

**CROSSROADS AT LAKE DILLON
PLANNED UNIT DEVELOPMENT AGREEMENT**

THIS PLANNED UNIT DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this ___ day of January, 2017 by and between the TOWN OF DILLON, a Colorado municipal corporation (hereinafter referred to as “Dillon” or the “Town”) and DANIEL LEE EILTS, individually, and CYNTHIA A. EILTS, individually, and DILLON GATEWAY DIAMOND IN THE RUFF a Colorado limited liability company (hereinafter together referred to as the “Developer”).

WHEREAS, Developer has submitted an application for the Crossroads at Lake Dillon Planned Unit Development (the “PUD” or the “Planned Unit Development”) consisting of a development located on Lots 1, 1A, 1B, and 1C, Block B, New Town of Dillon, Town of Dillon, Colorado (hereinafter referred to as the “Property”). The PUD and the development of the Property are hereinafter referred to as the “Development.” The PUD Plat Plan for the Development (hereinafter referred to as the “Plat”) is attached hereto as Exhibit “A” and incorporated herein by this reference; and

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

WHEREAS, Developer has also submitted the Development plans which include architectural elevations, floor plans, landscape plan and snow storage plan for the Development (hereinafter referred to as the “Development Plan”), copies of which are attached hereto, marked as Exhibit “C” and incorporated herein by reference; and

WHEREAS, Developer has also submitted a detailed estimated cost of public improvements (hereinafter referred to as the “Estimated Cost of Improvements”), copies of which are attached hereto, marked as Exhibit “D” and incorporated herein by reference; and

WHEREAS, Said Development, Site Plan and Development Plan have been reviewed under Planning and Zoning Commission Resolution PZ 09-16, Series of 2016, and approved by the Planning and Zoning Commission of the Town of Dillon following a public hearing held on December 7th, 2016; and

WHEREAS, Said Development, Site Plan and Development Plan have been reviewed under Town Council Resolution xx-17, Series of 2017, and approved by the Town Council of the Town of Dillon following a public hearing held on January __, 2017; and

WHEREAS, the Town Council has attached certain Conditions of Approval to the application approval as stated in Town Council Resolution xx-17, Series of 2017, copies of which are attached hereto, marked as Exhibit “K” and incorporated herein by reference; and

WHEREAS, a concurrent Conditional Use Permit application to allow a multi-family residential dwelling unit component of the proposed Development has been reviewed under Planning and Zoning Commission Resolution PZ 10-16, Series of 2016 following a public hearing held on December 7, 2016, and by not being called up by the Town Council of the Town of Dillon under Resolution 09-17, Series of 2017 on March 21, 2017; and

WHEREAS, the Planning and Zoning Commission has attached certain Conditions of Approval to the approval of a concurrent Conditional Use Permit application to allow a multi-family residential dwelling unit component of the proposed Development under Planning and Zoning Commission Resolution PZ 10-16, Series of 2016, and by not being called up by the Town Council under Resolution 09-17, Series of 2017 on March 21, 2017, copies of which are attached hereto, marked as Exhibit “L” and incorporated herein by reference; and

WHEREAS, the approval of the Development, Development Plan and Site Plan require that the Developer enter into a Planned Unit Development Agreement with the Town relative to the construction of all the Development Plan and Site Plan public improvements required by the Development (the “Improvements”), and that the Developer provide certain assurances that the Improvements associated with the Development are completed and this Agreement is intended to meet such requirement.

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

SECTION I. CONDITIONS:

A. DEVELOPER OBLIGATIONS AND IMPROVEMENTS:

1. Developer shall, as a preliminary requirement upon which the validity of this Agreement is contingent, first complete the real estate transaction and purchase Lots 1A and 1C, Block B, New Town of Dillon, Town of Dillon, Colorado (the “Town Lots”) from the Town of Dillon as set forth in the Option to Purchase Agreement, dated May 3rd, 2016 entered into by and between the Town and Developer (the “Option to Purchase Agreement”), marked Exhibit “F,” attached hereto and incorporated herein by this reference. In the event Developer fails to purchase the Town Lots pursuant to the terms of the Option to Purchase Agreement, this Agreement shall become null and void *ab initio*, and of no force or effect whatsoever.

