**DRAFT MILLSITE PARK**

**CONCESSIONAIRE AND LEASE AGREEMENT**

THIS AGREEMENT, by and between CITY OF MONTICELLO, UTAH, a Utah Municipal Corporation ("City") and THE MILLSITE, LLC, is a limited liability corporation (“Millsite LLC”) whose address is 296 W. Center St. Monticello, UT 84535.

WITNESSETH:

WHEREAS, City controls, owns, operates, and maintains open space known as the Millsite Park ("Park"), with the power to grant rights and privileges with respect thereto; and

WHEREAS, Millsite LLC is engaged in the business of metal detector rentals and sales, gold panning and treasure seeking, and the selling of gift shop products; and

WHEREAS, Millsite LLC submitted a proposal to operate at the Park a business that rents and sells metal detectors, offers gold panning and treasure hunting, and a gift shop;

WHEREAS, City, on the terms and conditions herein contained, is willing to grant to Millsite LLC the right or concession to rent and sell metal detectors, sell permits granting people the opportunity to find gold and treasures and operate a gift shop at the Park;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants contained herein, City and Millsite LLC agree as follows:

**SECTION 1**

**DEFINITIONS**

**Section 1.1 - Definitions.** The words and phrases defined in Section 1 shall have the following meanings when used elsewhere in this Agreement.

**SECTION 2**

**TERM**

**Section 2.1 Term.** This Agreement shall become effective on August 1, 2017and shall continue unless sooner terminated in accordance with this Agreement until December 31, 2047, with an option for Millsite LLC to renew this lease for one (1) or more additional terms.

**SECTION 3**

**LEASED PREMISES**

**Section 3.1 Leased Property.** For and in consideration of the mutual covenants contained herein, City hereby provides Millsite LLC concessionaire related use “Leased Property”, more particularly described as set forth on Exhibit A.

For purposes of this Agreement relating to Millsite LLC’s responsibilities, the Leased

Property shall mean the areas shown on Exhibit A where the exact boundaries are deemed to be on the City’s property boundaries at the Millsite Park.

If agreed upon by the Parties, the area and location may from time to time be adjusted as hereinafter provided and subsequently illustrated on a revised Exhibit A.

**Section 3.2 Extent of Leasehold.** In addition to the non-exclusive, concession related use of the Leased Property described in Section 3.1 above, Millsite LLC shall possess the non-exclusive right of ingress and egress to and from the Leased Property as may be necessary, as may be

amended from time to time, provided that Millsite LLC’s exercise of such right shall not impede or interfere unduly with the operation of the Park by City, its users or visitors and other authorized occupants.

**Section 3.3 Changes to Park.** Millsite LLC acknowledges and agrees that (a) City shall have the right at all times to change, alter, expand, and contract the Park: (b) City has made no representations, warranties, or covenants to Millsite LLC regarding the design, construction, pedestrian or bike traffic, or views of the Park or the Leased Property, as long as such changes do not unreasonably interfere with Millsite LLC's non-exclusive, concession related use of the Leased Property.

**Section 3.4 Common Areas.** The term “common areas” means all areas and facilities located within the Park that are determined by City from time to time for the general use and convenience of other users and occupants of the Park such as walking / biking paths, parking areas and facilities, restrooms, pedestrian entrances, driveways, loading zones and

roadways. City may, in its sole discretion, and without any liability to Millsite LLC change the common areas and increase or decrease the common areas, as long as such changes do not unreasonably interfere with Millsite LLC's non-exclusive, concession related use of the Leased Property. There will be no need for casual Park guests to obtain a permit to access and use the Parks amenities outside of the activities of Millsite LLC. Millsite LLC will do its best to see that its guests do not unreasonably interfere with the activities of other Park guests.

**SECTION 4**

**USES AND PRIVILEGES**

**Section 4.1 Concession Rights Granted.** For and in consideration of the prompt monthly payment of the compensation to City as hereinafter provided, City hereby grants to Millsite LLC, subject to all of the terms, covenants and conditions of this Agreement, theexclusive right and

obligation to operate and maintain a metal detector rental business, sell Metal Detecting Permits, gold panning and operate gift shop. Millsite LLC shall enjoy the following privileges in connection with its use of the Leased Property:

(a) The right, privilege, and obligation to conduct and operate an onsite building that will house the operations of Millsite LLC’s business if grants become available.

