CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. 5172

AN ORDINANCE AUTHORIZING AND CONFIRMING A REDEVELOPMENT AGREEMENT BY AND AMONG KIMBALL ACQUISITION LLC, A COLORADO LIMITED LIABILITY COMPANY, ("KA LLC") AND THE CITY OF GRAND JUNCTION, A COLORADO HOME RULE MUNICIPAL CORPORATION ("CITY") FOR THE PROPERTY LOCATED AT 919, 1059, 1101 and 1299 KIMBALL AVENUE ALONG WITH PROPERTY LEASED FROM THE CITY, GRAND JUNCTION, COLORADO, AND APPROVING ALL ACTIONS HERETOFORE TAKEN IN CONNECTION THEREWITH

RECITALS:

Kimball Acquisition LLC is the owner of the real property commonly known and addressed as 919, 1059, 1101 and 1299 Kimball Avenue and property leased from the City, Grand Junction, Colorado, ("Property") which is more particularly described in the Corridor Infill Development/Redevelopment Agreement attached hereto and incorporated by this reference as if fully set forth ("Agreement"). The Property is currently vacant and will benefit from development. The City Council has agreed to waive and shall cause to be paid certain fees as the same are defined in the Agreement.

With the City's Comprehensive Plan, the City has established the need to focus development on areas of infill and has subsequently adopted, with Resolution 74-22 a *Corridor Infill Incentive Boundary Area*, which is a physical area within the City which the City Council has found conditions that warrant City financial support to stimulate investment. This Ordinance, together with the Agreement and the development that will result, will serve a public purpose, promote the health, safety, prosperity, security, and general welfare of the inhabitants of the City, and will spur economic investment within the City's *Corridor Infill Incentive Boundary Area.*

In accordance with the Agreement, Kimball Acquisition LLC intends to develop the Property as a multi-family residential project, featuring at least 164 units, together with related amenities and uses (collectively, the "Project"). Given that the Project is consistent with the Comprehensive Plan, is in the *Corridor Infill Incentive Boundary Area*, and otherwise satisfies Resolution 74-22, development of the Property will ensure the availability of new housing that is within walking distance of businesses, services, and employment and will reduce sprawl by maximizing the use of existing infrastructure. Therefore, the City Council finds that the Project is consistent with the reasonable needs, plans and policies of the City in general and in particular for the development of the Property and the granting of the requested incentives.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO THAT:

1. The foregoing Recitals are incorporated and adopted, and in accordance with and pursuant to this Ordinance, the City Council of the City of Grand Junction hereby authorizes and confirms the redevelopment agreement ("Agreement") by and among Kimball Acquisition LLC, a Colorado Limited Liability Company, ("KA LLC") or its successors and assigns as permitted in accordance with the Agreement and the City of Grand Junction ("City"), for the property located at 919, 1059, 1101 and 1299 Kimball Avenue and property leased from the City of Grand Junction, Grand Junction, Colorado ("Property").

2. The terms of the Agreement, include but are not limited to a) the City paying fees, as provided by Resolution 74-22 and defined by the Agreement, in an amount not to exceed $862,348 for and on behalf of Kimball for the development of the Property all as provided in the Agreement and b) the City providing a rebate of sales and use tax charged for materials used in the construction of the project in an amount not to exceed $715,000.

3. In accordance with and pursuant to this Ordinance, the City Council of the City of Grand Junction, Colorado confirms and authorizes the Agreement and any and all actions consistent with and to be taken subsequent to the adoption of this Ordinance, by the officers, employees and agents of the City, if/when such action(s) is(are) pursuant to law and the Agreement, together with the findings made therein, and with any applicable City Plans, ordinance(s), resolution(s), or other document(s) all of which shall be substantially construed to affect the intent and purposes thereof.

4. If any part or provision of this Ordinance or the application thereof to any person or circumstance(s) is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are declared to be severable.

5. The City Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare and this Ordinance bears a rational relation to the lawful objectives sought to be obtained.

INTRODUCED ON FIRST READING, PASSED for publication in pamphlet form and setting a hearing for September 6, 2023, this 16th day of August 2023.

HEARD, PASSED and ADOPTED ON SECOND READING and ordered published in pamphlet form this 6th day of September 2023.

Anna M. Stout
President of the Council

Amy Phillips
City Clerk

I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 5172 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 16th day of August 2023 and the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, in pamphlet form, at least ten days before its final passage.

I FURTHER CERTIFY THAT a Public Hearing was held on the 6th day of September 2023, at which Ordinance No. 5172 was read, considered, adopted and ordered published in pamphlet form by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 8th day of September 2023.

Deputy City Clerk

Published: August 18, 2023
Published: September 8, 2023
Effective: October 8, 2023

DEVELOPMENT/REDEVELOPMENT AGREEMENT

919 AND 1101 KIMBALL AVENUE & PARCEL NO. 2945-231-39-001
GRAND JUNCTION, COLORADO

This DEVELOPMENT/REDEVELOPMENT AGREEMENT (this "**Agreement**") dated as of ____, 2023 ("**Effective Date**"), is made by and among Kimball Acquisition LLC, a Colorado limited liability company, or its successors and assigns permitted in accordance with Paragraph 9 and/or 17 ("**Developer**") and the CITY OF GRAND JUNCTION, a Colorado Home Rule municipal corporation ("**City**"). The Developer and the City are sometimes collectively called the "**Parties**," and individually, a "**Party**."

RECITALS

WHEREAS, Developer is the owner of that certain parcels of real property known as 919, 1059, 1101 and 1299 Kimball Avenue and certain leased areas, Grand Junction, Colorado, and as more particularly described and depicted in Exhibit A, which is attached hereto and incorporated herein by this reference (hereinafter known as the "Property"); and,

WHEREAS, Developer has applied to the City for an Infill Incentive pursuant to Resolution 74-22, and such application is attached hereto as Exhibit B (the "Infill Incentive Application"); and,

WHEREAS, consistent with the City's Comprehensive Plan and funding available under Resolution 74-22, the City has established and adopted an area within the community known as the *Corridor Infill Boundary Area* and certain *Corridor Infill Policies* in which the City has identified property conditions that warrant support to stimulate reinvestment; and,

WHEREAS, the Property is also located within the Infill Boundary Area; and

WHEREAS, the Developer intends to redevelop the Property as a multi-family residential project, featuring 164 residential units together with related amenities (collectively, the "Project"); and

WHEREAS, the Developer has outlined a preliminary financing plan (the "Preliminary Financing Plan") and such plan is attached hereto as Exhibit C (the "Preliminary Financing Plan"), which evidences to the City that the Developer has the financial capacity to undertake the Project; and,

WHEREAS, construction of the Project will ensure the availability of housing to area residents, and will provide a dense population of customers for the surrounding businesses, and maximize the efficient provision of infrastructure and public services; and,

WHEREAS, the City Community Development Department has reviewed the conceptual plans for the Project attached hereto as Exhibit D (the "Conceptual Plans"), and determined the Project is substantially consistent with the City's Zoning and Development Code and will further

stated goals and policies of the City's 2020 One Grand Junction Comprehensive Plan; and,

WHEREAS, the Parties acknowledge that the final design of the Project will be subject to the City's entitlement and permitting process; and

WHEREAS, the City Council has determined that the acquisition, construction, and installation of the Project will serve a public purpose and contribute to the redevelopment of the City.

