

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. 5173

**PURSUANT TO VOTER APPROVAL AN ORDINANCE LEASING APPROXIMATELY
1.4 ACRES OF CITY PROPERTY TO KIMBALL ACQUISITION, LLC LOCATED
ADJACENT TO 919 AND 1101 KIMBALL AVENUE GRAND JUNCTION, COLORADO**

RECITALS:

In 1994 the City acquired property (now known as Las Colonias Park ("Park Property")), which was formerly a uranium mill tail processing site, from the State of Colorado, Department of Public Health and Environment by quit claim deed. Following remediation of the Park Property, as recorded in Book 2320, Pages 884 and 885 the Park Property has been redeveloping in accordance with State and Federal approval in accordance with 42 U.S.C. § 7914(e)(1)(B), which generally provides that the Park Property is to be used for park, recreational or other public purposes. The "public purposes" to which the property may be set has been relatively broad so long as the City has determined that the use(s) advances community interests. The City is developing the Park Property south of the Riverside Parkway principally for park purposes and some commercial use; however, development of the property on the north side is being accomplished by aggregating a portion of the Park Property with private property for the construction of needed housing.

The Lessee desires and has proposed to lease a portion of the Park Property, as the same is specifically described herein ("Kimball Lease Property") from the City and use the surface of the City property for parking and other purposes associated with its housing development/redevelopment on the Lessee's parcel commonly known and referred to as the Sugar Beet building at 1101 Kimball Avenue.

In November 2019 City voters approved an amendment to the City Charter which allowed the City to lease certain property, including certain of the Park Property including certain parcels owned by the City in the vicinity of Las Colonias Park north of the Riverside Parkway for a term of up to 99 years. The Charter amendment affirmed the City Council's right to lease the property for a term of not to exceed 99-years.

Kimball Acquisition, LLC (Developer) has applied for and with the adoption of Ordinance No. 5172 been approved for a City Corridor Infill Incentive (CII). With the CII the Developer will construct 164 housing units on the property located at 1101 Kimball Avenue, 919 Kimball Avenue and the parcel identified with Mesa County tax #2945-231-39-001. The City property, the Kimball Lease Property, and the Council approval and authorization of the lease thereof, on the terms established therein (Lease), adjoins the redevelopment parcel on the east and west. The City parcels are necessary for surface

parking for the successful development/redevelopment and the provision of housing units for the community.

The City Council, by and with approval of this Ordinance does confirm and ratify the actions heretofore taken and more particularly described in the Lease, and specifically finds, determines, and affirms that the Lease is for and advances public purposes and advances community interests, all of which are in furtherance of the CII, the development/redevelopment of the Kimball Lease Property and community well-being.

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

Incorporating the foregoing Recitals, the City Council does confirm and ratify the actions heretofore taken and more particularly described in the lease agreement by and between Kimball Acquisition, LLC, and the City of Grand Junction (Lease), a copy of which is attached and incorporated by this reference as if fully set forth, leasing the property therein described.

AND FURTHERMORE, BE IT ORDAINED, that this Ordinance, together with the Lease and Ordinance No. 5172 approving the Corridor Infill Incentive are deemed by the City Council to discharge the City Charter, as amended, and the laws and ordinances of the City of Grand Junction, Colorado and overall support and advance the public health, safety, and welfare.

Introduced on first reading this 16th day of August 2023 and ordered published in pamphlet form.

Adopted on second reading the 6th day of September 2023 and ordered published in pamphlet form.



Anna M. Stout
President of the City Council

ATTEST:



Amy Phillips
City Clerk



I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 5173 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. 5173 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



LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement" or "Lease") is hereby made and entered into this 6th day of September 2023, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and Kimball Acquisition, LLC ("Lessee") or any successor to Lessee, whose legal address is 1315 Mountain View Drive, Aspen, Colorado 81611 (hereinafter collectively referred to as the "Parties").

