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TYPE OF RECORD: ACTIVE NON-PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF CONTRACTOR: RED JUNCTION LLC, A COLORADO LIMITED LIABILITY COMPANY ("GOLF LAND OWNER") AND REDLANDS MESA, LLC, A COLORADO LIMITED LIABILITY COMPANY

SUBJECT/PROJECT: RELATING TO HILE #4, REDLANDS (SEE DIA-RJL02GLF) – FILE # FP-1999-206 (PARENT PARCEL) MESA GOLF COURSE

LOCATION: REDLANDS MESA GOLF COURSE

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2002

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

INDEMNIFICATION AGREEMENT  
**Relating to Hole #4, Redlands Mesa Golf Course**

This Indemnification Agreement is made and entered into this 30<sup>th</sup> day of January, 2002, by and between THE CITY OF GRAND JUNCTION, Colorado ("City"), RED JUNCTION LLC, a Colorado limited liability company ("Golf Land Owner"), and REDLANDS MESA, LLC, a Colorado limited liability company ("Developer").

2056676 05/16/02 0341PM  
 MONIKA TODD CLK&REC MESA COUNTY CO  
 REC FEE \$25.00

Recitals.

A. Golf Land Owner is the owner of The Golf Club at Redlands Mesa, City of Grand Junction, Mesa County, Colorado, including without limitation Golf Block 16, Redlands Mesa Filing 1, according to the Plat thereof recorded July 17, 2000 in Plat Book 17 at Page 354 in the Office of the Clerk and Recorder of Mesa County, Colorado.

B. Developer is the developer of Redlands Mesa Planned Unit Development, City of Grand Junction, Mesa County, Colorado, and is in the process of platting Redlands Mesa Filing 3.

C. As a condition to its approval of the Final Plat of Filing 3, City has requested that Golf Land Owner and Developer grant to City perpetual, non-exclusive easements over (i) a portion of Golf Block 16, Redlands Mesa Filing 1, along an alignment described on **Exhibit A** attached hereto and made a part hereof by this reference, and (ii) a portion of Tract 11-4, Redlands Mesa Filing 3, as described in Paragraph 3 of the Certificate of Ownership and Dedication on said Final Plat of Filing 3, for the installation, operation, maintenance and repair/replacement of a public pedestrian and bicycle trail, without motorized uses.

D. The configuration of the golf course and the requested easement is such that a pedestrian, bicyclist or other user of the public trail could be struck by an errant golf ball from the most difficult ("black") tee box for hole #4. Given that the City requests this change, and given that the chances of a user of the trail being hit or injured are remote in general and given that the golfers who tend to tee from the most difficult tee boxes are the most proficient golfers, the likelihood of injury is very low.

E. Golf Land Owner and Developer are prepared to grant said public trail easements, provided that City indemnifies Golf Land Owner and Developer ("Indemnitees") from and against any claims, actions, damages, costs or liabilities arising from errant golf balls striking persons or property using the public trail easements as a result of a tee off from said "black" tee on hole #4.

F. These parties believe that in Colorado each golfer is liable and responsible for placement of each golf shot on the course in a location and at a time that injury to persons or property does not occur. Part of such duties are the golfer's duty to look first before striking the ball, to determine if any pedestrian user will be crossing in front of said tee box as the golfer strikes the ball.

G. The Golf Land Owner is willing to install and continuously maintain signs warning the pedestrians and the golfers of the dangers described in this Agreement.

H. Given the low probability of injury, City is willing to sign this Agreement, in order to secure the trail easements as described.

1. NOW, THEREFORE, for and in consideration of (and with respect to time periods that the City authorizes the public use of such easements):
  - (a) The grant and/or dedication of public trail easement over a portion of Golf Block 16, Redlands Mesa Filing 1, as granted by Golf Land Owner to City in that certain Grant of Public Trail Easement recorded April 11, 2002 in Book 3056 at Page 846 in the Office of the Clerk and Recorder of Mesa County, Colorado; and the public trail easement over a portion of Tract 11-4, Redlands Mesa Filing 3, as granted by Developer to City on the Final Plat of Filing 3;
  - (b) The City agrees to indemnify, defend (including reasonable attorney's fees and costs reasonably incurred by Indemnitee(s) in defense or enforcement of this provision and subject to the other provisions hereof) and hold harmless Golf Land Owner and Developer, and their respective managers, members, directors, officers, employees, agents, successors and assigns forever;
  - (c) This indemnity is with respect to and against any and all claims, demands, actions, causes of action, damages, losses, costs, expenses or liabilities of any kind or nature arising from any property damage, personal injury or death caused directly or indirectly by errant golf balls striking persons or property using said public trail easements through Golf Block 16, Redlands Mesa Filing 1 and Tract 11-4, Redlands Mesa Filing 3.
  - (d) Notwithstanding any other provisions to the contrary, the following limitations and restrictions on the City's duties and liabilities shall apply: (i) The City's obligations to indemnify and hold harmless applies only to individuals in their capacity that is directly related to this Agreement, *e.g.*, a homeowner is not indemnified hereby by virtue of such person's ownership of a lot or other interest in one of the Indemnitees but only if such homeowner is a member of the Developer entity; this provision applies to a natural person only if the entity is sued and the individual board member is also sued; (ii) the City's duty to pay attorneys fees and costs would apply only where, pursuant to the other provisions of this Agreement, the entity or covered individual was reasonably forced to defend itself and incur legal fees and costs; (iii) as used in this Agreement, "sued" includes circumstances where the Indemnitee(s) are otherwise reasonably forced to defend itself and incur legal fees and costs.
  
