



**MURRAY CITY CORPORATION**  
Community &  
Economic Development

Building Division 801-270-2400  
Planning Division 801-270-2420

**MEMORANDUM of UNDERSTANDING**  
For Process and Timing of a Horizontal Mixed-Use Development

This Memorandum of Understanding ("MOU") is made and entered into this 15<sup>th</sup> day of September, 2020 (the "Effective Date") by and between Murray City Corporation ("City"), a Utah municipal corporation, and Kimball Investments, LLC and ICO Multifamily Holdings, LLC. (jointly "Developer").

**RECITALS**

**WHEREAS**, Developer is the owner of certain real property located at or near 4670 South 900 East, Murray, in Salt Lake County, Utah, ("Property"). The Property consists of 10.5 acres of land as more particularly described in Exhibit "A", attached hereto and incorporated herein; and

**WHEREAS**, the Property is located and situated in the Mixed Use, M-U Zone; and

WHEREAS, Developer wants to develop the Property and is willing to design and construct a mixed-use development ("Development") in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of the Murray City General Plan, zoning, and development regulations; and

**WHEREAS**, Developer proposes the construction of a horizontal mixed-use development as illustrated on the site and phasing plan attached as Exhibit "B", which Development includes both commercial and residential aspects, respectively five multi-family residential apartment buildings totaling 421 dwelling units and commercial building pads and property to accommodate twenty-one thousand (21,000) square feet of commercial, retail, and office buildings along with associated right-of-way, utility, amenity, and landscaping improvements; and

**WHEREAS**, the parties acknowledge that both commercial and residential aspects are essential components of mixed-use developments; and

**WHEREAS**, the City wants assurance from Developer that the commercial aspects and required improvements of the Development are completed through coordinating the process and timing of the commercial and residential aspects of the Development and the associated site improvements thereof; and

**WHEREAS**, the parties desire to enter this MOU in order to address the process, timing, and specific aspects of the Development as required by the Mixed-Use Zone; and

WHEREAS, Developer has voluntarily represented to City that it will enter into this binding MOU; and

WHEREAS, the City Council, acting pursuant to its authority under Utah Code Annotated section 10-9a-101 et seq., and its ordinances, resolutions and regulations and in furtherance of its land use policies, has made certain determinations with respect to the proposed Development and, in the exercise of its legislative discretion, has elected to approve this MOU;

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09/24/2020 11:27 AM \$10.00  
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RASHELLE HOEBS  
RECORDER, SALT LAKE COUNTY, UTAH  
MURRAY CITY  
5025 S STATE ST  
MURRAY UT 84107  
BY: JLA, DEPUTY - 01 13 P.

**NOW, THEREFORE**, based upon the mutual promises and conditions herein, the parties hereby enter into this Memorandum of Understanding and agree as follows:

1. **Incorporation of Recitals**: the recitals are hereby incorporated as part of this MOU.
2. **Affected Property**: This MOU shall apply to the property located at or near 4670 South 900 East, Murray, Utah as more particularly described in Exhibit "A", which is attached hereto and incorporated by reference herein.
3. **Master Site Plan**: Developer agrees to adhere to and install improvements in accordance with the Master Site Plan approved by the Murray City Planning Commission. The Development shall include five residential buildings with 421 total dwelling units, commercial buildings totaling no less than 21,000 square feet, as well as associated parking, landscaping amenities, utilities, accesses and right-of-way improvements.
4. **Development Phasing**: Residential development will be constructed in three phases described here and as more particularly illustrated in Exhibit "B", which is attached hereto. Required commercial development may occur independently during both residential phases.
  - a. Phase 1 shall include construction of:
    - i. 301 residential units in one (1) 5-story building and one (1) 4-story building as shown on Exhibit "B";
    - ii. A central 4.5 level parking structure;
    - iii. Improvements to interior accesses as conditioned by the Conditional Use Permit and depicted in Exhibit "B";
    - iv. All utility improvements necessary for distribution to construction sites in the commercial project area adjacent to 900 East as designated on Exhibit "B", and right-of-way improvements to the project frontage along 900 East as required in the M-U Zone.
  - b. Phase 2 shall include construction of:
    - i. 120 residential units in a 5-story building with podium parking; and
    - ii. All remaining parking and site amenities required under the Master Site Plan.
  - c. Commercial Phase: Developer shall construct no less than 21,000 square feet of retail, commercial and/or office space, as required by the M-U Zone and as depicted conceptually in Exhibit "B." City agrees that the required commercial development of the property may occur as separate and individual projects, evaluated by the City as they are proposed, but shall be constructed no later than five (5) years after the execution of this MOU. The parties understand that commercial development must comply with standards of the M-U Zone, the Master Site Plan, and must contribute to and not impede the connectivity and pedestrian oriented nature of the larger project.
5. **Access Management**: Developer agrees to maintain free and open access from east to west across the Development between 900 East and 4680 South as depicted in Exhibit "B".

