

## INDEMNIFICATION AGREEMENT

**THIS INDEMNIFICATION AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of February 9<sup>th</sup>, 2023, by and between Cannon Properties Grand Junction, LLC, a Colorado limited liability company, whose legal address is 683 24 Road, Grand Junction, Colorado 81505 (“Developer”) and the City of Grand Junction (“City”), Colorado, a home rule municipality. Developer and the City may be referred to collectively as “Parties.”

This Agreement specifies the terms, conditions, responsibilities and duties of the Developer to indemnify and hold harmless the City, pertaining to the development, use and placement of certain drainage facilities, conveyance(s), structure(s) and point(s) of discharge on, over, under, through, in, and from the real property and associated improvements for the uses located at 684 24 Road, Grand Junction, Colorado. The Developer asserts that the drainage facilities, conveyance(s), structure(s), and point(s) of discharge are necessary for the discharge of storm and/or surface water into Leach Creek south of G Road along 24 Road and as it flows south all located in Grand Junction, Colorado and as more particularly described and depicted on the **Exhibit A**, attached hereto and incorporated herein by this reference (the “Project”).

### RECITALS

A. The Developer has designed and developed the Project such that storm and/or surface water will be discharged into Leach Creek south of G Road along 24 Road and as it flows south (the “Creek”).

B. Developer has entered into an agreement entitled “Construction, Maintenance and Easement Agreement” whereby Usher NV, LLC (“Usher”) has consented to accept the developed storm and surface water flow from the Project.

C. The Project shall have surface and storm water detention and/or retention drainage facilities constructed to City standards; However, with the City’s review and approval of the Project the City cannot, and does not, authorize storm and/or surface water discharge of developed flows into the Creek or other facility(ies) or location(s) without permission from the private owner, in this case, Usher

D. The City is not and cannot be the arbiter of the competing legal claims of the Developer Usher and/or any other party. As such, the City is unwilling to accept any liabilities, costs or expenses associated with or resulting from the Developer’s decision to discharge as designed.

E. The Developer understands and accepts the City’s position as stated in these Recitals, and by the execution of this Agreement agrees to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the covenants and conditions set forth herein as well as the approval of the Project, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the Developer agrees as follows:

1. The Project was designed and approved for development as detailed and described in the City’s Community Development file # SPN-2022-317 (“Development File”). Developer has entered into an agreement entitled “Construction, Maintenance and Easement Agreement” whereby Usher has agreed to allow and facilitate Developer’s proposed facilities and improvements associated with the Project on and through Usher property. The Developer relies upon the “Construction, Maintenance and Easement Agreement” as witnessing its’ right to use the Creek for the Project and purposes of discharging surface and/or storm water. ..

2. Usher, the Developer, and others may have certain legal rights in and to the Creek, but those rights, if any, are for the Developer to determine with Usher and others who have rights.

3. Because of the uncertainty of rights, if any, and because the discharge is necessary to the project the Developer has agreed to indemnify and hold harmless the City, its officers, directors, agents and employees from and against any and all claims, suits, damages, costs, expenses, liabilities, actions or proceedings arising from bodily injury, loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the design, construction, use and/or approval of the Developer's drainage system, revocable permit if any issued, and/or drainage conveyance described herein and/or as constructed by the Developer.

4. The Developer has further agreed to indemnify and hold harmless the City of Grand Junction, its officers, directors, agents and employees, from any and all loss, liability, claims, damages, fines or penalties asserted, assessed or imposed against the City by any Federal, State or local agency concerning an environmental release or discharge from the Project or violation of environmental laws, rules or regulations that occur, result or are claimed to occur or result by or from the City's approval of the Project.

5. The indemnification provided for herein shall include, but not necessarily be limited to, property damage, personal injury, attorney fees and/or cost of environmental restoration/reclamation. The Developer shall bear all costs and expenses of the indemnification provided for herein including, but not necessarily limited to, court costs and attorney fees.

6. In the event of a claim against the City, the Developer shall retain legal counsel of its choosing so long as any such counsel retained to defend the Developer and/or the City is licensed by and in good standing with the Colorado Supreme Court and is competent and experienced in defending claims, suits, actions or proceedings arising from bodily injury, loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the design, construction or use of the drainage system and/or drainage conveyance referred to herein.

7. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act 24-10-101 et. seq., C.R.S., as now or hereafter amended. The parties hereto understand and agree that liability for claims for injuries to persons or property and other injuries which lie in tort or could lie in tort that arise out of the negligence of the City and its officers, directors, agents and employees is controlled and limited by the provisions of 24-10-101 et. seq., C.R.S., as now or hereafter amended.

8. The person(s) signing this Agreement, whether as individuals or in a representative capacity, shall have authority and be authorized to sign the Agreement and bind themselves or the entity that on whose behalf he/she/they sign. This Agreement shall be perpetual and shall not be terminated except by a written instrument executed by the Developer and the City.

9. The exclusive venue for any suit, action or proceeding for the enforcement of the obligations created under this Agreement shall be the courts in and for Mesa County, Colorado. The prevailing party in any action brought in connection with this Agreement shall be entitled to judgment for its attorneys' fees and costs, including expert witness fees and fees incurred in connection with any appeals.

10. This Agreement may be executed in one or more counterparts including scanned and emailed counterparts each counterpart to be considered an original portion of this Agreement, and all of

which together shall constitute a single instrument. A photocopy of this Agreement may be used in lieu of an original in any action or proceeding brought to enforce or construe this Agreement.

11. This Agreement was drafted jointly by the Parties and shall not be construed against any party hereto.

12. This Agreement supersedes any and all other agreements either oral or written, express or implied, between the Parties with respect to the matters contained herein and contains all of the covenants and agreement between the Parties with respect thereto.

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

14. The Parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Agreement.

15. In case any one or more of the terms or provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement, and this Agreement shall be construed and given effect as if such invalid or illegal or unenforceable term or provision had never been contained herein. Upon such determination that any term or provision is invalid, illegal or unenforceable, the court or other tribunal making such determination is authorized and instructed to sever the invalid, illegal or unenforceable term or provision and modify this Agreement so as to give effect to the original intent of the Parties as closely as possible so that the transactions, agreements, covenants and obligations contemplated herein are consummated as originally intended to the fullest extent possible.

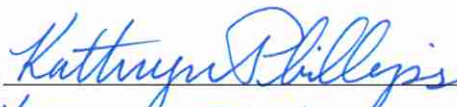
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first written above.

**DEVELOPER: CANNON PROPERTIES  
GRAND JUNCTION, LLC**

**CITY OF GRAND JUNCTION**

By:   
Joey Wilkinson  
(Print Name)

Its: Managing Member

By:   
Kathryn Phillips  
(Print Name)

Its: Development Engineer

By: NA  
  
(Print Name)

Its: \_\_\_\_\_