NOW, THEREFORE, the Parties hereto, for themselves, their permitted successors, and assigns, in and for valuable consideration, including but not limited to, the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, do hereby covenant, and agree as follows:

DEFINITIONS

1. "**Code**" or "**GJMC**" means the zoning and development regulation of the City in effect as of the date of the application for the Project.

2. "**Commence**" "**Commenced**" or "**Commencement**" means the beginning of on-site physical construction of the Project, including without limitation demolition of existing structures.

3. "**Complete**" "**Completed**" or "**Completion**" means issuance of temporary or final certificates of occupancy for all buildings within the Project.

4. "**Conceptual Plans**" are/consists of the documents marked and attached to this agreement as Exhibit D.

5. "**Fees**" means fees imposed by the City with respect to the development of the Project, including, impact fees (e.g., Parks & Recreation, Fire, Traffic, Park Land Dedication, *etc.*) together with City sales and use tax charged for materials used in the construction of the Project up to the Fee Cap. Application fees, development review fees, fees imposed as a condition of the issuance of a City Planning Clearance, Mesa County Building Department fees and charges are not "Fees" for purposes of this Agreement.

6. "**Fee Cap**" means $1,577,348.00[1].

7. "**Preliminary Financing Plan**" is attached to this agreement as Exhibit C.

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[1] The Developer and any person(s) or entity(ies) claiming by and through the Developer in accordance with this Agreement acknowledges and agrees that $862,348.00 is the amount remaining of the City's appropriated and budgeted Corridor Infill Incentive and that said sum ($862,348.00) is less than the amount of a Level 5 incentive. Accordingly, this Agreement does not and shall not refer to or be claimed to be controlled by the "levels" established in Resolution 74-22. The "Fee Cap" assumes $862,348.00 plus up to $715,000.00 of rebated sales and use tax charged for materials used in the construction of the Project for a total ("Fee Cap") not to exceed $1,577,348.00.

8. "**Project**" has the meaning assigned to such term in the Recitals.

9. "**Property**" the real property that is depicted and described in Exhibit A hereto.

AGREEMENT

1. Waiver of Fees. In consideration of the terms of this Agreement, the City hereby waives, and/or shall cause the payment of Fees not to exceed the Fee Cap as provided herein. The Developer and any person(s) or entity(ies) claiming by and through the Developer in accordance with this Agreement acknowledges and agrees that $862,348.00 is the amount remaining of the City's appropriated and budgeted Corridor Infill Incentive and that said sum ($862,348.00) is less than the amount of a "Level 5" incentive. The Developer and any person(s) or entity(ies) claiming by and through the Developer in accordance waives and releases the City from any assumption that the Fee Cap is or will be established as a "Level 5" incentive as provided in Resolution 74-22.

2. Development Deadlines.

a. Notwithstanding anything to the contrary in this Agreement: (i) Developer shall have no obligation to construct all or any portion of the Project, or to timely Commence or Complete the Project; (ii) Developer may, in its sole discretion, elect to undertake none, all, or only certain phases of the Project, and to Commence and Complete the Project at any time; and (iii) if the Developer elects to undertake all or any portion of the Project, Developer acknowledges that the Project will be subject to the City's entitlement and permitting process. If, subject to Paragraph 21 below, Developer fails to Commence the Project on or before the date that is four (4) calendar months after Developer receives building permit approval from Mesa County, pursuant to the City's Building Services Contract ("**Commencement Deadline**"), or thereafter, fails to Complete the Project within thirty-six (36) calendar months after the date of Commencement ("**Completion Deadline**"), then Developer shall neither be entitled to receive a waiver of, nor shall the City be obligated to pay on behalf of the Developer or any successor(s) or assign(s), any Fees, regardless of whether the Fees accrue or accrued prior to or after expiration of the Commencement Deadline or the Completion Deadline, as applicable.

b. Notwithstanding the foregoing, Developer may request an extension of either the Commencement Deadline and/or the Completion Deadline by delivering a written request for the same to the City Manager to schedule for consideration by the City Council at the next scheduled City Council meeting. Any extension may be granted only with prior City Council approval.

2. Terms and Conditions of Agreement, Default: In the event a Party fails or refuses to perform according to the terms of this Agreement, that Party shall be declared in default. In the

event of a default, the defaulting Party is permitted thirty (30) calendar days to cure said default after receipt of Notice consistent with this Agreement. In the event a default remains uncured after the 30-day period, the Party declaring default may:

a. Terminate the Agreement; or

b. Bring an action for its actual damages, injunction, specific performance, and/or for mandamus (including without limitation to enforce a current annual appropriation made to pay an amount due or owing hereunder) or other appropriate equitable remedy.

The foregoing remedies shall be cumulative and shall be the sole and exclusive remedies for a default of this Agreement, and all other remedies are hereby waived. In the event the default causes the other Party not in default to commence legal or equitable action against the defaulting Party, the defaulting Party will be liable to the non-defaulting Party for the costs incurred by reason of the default, including reasonable attorneys' fees and costs. Except as provided in this Paragraph 3, no Party shall be entitled to recover or claim damages for an event of default by the defaulting Party, including, without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, exemplary, or punitive damages for any other Party's breach of this Agreement.

3. No Waiver of Grand Junction Municipal Code ("**Code**"): Except for the express incentives offered by the City as stated herein, this Agreement does not waive any part or provision of the Code.

4. Governmental Immunity: The Parties agree that the City, in entering this Agreement, does not waive governmental immunity as described in C.R.S. § 24-10-101, *et seq*. No part of this Agreement shall be deemed to create a waiver of immunity as defined therein or by case law construing the law.

5. Service of Notices: All notices required or permitted pursuant to this Agreement must be made in writing and delivered in person, by prepaid overnight express mail or overnight courier service, or by certified mail or registered mail, postage prepaid return receipt requested, or by e-mail, to the other Parties' authorized representatives (or their successors) as identified herein at the addresses listed below. All notices shall be deemed effective when actually delivered as documented in a delivery receipt, or, if delivered by e-mail, as documented in a delivery or read receipt, whichever is earlier; provided, however, that if the notice is affirmatively refused or cannot be delivered during customary business hours by reason of (a) the absence of a signatory to acknowledge receipt, or (b) a change of address with respect to which the addressor had neither actual knowledge nor written notice delivered in accordance with this section, then the first attempted delivery shall be deemed to constitute delivery.