2. Once the Developer purchases the Town Lots and owns the Property in its entirety, the Developer shall apply for the required Level IV Subdivision permit and approvals from the Town and replat the Property into one single lot (“New Lot Final Plat”). As a part of the New Lot Final Plat application, Developer shall vacate all existing easements on the Property as may be required to construct the Development, and shall dedicate on the New Lot Final Plat all new easements as required by the Town and utility companies permitted to operate within the Town limits. The approved New Lot Final Plat shall be marked Exhibit “G,” attached hereto and incorporated herein by this reference.

3. Developer shall obtain a Level IV Development Permit from the Town allowing the relocation of the existing telecommunications tower from the existing location on the Property to a rooftop installation or revised site location at the Development.

4. Developer shall design, construct, install, and pay for, according to the Town approved plans, all Improvements as specifically set forth in Section 1.A.3., herein below and on Exhibits “B,” “C” and “D,” and approved by the Planning and Zoning Commission on December 7, 2016 as the Crossroads at Lake Dillon Planned Unit Development. The Improvements shall be constructed in accordance with the Site Plan and the Development 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. These utility and drainage improvements and relocations shall be in accordance with engineering plans to be reviewed and approved by the Town prior to installation.

5. Following Developer’s purchase of the Town Lots, and Prior to the demolition of the building on Lot 1C, the Developer shall hire a qualified asbestos abatement contractor to remove the asbestos materials in the existing building on the parcel and dispose of said materials in conformance with State and Federal regulations.

6. Developer shall enter into encroachment license and maintenance agreements as listed herein, below, each by a separate instrument in the forms attached to this Agreement as the exhibits referenced herein, below:

a. Developer shall enter into a Right-of-way Encroachment License Agreement with the Town by separate instrument, in the form marked Exhibit “I,” attached hereto and incorporated herein by this reference. The Right-of-way Encroachment License Agreement shall be signed by the Developer at the time of approval of the PUD by the Town Council.

b. Developer shall enter into a Right-of-way Maintenance Agreement with the Town by separate instrument, in the form marked Exhibit “J,” attached hereto and incorporated herein by this reference. The Right-of-

way Maintenance Agreement shall be signed by the Developer at the time of approval of the PUD by the Town Council.

c. Developer shall execute each of the two agreements referenced herein above in this Section I.A. 6.a. and b., and submit the two executed agreements, along with the required payments for each agreement, to the Town at the time the Developer submits for its first building permit of the Development.

7. Developer shall execute the Snow and Ice Removal and Maintenance Agreement with the Town by separate instrument, in the form marked Exhibit “M,” attached hereto and incorporated herein by this reference. The Snow and Ice Removal and Maintenance Agreement shall be signed by the Developer at the time of approval of the PUD by the Town Council.

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

Lake Dillon Drive Improvements:

- a. Remove the existing concrete islands, concrete pans, concrete sidewalks, asphalt pavement areas.
- b. Install new concrete curb returns at the main entrance to the development and the required ADA ramps.
- c. Install a new concrete curb and gutter section along Lots 1 and 1C.
- d. Install a new public sidewalk with a minimum width of 6’ along Lots 1 and 1C.
- e. Install a curb return and accessible ramp to line up with the Lake Dillon Drive sidewalk to the south of the 40’ ROW.
- f. Install Three (3) Street lights along the sidewalk and connect them to the Town’s electrical load center at the front entrance landscaping. The Street lights shall match the existing LED street lights installed on Lake Dillon Drive.

40’ R.O.W. Improvements:

- g. Install a concrete curb and gutter section along the north side of the 40’ ROW.
- h. Install a 3’ concrete pan along the southern side of the 40’ ROW.