RECITALS

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

A parcel of land located in the SW1/4 of the NW1/4 of Section 24, Township 1 South, Range 1 West, Ute Meridian, City of Grand Junction, Mesa County, Colorado being a portion of the parcel of land described in Reception Number 1796705 owned by the City of Grand Junction, lying South of Lot 2, Old Mill Subdivision as recorded at Reception Number 2532046 and lying North of a line that is 5.00 feet North and parallel with the Northerly edge of the concrete gutter on the North side of Riverside Parkway and West of an existing concrete wall whose Northerly terminus is approximately located at the Northeast Corner of said Lot 2, Old Mill Subdivision, said parcel being more particularly described as follows:

Commencing at the Quarter Corner common to said Section 24 and Section 23; whence the Center Quarter Corner of said Section 23 bears N89°36'06"W with all other bearings herein relative thereto; thence N60°52'19"E, a distance of 675.91 feet to the Northeast Corner of said Lot 2, Old Mill Subdivision being the Point of Beginning; thence S01°44'31"E, a distance of 156.77 feet along the west edge of an existing concrete wall to a point lying 5.00 feet North of the Northerly edge of the concrete gutter on the North side of Riverside Parkway; thence S89°26'47"W, a distance of 524.13 feet along a line 5.00 feet North and parallel with said Northerly edge of the concrete gutter to a point on the southerly line of said Lot 2; thence the following courses along the Southerly line of said Lot 2; 55.36 feet along the arc of a 1,156.28 foot radius curve concave Northwesterly, through a central angle of 02°44'36" whose chord bears N74°00'46"E, 55.36 feet; thence N72°33'02"E, a distance of 488.61 feet to the Point of Beginning.

Said parcel containing 40,718 Square Feet or 0.94 Acres, more or less as described.

And;

A parcel of land located in the SE1/4 of the NE1/4 of Section 23, Township 1 South, Range 1 West, Ute Meridian, City of Grand Junction, Mesa County, Colorado being a portion of the parcel of land described in Reception Number 1796705 owned by the City of Grand Junction, lying South of Lot 1, Old Mill Subdivision as recorded at Reception Number 2532046 and lying North of a line that is 5.00 feet North and parallel with the Northerly edge of the concrete gutter on the North side of Riverside Parkway, said parcel being more particularly described as follows:

Commencing at the Quarter Corner common to said Section 23 and Section 24; whence the Center Quarter Corner of said Section 23 bears N89°36'06"W with all other bearings herein relative thereto; thence N76°59'16"W, a distance of 1,354.45 feet to the Northwest Corner of said Lot 1, Old Mill Subdivision being the Point of Beginning; thence the following courses along the westerly line of said Lot 1, S57°07'00"E, a distance of 220.00 feet; thence 64.30 feet along the arc of a 369.93 foot radius curve concave Northeasterly, through a central angle of 09°57'35" whose chord bears S62°15'41"E, 64.22 feet to a point 5.00 feet North of the Northerly edge of the concrete gutter on the North side of Riverside Parkway; thence S89°25'42"W, a distance of 241.85 feet along a line 5.00 feet North and parallel with said concrete gutter to a point on the East line of Block 13 of Amended Benton Canon's First Addition as recorded at Reception Number 117077; thence N00°02'17"W, a distance of 151.21 feet along said East line of Block 13 to the Point of Beginning.

Said parcel of land containing 17,611 Square Feet or 0.40 Acres, more or less as described.

The City acquired the property (now known as "Park Property" or "the Park Property") which was formerly a uranium mill tail processing site, from the State of Colorado, Department of Public Health and Environment ("State") by quit claim deed ("Deed") following remediation of the Park Property, as recorded in Book 2320, Pages 884 and 885, Public Records, Mesa County, Colorado. Pursuant to 42 U.S.C. § 7914(e)(1)(B), the State may donate such lands to another governmental entity for permanent use by the governmental entity solely for park, recreational or other public purposes. The City is developing the Park Property south of the Riverside Parkway principally for park purposes and some commercial use; however, timing for development and use of the property on the north side of the Riverside Parkway is uncertain.

B. Lessee desires to lease a portion of the Park Property, as the same is specifically described herein ("Kimball Lease Property") from the City and use the surface of the property for parking and other purposes associated with its business operations and/or the redevelopment of the Lessee's parcel commonly known and referred to as the Sugar Beet building. Lessee is aware of the conditional uses of the Park Property and that the same or similar conditions apply to the Kimball Lease Property and by signing this Agreement Lessee agrees and warrants that it and any successor(s) shall use the Kimball Leased Property only as specified in this Agreement and as otherwise allowed by the State and/or the United States.

C. The City agrees to lease, as allowed by voter approval for a term of 99 years that portion of the Park Property, the Kimball Lease Property, to the Lessee and any authorized successor(s) for the surface use only as specified in this Agreement.