For the City:
City Manager
City of Grand Junction
Attention: Greg Caton
250 North 5th Street
Grand Junction, CO 81501
Email: gregc@gjcity.org

With copy to: City Attorney
City of Grand Junction
Attention: John Shaver
250 North 5th Street
Grand Junction, CO 81501
Email: johns@gjcity.org

For Developer: Kimball Acquisition, LLC
312 Aspen Airport Business Center, Suite D
Aspen, CO 81611
Email: mac@aspenstarwood.com

With a copy to: Coleman & Quigley, LLC
Attention: Stuart R. Foster & Isaiah Quigley
2454 Patterson Road, Suite 200
Grand Junction, CO 81505
Email(s): stuart@cqlawfirm.net & isaiah@cqlawfirm.net

6. Severability: If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and of this Agreement will remain enforceable to the fullest extent permitted by law.

7. Venue and Governing Law: This Agreement shall be governed by and construed according to the laws of the State of Colorado. Venue for all actions regarding this Agreement shall be in Mesa County, Colorado.

8. Assignment:

a. Neither the City nor the Developer shall assign any rights or obligations under this Agreement without the prior written consent of the other Party except as follows.

b. Prior to Completion, Developer may assign, pledge, collaterally assign, or otherwise encumber all or any part of this Agreement, including without limitation its right to receive any payment or reimbursement, without any Party's consent, but after written notice to the City containing the name and address of the assignee, to: (i) any lender or other party that provides acquisition, construction, working capital, tenant improvement, or other financing to Developer in connection with the Project or acquisition or ownership of the Property as collateral or security for such financing; or (ii) one or more subsidiaries, parent companies, special purpose entities, affiliates controlled by or under common control or ownership with Developer, or joint venture entities formed by Developer or with its investors or partners to develop, own, and/or operate all or a portion of the Property or of the improvements to be constructed thereon (each assignee in (i) and (ii) being a "**Permitted Assignee**").

c. After Completion, Developer shall have the right to assign all or any portion of this Agreement to a purchaser of all or a portion of the Property without the written consent of the other Parties but shall provide written notice to the City containing the name and address of the assignee within 5 business days of such conveyance and assignment.

d. If consent is required, it shall not be unreasonably withheld, delayed, or conditioned.

e. The restrictions on assignment contained in this Agreement apply only to a potential assignment of all or a portion of the rights and obligations pursuant to this Agreement and shall not be interpreted to restrict in any way the conveyance of one or more interests in all or a portion of the Property which is the subject of this Agreement.

f. Nothing in this Agreement modifies or waives the obligations or responsibilities of either Developer or Developer's assignee under the Code and other applicable law, rule, or regulation.

g. No assignment of this Agreement by Developer, whether or not such assignment requires the consent of the City, shall relieve Developer of its obligations contained within this Agreement. Any purported assignment that does not comply with this provision is void. This Agreement is binding and inures to the benefit of the parties and their respective permitted successors and assigns, subject to this Paragraph 9.

9. No Third-Party Beneficiaries: It is expressly understood and agreed that the terms and enforcement of the terms of this Agreement, and all rights of action relating to enforcement, are strictly reserved to the Parties. Nothing in this Agreement shall give or allow any claim or cause of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned Parties that no person or entity, other than the Parties hereto, receiving services or benefits under this Agreement shall be deemed any more than an incidental beneficiary only.

10. Modifications and Amendments: This Agreement shall not be modified, revoked, or amended except by written agreement signed by all Parties.

11. Counterparts: This Agreement may be executed in counterpart originals, each of which shall be deemed an original, and each of which shall be deemed to constitute one and the same Agreement. Additionally, a copy of an executed original Agreement signed by a Party hereto and transmitted by electronic mail shall be deemed an original, and any Party hereto is entitled to rely on the validity, authenticity, and authority of an original transmitted by electronic mail.

12. Nonliability of Officials, Agents, Members, and Employees. Except for willful or wanton actions, no trustee, board member, commissioner, official, employee, consultant, manager, member, shareholder, attorney, or agent of any Party, will be personally liable under this Agreement, or in the event of any default, or for any amount that may become due to any Party.

13. Cooperation Regarding Defense. In the event of any litigation or other legal challenge involving this Agreement or the ability of any Party to enter into this Agreement that is not brought by a Party, the Parties will cooperate and subject to a mutually acceptable joint defense agreement jointly defend against such action or challenge, to the extent permitted by law.

14. Additional Documents or Actions. The Parties agree to execute any reasonable additional documents or take any reasonable additional action, including but not limited to estoppel certificates requested or required by lenders or purchasers of the Property, that are: (a) reasonably necessary to carry out this Agreement, (b) reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement or the status of the Agreement and the Parties' actions hereunder, or (c) are reasonably necessary to effectuate the agreements and the intent of this Agreement. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement, are asserted or determined to be invalid, illegal, or are otherwise precluded, the Parties will use reasonable, diligent, good faith efforts to amend, reform, or replace such invalid, illegal, or precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement.

15. Waiver of Breach. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and will not operate or be construed as a waiver of any subsequent breach by any Party.

16. Binding Effect; Entire Agreement. This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph permits the assignment of this Agreement except as set forth in Paragraph 9. This Agreement represents the entire Agreement among the Parties with respect to the subject matter hereof and supersedes any prior written or oral agreements or understandings with regard to the subject matter of this Agreement.

17. Days. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to § 24-11-101(1), C.R.S., such day will be extended until the next day that is not one of the foregoing days.

18. Recording. The Parties will execute and acknowledge a memorandum of this Agreement, in form and substance attached hereto as Exhibit E, which will be recorded in the real property records of Mesa County, Colorado.

19. Good Faith of Parties. In the performance of this Agreement or in considering any requested approval, consent, acceptance, or extension of time, the Parties agree that each will act in good faith.

20. Parties Not Partners. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party.

21. Force Majeure. If a Force Majeure Event occurs, the deadline for performance of any obligations affected by such Force Majeure Event shall be automatically extended for a period equal to the duration of such Force Majeure Event and Developer shall be excused from the performance of such obligations during such period. "Force Majeure Event" means any one or more of the following events or circumstances that, alone or in combination, directly or indirectly, adversely affects the Developer's performance of an obligation pursuant to this Agreement: fire, earthquake, flood, storm or other casualty; strikes, lockouts, or other labor interruptions or shortages; COVID-19 and other pandemics or epidemics; war, rebellion, riots, acts of terrorism, or other civil unrest; acts of Nature; disruption to local, national, or international transport services; prolonged shortages of materials or equipment; severe adverse weather; the discovery of previously unknown facilities, improvements, or other features or characteristics of the Property; delays in the demolition of existing structures, including without limitation delays related to the remediation or removal of asbestos or other hazardous materials; Entitlement Delays; Material Litigation; and any other event, similar or dissimilar to the above, whether foreseeable or unforeseeable, known or unknown, that is beyond the Developer's reasonable control. Without in any way obligating the City to provide comments within any specific time period, if the City takes longer than twenty-one (21) days after receipt of any complete application for approval any site plan, plat, or other approval, entitlement, or permit for the Project, or any resubmission of the same, to provide Developer with a complete set of comments from each City agency, department, and referral agency on such application or resubmission, each day after such twenty-one (21) day period shall constitute "**Entitlement Delays**". "**Material Litigation**" includes litigation, appeals, and administrative actions related to the entitlement, permitting, development, financing, or construction of the Project, including without limitation claims brought pursuant to C.R.C.P. § 106(a)(4) to the extent not initiated by the Developer, and any litigation brought by Developer against the City arising out of or related to this Agreement or performance of the obligations set forth herein, but only if such litigation, appeal, or administrative action delays development of the Project for a period of more than five consecutive business days.

