

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease" and/or "Agreement") is entered into as of the 1st day of January, 2021, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Sawmill Unlimited LLC hereinafter referred to as "Lessee", whose address for the purpose of this Agreement is 1441 Winters Avenue, Grand Junction, Colorado 81501-3862.

RECITALS

A. The City is the owner of that certain real property in the City of Grand Junction, County of Mesa, state of Colorado, described as:

a parcel of land situated in the S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ and in Lot 3 of Section 23, and in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Lot 3 and Lot 4 of Section 24, all in Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, commonly known as the portion of the Las Colonias Park property (Park Parcel)

and

Lots 5 and 6, Colorado West Development Park Filing Two as recorded in the Mesa County Clerk and Recorder's records, plus all of the vacated right-of-way abutting Lots 5 and 6 (Lots).

The Park Parcel and the Lots shall be referred to jointly as the Property and the Property is commonly known and referred to as 1441 Winters Avenue, Grand Junction, Colorado.

B. A predecessor to the Lessee has been leasing the Park Parcel since 2007 and wishes to continue to lease the Park Parcel under the terms and conditions of this Agreement and to lease the Lots and use the surface of the Property for the winding up of the operations of the sawmill business along with storage and other purposes associated with the sawmill business.

C. The managing member of the Lessee has been a long term employee of the sawmill business and is endeavoring to relocate the business and desires a short term lease to facilitate the relocation and winding up of the business, which will include but not be limited to cleaning the property to the City's reasonable satisfaction. The Lessee has agreed to fully cooperate with City staff to accomplish those ends.

NOW, THEREFORE, in consideration of the payment of rent and the performance of the promises, covenants, conditions, restrictions, duties and obligations set forth herein, the parties agree as follows:

1. Grant and Acceptance of Lease. The City hereby leases the Property to Lessee. Lessee hereby accepts and leases the Property from the City, for the term stated in paragraph 2 below.

2. Term. The term of this Lease shall commence on the date above first written and continue through March 31, 2021 unless sooner terminated.

3. Rental. Rent for the Property, for the term hereinabove specified, shall be one thousand dollars (\$1000.00) per month, which amount shall be due and payable, without demand by the City, on or before the 10th day of each month, beginning January 10, 2021. In the event payment of rent is not received by the City on or before the 10th day of each month, Lessee agrees to pay to the City a late charge of \$100.00, which amount shall be added to the amount of rent(s) due. In the event payment of rent and any late charge is not received by the City on or before the 15th of the month, this Lease shall automatically terminate and neither party shall have any further rights, duties or obligations under this agreement.

4. Reservations from Lease. This Lease is also subject to the reservation of: (a) any and all oil, gas, coal and other minerals and mineral rights of any person underlying and/or appurtenant to the Property; (b) all water and water rights, ditches and ditch rights appurtenant to and/or connected with the Property, including, but not limited to, any water and/or water rights which may have been previously used on or in connection with the Property, for whatever purpose; (c) existing rights-of-way for roads, railroads, telephone lines, transmission lines, utilities, ditches, conduits or pipelines on, over, or across said parcel; and the following terms and conditions specified in Section 5 below, so long as such actions will not interfere with Lessees' use and quiet enjoyment of the Property for the purposes set forth in this Agreement.

5. Use and Condition of the Property.

5.1 Lessee covenants and agrees that Lessees' use of the Property is strictly limited to the use of the surface of the property and that Lessee will not use the ground water from the site for any purpose, construct wells or any means of exposing ground water to the surface. Lessee also agree to make application and follow City development requirements, including but not limited to, prior written approval of construction plans, designs and specifications. Any habitable structures constructed on the property shall employ a radon ventilation system or other radon mitigation measures, as required by the State of Colorado. Any use of the property shall not adversely impact ground water quality nor interfere with ground water remediation under State and federal regulations.