**Section 4.2 Operational Assurances and Requirements.**

(a) Development of Metal Detector Rental Permits and Gift Shop Business. At the location indicated herein, Millsite LLC shall provide the rental of metal detectors, sell permits to search for gold and treasure and provide services at a gift shop during the term hereof.

(b) Advertising and Promoting of Products. Millsite LLC may advertise brand-name products on its packaging and within the Leased Property in accordance with **Appendix B**..

(c) No Other Uses. Millsite LLC shall not use nor permit the Leased Property and to be used for any purpose other than as herein above set forth except with the prior written consent of City, nor for any use in violation of any applicable present or future law, ordinance, rule or regulation of any governmental authority, agency, department or officer thereof.

(d) Purchasing. The Millsite LLC shall have the right to purchase Personal Property or services, materials and supplies used by Millsite LLC from any person or company of Millsite LLC 's choice. The Millsite LLC shall have the right to make agreements with any person or company of Millsite LLC 's choice for services to be performed for Millsite LLC which are incidental to the conduct of Millsite LLC 's activities. It is understood that if Millsite LLC 's suppliers, contractors and furnishers of service exclusively use any portion of the Park

or facilities of City, then City may charge reasonable fees therefore, but nothing herein gives the Millsite LLC the right to grant to any other party the privilege to use any portion of the Park or facilities of City.

(e) Disposal of Equipment. The Millsite LLC may dispose of equipment, which is

not City property, and which has been replaced or fully amortized, or which is unnecessary; provided, that such right shall not be construed as authorizing the conduct of a separate business.

(f) Access. Subject to the provisions hereof, the rules, regulations, and ordinances, and such restrictions as Company may impose with respect to its Leased Property, City hereby grants to Millsite LLC, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of access, ingress, and egress to the Leased Property; (2) The ingress and egress provided for above shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Millsite LLC that Millsite LLC is not authorized to engage in or perform under the provisions hereof unless

expressly authorized by City; (3) City shall have the right at any time or times, after consultation and input from Millsite LLC, to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Millsite LLC 's use pursuant to this Agreement or otherwise, either temporarily or permanently; provided that reasonable notice to Millsite LLC and a reasonably convenient and adequate means of access, ingress and egress shall exist or be provided in lieu thereof. City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Millsite LLC 's obligations, rights, or investments under this Agreement.

(g) Pest Control. The City and Millsite LLC will equally be responsible for maintaining bi-annual scheduled licensed pest control.

(h) Security. Millsite LLC will provide day and night security, by whatever means it deems necessary, to ensure its investment in the Park and Leased Property is safe.

**Section 4.3 - No Joint Venture or Partnership.** This Agreement shall not be deemed or construed (a) to create any relationship of joint venture or partnership between City and MillsiteLLC, (b) to give City any interest in the business of Millsite LLC, or (c) to grant to Millsite LLC any powers as an agent or representative of City, the Authority, or the City for any purpose or to bind City, the Authority, or the City.

**SECTION 5**

**COMPENSATION, BOOKKEEPING, AND AUDIT**

**Section 5.1 - Compensation.**

(a) Rents. As consideration for the privilege of operating Millsite LLC’s business hereunder, Millsite LLC shall pay to the City each year, ten-percent (10%) of Millsite LLC’s gross revenue from the sales of Metal Detecting Permits for the betterment of the Park.

**Section 5.2 - Gross Sales Defined.** As used herein, the term “Gross Sales” shall include all revenue derived from the sale of Metal Detecting Permits on the Leased Property, whether delivered on or off the Park, and whether paid for in cash or credit, and regardless of when or whether paid for or not, except only as explicitly excluded hereunder. Excluded from Gross Sales shall be:

(a) Federal, state, county, and municipal sales taxes, employee taxes or other taxes separately stated and collected from customers;

(b) Actual credit card transaction fees not to exceed three percent (3%) for any given transaction;

(c) Receipts from the sale of or the trade -in value of any Trade Fixtures;

(d) Receipts from, the value of, or the sale of, any supplies or equipment to another operation or affiliate of Millsite LLC, whether or not located at the Park; provided such sale is incidental to or not made for the purpose of circumventing the fee provisions of this

Agreement.