22. Estoppel Certificates. The City, at any time and from time to time upon not less than ten (10) business days' prior written notice from Developer, agrees to execute and deliver to Developer an estoppel certification in the form attached as Exhibit F, which form is acceptable to the Developer and the City.

23. Representations and Warranties

a. Developer represents and warrants to the City that the following statements are true as of the Effective Date:

i. ***No Litigation***. There is no pending or, to Developer's actual knowledge, threatened litigation or claim against the Project or the Developer related to the Project that would prohibit Developer from performing its obligations in this Agreement or render this Agreement invalid.

ii. ***Authorization***. Developer has all requisite power and authority to perform its obligations under this Agreement and the execution, delivery, and is duly and validly authorized to execute, enter into, and perform the obligation set

forth in this Agreement. Each person executing and delivering this Agreement and all documents to be executed and delivered in regard to the consummation of the transaction herein has due and proper authority to execute and deliver those documents. This Agreement and all documents executed and delivered by Developer in connection with the transaction herein shall constitute valid and binding obligations of Developer, enforceable against Developer in accordance with the terms of this Agreement. The Preliminary Financing Plan may be in the form of a loan commitment and be based on the project budget reviewed and approved by the lender issuing the loan commitment.

iii. ***Organization of Developer***. Developer is a duly organized and validly existing limited liability company under the laws of the State of Colorado and with full power to enter into and to perform its obligations under this Agreement.

iv. ***No Breach or Prohibition***. To Developer's actual knowledge, the transactions contemplated by this Agreement are not restrained or prohibited by any injunction, order or judgment rendered by any court or other governmental agency of competent jurisdiction against Developer. To Developer's actual knowledge, neither the execution and delivery of the Agreement, nor the consummation of the transactions contemplated hereby, will (a) be in violation of any agreements to which Developer is a party, or (b) conflict with or result in the breach or violation of any laws applicable to Developer or the Project.

b. The City represents and warrants to Developer that the following statements are true as of the Effective Date:

i. ***No Litigation***. There is no pending or, to the City's actual knowledge, threatened litigation or claim against the City that would prohibit the City from performing its obligations in this Agreement or render this Agreement invalid.

ii. ***Organization***. The City is a home rule municipal corporation organized under the constitution and laws of the State of Colorado, validly existing under the laws of the State of Colorado and has the power and authority to transact the business in which it is engaged.

iii. ***Authority***. All governmental proceedings required to be taken on the part of the City to execute and deliver this Agreement and to consummate the transactions contemplated hereby have been duly and validly taken under the Grand Junction Municipal Charter provisions, subject to any referendum rights set forth in Article XVI Section 136 of such Grand Junction Municipal Charter. Each person executing and delivering this Agreement and all documents to be executed and delivered in regard to the consummation of the transaction herein has due and proper authority to execute and deliver those documents. This Agreement and all documents executed and delivered by the City in connection with the transaction

herein shall constitute valid and binding obligations of the City, enforceable against the City in accordance with their terms.

iv. ***No Breach or Prohibition***. To the City's actual knowledge, the transactions contemplated by this Agreement are not restrained or prohibited by any injunction, order or judgment rendered by any court or other governmental agency of competent jurisdiction against the City. To the City's actual knowledge, neither the execution and delivery of the Agreement, nor the consummation of the transactions contemplated hereby, will (a) be in violation of any agreements to which the City is a party, or (b) conflict with or result in the breach or violation of any laws applicable to the City or the Project.

The Parties hereby agree to the same and execute this Agreement by their duly authorized representatives as follows:

City of Grand Junction, Colorado

_____
Mayor

_____
City Clerk

_____
Date

Developer

Kimball Acquisition LLC
a Colorado limited liability company

By: _____
its Manager

forth in Article XVI Section 136 of such Grand Junction Municipal Charter. Each person executing and delivering this Agreement and all documents to be executed and delivered in regard to the consummation of the transaction herein has due and proper authority to execute and deliver those documents. This Agreement and all documents executed and delivered by the City in connection with the transaction herein shall constitute valid and binding obligations of the City, enforceable against the City in accordance with their terms.

iv. ***No Breach or Prohibition.*** To the City's actual knowledge, the transactions contemplated by this Agreement are not restrained or prohibited by any injunction, order or judgment rendered by any court or other governmental agency of competent jurisdiction against the City. To the City's actual knowledge, neither the execution and delivery of the Agreement, nor the consummation of the transactions contemplated hereby, will (a) be in violation of any agreements to which the City is a party, or (b) conflict with or result in the breach or violation of any laws applicable to the City or the Project.

The Parties hereby agree to the same and execute this Agreement by their duly authorized representatives as follows:

City of Grand Junction, Colorado

Mayor

City Clerk

Date

Developer

Kimball Acquisition LLC
a Colorado limited liability company

By:
its Manager

Approved as to Substance:

_____

City Manager

Approved as to Legal Form:

_____

City Attorney

Approved as to Fee Cap Funds Availability:

_____

Director of Finance

EXHIBIT A

Legal Description and Depiction

Lots 1 and 2 of Old Mill Subdivision, Reception Number 2532046,
together with Lot 1 of Block 13 and the north 15.0 feet of Lot 2 of Block 13 of Amended Plat of Benton Canon's First Subdivision, Rec No 117077 (1913) & Vacated Right-of-Way by ordinance number 4839, Reception Number 2873347
Including areas owned by the City of Grand Junction subject to use by separate lease agreement



EXHIBIT A (Continued)