5.2 Lessee agrees that Lessees' use and occupancy of the Property shall be subject to all applicable laws, rules, rulings, codes, regulations and ordinances of any governmental authority, either now in effect or hereafter enacted, having jurisdiction over the Property and Lessees' use, occupancy and operations thereon. Lessee agrees that Lessee shall not use nor permit the Property to be used for any other purpose or in any other fashion or manner contrary to the provisions of this Lease or the laws, ordinances, codes or regulations of any governmental unit or agency exercising jurisdiction over the Property or any use thereon. No modifications shall be made to the use of the Property or additions and/or removal of structures or other fixtures to the Property without the written consent of the City.

5.3 Lessee agrees to maintain and repair all aspects of the Property including, but not limited to driveways, fences, and gates located upon the Property and upon termination of the tenancy clean the property of all materials and debris, and as otherwise

specifically provided in paragraph 8 hereof, all at Lessees' sole cost and expense, and to not cause damage to the Property or to the real or personal property of any other party. Lessee agrees that the City shall not be obligated nor required to repair damages to any portion or aspect of the Property.

5.4 Lessee further agrees that Lessee shall not commit nor permit waste, damage or injury to the Property. Lessee shall make a reasonable effort to keep the Property free from noxious weeds and vermin.

5.5 Lessee has inspected the Property, the rights and privileges appurtenant thereto, and the rules, regulations, codes and ordinances governing Lessees' use, occupancy and operations thereon. Lessee agree that the condition of the Property and such rights, privileges, rules, regulations, codes and ordinances are sufficient for the purposes of Lessee. The City makes no warranties, promises or representations, express or implied, that the Property is sufficient for the purposes of Lessee. If the Property is damaged due to fire, flood or other casualty, or if the Property or any aspect thereto is damaged or deteriorates to the extent where it is no longer functional for the purposes of Lessee, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at Lessees' own risks.

5.6. No modifications, alterations or additions of improvements upon the Property, shall be performed by Lessee without the express written consent of the City first being obtained, which consent shall not be unreasonably withheld, conditioned or delayed.

6. Non-liability of the City for Damage.

6.1 The City shall not be liable for liability or damage claims for injury to persons or property, including property of Lessee, from any cause relating to the occupancy and use of the Property by Lessee, including those arising out of damages or losses occurring on areas adjacent to the Property or easements used for the benefit of the Property during the term of this Lease or any extension thereof, nor for any injury or damage to any property of Lessee or any other party, from any cause. Lessee shall jointly and severally indemnify the City, its officers, employees and agents, and hold the City, its officers, employees and agents, harmless from all liability, loss or other damage claims or obligations resulting from any injuries, including death, or losses of any nature.

6.2 The City shall not be liable to Lessee for any damages or any loss of profits or loss of opportunities claimed by Lessee jointly or individually or for interruption of Lessees' business or operations resulting from fire, the elements, casualty of any kind or the closure of any public highway providing access to and from the Property.

7. Hazardous Substances.

7.1 The term "Hazardous Substances", as used in this Agreement, shall mean any substance which is: defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or other governmental authority; a petroleum hydrocarbon, including, but not limited to, crude oil or any fraction thereof; hazardous, toxic or reproductive toxicant; regulated pursuant to any law; any pesticide or herbicide regulated under state or federal law. The term "Environmental Law", as used in

this Lease Agreement, shall mean each and every federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety of the environment, either now in force or hereafter enacted.

7.2 Lessee shall not cause or permit to occur by Lessee and/or Lessees' agents, guests, invitees, contractors, licensees or employees:

- a. any violation of any Environmental Law on, under or about the Property or arising from Lessees' use and occupancy of the Property, including, but not limited to, air, soil and groundwater conditions; or
- b. the use, generation, accidental or uncontrolled release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance in violation of any federal state or local law, ordinance or regulation either now in force or hereafter enacted.