(e) Receipts in the form of refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;

(f) The amounts of any gratuities paid or given by patrons or customers to employees of Millsite LLC, so long as such gratuities are voluntary and not included in the invoices to such patrons or customers.

(g) Receipts from the sale of uniform or clothing to Millsite LLC’s employees whether such uniforms or clothing are required to be worn by said employees.

Except as herein above specified, if any charge for any of the products or services provided hereunder is not assessed, charged, or collected, irrespective of the reason therefore, the proper amount of such charge shall, nevertheless, be included in the term “Gross Sales” as the same is used in this section. Further, no deduction shall be made from Gross Sales by reason of any credit loss, charge, or deduction that may be incurred by reason of the acceptance or use of credit cards or other charge or charge arrangements.

**Section 5.3 – Statements, Books and Records.** Within ten (10) days after the close of each calendar month of the term of this Agreement, Millsite LLC shall submit to City, in such detail and form as may be specified by City, certain information, including but not limited to, a statement of its Gross Sales during the preceding month said statement to be signed by a

responsible accounting officer of Millsite LLC. Said statement shall include, at a minimum, a breakdown of Millsite LLC’s sales at the Park location. City reserves the right to change the form of the monthly statement and to require the submission by Millsite LLC of other information pertaining to the Gross Sales hereunder, and Millsite LLC agrees to change the form of its statements to that requested by City and to provide any additional information City may request.

Millsite LLC further agrees that it will make any statements, books, and records related to Gross Sales be available to the City's auditors upon request and with reasonable notice.

**SECTION 6**

**IMPROVEMENTS ON LEASED PROPERTY**

**Section 6.1 - Alterations and Improvements.** Millsite LLC shall not install or erect additional, structural (Operations Building) or nonstructural improvements on the Leased Property, or alter, change, or make other improvements unless and until plans and specifications for such additional alterations or improvements shall have been submitted to and approved in writing by the City. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the time required to complete same, shall be submitted to and receive the written approval of The City before any work or construction is commenced. Any such alterations or improvements shall be without cost to City, except as provided in Section 6.2 below.

All structural improvements, equipment and interior design and decor constructed or installed by Millsite LLC, its agents, or contractors, including the plans and specifications, shall be of attractive construction and first-class design and shall comply with any and all applicable

statutes, ordinances, building codes, and rules and regulations.

**Section 6.2 - Title, Removal, and Demolition of Improvements.** All permanent structures (Operations Building),improvements, additions and alterations made to the Leased Property by Millsite LLC shall upon installation become the property of City, free and clear of liens or encumbrances; provided, however, that any Trade Fixtures, signs and other Personal Property of Millsite LLC not permanently affixed to Leased Property shall remain the property of Millsite LLC or the landowner where the property is situated. Millsite LLC have one (1) year, following the termination of this Agreement to remove its Trade Fixtures, signs and other Personal Property of Company not permanently affixed to Leased Property, then at the option of City, title to same shall vest in City at no cost to City. Millsite LLC shall not remove or demolish, in whole or in part, any improvements upon Leased Property without the prior written consent of the City. Millsite LLC understands and agrees that consent may be conditioned upon the obligation of Millsite LLC to replace the same by an improvement specified in such consent at Millsite LLC’s sole expense.

**SECTION 7**

**MAINTENANCE**

**Section 7.2 – Millsite LLC’s Obligations in Millsite LLC’s Operations Building.**

(a) Millsite LLC shall provide structural maintenance of its Operations Building and

maintenance of electrical, heating, ventilating and air conditioning systems providing services to the leased premises.

(b) Millsite LLC will at all times maintain, operate, and keep in good repair the Operations

Building, and all appurtenances, facilities, and services now or hereafter connected thereto.

(c) In addition for structural maintenance of the Operations Building, as provided in

Subsection b, Millsite LLC shall be obligated, without cost to City, to maintain the Leasehold Improvements installed by Millsite LLC an keep in good appearance, repair, and safe condition consistent with good business practices, industry standards and in accordance with all applicable laws and rules and regulations of the City. All such maintenance and repairs shall be of quality equal to the original in materials and workmanship.

(d) Millsite LLC shall be responsible for transporting all Millsite LLC business related trash to City designated trash containers in a manner satisfactory to the City.