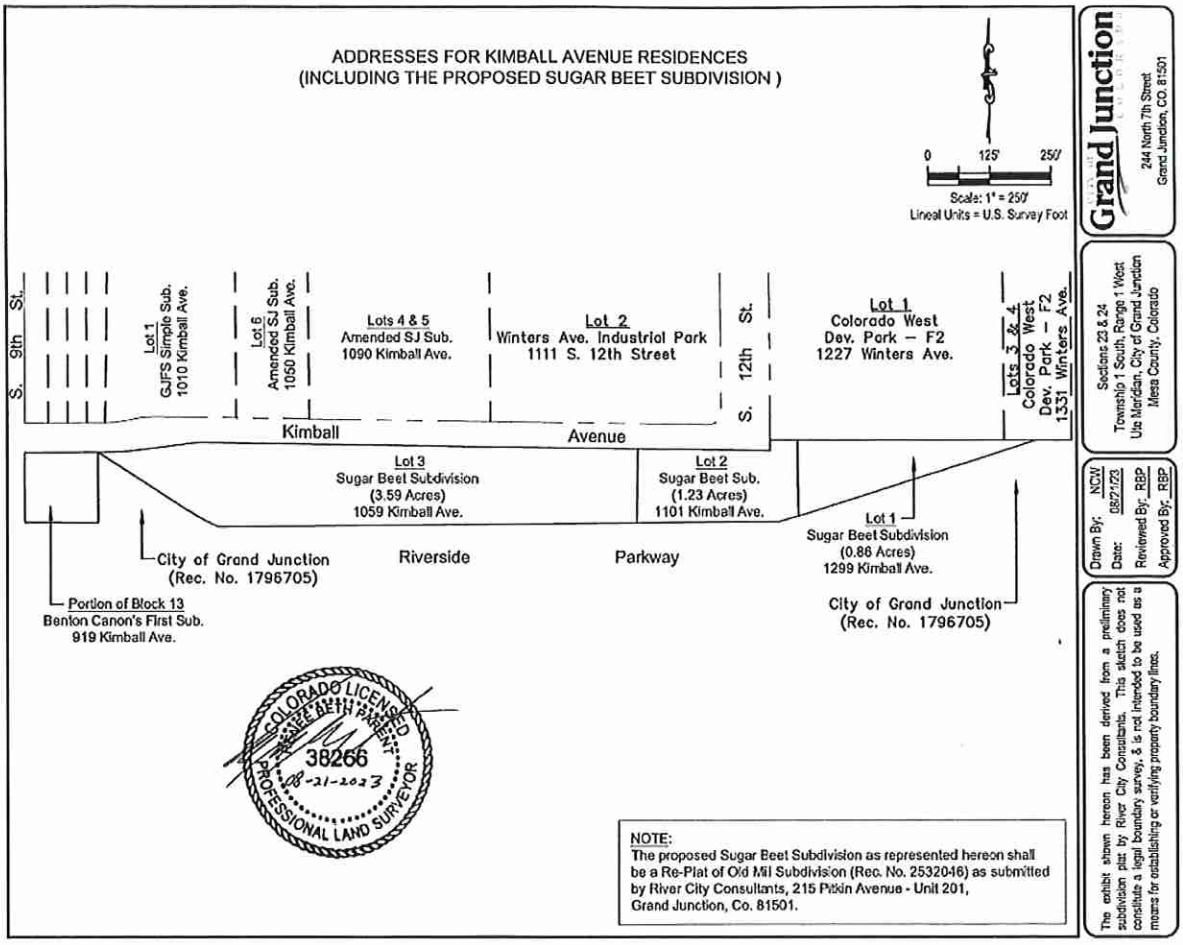


EXHIBIT B

Infill Incentive Application

Application for Corridor Infill Incentive Project

Please select year Project is seeking funding	2023
Project Name	Kimball Residences
Property Address/Parcel Identification Number	919 & 1101 Kimball Avenue Grand Junction
Property Ownership	Kimball Acquisition LLC
Developer/Entity Name	Mark Friedland/Aspen Starwood

Developer/Entity Email Address	mac@aspenstarwood.com
Developer/Entity Phone Number	646-413-2854
Developer/Entity Mailing Address	312 Aspen Airport Bus Ctr, Suite D Aspen, CO 81611
Description of how the Project will address the City's redevelopment and infill goals. The Project description shall include but not be limited to, an explanation of the square footage, uses and unit type and count.	The Kimball Residences will provide 164 for rent apartments. The residences will provide much needed housing for the current population, as well as provide housing for expanding local businesses and the many new businesses coming to GJ. Additionally, new apartments incentivize graduates to stay in GJ by providing housing located in a blossoming part of town. The location of the project is idea for energizing the redevelopment of the area and connecting the River to Downtown. The City has developed, in community assets with the amphitheater, trail system, botanical gardens and more. The Kimball Residences will further expand on this area and promote more developing into a vibrant neighborhood. Overall, the project provides housing and expands on a neighborhood the City has already begun with their investments on development.

	Additionally, the project will promote the development of the iconic Sugar Beet Factory. The owners have already had interest from restaurants and retail companies for the Sugar Beet building. Until there are people, a market, it is unlikely this building will be redeveloped. Envision going to dinner at the beautiful Sugar Beet building and then heading over to the amphitheater for live music. Even better, imagine walking from your apartment to do all of this! The project includes five (5) three story residential buildings, with redevelopment of the Sugar Beet building by others. Total square footage of all five residential buildings is 168,360 sf and includes 24 studios, 77 1-bedrooms, and 63 2-bedrooms. Overall the project is a public benefit: a) the efficient development of property adjacent to existing City services; b) the creation of developable lots; c) the development of vacant land within the Downtown and Infill corridor area; d) utilizing an existing building and infrastructure; and 3) aiming for better utilization of properties that prove a needed use and an economic return to the community.
Description of the Project timeline, whether the	The project currently has conditional planning approval. With support from this incentive program the project will move to the

Project is dependent on other grant funding or entitlements, whether the Project will be phased, and if there any known uncertainties for the Project.	building permit process with the aim to start construction in late Q1 2024 or early Q2 2024. The project is projected to take up to 36 months with completion being in 2027. The project will start with a 20 unit building at the western edge of the property. Followed by 36 units at the eastern end of the property and the final 108 units finishing off in the center of the site.

Description of the developer's experience with and capacity to implement the proposed Project.	Aspen Starwood, in partnership with Sweeney Real Estate and Development, completed 805 Struthers Avenue which is 48 units across the street from Kimball. 111 S Mesa and 204 S Mulberry in Fruita were completed in 2023 and are currently in lease up. 656 Market Street anticipates TCO on one of two buildings this month (July 2023) with the second building being completed and open for tenants in September 2023. 535 W Aspen in Fruita, 5 buildings, is set to start construction in August 2023. Additionally, the developer/owner owns two more sites in Fruita for multi family development along with 11 acres at F 1/2 road (near the 656 Market site). Buffalo Valley in Glenwood is an operating multi-family for rent project that is been open for over two years and 20 more units are under construction in Glenwood. Aspen Starwood, Mark Friedland is the owner, has been operating in Aspen for decades building and managing homes and commercial properties. Mr. Friedland's extensive experience in the Aspen area has cultivated relationships with numerous equity investors who are interested in the multi family long term hold strategy. Additionally, the experience has provided Mr. Friedland with strong relationships with ANB Bank and First Bank, both of whom are interested in this project. MacKenzie Thorn who manages Aspen Starwood multi-family has been in the industry for 15 years. Ms. Thorn's experience includes multi tenant housing, schools, and civil projects. Shannon Sweeney, Sweeney Real Estate and Development, has a long relationship with Mark Friedland and has led finding land in the Grand Valley for multi-family. Mr. Sweeney has also constructed Mesa and Mulberry (in Fruita) given his 25+ years of experience building in the Roaring Fork Valley. Our team are seasoned real estate development and construction professionals. Local consultants and subcontractors are used as much as possible. The developer/owners are building to own thus a long term commitment to the Grand Valley. Our lenders - Frist Bank and ANB Bank - are local and are also invested in the Grand Valley.