8. Clean-Up of the Property.

8.1 The following provisions shall be applicable to Lessee and to Lessees' agents, guests, invitees, contractors, licensees and employees:

- a. Lessee shall, at Lessees' sole cost and expense jointly and severally, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances;
- b. Lessee shall, at Lessees' sole cost and expense, make all submissions to provide all information required by and/or to comply with all requirements of all governmental authorities ("the Authorities") under Environmental Laws and other applicable laws.
- c. Should any Authority or the City demand that a clean-up plan be prepared and that a clean-up plan be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property by Lessee, Lessee shall, at Lessees' sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws. Lessee shall not be responsible for any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property, or for the costs associated therewith, by Lessee's predecessor.
- d. Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by any Authority. If Lessee fail to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessees' behalf and, in such case, Lessee shall cooperate with the City in the preparation of all documents the City or any Authority deems necessary or appropriate to determine the applicability

of Environmental Laws to the Property and Lessees' use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Lessees' obligations hereunder.

- e. Upon termination the Lessee shall remove the existing structures and render the surface of the Property as reasonably determined by the City to be safe and free from contamination.
- f. Lessees' obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

8.2 Lessee, jointly and severally shall indemnify, defend and hold the City, its officers, employees and agents harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances and the violation of any Environmental Law and other applicable law by Lessee and/or Lessees' agents, guests, invitees, contractors, licensees and employees that occur during the term of this Lease or any extension thereof, or from Lessees' failure to provide all information, make all submissions, and take all actions required by all authorities under the Environmental Laws and other applicable laws and the terms of this agreement. Lessees' obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

9. Default, Sublet, Termination, Assignment.

9.1 Should Lessee: (a) default in the performance of these agreements or obligations herein and any such default continue for a period of thirty (30) days after written notice thereof is given by the City to Lessee; or (b) abandon or vacate the Property; or (c) a Lessee be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed; the City, at the City's option, may cancel and annul this Lease at once and enter and take possession of the Property immediately without any previous notice of intention to reenter, and such reentry shall not operate as a waiver or satisfaction in whole or in part of any claim or demand arising out of or connected with any breach or violation by Lessee(s) of any covenant or agreement to be performed by Lessee(s). Upon reentry, the City may remove the property and personnel of Lessee and store Lessees' property at a place selected by the City, at the expense of Lessee and without liability to the City. Any such reentry shall not work a forfeiture of nor shall it terminate the rent(s) to be paid or the covenants and agreements to be performed by Lessee for the full term of this Lease; and, upon such reentry, the City may thereafter lease or sublease the Property for such rent as the City may reasonably obtain, crediting Lessee with the rent so obtained after deducting the cost reasonably incurred in such reentry, leasing or subleasing, including the costs of necessary repairs, alterations and modifications to the Property. Nothing herein shall prejudice or be to the exclusion of any other rights or remedies which the City may have against Lessee, including, but not limited to, the right of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

9.2 Except as otherwise provided for (automatic and immediate termination), if Lessee are in default in the performance of any term or condition of this Lease Agreement, the City may, at its option, terminate this Lease upon giving thirty (30) days written notice. If Lessee fail within any such thirty (30) day period to remedy each and every default specified in the City's notice, this Lease shall terminate. If Lessee remedy such default, Lessee shall not thereafter have the right of thirty (30) days (to remedy) with respect to a similar subsequent default, but rather, Lessees' rights shall, with respect to a subsequent similar default, terminate upon the giving of notice by the City.

9.3 Lessee shall not assign or sublease the Property, or any right or privilege connected therewith, or allow any other person, except officers, employees, agents and clientele of Lessee, to occupy the Property or any part thereof without first obtaining the written consent of the City, which consent must be approved and ratified by the City Council of the City. Any attempt to sublet, assign or transfer without the prior written consent of the City shall be void *ab initio*. In the event an assignment of this Lease or a sublease is authorized by the City, Lessee shall not be released from Lessees' obligations and duties under this Lease and this Lease shall remain in full force and effect. Any consent by the City shall not be a consent to a subsequent assignment, sublease or occupation by any other party. Any unauthorized assignment, sublease or permission to occupy by a Lessee or both Lessee shall be void and shall, at the option of the City, provide reasonable cause for the City to terminate this Lease. The interest of Lessee in this Lease is not to be assignable by operation of law without the formal approval and ratification by the City Council of the City.