6. Compliance with City Design and Construction Standards. Developer acknowledges and agrees that nothing in this MOU shall be deemed to relieve it from the obligation to comply with all applicable laws, ordinances, resolutions, regulations, rules, policies and procedural requirements of the City necessary for the development of the Property, including payments of fees and compliance with the City's design and construction standards, except as expressly provided herein.
7. Reserved Legislative Powers. Nothing in this MOU shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space and related land-use plans, policies, ordinances and regulations after the date of this MOU, provided that the adoption and exercise of such power shall not restrict Developer's vested rights to develop the Property as provided herein.
8. Remedies: Should Developer fail to adhere to requirements as outlined herein, the City may: (a) issue stop orders and/or (b) refuse to issue additional permits or certificates of occupancy for any buildings or portions thereof of the Development.
9. Assignment: This MOU, the provisions, terms or conditions hereof and the benefits, rights and obligation arising hereunder may be assigned in whole or in part by Developer to any other party, individual, or entity with the prior express written consent of the City, which consent shall not be unreasonably withheld or delayed, as follows:
  - a. Certain Sales not an Assignment: Developer's leasing, selling or conveying units, lots or pads in the Development and/or any approved Phase to builders, users, or sub-developers, shall not be deemed to be an assignment subject to the above-referenced approval by the City.
  - b. Related Party Transfer: Developer's transfer of all or any part of the Property to any entity related to Developer (as defined by regulations of the Internal Revenue Service), Developer's entry into a joint venture for the development of the Property or Developer's pledging of part or all of the Property as security for financing shall also not be deemed to be an assignment subject to the above-referenced approval by the City. Developer shall give the City notice of any event specified in this sub-section within ten (10) days after the event has occurred. Such notice shall include providing the City with all necessary contact information for the newly responsible party.
  - c. Notice: Developer shall give the City written notice of any proposed assignment thirty (30) days in advance of the proposed assignment. In addition, Developer shall provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation, including the contact information for the proposed assignee.
  - d. Deemed Approved: Unless the City objects in writing within ten (10) business days' receipt of written notice of the proposed assignment, the City shall be deemed to have approved of and consented to the assignment.

- e. **Partial Assignment:** If any proposed assignment is for less than all of the Property, the Development, this MOU, the provisions, terms or conditions hereof and the Developer's benefits, rights and obligations arising hereunder, then the assignee shall be responsible for the performance of each of the obligations contained in this MOU to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.
  - f. **Grounds for Denying Assignment:** The City may only withhold its consent if the City is not reasonably satisfied of the assignee's ability to perform the obligations of Developer proposed to be assigned.
  - g. **Assignee Bound by this MOU:** Any assignee shall consent in writing to be bound by the assigned terms and conditions of this MOU as a condition precedent to the effectiveness of the assignment.
  - h. **Binding Effect:** If Developer sells or conveys all or a portion of the Property to sub-developers or related parties, the Property, Development, or portion thereof so sold and conveyed shall bear the same rights, privileges, intended uses, configurations, and density as applicable to such Property, Development, or portion thereof, and be subject to the same limitations and rights of the City when owned by Developer and as set forth in this MOU without any required approval, review, or consent by the City except as otherwise provided herein.
  - i. **Assignment Approval Dispute:** A dispute related to the approval of any proposed assignment under this Section 7 shall be resolved by each party selecting a disinterested third party with experience in real estate development and land use entitlement, and those two selecting a third similarly qualified person who will be the final arbiter of the City's refusal to approve the proposed assignment. The parties agree to proceed in good faith to ensure that this entire resolution process is completed within ten (10) business days of the City's written rejection of a proposed assignment, unless extended by a writing signed by both parties. The parties shall abide by, defer to, respect and honor the decision of the third arbiter for all purposes under this section.
10. **Governing Law & Venue:** This MOU shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this MOU shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
11. **Severability:** In case any one or more of the provisions contained in this MOU shall be held invalid, illegal, or unenforceable in any respect under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that they are invalid, illegal, or unenforceable, and the remainder of this MOU shall continue in full force and effect.
12. **Limitation of City's Liability:** In no event shall the City be liable for anticipated profits or for incidental, indirect, consequential, liquidated, or special damages.