(e) If City determines that maintenance of the Leasehold Improvements are not satisfactory, City shall so notify Millsite LLC in writing. If after consultation with the City, said maintenance is not performed by Millsite LLC during the agreed upon time period, City or its agent shall have the right to perform the maintenance therefore and Millsite LLC agrees to reimburse City promptly for the cost thereof.

(f) Upon execution of this Agreement, Millsite LLC shall establish a preventive and routine maintenance program, the provisions of which shall be subject to the approval of both parties and periodic review by the City. Millsite LLC shall from time to time, upon request, provide the City

a written schedule of Millsite LLC’s cleaning and maintenance program.

(g) On or about the commencement of each calendar year, representatives of City and Millsite LLC shall tour the Leasehold Improvements and jointly agree upon what, if any, routine refurbishment is required to maintain the Leasehold Improvements in first-class condition, and Millsite LLC shall undertake such refurbishment at its sole cost and expense.

(h) Upon discovery, Millsite LLC shall immediately give oral and written notice to

City of any hazardous or potentially hazardous conditions in the Leased Property or in the Operational Building. Any hazardous or potentially hazardous condition in the Leased Property shall be removed and disposed of immediately in accordance with local, state and federal regulations. At the direction of the City, Millsite LLC shall close any areas of the Leased Property containing a hazardous or potentially hazardous condition until such hazardous or potentially hazardous condition is removed.

(i) Millsite LLC agrees to employ sufficient maintenance and janitorial personnel, and provide necessary equipment, to keep the Leasehold Improvements and all furniture, furnishings, fixtures and equipment clean, neat, safe, sanitary and in good working order and condition at all times.

(j) Millsite LLC shall comply with all health and sanitary regulations adopted by all

applicable governing bodies and all rules and regulations promulgated by the City. Millsite LLC shall give access for inspection purposes to any duly authorized representatives of such governing bodies and to the City and Millsite LLC shall promptly give a copy of any reports related health and sanitary regulations to the City.

**SECTION 8**

**OPERATIONS OF LEASED PREMISES**

**Section 8.1 – Hours of Operation.** Millsite LLC shall actively operate its businessand use its best efforts to accomplish a business-like operation therein. The operationshall be open to serve the public at dates and times deemed proper by Millsite LLC. However, in no event shall the hours of operation be curtailed to an extent that the service contemplated under this Agreement shall be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands. Millsite LLC may advise the City of Millsite LLC’s analysis of the optimum arrangements, but the final determination shall be made by Millsite LLC based on an analysis of necessary service to the public and the profitability of Millsite LLC. No facilities shall be blocked off or closed at any time during the approved hours of operation.

**Section 8.2 – Delivery of Goods.** Millsite LLC shall arrange for the timely delivery of all products, goods, merchandise, and supplies, at such times, in such location(s), and by such routes as determined by Millsite LLC and according to such procedures that may be established from time to time by the City.

**Section 8.3 - Utilities.** Water, sewage, garbage removal, electricity and natural gas will be made available by the City and the cost of such utilities used or consumed on the Leased Premises shall be borne by the City out of the ten-percent (10%) revenue from Millsite LLC's Gross Sales.

**Section 8.4 - Employees.** Millsite LLC will pay all required taxes, provide unemployment insurance, worker's compensation and cover other employee expenses.

**Section 8.5 –Signs.**

(a) Right to Install. Millsite LLC shall have the right to install and operate upon or

in the Leased Property, and at Millsite LLC’s sole cost and expense except for one billboard paid by the City, signs containing its name and representing its business. Millsite LLC acknowledges City’s desire to maintain a high level of aesthetic quality in the Park and the Operational Building. Therefore, Millsite LLC covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signs on the Leased Property, it will submit to City the size, design, content, and intended location of each and every sign it proposes to install on or within the Leased Property, and that no signs of any type shall be installed on or within the Leased Property without the specific prior written approval of City as to the size, design, content, and location. Handwritten, or hand lettered signs are prohibited. Notwithstanding any prior written approval, upon written notice from the City at any time during the term of this Agreement, Millsite LLC shall install, remove, or modify any signs which the City deems necessary or unnecessary for identification or information to the public, passengers, or other Park users. Failure to require removal of any sign placed on or about the Leased Property without written permission shall not imply consent or limit the authority of the City to require removal of any unapproved sign.

