only in accordance with Code requirements. The Letter of Credit shall

guarantee that all Improvements shall remain free from defect for the required Warranty Period.

C. The Performance Guarantee shall be released and returned to the Developer, without interest thereon, only at such time as the Town Manager determines, in his sole discretion, that: 1) all of the Improvements have been properly constructed or installed, 2) all Code requirements are met, 3) the Warranty Period has been met, and 4) the Improvements have been finally approved and accepted by the Town.

D. The Developer shall maintain the Improvements in the Development and to provide for snow removal, street cleaning, drainage and general maintenance of the streets and sidewalks prior to final acceptance by the Town. In the event the Developer fails to comply, the Town is authorized, through the Town Manager, to perform the necessary work without incurring any liability and charge such work to the Developer. If not paid, any such charges shall become a first and prior lien on the Development.

SECTION IX. FINAL APPROVAL OF IMPROVEMENTS AS CONSTRUCTED:

The Town's final approval of the completed Improvements shall be evidenced by a letter of final approval signed by the Town Engineer or Director of Public Works. The Town shall not be required to grant final approval of the Improvements until the Town has determined the following:

A. The Improvements have been satisfactorily completed in accordance with the approved Development Plan, Site Plan, Construction Plans, Architect's Elevations Landscape Plan, and Town of Dillon Construction Specifications, and all requirements for the Development have been completed.

B. The Developer has delivered to the Town all as-built drawings for all Improvements, including, but not limited to, the utility and drainage facilities.

SECTION X. DEFAULT:

The following conditions, occurrences or actions shall constitute a default by Developer under this Agreement:

A. Developer's failure to commence construction of the Improvements within two (2) years of the date of this Agreement.

B. Developer's failure to cure the defective construction of any Improvement within thirty (30) days of being notified by the Town in writing that such a defect exists except that if the cure of such defect will reasonably require more than thirty (30) days to cure then Developer will be in default if Developer fails to cure such defect within such longer period of time, such period not to exceed ninety (90) days from the date of said notice.

C. Developer's failure to perform work within the Development for a period of more than sixty (60) consecutive days, without the prior written approval of the Town.

D. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; or

E. Foreclosure of any lien against the Development or a portion of the Property or assignment or conveyance of the Property or the Development in lieu of foreclosure prior to the final approval and acceptance of the Improvements by the Town as provided in Section IX.

F. Violation of any term or condition of this Agreement beyond an applicable cure period set forth herein.

The Town may declare a default following three (3) days written notice to the Developer.

SECTION XI. MEASURE OF DAMAGES:

The measure of damages for breach of this Agreement by the Developer shall be the actual cost of completing the Improvements, including design, engineering, construction, construction management, legal and inspection costs, as well as all costs incurred by the Town, including attorneys' costs, in pursuing such breach and remedy. For Improvements upon which construction has not begun, the estimated cost of the Improvements as supplied by Developer pursuant to the Agreement and shown on the attached Exhibit "G" shall be prima facie evidence of the minimum cost of completion; however, neither that amount nor the amount of the Performance Guarantee establishes the maximum amount of the Developer's liability, and Developer's liability shall be the Town's actual cost including those items set forth herein above. The Town shall be entitled to complete all unfinished Improvements at the time of default regardless of the extent to which development has taken place in the Development or whether development ever commenced.

SECTION XII. TOWN'S RIGHTS UPON DEFAULT:

A. The Town may, but shall not be required to, have the Improvements constructed by such means and in such manner as the Town shall determine, without the necessity of a public bidding.

B. If the Town elects to have the Improvements constructed pursuant to this Section it shall have the right to use Developer's Performance Guarantee to pay for the construction of such Improvements. If the amount of the Performance Guarantee exceeds the cost of constructing the Improvements, the Town shall deliver any excess funds to the Developer. If the Performance Guarantee is insufficient to fully pay the cost of constructing such Improvements, the Developer shall, upon demand, pay such deficiency

to the Town, together with costs and interest thereon as provided in Sections XIII and XIV.

C. The Town may exercise such rights it may have under Colorado law, including, without limitation, the right to bring suit against the Developer for specific performance of this Agreement, ~~or to recover damages for the breach by the Developer of this Agreement.~~

D. The Developer hereby grants to the Town, its successors, assigns, agents, contractors and employees, a non-exclusive right and easement to enter the Property for the purpose of constructing, maintaining and repairing any Improvements made by the Town pursuant to the provisions of this Section.