Amount of the incentive being requested.	As much as possible
A preliminary financing plan including project budget and a letter from a State or Federally chartered commercial bank or lender expressing the ability, expertise, and financial capability of the developer's ability to complete the Project.	The total cost of this project is over $50m given the scale, construction costs, site conditions, impact fees, interest rates, and insurance costs. Aspen Starwood has a long history with ANB Bank and thus a letter from them is included. To make this project feasible we are looking for any, and all funds possible, to bring the full project to fruition. At this time the development team has worked with City Planning for two years to bring this project forward. Attached please also find the financing information as estimated March 2023.
Supplemental Document 1	1101 Kimball_Bank Letter July 2023.pdf
Supplemental Document 2	Kimball Development Costs 3.16.23.pdf
Supplemental Document 3	Kimball Development Fees (page 2) 3.16.23.pdf

Kimball Development Costs

Category		Project Costs	Per Unit	Per SqFt
			164	170,590
Land		**$2,750,000**	**$16,768**	**$16.12**
Construction Cost		**$44,000,000**	**$268,293**	**$257.93**
Architectural and Engineering Fees				
	Architect	$235,000		
	Structural/MEP/Fire	$214,000		
	Civil/Survey	$160,000		
	Land Planner/Landscape Architect	$30,000		
	Other	$65,000		
	TOTAL	**$704,000**	**$4,293**	**$4.13**
Soft Cost				
	Land Closing Costs	$65,000		
	Land Loan Interest	$120,000		
	Due Diligence/Third Party reports	$82,500		
	Pre Construction	$50,000		
	Third Party testing	$70,000		
	Travel/Print/Accounting	$35,000		
	Development Legal	$25,000		
	Insurance	$900,000		
	Taxes	$20,000		
	Other Development Costs	$50,000		
	Development Fee	$1,435,000		
	Pre Opening/Marketing	$80,000		
	Development Contingency	$250,000		
	FF&E	$260,000		
	TOTAL	**$3,442,500**	**$20,991**	**$20.18**
Entitlement Fees				
	Impact Fees	$682,664		
	Water & Sewer Fees	$748,846		
	Site Permit	$1,289		
	Building Applications + Permits	$52,000		
	AHJ Off Site Improvements	$25,000		
	Utilities	$60,000		
	Other Municipality Costs	$15,000		
	TOTAL	**$1,584,799**	**$9,663**	**$9.29**
Financing				
	Loan Origination Fee	$163,000		
	Equity Origination Fee	$15,000		
	Legal Financing	$20,000		
	Guarantee Fee	$50,000		
	Appraisal/Market Study/Lender	$65,000		
	Title Costs	$10,000		
	Construction Loan Closing Costs	$20,000		
	Other Financing Costs	$10,000		
	Construction Interest Carry	$2,025,000		
	TOTAL	**$2,378,000**	**$14,500**	**$13.94**
	TOTAL	**$54,859,299**	**$334,508**	**$321.59**

Equity 30%	**$16,457,790**
Deby 70%	**$38,401,509**

ANB Bank.

July 18, 2023

To City of Grand Junction:

ANB has completed over 25 projects with Mark Friedland and his team and watched him successfully complete another 75 projects through another lending institution. In all of my years of banking I have never witnessed an individual raise the amount of capital Mark's team has put into development projects in the Roaring Fork and Grand Valleys. Not only the sheer dollar volume is impressive but also the ease at which he has been able to raise funds.

Throughout the years some of the projects have required additional equity injections due to unforeseen overruns, all of these overruns have been funded through the partnerships and all of the projects have been successfully completed.

Throughout my relationship with Mark, I have been introduced to a number of his equity partners and investors and built a banking relationship with many of those individuals. Another key attribute to the success of the group is the fact that Mark's team and a majority of his partners have a significant personal presence to the Roaring Fork Valley and Western Colorado as a whole. They are inherently gratified to see the success of the projects through completion and ongoing operations.

From a banking perspective, it has been gratifying to partner with this group to help them achieve their goal of building much-needed community housing in Western Colorado.

Sincerely,

Mark A. Pavro

ANB Bank
Community Bank President – Aspen & Basalt
325 E Main St Aspen, CO 81611
970-544-9553

EXHIBIT B
Infill Incentive Application (Project Timing)

Timing: Below is an estimated project schedule.

Building Permit Approval	February 28, 2024
Sitework Start	April 1, 2024
Project Complete (Certificates of Occupancy Issued for all buildings including Building A, B, C, D and E	February 28, 2027

EXHIBIT E

Form of Memorandum of Redevelopment Agreement

Recording Requested By
And When Recorded Return To:

MEMORANDUM OF DEVELOPMENT/REDEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DEVELOPMENT/REDEVELOPMENT AGREEMENT is made as of _____, 2023, by and among Kimball Acquisition, LLC, a Colorado limited liability company, or its successors and assigns permitted in accordance with Paragraph __ ("**Developer**"), and the CITY OF GRAND JUNCTION, a Colorado Home Rule municipal corporation ("**City**"). The Developer and the City are sometimes collectively called the "**Parties**," and individually, a "**Party**.".

The Parties entered into that certain Redevelopment Agreement, dated _____, 2023 (the "**Development/Redevelopment Agreement**") pertaining to the redevelopment of the real property described therein and on Exhibit A, attached hereto and incorporated herein by this reference (the "**Property**"). All initially capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Redevelopment Agreement.

Pursuant to the Redevelopment Agreement, the City has agreed to waive certain Fees, not to exceed the Fee Cap with such obligation being contingent upon Developer having Commenced and Completed construction of the Project by the Commencement Deadline and Completion Deadline, respectively.

This Memorandum may be executed in counterpart originals, each of which shall be deemed an original, and each of which shall be deemed to constitute one and the same Memorandum. Additionally, a copy of an executed original Memorandum signed by a Party hereto and transmitted by electronic mail shall be deemed an original, and any Party hereto is entitled to rely on the validity, authenticity, and authority of an original transmitted by electronic mail. Nothing in this Memorandum shall be deemed or interpreted to amend the Redevelopment Agreement. In the event of any conflict between the terms and conditions of this Memorandum and the terms and conditions of the Redevelopment Agreement, the terms and conditions of the Redevelopment Agreement shall supersede and control. The purpose of this Memorandum is merely to provide notice of the existence of the Redevelopment Agreement.