9.4 At Lessee's option it may terminate this Lease by giving the City written notice no later than 5:00 p.m. on February 19, 2021, which notice will serve to terminate the Lease at 11:59 p.m. on February 28, 2021. Termination shall not relieve the Lessee of its further obligations as provided herein.

9.4 Lessee shall not engage or allow any contractor, material man or supplier to perform any work or supply any materials or other goods or services on any portion of the Property which could be the subject of a mechanic's lien.

10. Fees or Commissions. The parties to this Lease Agreement warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. The City and Lessee agree to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party claiming to be entitled to brokerage commissions or finder's fees arising out of this Lease.

11. Notices. All notices to be given with respect to this Lease shall be in writing delivered either by United States mail or Express mail, postage prepaid, or by facsimile transmission, personally by hand or courier service, as follows:

To the City:
City of Grand Junction
Parks & Recreation Director
1340 Gunnison Avenue
Grand Junction, CO 81501

With Copy to:
City of Grand Junction
City Attorney
250 North 5th Street
Grand Junction, CO 81501

To Lessee:
Sawmill Unlimited LLC
1441 Winters Avenue
Grand Junction, CO 81501

With a Copy to:
Lodestone Law
101 S. 3rd Street, #310
Grand Junction, CO 81501

All notices shall be deemed given: (a) if sent by mail, when deposited in the mail; (b) if delivered by hand or courier service, when delivered; or (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

12. Insurance. Lessee shall purchase and at all times maintain in effect commercial general liability which will protect the City, its officers, employees and agents from liability in the event of loss of life, personal injury or property damage, suffered by any person or persons on, about or using the Property, including Lessee and employees, agents, licensees and guests of Lessee. Such insurance policy shall have terms and amounts approved by the City Attorney and/or Risk Manager of the City. Such insurance shall not be cancellable without thirty (30) days prior written notice to the City and shall be written with limits of such policies to be in an amount not less than \$1,000,000 in respect of injuries to or death of any one person, and in an amount not less than \$1,000,000 in respect of any one accident or disaster, and in an amount not less than \$1,000,000 in respect of property damaged or destroyed, and to be written by insurance companies qualified to do business in the State of Colorado and shall be in a form acceptable to the City. Evidence of coverage shall be furnished to the City upon the execution of this Agreement along with a copy of the policy if requested by the City. The certificate of insurance must be deposited with the City and must designate "the City of Grand Junction, its officers, employees and agents" as additional insureds. If a policy approved by the City Attorney and/or Risk Manager of the City is not at all times in full force and effect, this Lease shall automatically terminate.

13. Not a Partnership.

13.1 The City, by entering into this Lease Agreement, does not part with its entire possession of the Property, but only so far as it is necessary to enable Lessee to use the Property and carry out the terms and provisions of this Lease. It is expressly agreed between the parties that this Agreement is one of lease and not of partnership and that the City shall not be or become responsible for any debts contracted or incurred by a Lessee or Lessee. Lessee, jointly and severally shall save, indemnify and hold the City, its officers, employees and agents harmless against all liability and loss, and against all claims or actions based upon or arising out of any claim, lien, damage or injury (including death), to persons or property caused by a Lessee or Lessee or sustained in connection with Lessees' performance of the terms and conditions of this Agreement or the conditions created thereby, or based upon any violation of any statute, ordinance, code or regulation, either now in force or hereinafter enacted, and the defense of any such claims or actions, including the costs and fees of attorneys, consultants and experts. Lessee shall also jointly and severally save, indemnify and hold the City, its officers, employees and agents harmless from and against all liability and loss in connection with, and shall assume full responsibility for the payment of, all federal, state and local taxes, fees or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to employees engaged by a Lessee or Lessee.