- i. Pave a 24' wide asphalt road between the curb and gutter and the pan sections.
 - j. Install a storm sewer system including 4' diameter manholes and 15" minimum HDPE storm sewer pipe between Detention Pond #2 and the existing Type 'R' curb inlet located at the northwest corner of Lake Dillon Drive and Buffalo Street. This work shall include all removals and replacement of existing concrete sidewalks, concrete curb cuts, concrete curb and gutter sections, and asphalt pavement as required to install the storm sewer. All concrete and asphalt shall be sawcut full depth prior to removal and shall be replaced to match or exceed the existing improvements.
9. Developer shall modify the Site Plan and the Development Plan (Exhibits "B" and "C") in accordance with the conditions of approval placed on the project by the Planning and Zoning Commission at the December 7th, 2016 Planning and Zoning Meeting, and the conditions of approval placed on the project by the Town Council at the March 21, 2017 Town Council meeting. These changes are referenced in the adopted Town Council Resolutions "Resolutions," marked Exhibit "K," attached hereto and incorporated herein by this reference.
10. Town of Dillon Specifications. All Improvement construction shall be performed in accordance with the "Town of Dillon Construction Specifications," which construction specifications are on file at the Town of Dillon.
11. Apartment Units Provided. Developer shall provide three (3) onsite apartments which shall be reserved for employees that work in the hotel, restaurant and conference room facilities located in the Development. These three (3) units shall not be subdivided or separately deeded and shall not be sold separately from the hotel property. These units are identified on the Development Plan as units AH1, AH2 and AH3 on Level 3 of the proposed structure. The use restrictions set forth herein on the three (3) onsite apartments which shall be reserved for employees shall be included in all ownership association documents created for the Development.
12. Residential Parking. The Developer shall provide forty-four (44) dedicated and distinct parking spaces onsite for the residential uses. This includes two (2) accessible parking spaces as required by federal law and the Dillon Municipal Code (Code).
13. Commercial/Hotel Parking. For the proposed hotel, conference center & restaurant portion of the project, the Developer has provided one-hundred twenty-five (125). This includes three (3) accessible parking spaces as required by federal law and the Dillon Municipal Code (Code).

14. Parking Space Use restrictions. The residential and commercial parking spaces located onsite 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. The residential and commercial parking spaces located onsite shall be used at all times only for vehicle parking. The parking space use restriction contained herein shall be included in all ownership association documents created for the Development. All ownership association documents created for the Development shall be finalized and presented to the Town upon their adoption, but no later than the issuance of the first building permit issued for the Development.

15. Master Sign Plan. The Developer shall submit an application for a master sign plan for the Development to the Town for review and approval and pay all required fees. Each individual sign will require a separate individual sign permit and fee as required by the Code.

16. Water and Sewer *Equivalent Residential Units*. The Developer shall pay all applicable water and sewer tap fees for the total number of *Equivalent Residential Units* ("EQRs") required for the Development at a time that conforms with the requirements of the Dillon Municipal Code. The fee will be based on the then current fee adopted by the Town in Chapter 19 of the Code at the time of payment. The total number of EQRs required for this project is calculated as follows:

<u>Unit Type</u>	<u>Number of Units & Required EQRs</u>	<u>Required</u>
Restaurant & Bar	338 Seats @ 0.65 EQR's / 10 seats.....	21.970
Restaurant Carry-out	0.5 EQR's	0.500
Banquet Room	100 seats @ 0.35 EQR's / 10 seats.....	3.500
King Hotel Room	41 @ 0.25 EQR's / 2 Bed Spaces	10.25
Double Queen Hotel Rm.	42 @ 0.35 EQR's / 4 Bed Spaces	14.700
Guest Laundry	4 @ 1.05 EQR's / Washer.....	4.200
2 Hot Tubs	2400 Gallons @ 0.20 EQR's / 300 Gal.	1.600
Back of House	2,380 Sq Ft @ 0.20 EQR's / 1000 Sq Ft.....	0.476
Employee Housing	3 @ 0.65 EQR's / 1 Bedroom.....	1.950
1-Bedroom Units	2 @ 0.65 EQR's / 1 Bedroom.....	1.300
2-Bedroom Units	8 @ 0.85 EQR's / 2 Bedroom.....	6.800
3-Bedroom Units	8 @ 1.05 EQR's / 3 Bedroom.....	8.400
4-Bedroom Units	2 @ 1.25 EQR's / 4 Bedroom.....	2.500

CREDIT for Existing Buildings (6.860 EQRs)

Total EQRs Required71.286 EQRs

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

18. Right-of-Way Undertaking Fee. The Developer shall pay the Right-of-Way undertaking fee(s) for any construction activities which utilize a portion of the Town right-of-way as a staging area. The fee shall be based on the then current fee adopted by the Town in Chapter 19 of the Code at the time of payment. The Developer shall submit a final construction limits plan showing which portions of the right of way will be used during construction of the project for review and approval by the Town Manager. The plan shall include traffic control provisions to install and maintain signage for temporarily closed sidewalks, if required by the construction.