(b) Signs and Fixtures Outside Leased Property. Millsite LLC may place or install signs, or other displays of products outside the boundaries of the Leased Property without the express

prior written approval of the City. The upfront costs of two (2) billboards, including fees charged by UDOT will be borne by the City. Additionally, one (1) billboard on City property located between the Inn of the Canyons and the Paul Sonderegger property off the Leased Property may be erected and maintained by Millsite LLC free of charge.

(c) Removal of Signs. Upon the expiration or sooner termination of this Agreement, Millsite LLC shall, if requested by the City, remove any and all identification signs and similar devices placed by Millsite LLC on or in the Leased Property within one (1) year. In the event of the failure on the part of Millsite LLC to so remove each and every sign as requested by the City, the City may perform such work and, upon demand, Millsite LLC shall pay the cost thereof to City.

**SECTION 9**

**LICENSES AND TAXES**

Millsite LLC covenants and agrees to obtain all proper licenses or permits for the operation of its business hereunder, and to pay all taxes assessed or imposed by any governmental authority on property owned by Millsite LLC. Millsite LLC shall, after notifying City of its intention to do so, have the right to contest in good faith by all appropriate proceedings, the amount, applicability, or validity of any such tax or assessment.

**SECTION 10**

**RIGHTS AND OBLIGATIONS OF CITY**

**Section 10.1 - Rights and Obligations.**

(a) Utility Hook-ups. The City agrees to provide efficient hook-up for utilities and sewage to the Operations Building.

(b) Utilities and Restrooms. The City agrees to provide access to water, sewage, garbage, electricity and natural gas at its cost and pay for such utilities. If a grant is obtained, Millsite LLC will construct and maintain restrooms at the Park for the use of all visitors.

(c) Parking Lots and Trails. The City agrees to maintain parking lots and trails for customers of Millsite LLC and other guests.

**SECTION 11**

**LIABILITY, INDEMNIFICATION, INSURANCE AND CONDEMNATION**

**Section 11.1 - Liability.** The City shall not be liable for its failure to perform any of the obligations under this Agreement or for any delay in the performance thereof, nor shall any delay or failure be deemed a default by the City when such failure or delay is the result of any cause beyond its reasonable control or jurisdiction. In any such case, a promptly written notice will be given by the City to Millsite LLC of the existence of such cause and of readiness to resume performance upon the removal or termination thereof provided, however, that in every instance where the operation of the Park and its facilities shall be wholly or partially suspended because of fires, storms, riots or acts of God. Likewise, the City agrees to not hold Millsite LLC liable to perform any of the obligations under this Agreement or for any delay in the performance thereof, nor shall any delay or failure be deemed a default by the City when such failure or delay is the result of any cause beyond its reasonable control or jurisdiction. In any such case, a promptly written notice will be given by Millsite LLC to the City of the existence of such cause and of readiness to resume performance upon the removal or termination thereof provided, however, that in every instance where the operation of the Park and its facilities shall be wholly or partially suspended because of fires, storms, riots or acts of God.

**Section 11.2 - Indemnification.**

A. Definitions. For the purpose of this section the following definitions apply:

“City” shall mean all officers, agents and employees of the City of Monticello.

“Claims” shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

“Damages” shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

(i) injury or damage to any property or right

(ii) injury, damage, or death to any person or entity

(iii) attorney’s fees, witness fees, expert witness fees and expenses, and

(iv) all other costs and expenses of litigation

“Property Defects” shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the property.

“Millsite LLC” includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

“Millsite LLC’s employees” shall mean any employees, officers, agents, subcontractors, licensee and invitees of Millsite LLC.

“Proven” shall mean that a court of competent jurisdiction has entered a final

unappealable judgment on a claim adjudging an entity or person liable for a

monetary judgment.

“Sole negligence” shall mean negligence of a party that is unmixed with the

fault of any other person or entity

**B. Indemnity.** The Millsite LLC must indemnify, hold harmless, and defend the City from

and against liability for any claims arising out of Millsite LLC's work and activities conducted in connection with this Agreement.

The Millsite LLCis an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City. Millsite LLC must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Millsite LLC’s employees while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of Millsite LLC or Millsite LLC’s employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to property defects. Responsibility for all such defects is expressly assumed by the

Millsite LLC.

The City and Millsite LLC must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Millsite LLC or City. The City has the right to compromise and defend the same to the extent of its own interests.