[Remainder of page blank; signature pages follow]

The Parties hereby execute this Memorandum of Development/Redevelopment Agreement by their duly authorized representatives as follows:

City of Grand Junction, Colorado

_____

Mayor

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The forgoing Memorandum of Development/Redevelopment Agreement was acknowledged before me this _____ day of ____ 2023, by _____ as Mayor of the City of Grand Junction, a Colorado Home Rule municipal corporation.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)

_____

City Clerk

_____

Date

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The forgoing Memorandum of Development/Redevelopment Agreement was acknowledged before me this _____ day of _____, 2023, by _____ as City Clerk of the City of Grand Junction, a Colorado Home Rule municipal corporation.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(SEAL)

[Signature Pages Continue]

Developer

Kimball Acquisition, LLC
a Colorado limited liability company

By: Kimball Acquisition, LLC
a Colorado limited liability company,

By: _____
_____, Manager Shannon P. Sweeney

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The forgoing Memorandum of Development/Redevelopment Agreement was acknowledged before me this 2 day of OCT., 2023, by SHANNON P. SWEENEY as Manager of Kimball Acquisition, LLC, a Colorado limited liability company.

Witness my hand and official seal. _____
Notary Public

My commission expires: 12.01.2026

(SEAL)

TOMMY ARMENTA
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 20144045517
MY COMMISSION EXPIRES DEC 1, 2026

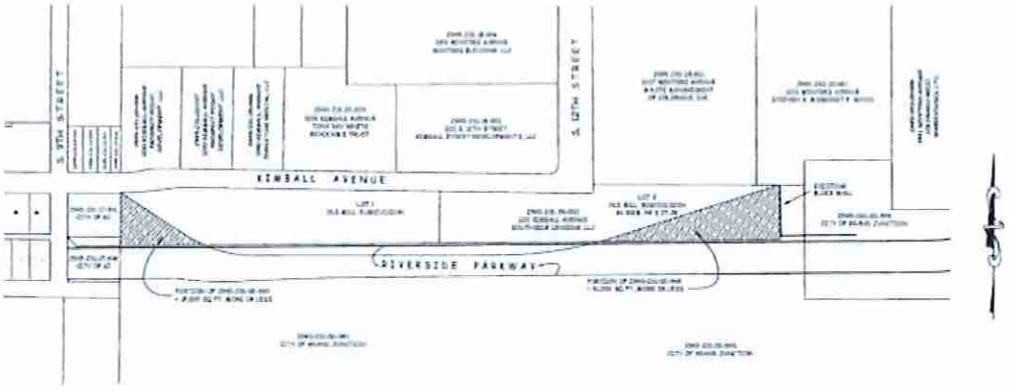
EXHIBIT "A"

Legal Description

Lots 1 and 2 of Old Mill Subdivision, Reception Number 2532046, together with Lot 1 of Block 13 and the north 15.0 feet of Lot 2 of Block 13 of Amended Plat of Benton Canon's First Subdivision, Rec No 117077 (1913) & Vacated Right-of-Way by ordinance number 4839, Reception Number 2873347

Including areas owned by the City of Grand Junction subject to use by separate lease agreement, described and depicted as:

ALL of that part of said Parcel Number 2945-231-00-945 lying South of Lot 2, Old Mill Subdivision, as same is recorded in Book 5008, Pages 27 and 28, Public Records of Mesa County, Colorado; North of a line that is 5.00 feet North of and parallel with the Northerly edge of the concrete gutter lying North of the Riverside Parkway; West of an existing concrete wall whose Northerly terminus is located approximately at the Northeast corner of said Lot 2, Old Mill Subdivision.
CONTAINING 41,000 Square Feet, more or less, as described.
And;
A certain parcel of land lying in Section 23, Township 1 South, Range 1 West of the Ute Principal Meridian, State of Colorado, County of Mesa, City of Grand Junction and being more particularly described as follows:
ALL that portion of Parcel Number 2945-231-00-945 owned by the City of Grand Junction, lying South of Lot 1, Old Mill Subdivision, as same is recorded in Book 5008, Pages 27 and 28, Public Records of Mesa County, Colorado and lying North of a line that is 5.00 feet North of and parallel with the Northerly edge of the concrete gutter lying North of the Riverside Parkway.
CONTAINING 18,000 Square Feet, more or less, as described.



THIS IS NOT A SURVEY

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder. This sketch does not constitute a legal survey, and is not intended to be used as a means for establishing or verifying property boundary lines.

GRAPHIC SCALE
1" = 200 FEET
LINEAR UNITS = U.S. SURVEY FOOT

CITY OF GRAND JUNCTION
PARCEL MAP
SECTION 23 T1S R1W
TOWNSHIP 1 SOUTH, RANGE 1 WEST
UTE PRINCIPAL MERIDIAN

City of Grand Junction COLORADO

EXHIBIT F

Form of Estoppel Certificate

To: Kimball Acquisition LLC, a Colorado limited liability company ("**Developer**")

From: CITY OF GRAND JUNCTION, a Colorado Home Rule municipal corporation ("**City**")]

Date: _____, 20__

Re: The Development/Redevelopment Agreement, dated as of ____, 2023, by and between Developer, and the CITY OF GRAND JUNCTION, a Colorado Home Rule municipal corporation ("**City**"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

The City hereby certifies, warrants, represents, and agrees, as of the date hereof, as follows:

1. The Agreement is in full force and effect and has not been modified, supplemented, or amended in any way, except as expressly described above.

2. The Developer has timely and fully performed its obligations under the Agreement through the date of this Estoppel Certificate. There exists no default under, violation of, or failure to comply with the Agreement, and no event has occurred, or circumstance exists that, with the giving of notice or the lapse of time, or both, would constitute a default under, violation of, or failure to comply with the Agreement.

3. The Commencement Deadline is _____ and the Completion Deadline is _____.

4. The Developer Commenced the Project on _____ and Completed the Project on _____. [modify as applicable]

5. Through the date of this Agreement, [the City has waived or paid $_____ in Fees] in accordance with this Agreement.

6. The City hereby approves of the Developer's assignment of the Agreement to _____. [OR] _____ is a Permitted Assignee under the Agreement. [modify as applicable]

7. The Agreement was approved by [the City at a public hearing held on _____ pursuant to Ordinance ____].

8. The City agrees that _____ days of Force Majeure delays have accrued under the Agreement.

9. The City has not assigned the Agreement.

10. The undersigned is duly authorized to sign and deliver this Estoppel Certificate, and no other signature is required or necessary in connection with the execution and validity of this Estoppel Certificate. The representations and warranties of the City made in the Agreement are true, complete, and accurate as of the date of this Estoppel Certificate.