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

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

- a. A final grading and drainage plan and site plan and construction details.
- b. A final drainage study based on the final Site Plan to demonstrate that the proposed development retains the 100-year developed storm, and releases it at the 5-year historic flow rate.
- c. The applicant shall submit final construction drawings for detention ponds including outlet sizing information for review and approval. Developer shall acquire any permits required by the Colorado Department of Transportation to drain the Detention Pond #1 into CDOT right-of-way.
- d. Depending on the timing of the approved Dillon Gateway PUD to the south, the outlet from Detention Pond 2 will need to be coordinated with the Town to convey the developed runoff to the Lake Dillon Drive Right-of-Way, in lieu of installing a piped storm sewer solution.
- e. An updated Lake Dillon Drive plan reflecting any adopted Streetscaping plans for Lake Dillon Drive, or any revised Street Design Standards and Construction details adopted by the Town prior to commencement of construction.
- f. Final storm sewer plan and profile construction which include the locations, sizes and connection points for all storm sewer piping and structures, roof

drains and roof overflow pipes for all new storm sewer systems including those within Town right-of-way; and include size and location of all piping and appurtenances associated with grate drains for the parking structure entrance(s).

- g. Geotechnical Report.
- h. Final construction plans for the improvements in Lake Dillon Drive and the 40' ROW. Plan and Profiles for the curb and gutter alignments in both right-of-ways.
- i. Final Lighting plan showing fixture locations, types and wattages. The plan should include details and locations of sidewalk lighting along the 40' ROW and Lake Dillon Drive.
- j. Since the site is over 1 acre in size, the Developer shall obtain the required "*Stormwater Discharge Associated with Construction Activities*" Permit issued by the Colorado Department of Health and Environment. Submit a copy of this permit from the state as well as the erosion control plan to the Town Engineer prior to starting construction.

21. The Developer shall submit a final detailed landscaping plan for the entire Development to the Town for review and approval. The landscaping plan shall provide at a minimum, the following trees and shrubs:

- a. The planting of trees and shrubs shall generally conform to the Code, except as provided for herein.
- b. One tree for every (15) fifteen feet of ROW along both Lake Dillon Drive and the 40' ROW.
- c. Trees shall be planted as follows:
 - i. A minimum of forty-six (46) trees shall be planted.
 - ii. Trees shall be a minimum of six (6) feet tall.
 - iii. Twenty-five percent (25%) of all trees shall be eight (8) feet tall.
 - iv. Thirty percent (30%) of all trees shall be evergreens.
 - v. Twenty-five percent (25%) of the evergreen trees shall be eight (8) feet tall.
- d. The minimal landscaping strip width shall be six (6) feet along Lake Dillon Drive from the back of the six (6) foot wide sidewalk on Lake Dillon Drive to the parking area as shown on the Development Plans, Sheet A2.2.

- e. Landscaping shall primarily consist of ground cover, trees, shrubs and other living plants with sufficient irrigation to properly maintain all vegetation.
 - f. Irrigation plans for all irrigation lines in Town right of way shall also be submitted to the Town Engineer for review and approval.
22. Developer shall provide traffic control plans, devices, advanced warning signs, and flaggers in conformance with the latest 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 site. Developer shall maintain one fourteen (14) foot wide southbound traffic lane in Lake Dillon Drive for use by the public at all times during construction. Developer shall further provide a construction fencing plan that describes the construction area and separation of the construction area from the public. Such plan shall be presented to the Town prior to issuance of the first building permit for the Development.
23. Erosion Control & Vehicle Tracking. Developer shall provide and install all erosion control best management practices (BMPs) as shown on the approved grading and drainage plans. Developer shall maintain all erosion control devices on a daily basis. Developer shall remove all material, dirt and debris tracked onto Town streets by 7:00 p.m. each day. Developer shall pay a Two Hundred Dollar (\$200.00) per day fine for each day tracked material is left on Town streets past 7:00 p.m.
24. Roof Drainage: All roof drains shall be collected and conveyed through storm sewer pipes to the detention ponds shown on the Development Plans. All overflow roof scuppers shall be collected by surface area inlets and piped to the detention ponds.
25. Snow and Ice Limitations: No snow or ice shall be removed from the building, decks or other portions of the Development and placed in Town or CDOT right-of-ways. In the event the onsite snow storage areas have been filled with snow, the Developer is required to haul off all remaining snow and dispose of the snow and ice at a legal disposal site.
26. Limitations on noise and use of outdoor patios and rooftop deck areas. *The applicant is to provide to the Town a proposal for the times of operation and activities anticipated for the project, and receive approval for said uses.*