E. In addition to any remedies provided for herein or by law, while the Developer is in default under this Agreement, the Town may refuse to issue building permits, development permits and certificates of occupancy for the Development, ~~and the Developer shall have no right to sell, transfer, or otherwise convey the lots, buildings or units within the Development or the Development itself without the express prior written approval of the Town, which approval may be withheld at the Town's sole discretion.~~

F. The remedies provided for herein are cumulative in nature.

SECTION XIII. INTEREST:

Any sum which is required to be paid by the Developer to the Town under this Agreement and which is unpaid shall accrue interest at the rate of eight percent (8%) per annum commencing as of the date such sum was due.

SECTION XIV. ATTORNEY'S FEES:

It is agreed that if any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees, as well as cost, including expert witness fees incurred in the prosecution or defense of such action.

SECTION XV. INDEMNIFICATION:

The Developer agrees to indemnify and hold the Town, its officers, employees, consultants, insurers, and self-insurance pool harmless from and against all liability, claims, and demands 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 the construction of the Improvements, if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by the act, omission, error, professional error, mistake, negligence or other fault of the

Developer, any subcontractor of the Developer, or any officer, employee, representative, or agent of the Developer or of any subcontractor of the Developer, or which arise out of any worker's compensation claim of any employee of the Developer, or of any employee of any subcontractor of the Developer. The Developer agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims, or demands at the sole expense of the Developer. The Developer also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are determined to be groundless, false or fraudulent.

SECTION XVI. NO WAIVER:

No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement, signed by both Town and Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvements.

SECTION XVII. VESTED RIGHTS:

This Agreement shall not alter, extend or modify the vested right obtained by the Developer in connection with the approval of the Development.

SECTION XVIII. RECORDATION:

This Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado. Developer shall pay all costs of recording.

SECTION XIX. IMMUNITY:

Nothing contained in this Agreement shall constitute a waiver of the Town's governmental immunity under applicable state and federal laws. The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as from time to time amended, or any other law, protection or limitation otherwise available to the Town, its officers, or its employees.

SECTION XX. PERSONAL JURISDICTION AND VENUE:

Personal jurisdiction and venue for any civil action commence by either party to this Agreement, whether arising out of or relating to the Agreement or the Performance Guarantee, shall be deemed to be proper only if such action is commenced in District Court of Summit County, Colorado. The Developer expressly waives its rights to bring such action in or to remove such action to any other court, whether state or federal.

SECTION XXI. CODE CHANGES:

References in this Agreement to any provision of the Code, Town of Dillon Construction Specifications or to any Town or other governmental standards are intended to refer to any subsequent amendments and/or revisions to such Code, Town of Dillon Construction Specifications or standards. Such amendments or revisions shall be binding upon Developer.

SECTION XXII. ASSIGNMENT, DELEGATION AND NOTICE:

Developer shall provide to the Town, for consent, written notice of: 1) any proposed transfer of title to all or any portion of the Development, 2) arrangements for delegation or transfer of the Improvement obligations hereunder to any successor, and 3) successor’s written acceptance of such Improvement obligations. Notwithstanding the forgoing, Developer may sell developed units without Town’s consent, provided that the purchaser deposits with the Town all guaranties, security and sureties that may be required under this Agreement. Until the Town provides written consent to the assignment, Developer and Developer’s successors and assigns shall be jointly and severally liable for the assigned Improvement obligations. The Town may withhold its consent in the event it reasonably determines that the Improvement obligations or any constituent element of this Agreement may not be fulfilled through assignment or that the benefit of Town’s bargain under this Agreement may be materially and adversely impaired by such assignment.

SECTION XXIII. NOTICES:

Any notice required or permitted hereunder shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt required, addressed as follows:

If to the Town: Town Manager
Town of Dillon
P.O. Box 8
Dillon, CO 80435

If to the Developer: 817 Dillon Road, LLC
875 Parfet Street
Lakewood, CO 80215

And to: Fairfield and Woods
Tom Kearns
1801 California Street, Ste 2600
Denver, CO 80202

Notices mailed in accordance with the provision of this Section shall be deemed to have been given on the third business day after mailing. Notices personally delivered shall be

deemed to have been given upon delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process.

SECTION XXIV. THIRD PARTIES:

This Agreement does not, and shall not be deemed or construed to confer upon or grant to any third party (except a party to whom the Developer may assign this Agreement in accordance with the terms hereof) any right to claim damages or to bring suit, action or other proceeding against the Town because of any breach hereof or because of any of the terms, covenants, agreements, and conditions herein.

SECTION XXV. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes any prior Agreement or understanding relating to such subject matter.

SECTION XXVI. SEVERABILITY:

It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, state or federal, the validity of the remaining portions or provisions hereof shall not be affected, and the rights and obligations of the parties shall be construed and enforces as if the Agreement did not contain the particular part, term or provision held to be invalid.