2. To the extent necessary or applicable to effectuate the purposes contained in the Recitals hereto and the terms hereof, this Agreement supersedes and shall take precedence over the release and indemnity given by the owners from time to time of the "Community Area" as set forth in Article II "Hazards of Errant Golf Balls" in the Declaration of Golf Course and Community Area Easements recorded in Book 2730 at Page 44 in the Office of the Clerk and Recorder of Mesa County, Colorado.

3. The City's obligations hereunder are continuously and completely contingent upon the following being true at the time of each injury, claim, demand, action, cause of action, damage, loss, cost, expense or liability referred to in 1(c), above:
- (a) Golf Land Owner shall install and continuously maintain in large, easily readable text signs for the golfers, the public, pedestrian and other users at locations, and with text, mutually agreed upon by the signatories hereto. The City shall confirm in writing to the Golf Land Owner, upon request, that the proposed signs and text satisfy the City as to the requirements of this provision. Failure by the City to respond (to a written request directed to the City Attorney) within thirty days shall constitute the City's approval.
  - (b) In event of a claim, the Golf Land Owner, as a condition for enforcement of the terms of this Agreement, shall cooperate with the City to attempt to identify the person striking the golf ball that allegedly caused the claim or injury. The City shall then have the right, but not the duty, to seek relief against the person who struck the ball, and to use such relief, if any, including insurance proceeds, to act in the discharge of the City's duties under paragraph 1. It shall be the duty of the City to actively represent and defend once a claim has been made or injury alleged.
  - (c) The City's duty to indemnify under paragraph 1 hereof is not contingent on the parties having identified the person allegedly striking the ball, so long as the Golf Land Owner has reasonably cooperated.
  - (d) The duty of the City to pay for the attorney's fees, as described in section 1, above, shall not be in effect, nor shall the City have an obligation to pay such amounts, unless the Indemnitee(s) have a substantial basis to believe that City is not adequately defending such claim or action and is thereby exposing Indemnitee(s) to a judgment; or a substantial basis to conclude that the City does not have the ability to pay a judgment that arises out of the City's Agreement in subsection 1(c) hereof.
4. Notwithstanding any term or provision to the contrary, the City may at any time in its sole discretion, end the use of the pedestrian easements described herein and in such event, or during such periods of time that pedestrian or other use is not authorized, this Agreement shall not apply nor have any force or effect, and the City shall adequately block, barricade and give notice to terminate the trail usage. To implement this provision, the City shall send notice to the Golf Land Owner, certified mail, signed by the Director of Parks and Recreation, the Director of Community Development or the City Manager. Said notice shall specify the time or times during which this Agreement shall not apply; once the public use of the easement(s) has been ended, temporarily or not, the City shall pay the expenses incurred to reinstall any signs that have been removed and the public use of the easements shall not begin again until the City has sent a notice in like manner specifying when such public use may begin anew.

This Agreement shall be binding upon and inure to the benefit of City, Golf Land Owner, Developer, and the Redlands Mesa Master Association, and their respective successors and assigns forever.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

CITY: THE CITY OF GRAND JUNCTION

By: [Signature]  
Its: CITY MANAGER

GOLF LAND OWNER: RED JUNCTION LLC, a Colorado limited liability company

By: [Signature]  
Its: MANAGER

DEVELOPER: REDLANDS MESA, LLC, a Colorado limited liability company

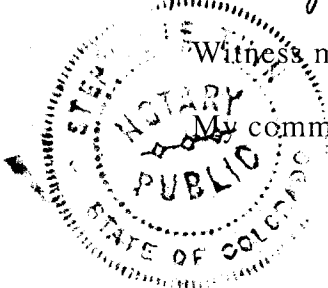
By: [Signature]  
David R. Slemon, Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

The foregoing Indemnification Agreement was acknowledged before me this 30<sup>th</sup> day of January, 2002, by Kelly Arnold as City Manager of the City of Grand Junction.

Witness my hand and official seal.

My commission expires: 10-10-02



[Signature]  
Notary Public

STATE OF COLORADO)  
 )ss.  
COUNTY OF Arapahoe

The foregoing Indemnification Agreement was acknowledged before me this 3<sup>rd</sup> day of Feb., 2002, by James Eller as Manager of Red Junction LLC, a Colorado limited liability company.