B. USES ALLOWED:

The Developer shall be allowed the following uses in the Development as a part of the PUD approval, in accordance with the conditions set forth by the Town Planning and Zoning Commission and the Town Council:

1. Those uses allowed in the underlying Commercial (C) zoning district.
2. Multi-Family Residential: 23 units.

C. DENSITY ALLOWED:

The Developer shall be allowed the following densities for residential and hotel components of the Development as a part of the PUD approval, in accordance with the conditions set forth by the Town Planning and Zoning Commission and the Town Council:

1. Hotel Density: A density of 83 hotel units.
2. Multi-Family Residential: 23 units.

D. BUILDING HEIGHTS ALLOWED:

The Developer shall be allowed the following maximum building height in the Development as a part of the PUD approval, in accordance with the conditions set forth by the Town Planning and Zoning Commission and the Town Council:

1. The Building shall not exceed 89'-10" in height as measured per Code.
2. The definition of *Building Height*, allows for an additional 8' of non-habitable architectural spaces above the building height as set forth in Section of 16-1-50 of the Town of Dillon Municipal Code. In this case, the additional 8' is included in the maximum final building height of 89'-10".

E. PARKING LOT DESIGN STANDARDS:

The Development shall use the following parking lot design standards in the Development as a part of the PUD approval, in accordance with the conditions set forth by the Town Planning and Zoning Commission and the Town Council:

1. Parking spaces along the CDOT Highway 6 Right-of-way may be constructed at 17' deep with a 12" overhang over the curb and landscape strip adjacent to the right-of-way line. This effectively still provides an 18 foot long parking space.
2. Parking garage ramp grades of a maximum of 20%. All parking garage ramps in excess of 10% shall utilize an integral snowmelt system with mechanical systems located within the building.
3. Garage ramp widths at a minimum of 20'.
4. Designate up to 20% compact parking spaces.

F. YARDS AND SETBACKS:

The Development shall be allowed the following yards and building setbacks as a part of the PUD approval, in accordance with the conditions set forth by the Town Planning and Zoning Commission and the Town Council:

1. Along the Lake Dillon Drive Right-of-Way: No yard required.
2. Along the 40' unnamed Right-of-Way: No yard required.
3. Along the Highway 6 Right-of-Way: Minimum 25' Street Side Yard.
4. Along Lot 2, Block B, New Town of Dillon: No Yard Required.

G. SIGNAGE ALLOWED:

The Developer shall be allowed the following signage in the Development as a part of the PUD approval, in accordance with the conditions set forth by the Town Planning and Zoning Commission and the Town Council:

1. Signage shall be in conformance with the requirements of Sign Zone B as set forth in *Section 16, Article XI: Sign Regulations* of the Town of Dillon Municipal Code.

SECTION II. CONSTRUCTION SCHEDULE:

A. Developer shall construct the Improvements in a timely manner. This shall require that the Developer begin construction of the Development within twenty-four (24) months of the date, set forth above, of this Agreement, and continue without interruption until the Development is 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 the Development is completed shall cause the PUD approval to terminate and become null and void. If construction circumstances cause the project to exceed the construction period stated above, then the Developer shall request a time extension from the Town prior to the expiration of the construction period stated above.

B. No building permits for this PUD or Development shall be issued until the Developer has delivered to the Town a letter of credit, in the form as set forth on Exhibit "E," attached hereto and incorporated herein by this reference, guaranteeing the construction of the Improvements. No building permits for this PUD or Development shall be issued until the Developer has complied with all applicable requirements as set forth herein, with all Town Code requirements, and has paid all fees and costs due and owing to the Town in relation to this PUD or 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, in accordance with the Code, 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 execution of this Agreement by both parties hereto, 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:

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 ordinances, laws and standards.

SECTION V. COMPLIANCE WITH APPLICABLE LAWS:

The Developer shall comply with all applicable Federal, State of Colorado and Town 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. and itemized in Exhibit “D.” The actual cost of constructing the Improvements required in Section I.A., and itemized on Exhibit “D,” 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 a performance guarantee in the form of cash or an irrevocable Letter of Credit in the agreed upon amount of the cost of constructing the Improvements as itemized in Exhibit “E” as a guarantee of the performance of its obligations under this Agreement (the “Performance Guarantee”). If the Performance Guarantee is in the form of an irrevocable Letter of Credit, said Letter of

Credit shall be issued by a qualified lending institution acceptable to the Town, in a form as set forth on Exhibit "E." Said monetary guarantee shall equal a minimum of One Hundred Twenty percent (120%) of the estimated cost of constructing the Improvements as itemized in Exhibit "D." No permit of any kind shall be issued by the Town prior to the Developer delivering to the Town the Performance Guarantee in the amount and form as required herein.