SECTION XXVII. MODIFICATION:

This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

SECTION XXVIII. BINDING EFFECT:

This Agreement shall run with the Development and the real property contained therein and shall be binding upon, and shall inure to the benefit of the parties hereto and their respective heirs, successors, assigns, and legal representative.

SECTION XXIX. GOVERNING LAW:

This Agreement shall be interpreted in accordance with the laws of the State of Colorado.

SECTION XXX. INCORPORATION OF EXHIBITS:

The attached Exhibits “A” through “K” inclusive are incorporated herein by reference.

[Signatures on Following Page]

TOWN:
TOWN OF DILLON, COLORADO,
A Colorado municipal corporation

By: _____
Kevin Burns, Mayor

ATTEST:

By: _____
Jo-Anne Tyson, Town Clerk

1
DEVELOPER:
817 DILLON ROAD, LLC,
A Colorado limited liability company

Patrick O'Winter, Manager and Member

STATE OF COLORADO)
)ss.
COUNTY OF SUMMIT)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2017, by _____, _____.

WITNESS my hand and official seal.
My commission expires: _____

Notary Public

8/21/17

LIST OF EXHIBITS

- Exhibit A - Site Plan
- Exhibit B - Development Plan
- Exhibit C - Architectural Plan
- Exhibit D - Landscape Plan
- Exhibit E – ~~Public Sidewalk Snow Storage Easement Description~~ NOT USED
- Exhibit F - ~~Public Sidewalk Snow Storage Easement Form~~ NOT USED
- Exhibit G - Improvements and Estimated Cost of Improvements
- Exhibit H - Resolution and Conditions of Approval
- Exhibit I - Letter of Credit form
- Exhibit J - ~~Site Lighting Fixtures~~ NOT USED
- Exhibit K - Plat and ALTA/NSPS Land Title Survey
- Exhibit L – Material & Color Board

EXHIBIT "A"
SITE PLAN

EXHIBIT "B"
DEVELOPMENT PLAN

EXHIBIT "C"
ARCHITECTURAL PLAN

EXHIBIT "D"
LANDSCAPE PLAN

EXHIBIT "E"
~~PUBLIC SIDEWALK SNOW STORAGE EASEMENT DESCRIPTION~~
NOT USED

EXHIBIT "F"
~~PUBLIC SIDEWALK SNOW STORAGE EASEMENT FORM~~
NOT USED

EXHIBIT "G"
IMPROVEMENTS AND ESTIMATED COST OF IMPROVEMENTS

EXHIBIT "H"
RESOLUTION AND CONDITIONS OF APPROVAL

EXHIBIT "T"
LETTER OF CREDIT FORM

IRREVOCABLE LETTER OF CREDIT

**INSERT PROPERTY IDENTIFICATION
(IF FOR 2 YEAR WARRANTY ADD APPROPRIATE ITEM: LANDSCAPING OR
HARDSCAPE OR TOTAL SUBDIVISION IMPROVEMENTS)**

Town of Dillon
275 Lake Dillon Drive
P.O. Box 8
Dillon, CO 80435

No.
Issue Date:
Expiration:

Ladies and Gentlemen:

We hereby authorize you to draw on us for the account of up to an aggregate amount of \$ _____ (insert amount in words) available by your drafts at sight accompanied by your signed statement that either (a) the drawing is for payment of public improvements pursuant to: Town of Dillon Subdivision Improvement Agreement/Development Agreement/PUD Agreement dated _____, entered into between the Town of Dillon, Colorado and _____ (Include name of subdivision/development and filing number [if applicable]) (the "Development Agreement") or (b) "We have received notification from _____ (Title of Bank) that Letter of Credit No. _____ will not be extended for a further period, and [APPLICANT NAME] has not replaced this Letter of Credit or provided other acceptable security.

Partial Drawings are permitted. In the event of a partial drawing, the original Letter of Credit will be returned to the Town of Dillon by the issuing Bank after endorsement. Drafts must be drawn and presented for payment on or before _____ (expiration date). Each draft presented under this letter of credit must state that it is drawn under (Title of Bank and identification of the Letter of Credit) and the amount endorsed on this letter of credit.

We hereby agree with the drawers, endorsers and bona fide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit that such drafts will be duly honored upon the presentation to the drawee.

This Letter of Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof unless at least sixty (60) days prior to any such date we shall notify you in writing by overnight courier service that we elect not to so extend this Letter of Credit.

Except as expressly provided herein, this Letter of Credit is governed by the Uniform Commercial Code of the State of Colorado.

Yours very truly,

By: _____
Title: _____

Attest: _____

EXHIBIT "J"
~~SITE LIGHTING FIXTURES~~
NOT USED

EXHIBIT "K"
PLAT AND ALTA/NSPS LAND TITLE SURVEY