NOW, THEREFORE, for and in consideration of the payment of rent and the performance of the promises, covenants, conditions, restrictions, duties, and obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Grant and Acceptance of Lease.** The City hereby leases two individual portions of the Park Property to the Lessee, the Kimball Lease Property, as more particularly described in **Exhibit A and depicted in Exhibits B and C**, which are attached hereto and incorporated herein by this reference ("Property" or "Kimball Lease Property"). Lessee hereby accepts and leases the Property from the City, for the Term (defined in Section 2 below).

2. Term. The term of this Lease shall commence upon the City's issuance for the first City Planning Clearance to Lessee or its successor, for the development project located at 919 Kimball Avenue, 1101 Kimball Avenue and the property identified as Mesa County tax parcel #2945-2331-001, Grand Junction, Colorado 81501 and bearing City file number SPN-2022-552 named Kimball Residences ("Term Commencement Date") and shall continue for ninety-nine (99) years ("Term"), at which time this shall expire, if not extended by voter approval.

3. Rent. Rent for the Property specified in **Exhibit A** during the Term shall be paid in accordance with the following schedule:

- \$1000.00 per year for the first (1st) twelve (12) year period of the Term.
- \$1450.00 per year for the second (2nd) twelve (12) year period of the Term.
- \$1900.00 per year for the third (3rd) twelve (12) year period of the Term.
- \$2350.00 per year for the fourth (4th) twelve (12) year period of the Term.
- \$2800.00 per year for the fifth (5th) twelve (12) year period of the Term.
- \$3250.00 per year for the sixth (6th) twelve (12) year period of the Term.
- \$3700.00 per year for the seventh (7th) twelve (12) year period of the Term.
- \$4150.00 per year for the eighth (8th) twelve (12) year period of the Term.
- \$4500.00 per year until the termination of the Term.

Rent shall be due and payable, without the City's demand, on or before the seventh (7th) day of the month of the year of the Term Commencement Date, until the termination of the Term without proration for the number of days and/or months remaining in such calendar year during which the Agreement becomes effective. Should payment of Rent not be received by the City on or before the seventh (7th) day of the month, Lessee hereby agrees to pay the City a late charge of **\$75.00**, which amount shall be added to the amount of Rent(s) due. Furthermore, should payment of Rent and any late charge not be received by the City on or before the fifteenth (15th) day of the following month, this Lease shall automatically terminate and neither of the Parties shall have any further rights, duties, or obligations under this Agreement.

- Reservations from Lease. Pursuant to the Deed, the State reserved unto itself any non-tributary groundwater and the right to surface access for groundwater development. This Lease is also subject to the reservation of: (1) any and all oil, gas, coal and other minerals and mineral rights of any person underlying or appurtenant to the Property; (2) all water and water rights, ditches, and ditch rights appurtenant to or connected with the Property, including, but not limited to, any water or water rights which may have been previously used on or in connection with the Property, for whatever purposes; (3) existing rights-of-way for roads, railroads, telephone lines, transmission lines, utilities, ditches, conduits or pipelines on, over, or across said parcel; and the following terms and conditions specified in Section 5 below, so long as such actions will not interfere with the Lessee's use and enjoyment of the Property for the purposes set forth herein.

- Use and Condition of the Property.

5.1 Lessee covenants and agrees that its use of the Property is strictly limited to the use of the surface of the Property and that it will not use the groundwater from the site for any purpose, construct wells or any means of exposing groundwater to the surface. Lessee also agrees to make application and follow City development requirements, including, but not limited to, prior written approval of construction plans, designs, and specifications. Any habitable structures constructed on the Property shall employ a radon ventilation system or other radon mitigation measures, as required by the State of Colorado.

Any use of the Property shall not adversely impact groundwater quality nor interfere with groundwater remediation under State and federal law or regulations.

5.2 Lessee agrees that its use and occupancy of the Property shall be subject to all applicable laws, rules, regulations, codes, rulings, and ordinances of any governmental authority, either now in effect or hereafter enacted, having jurisdiction over the Property and Lessee's use, occupancy, and operations thereon. Lessee agrees that it shall not use nor permit the Property to be used for any other purpose or in any other fashion or manner contrary to the provisions of this Lease or the laws, ordinances, codes, or regulations of any governmental unit or agency exercising jurisdiction over the Property or any use thereon.

5.3 Lessee agrees to maintain, clean, and repair all aspects of the Property at Lessee's sole cost and expense, including, but not limited to, driveways, fences, parking spaces, lights, or gates located or hereafter constructed by Lessee on the Property, and to not cause damage to the Property or the real or personal property of any party. Lessee agrees that the City shall not be obligated nor required to repair damages to any portion or aspect of the Property.