**BOTH CITY AND MILLSITE LLC EXPRESSLY INTEND THIS AGREEMENT'S**

**INDEMNITY PROVISION TO REQUIRE MILLSITE LLC TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS AGREEMENT, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS AGREEMENT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.**

**Section 11.3 – Insurance.**

(a) Park Insurance. The City shall carry and maintain general liability and personal injury insurance at reasonable levels for the Operations Building and all Park visitors.

(b) Millsite LLC. Millsite LLC shall carry and maintain insurance on Millsite LLC personnel, personal and company assets, inventory, etc. with the City named as an additional insured party.

**SECTION 12**

**EVENTS OF DEFAULT AND REMEDIES**

**Section 12.1 - Default by Millsite LLC.** The following shall be events of default as to the Millsite LLC under this Agreement:

(a) Failure by Millsite LLC to pay any rent and fees within thirty (30) days of the date it receives written notice from the City that such rent is past due.

(b) Failure by the Millsite LLC to observe and perform any covenant, condition or

agreement on its part to be performed other than as referred to in sub-section (a) for a period of thirty (30) days after receipt of written notice from the City specifying such failure and requesting that it be remedied.

(c) Abandonment or desertion of Leased Property by the Millsite LLC for any period of time exceeding thirty (30) consecutive calendar days.

(d) The dissolution or liquidation of Millsite LLC or the filing by Millsite LLC of a voluntary petition in bankruptcy or failure by the Millsite LLC promptly to remove any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Leased Property.

**Section 12.2 - Remedies on Default.** Whenever any event of default referred to in Section 13.1 hereof shall have happened, the City may take any one ormore of the following remedial steps as against the Company:

(a) The City may re-enter and take possession of the Leased Property of Millsite LLC without terminating this Agreement and sub-lease the interest of Millsite LLC to any party or operate the same on behalf of the Millsite LLC. In either case, holding Millsite LLC liable for the difference, if any, between the rents and other amounts payable by Millsite LLC hereunder and the rents and other amounts payable by such sub-leasing.

(b) After thirty (30) days’ written notice to Millsite LLC, the City may terminate this

Agreement, exclude the Millsite LLC from possession of the Leased Property and shall use its best effort to lease Millsite LLC’s interest therein to another party for the account of City holding Millsite LLC liable for all rents and other amounts due under this Agreement and not paid by such other party.

(c) The City may take whatever other action at law or in equity as may appear necessary or desirable to collect the rent then due and thereafter to become due from Millsite LLC

or to enforce performance and observance of any obligation, agreement or covenant of the Millsite LLC under this Agreement.

(d) If the City and the Millsite LLC disagree with respect to Millsite LLC’s obligations

to pay money under this Agreement, Millsite LLC may pay the amount under protest and such payment shall not prejudice Millsite LLC’s right to recover the disputed amount if it is determined that such payment was not due.

**Section 12.3 – Non-Exclusive Remedy.** No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement.

**Section 12.4 - Legal Fees.** In the event there should be a default under any of the provisions of this Agreement and the City should determine that the services of an attorney are required or the City incurs other expenses for the collection of rent or the enforcement of performance or observance of any obligation or agreement on the part of Millsite LLC, the Millsite LLC agrees that it will on demand therefor pay to the City the reasonable, just and necessary fees of such legal and other reasonable incurred expenses.

**SECTION 13**

**ASSIGNMENTS, SUBLETTING, TERMINATION AND ENCUMBRANCES**

**Section 13.1 - Assignment and Subletting.**

(a) Millsite LLC covenants and agrees that it will not sell, convey, transfer or assign

this Agreement or any part thereof or any rights created thereby or sublet the Leased Premises covered by this Lease or any part thereof without the prior written consent of the City provided but not unreasonably withheld, however, that Millsite LLC shall have the right to assign its interest hereunder or to sublet the Leased Proprty to any subsidiary, affiliate or successor company thereof upon the condition that the Millsite LLC hereunder shall remain liable for the full, faithful and complete performance of this Agreement. Upon approval of the City, Millsite LLC may sublet the Leased Property subject to Millsite LLC and Sub-Company remaining liable for the full faithful and complete performance of this Lease both pre-assignment and post-assignment. Such approval will consider the effect such sale, conveyance, transfer or assignment will have on the continued performance of successor company under this agreement and its response to the request for proposal.