11. This Estoppel Certificate shall inure to the benefit of Developer and its successors, assigns, and lenders (the "**Reliance Parties**"), and the foregoing certificates, representations, warranties, and agreements shall be binding upon the City and its successors and assigns and inure to the benefit of the Reliance Parties.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be executed as of the day and year first written above.

CITY SIGNATURE BLOCK

By:_____

Name:_____

Title:_____

EXHIBIT A

Legal Description and Depiction

Lots 1 and 2 of Old Mill Subdivision, Reception Number 2532046,
together with Lot 1 of Block 13 and the north 15.0 feet of Lot 2 of Block 13 of Amended Plat of Benton Canon's First Subdivision, Rec No 117077 (1913) & Vacated Right-of-Way by ordinance number 4839, Reception Number 2873347
Including areas owned by the City of Grand Junction subject to use by separate lease agreement



EXHIBIT A (Continued)

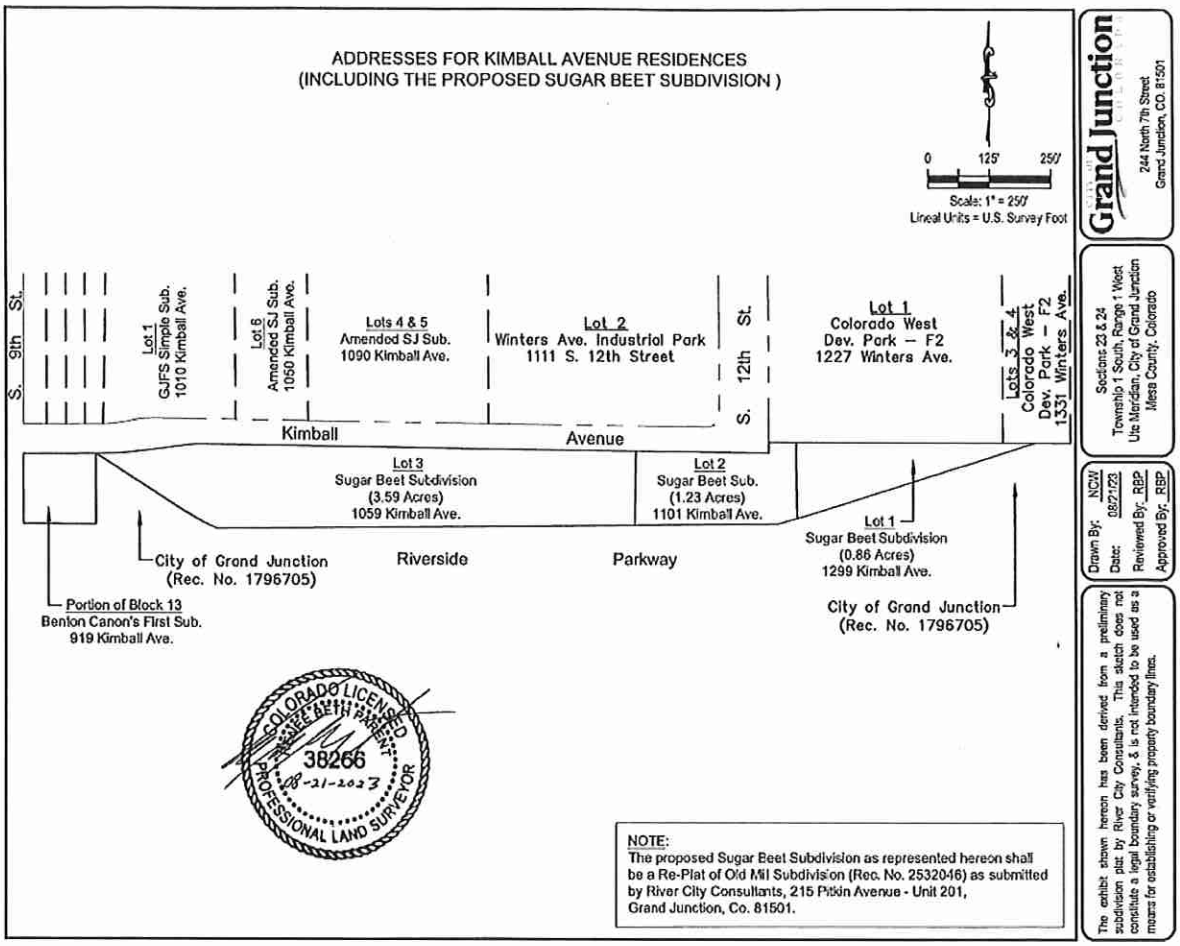


EXHIBIT B

Infill Incentive Application

Application for Corridor Infill Incentive Project

Please select year Project is seeking funding	2023
Project Name	Kimball Residences
Property Address/Parcel Identification Number	919 & 1101 Kimball Avenue Grand Junction
Property Ownership	Kimball Acquisition LLC
Developer/Entity Name	Mark Friedland/Aspen Starwood

Developer/Entity Email Address	mac@aspenstarwood.com
Developer/Entity Phone Number	646-413-2854
Developer/Entity Mailing Address	312 Aspen Airport Bus Ctr, Suite D Aspen, CO 81611
Description of how the Project will address the City's redevelopment and infill goals. The Project description shall include but not be limited to, an explanation of the square footage, uses and unit type and count.	The Kimball Residences will provide 164 for rent apartments. The residences will provide much needed housing for the current population, as well as provide housing for expanding local businesses and the many new businesses coming to GJ. Additionally, new apartments incentivize graduates to stay in GJ by providing housing located in a blossoming part of town. The location of the project is idea for energizing the redevelopment of the area and connecting the River to Downtown. The City has developed, in community assets with the amphitheater, trail system, botanical gardens and more. The Kimball Residences will further expand on this area and promote more developing into a vibrant neighborhood. Overall, the project provides housing and expands on a neighborhood the City has already begun with their investments on development.

EXHIBIT C

Preliminary Financing Plan

Construction of 164-unit project, *Kimball Residences* (Project) will be financed using a combination of Kimball Acquisition LLC/Aspen Starwood equity and lender financing. For the Project financing Kimball Acquisition LLC has two lenders vying for the business.

Debt options include the same lender who is financing Struthers Residences and Market Street Residences and the other financed 111 S Mesa and 204 S Mulberry in Fruita. Both banks have provided financing on many projects, for over 20 years, in Western Colorado with the same developer.

Kimball Acquisition/Aspen Starwood expects commitment letters from potential lender Q4 2023. Given ever changing market conditions the debt/equity ratio cannot be predicted. Kimball Acquisition LLC/Aspen Starwood has a deep ownership pool with ample equity to meet loan requirements. Given the scale of the Project, it will be phased, and a construction loan will be secured for each phase in a staggered approach.

Kimball Acquisition LLC/Aspen Starwood will select as construction lender in Q1 2024 and once a lender is chosen, it will take approximately 45-60 days before the construction loan closes.

EXHIBIT D

Conceptual Plans (SPN-2022-552)