5.4 Lessee has inspected the Property, the rights, and privileges appurtenant thereto, and the laws, rules, regulations, codes, and ordinances governing Lessee's use, occupancy and operations thereon. Lessee agrees that the condition of the Property and such rights, privileges, rules, regulations, codes, and ordinances are sufficient for the Lessee's purposes. The City makes no warranties, promises, or representations, express or implied, oral, or written, that the Property is sufficient for the purposes of the Lessee. If the Property is damaged due to fire, flood, or other casualty, or if the Property or any aspect thereof is damaged or deteriorates to the extent that it is no longer functional for the purposes of the Lessee, the City shall have no obligation to repair the Property or to otherwise make the Property usable or occupiable, and damages shall be at Lessee's own risk.

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

- Non-Liability of the City for Damage. The City shall not be liable for liability or damage claims for injury to persons or property, from any cause relating to the occupancy and use of the Property by Lessee or any person or interest claiming by or through the Lessee or any successor(s) thereto, including those arising out of damages or losses occurring on areas adjacent to the Property or easements used for the benefit of the Property during the Lease Term or any extension thereof, nor for any injury or damage to any property of the Lessee or any other party, from any cause whatsoever. Lessee and any successor(s) thereto agree to indemnify the City, its officers, employees, and agents, and hold the same harmless from all liability, loss, or other damage claims or obligations resulting from any injuries, including death, or losses of any nature.

Furthermore, the City shall not be liable to Lessee for any damages, or any loss of profits or loss of opportunities claimed by Lessee or any successor(s) thereto or for interruption of Lessee's or any successor's(s') business or operations resulting from the environmental condition of the Property, fire, the elements, or casualty, of any kind.

- Hazardous Substances.

7.1 The term "Hazardous Substances" as used in this Agreement, shall mean any substance which is; defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or

other governmental authority; a petroleum hydrocarbon, including, but not limited to, crude oil or any fraction thereof; hazardous, toxic or reproductive toxicant; regulated pursuant to any law; any pesticide or herbicide regulated under state or federal law.

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

7.2 Lessee shall not cause or permit to occur by Lessee or Lessee's agents, guests, invitees, contractors, licensees, or employees the following:

(a) Any violation of any Environmental Law on, under or about the Property or arising from Lessee's use and occupancy of the Property, including, but not limited to, air, soil and groundwater conditions; or

(b) the use, generation, accidental or uncontrolled release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance in violation of any federal state or local law, ordinance or regulation either now in force or hereafter enacted.

- Environmental Clean-Up.

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

(a) Lessee shall, at Lessee's sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation, or disposal of Hazardous Substances;

(b) Lessee shall, at Lessee's sole cost and expense, make all submissions to provide all information required by and/or to comply with all requirements of all governmental authorities (the "Authorities") under Environmental Laws and other applicable laws,

(c) Should any Authority or the City demand that a clean-up plan be prepared and that a clean-up plan be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property, Lessee shall, at Lessee's sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws.

(d) Lessee shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Substances requested by any Authority. If Lessee falls to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessee's behalf and, in such case, Lessee shall cooperate with the City in the preparation of all documents the City or any Authority deems necessary or appropriate to determine the applicability of Environmental Laws to the Property and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Lessee's obligations hereunder.

(e) Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

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

- Default; Sublet; Termination; Assignment.

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

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

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

reasonable cause for the City to terminate this Lease. The interest of Lessee in this Lease is not to be assignable by operation of law without the formal approval and ratification by the City Council of the City.

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

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

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

To the City:
City of Grand Junction
City Manager
250 N. 5th Street
Grand Junction, CO 81501

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

To the Lessee:
1315 Mountain View Drive
81611

With Copies to:
Coleman & Quigley, LLC Aspen, CO
c/o Stuart R. Foster
2454 Patterson Road, Suite 200
Grand Junction, CO 81505
stuart@cqlawfirm.net

All notices shall be deemed given: (1) if sent by mail, when deposited in the mail; (2) if delivered by hand or courier service, when delivered; or (3) if sent via email, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

- Not a Partnership.

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

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

- Enforcement; Partial Invalidity; Governing Law.

14.1 If the Parties are required to commence or prosecute any legal action to determine the rights, duties, and obligations hereunder or to otherwise enforce this Agreement, then the prevailing party shall be entitled to the payment of their reasonable attorneys' fees and court costs, including those incurred for any successful appeal.