(b) If, without the prior written consent of the City, the Millsite LLC assigns, sells, conveys, transfers or sublets in violation of Section (a) of this Section or if the Leased Property are occupied by anybody other than Millsite LLC, as provided in this Lease, the City may collect rent from any assigns, sub-Company or anyone who claims a right to this Agreement or who occupies the Leased Premises and the City shall apply the net amount collected to the rental herein reserved but no such collection shall be deemed a waiver by the City of the covenants contained in subdivision (a) of this Section or an acceptance by the City of any such assignee or sub-Company.

(c) Any assignment or transfer of this Agreement or any rights of Millsite LLC hereunder (except as otherwise permitted herein) whether it be a voluntary assignment without the consent of City or an assignment or transfer by operation of law, shall be null and void and shall constitute a default on the part of the Millsite LLC.

**Section 13.2 - Termination by Millsite LLC.** If not in default in any of its obligations

hereunder, Millsite LLC may at its option terminate this Agreement by giving the City thirty (30) days’ written notice thereof if any of the following shall occur:

(a) The City shall fail to remedy any breach by it of any of the covenants and agreements herein contained within thirty (30) days after receipt of a written notice by the Millsite LLC of the existence of such breach.

(b) To the extent within its reasonable control, the City fails, for a period of thirty

(30) days after receipt of a written notice by the Millsite LLC to remove any or take the reasonable steps to remove a condition of the Park caused by the act or omission of the City and such condition results in Millsite LLC’s inability to conduct business operations at the Park.

**SECTION 14**

**MISCELLANEOUS**

**Section 14.1 - Consents and Approvals.**

(a) With respect to the approvals herein required of the Millsite LLC, Millsite LLC shall

from time to time furnish to the City appropriate certifications setting forth the officers or representatives of Millsite LLC who are authorized to grant such approvals and to bind Millsite LLC thereto.

(b) The City Manager may give any consent or approval herein required of the City unless otherwise provided.

(c) All consents and approvals required or permitted herein by either party shall be given in writing.

(d) Nothwithstanding what is written above, Millsite LLC may close its business at any time during the term due to unprofitability. Also, Metal Detection Permit prices will be determined solely by Millsite LLC.

(e) It is further agreed that the City will assist and support Millsite LLC in seeking and obtaining necessary grants.

(f) Before operations of Millsite LLC can commence in 2017, the projected site of the Operations Building at the current dump site must be cleared of debris, gravel and prepared for construction.

(g) Furthermore, the City will assist Millsite LLC in advertising on the City's website and utah.com.

**Section 14.2 - Notices.** All notices required or permitted to be given to the City or Millsite LLC shall be deemed sufficiently given if in writing and sent either by registered mail or certified mail, postage prepaid, addressed as follows, or to such other address or addresses as the City or Millsite LLC

City: Millsite LLC:

Monticello City The Millsite LLC

PO Box PO Box 844

Monticello, Utah 84535 Monticello, Utah 84535

**Section 14.3 - Force Majeure**. Neither the City nor Millsite LLC shall be deemed in default hereunder if either party is prevented from performing any of its obligations, other than the payment of rentals, fees and charges hereunder, by reasons of strikes, boycotts, labor disputes, embargoes, shortages of energy or material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, acts of sabotage or any other circumstances for which it is not responsible or which are not within its control.

**Section 14.4 - Entire Agreement**. This Agreement constitutes the entire agreement

between the City and Millsite LLC.

**Section 14.5** - **Place of Performance; Laws Governing Venue**. This Agreement shall be performable and enforceable in San Juan County, Utah, and shall be construed in accordance with the laws of the State of Utah. Venue for any cause of action shall be Monticello, San Juan County, Utah.

**Section 14.6 Severability.** Should any part of this Lease be held to be invalid, such invalidity shall not affect the balance of that provision or the remaining provisions of this Lease, which shall remain in full force and effect.

IN WITNESS WHEREOF this Agreement has been entered into and is effective as of the

Effective Date and has been executed in quadruplicate original counterparts by the

respective officers of the parties hereto as of the dates noted below.

**City of Monticello, a Municipal Corporation The Millsite, LLC**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tim Young, Mayor Tyler Hall, Representative

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPROVED:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Walter J. Bird, City Attorney

ATTEST: ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cindi Holyoak

City Clerk