SECTION VIII. RELEASE OF PERFORMANCE GUARANTEE:

A. When Released: The Developer's Performance Guarantee described in Section VII, above, 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 all of the Improvements have been properly constructed or installed, all Code requirements met, the warranty period has been met, and the Improvements have been finally accepted by the Town. Partial release of the letter of credit may be made only in accordance with Code requirements. The 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 Plan. In no event shall a Performance Guarantee be reduced below twenty percent (20%) of the original principal amount until all Improvements have been completed, the warranty period has been met and the Improvements have been finally accepted by the Town.

SECTION IX. FINAL APPROVAL OF IMPROVEMENTS AS CONSTRUCTED:

The Town's final approval and acceptance of the completed Improvements shall be evidenced by a letter of final approval and acceptance 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 Specifications and requirements for the Development.

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.

C. The one (1) year warranty period has been successfully completed and the Improvements have been accepted by the Town.

SECTION X. DEFAULT:

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

A. Developer's Violation of any term or condition 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 (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 Development or assignment or conveyance of the Development in lieu of foreclosure prior to the final approval of the Improvements by the Town as provided in Section IX.

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 Developer's default of this Agreement shall be the actual cost of completing the Improvements, including design costs, engineering costs, construction costs, construction management and supervision costs, legal and inspection costs, as well as all other related 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 "D" 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 hereunder, 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 and the additional costs as set forth in Section XI, above, 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 and the additional costs as set forth in Section XI, above, 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 all such rights and remedies 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 of the Development 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 twelve percent (12%) 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 law.

SECTION XX. PERSONAL JURISDICTION AND VENUE:

Personal jurisdiction and venue for any legal 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 Town's Municipal Code or to any Town or other governmental standards are intended to refer to any subsequent amendments and/or revisions to such Code 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:

Tom Breslin, Town Manager
Town of Dillon
P.O. Box 8
Dillon, CO 80435

With a Copy (which will not constitute
Notice to the Town) to:

Mark R. Shapiro
Mark R. Shapiro, P.C.
1650 38th St., Suite 103
Boulder, CO 80301-2624

If to the Developer:

Daniel Lee Eilts and Cynthia A.
Eilts
P.O. Box 685
Dillon, Colorado 80435

Dillon Gateway Diamond in the Ruff,
LLC.
P.O. Box 685

Dillon, Colorado 80435

With a Copy (which will not constitute
Notice to the Developer) to:

Steve Letofsky
Letofsky & Dombrowski
P.O. Box 549
Frisco, CO 80443

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 “M” inclusive are incorporated herein by reference.

[Signatures on Following Page]

EXHIBIT A
The Crossroads at Lake Dillon PUD Plat

EXHIBIT B
The Crossroads at Lake Dillon PUD Site Plan

EXHIBIT C
The Crossroads at Lake Dillon PUD Development Plan

EXHIBIT D
Estimated Cost of Improvements

EXHIBIT E
Letter of Credit Form

IRREVOCABLE LETTER OF CREDIT

*THE CROSSROADS AT LAKE DILLON P.U.D.
PUBLIC RIGHT-OF-WAY 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 PUD Agreement dated _____, entered into between the Town of Dillon, Colorado and Ivano Ottoborgo (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 Ivano Ottoborgo 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 F
Option to Purchase Agreement

EXHIBIT G
The Crossroads at Lake Dillon PUD Final Plat

EXHIBIT H
No Exhibit I for the Crossroads at Lake Dillon PUD
Left Blank on Purpose

EXHIBIT I
Right-of-way Encroachment License

EXHIBIT J
Right-of-way Encroachment Maintenance Agreement

EXHIBIT K
Crossroads at Lake Dillon PUD
Town Council Resolution XX-17, Series of 2017

EXHIBIT L
Conditional Use Permit
Town Council Resolution XX-17, Series of 2017

EXHIBIT M
Snow and Ice Removal and Maintenance Agreement