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

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

- Surrender; Holding Over. Lessee shall, upon the expiration or termination of this Lease, surrender the Property to the City in good order, condition and state of repair, reasonable wear and use excepted. In the event Lessee fails, for whatever reason, to vacate and surrender the Property upon the expiration or termination of this Lease and the parties have not reached an agreement which would allow Lessee to continue to occupy any portion of the Property, Lessee agrees that Lessee shall pay to the City the sum of **\$100.00** per day for each and every day thereafter until Lessee has effectively vacated and surrendered the Property. The parties agree that it would be difficult to establish the actual damages to the City in the event Lessee fails to vacate and surrender the Property upon the expiration or termination of this Lease, and that said **\$100.00** daily fee is an appropriate liquidated damages amount.

- Total Agreement; Applicable to Successors. This Lease contains the entire agreement between the parties and, except for automatic expiration or termination, cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. This Lease and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties. ~~The parties hereto have each executed and entered into this Lease Agreement as of the day and year first above written.~~

- ~~Execution in Counterparts. This Agreement may be executed in one or more counterparts including scanned and emailed counterparts each counterpart to be considered an original portion of this Agreement, and all of which together shall constitute a single instrument. A photocopy of this Agreement may be used in lieu of an original in any action or proceeding brought to enforce or construe this Agreement.~~

- ~~Headings Not Part of Agreement. The headings contained in this Agreement are for convenience only, do not constitute part of this Agreement, and shall not limit, affect the interpretation of, or otherwise affect in any way the provisions of this Agreement.~~

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- Execution in Counterparts. This Agreement may be executed in one or more counterparts including scanned and emailed counterparts each counterpart to be considered an original portion of this Agreement, and all of which together shall constitute a single instrument. A photocopy of this Agreement may be used in lieu of an original in any action or proceeding brought to enforce or construe this Agreement.

- Headings Not Part of Agreement. The headings contained in this Agreement are for convenience only, do not constitute part of this Agreement, and shall not limit, affect the interpretation of, or otherwise affect in any way the provisions of this Agreement.


- Interpretation of the Agreement. This Agreement was drafted jointly by the Parties and shall not construed against any party hereto.


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

IN WITNESS WHEREOF, the Parties have caused for the execution and made this Lease effective as of the date first set forth above.

**THE CITY OF GRAND JUNCTION,
a Colorado Home Rule Municipality:**

By: 
Greg Caton, City Manager

Attest: 
By: Amy Phillips, City Clerk

LESSEE:
Kimball Acquisition, LLC
By: 
Shannon Sweeney
(Print Name)

Its: _____



EXHIBIT A
Legal Descriptions

A parcel of land located in the SW1/4 of the NW1/4 of Section 24, Township 1 South, Range 1 West, Ute Meridian, City of Grand Junction, Mesa County, Colorado being a portion of the parcel of land described in Reception Number 1796705 owned by the City of Grand Junction, lying South of Lot 2, Old Mill Subdivision as recorded at Reception Number 2532046 and lying North of a line that is 5.00 feet North and parallel with the Northerly edge of the concrete gutter on the North side of Riverside Parkway and West of an existing concrete wall whose Northerly terminus is approximately located at the Northeast Corner of said Lot 2, Old Mill Subdivision, said parcel being more particularly described as follows:

Commencing at the Quarter Corner common to said Section 24 and Section 23; whence the Center Quarter Corner of said Section 23 bears N89°36'06"W with all other bearings herein relative thereto; thence N60°52'19"E, a distance of 675.91 feet to the Northeast Corner of said Lot 2, Old Mill Subdivision being the Point of Beginning; thence S01°44'31"E, a distance of 156.77 feet along the west edge of an existing concrete wall to a point lying 5.00 feet North of the Northerly edge of the concrete gutter on the North side of Riverside Parkway; thence S89°26'47"W, a distance of 524.13 feet along a line 5.00 feet North and parallel with said Northerly edge of the concrete gutter to a point on the southerly line of said Lot 2; thence the following courses along the Southerly line of said Lot 2; 55.36 feet along the arc of a 1,156.28 foot radius curve concave Northwesterly, through a central angle of 02°44'36" whose chord bears N74°00'46"E, 55.36 feet; thence N72°33'02"E, a distance of 488.61 feet to the Point of Beginning.