13.2 The City hereby reserves the right to at all times have its officers, employees and agents enter into and upon the demised premises and every part thereof and to do such acts and things as may be deemed necessary for protection of the City's interests therein.

14. Enforcement, Partial Invalidity, Governing Law.

14.1 If the City uses the services of a city attorney, or engages another attorney or attorneys to enforce its rights hereunder, or to terminate this Agreement, or to defend a claim by Lessee or any person claiming through a Lessee or Lessee, and/or to remove a Lessee or Lessees' personal property from the Property, Lessee agree to pay jointly and severally the reasonable attorney's fees of the City in such regard, plus the costs or fees of any experts, incurred in such action.

14.2 The invalidity of any portion of this Lease Agreement shall not affect the validity of any other provision contained herein. In the event any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provisions.

14.3 This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained in this Agreement shall be in Mesa County, Colorado.

15. Surrender, Holding Over. Lessee shall, upon the expiration or termination of this Lease, surrender the Property to the City in good order, condition and state of repair, reasonable wear and use excepted and not remove any fixtures from the Property that existed at the time of entering into this Lease or added during the Lease Term, including but not limited to any building, fencing, wall, including but not limited to block wall(s), structures, landscaping, etc. In the event Lessee fail, for whatever reason, to vacate and surrender the Property upon the expiration or termination of this Lease and the parties have not reached an agreement which would allow Lessee to continue to occupy any portion of the Property, Lessee agree that Lessee jointly and severally shall pay to the City the sum of \$25.00 per day for each and every day thereafter until Lessee have effectively vacated and surrendered the Property. The parties agree that it would be difficult to establish the actual damages to the City in the event Lessee fail to vacate and surrender the Property upon the expiration or termination of this Lease, and that said \$25.00 daily fee is an appropriate liquidated damages amount.

16. Total Agreement; Applicable to Successors. This Lease contains the entire agreement between the parties and, except for automatic expiration or termination, cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. This Lease and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties.

The parties hereto have each executed and entered into this Lease Agreement as of the day and year first above written.

Attest:



The City of Grand Junction,
a Colorado home rule municipality

Wanda Winkelman

City Clerk

J. Valente Acting City Manager

~~Greg Caton, City Manager~~

Jay Valentine, Acting City Manager

Lessee:

Sawmill Unlimited, LLC

Ernesto Hernandez

Ernesto Hernandez, Managing Member



INVOICE DATE	DUE DATE	INVOICE #	TOTAL DUE
02/01/2021	03/03/2021	2021-00114007	\$1,000.00

Customer #: AR16519

Sawmill Unlimited LLC
1441 Winters Ave

Grand Junction, CO 81501

Please Mail Payment To:
City of Grand Junction
Attn: Accounts Receivable
250 North 5th Street
Grand Junction, CO 81501

Amount Enclosed: _____

DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

KEEP THIS PORTION FOR YOUR RECORDS

February 2021

FOR BILLING INQUIRY: 970-244-1581

ch #255

Description	Total Price
Rent/Las Colonias Park	\$1,000.00

CUSTOMER #	BILLING DATE	DUE DATE	INVOICE #	CHARGES
AR16519	02/01/2021	03/03/2021	2021-00114007	\$1,000.00
			<i>Less Prepayment</i>	\$0.00
			<i>Total Due →</i>	\$1,000.00

January 2021

*paid ch#251
sent 1-15-2021*

FOR BILLING INQUIRY: 970-244-1581

Description	Total Price
Rent/Las Colonias Park	\$1,000.00

CUSTOMER #	BILLING DATE	DUE DATE	INVOICE #	CHARGES
AR16519	01/08/2021	02/07/2021	2021-00114002	\$1,000.00
<i>Less Prepayment</i>				\$0.00
<i>Total Due →</i>				\$1,000.00