Said parcel containing 40,718 Square Feet or 0.94 Acres, more or less as described.

And;

A parcel of land located in the SE1/4 of the NE1/4 of Section 23, Township 1 South, Range 1 West, Ute Meridian, City of Grand Junction, Mesa County, Colorado being a portion of the parcel of land described in Reception Number 1796705 owned by the City of Grand Junction, lying South of Lot 1, Old Mill Subdivision as recorded at Reception Number 2532046 and lying North of a line that is 5.00 feet North and parallel with the Northerly edge of the concrete gutter on the North side of Riverside Parkway, said parcel being more particularly described as follows:

Commencing at the Quarter Corner common to said Section 23 and Section 24; whence the Center Quarter Corner of said Section 23 bears N89°36'06"W with all other bearings herein relative thereto; thence N76°59'16"W, a distance of 1,354.45 feet to the Northwest Corner of said Lot 1, Old Mill Subdivision being the Point of Beginning; thence the following courses along the westerly line of said Lot 1, S57°07'00"E, a distance of 220.00 feet; thence 64.30 feet along the arc of a 369.93 foot radius curve concave Northeasterly, through a central angle of 09°57'35" whose

chord bears $S62^{\circ}15'41''E$, 64.22 feet to a point 5.00 feet North of the Northerly edge of the concrete gutter on the North side of Riverside Parkway; thence $S89^{\circ}25'42''W$, a distance of 241.85 feet along a line 5.00 feet North and parallel with said concrete gutter to a point on the East line of Block 13 of Amended Benton Canon's First Addition as recorded at Reception Number 117077; thence $N00^{\circ}02'17''W$, a distance of 151.21 feet along said East line of Block 13 to the Point of Beginning.

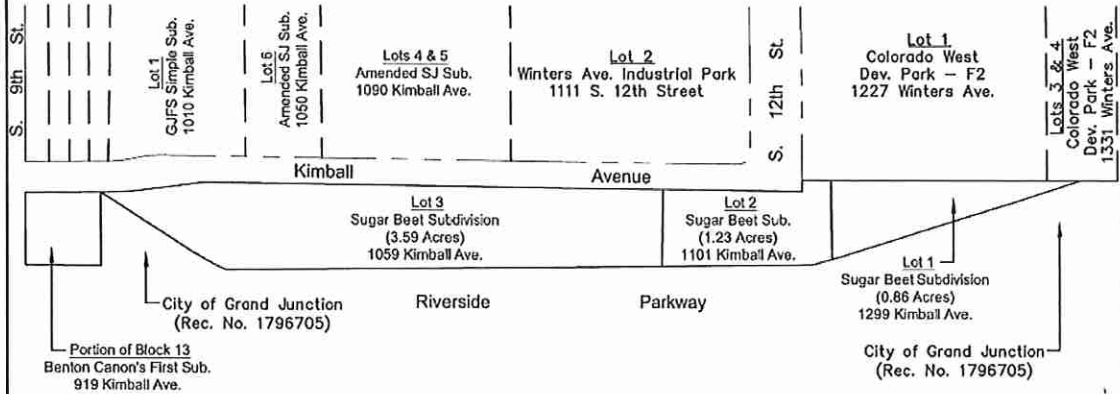
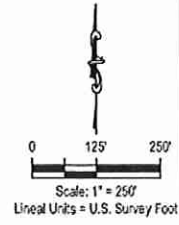
Said parcel of land containing 17,611 Square Feet or 0.40 Acres, more or less as described.

EXHIBIT B



EXHIBIT C

ADDRESSES FOR KIMBALL AVENUE RESIDENCES (INCLUDING THE PROPOSED SUGAR BEET SUBDIVISION)



NOTE:
The proposed Sugar Beet Subdivision as represented hereon shall be a Re-Plat of Old Mill Subdivision (Rec. No. 2532046) as submitted by River City Consultants, 215 Pitkin Avenue - Unit 201, Grand Junction, Co. 81501.

Grand Junction
Colorado
244 North 7th Street
Grand Junction, CO 81501

Sections 23 & 24
Township 1 South, Range 1 West
The Meridian, City of Grand Junction
Mesa County, Colorado

Drawn By: NCL
Date: 08/21/23
Reviewed By: BBP
Approved By: BBP

The exhibit shown herein has been derived from a preliminary subdivision plat by River City Consultants. This sketch does not constitute a legal boundary survey, & is not intended to be used as a means for establishing or verifying property boundary lines.