13. MOU to Run with the Land: This MOU shall be recorded against the Property described in Exhibit "A" hereto and shall be deemed to run with the land and shall be binding on all successors and assigns of Developer in the ownership or development of any portion of the Property.
14. Waiver: The failure of either party at any time or times hereafter to require strict performance by the other of any of the undertakings, agreements, or covenants contained in this MOU shall not constitute a waiver of such provision, nor in any way affect the validity of the MOU, any part hereof, or the right of the party hereunder to demand strict compliance and performance therewith. None of the undertakings, agreements, or covenants of either party under this MOU shall be deemed to have been waived unless such waiver is evidenced by an instrument in writing signed by both parties.
15. Relationship of Parties: This MOU does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto. Neither party has the power or authority to act for, bind, or otherwise create or assume any obligation on behalf of the other.
16. No Third-Party Beneficiaries: City and Developer are the only parties to this MOU and are the only parties entitled to enforce its terms. Nothing in this MOU, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation, or legal entity other than the parties, any rights, remedies, or other benefits under or by reason of the MOU.
17. Termination:
  - a. This MOU may be terminated by City if Developer fails to submit to the City within two (2) years of City Council approval of this MOU ("Approval") "complete" building permit applications as defined by the City's Building Code in effect at the time of Approval for the first phase of residential development (excluding the area necessary for any required parking). Prior to such termination, the City shall first provide Developer with sixty (60) days written notice, which notice shall be withdrawn if Developer submits a "complete" application prior to the expiration of 60 day period or such additional time as agreed to between the parties. Termination of this MOU shall not result in termination of any other legally binding Agreement or action based upon this MOU unless such additional termination is required under the terms of such other Agreement or action. Notice of termination shall be given in writing and either (1) delivered personally, (2) sent by facsimile transmission with an additional copy mailed first class, or (3) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City that the Agreement has been terminated.
  - b. This MOU may be terminated by City if Developer fails to submit to the City within four (4) years of Approval "complete" building permit applications as defined by the City's Building Code in effect at the time of Approval for an additional amount of square feet of commercial development (excluding the area necessary for any required parking) to achieve a total for the Project of 21,000 square feet of commercial development (excluding the area necessary for any required parking). Notice of termination shall be given in writing and either (1) delivered personally, (2) sent by facsimile transmission with an

additional copy mailed first class, or (3) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City that the Agreement has been terminated.

18. Authority: The parties to this MOU represent to each other that they have the full power and authority to enter into this MOU, and that all necessary actions have been taken to give full force and effect to this MOU. Developer and City warrant to each other that the individuals executing this MOU on behalf of their respective parties are authorized and empowered to bind the parties on whose behalf each individual is signing.

SIGNATURES ON FOLLOWING PAGE

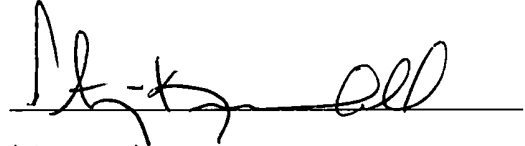
DATED as of the day and year first written above.

MURRAY CITY CORPORATION



D. Blair Camp, Mayor

KIMBALL INVESTMENT LLC / ICO Inc.

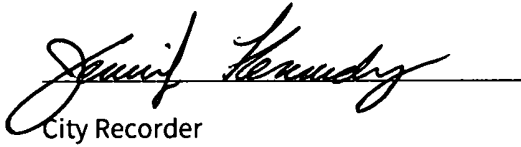


(Signature)

ATTEST:

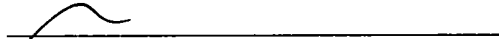
Victor M. Kimball, Mayor

(Print Name and Title)



City Recorder

APPROVED AS TO FORM:



City Attorney's Office Department

APPROVED AS TO CONTENT:



Community & Economic Development Department

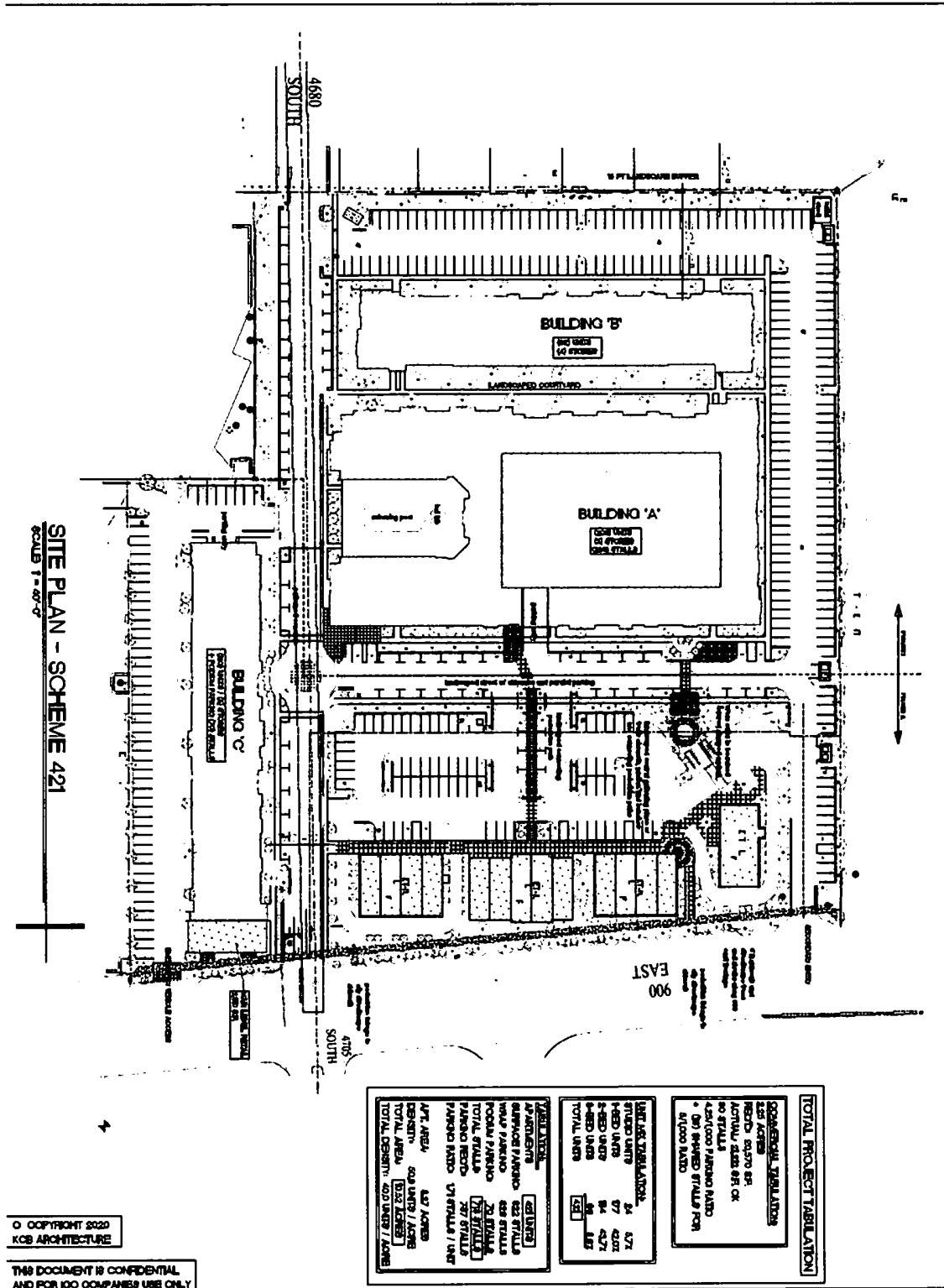


EXHIBIT "A"





# EXHIBIT "B"



© COPYRIGHT 2020  
KCB ARCHITECTURE

THIS DOCUMENT IS CONFIDENTIAL  
AND FOR KCO COMPANIES USE ONLY

ART. 1  
A1.0



KCO MURRAY KMART SITE  
MURRAY, UTAH

DATE: 11/11/2020  
TIME: 10:00 AM

EXHIBIT "C"  
Mixed-Use Zone

EXHIBIT "D"  
Conditional Use Permit  
(attached)

EXHIBIT "E"  
Planning Commission Meeting Minutes  
(attached)

EXHIBIT "F"  
Legal Description for Parcel Number 22-05-376-006

PARCEL 1

COMMENCING ON THE WEST LINE OF 900 EAST STREET, AT A POINT NORTH 89°50' WEST 667.14 FEET AND NORTH 04°54'30" WEST 24.075 FEET AND SOUTH 89°49'40" WEST 53.182 FEET FROM THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 04°54'30" WEST 685.682 FEET ALONG THE WEST LINE OF 900 EAST STREET; THENCE SOUTH 89°43' WEST 691.854 FEET TO THE EAST LINE OF THE GREEN VALLEY SUBDIVISION NUMBER 3; THENCE SOUTH 0°10'20" EAST 545.360 FEET ALONG THE EAST LINE OF SAID SUBDIVISION; THENCE SOUTH 0° 24'10" WEST 14.64 FEET; THENCE NORTH 89°49'40" EAST 275.147 FEET; THENCE SOUTH 0°10'20" EAST 122.00 FEET; THENCE NORTH 89°49'40" EAST 473.466 FEET TO THE POINT OF BEGINNING.

PARCEL 1A

TOGETHER WITH A PERPETUAL EASEMENT OF RIGHT OF WAY FOR EGRESS FOR VEHICULAR AND PEDESTRIAN TRAFFIC ON, OVER AND ACROSS THE FOLLOWING DESCRIBED PROPERTY, AS DISCLOSED BY WARRANTY DEED RECORDED MAY 27, 1966, AS ENTRY NO. 2157566 IN BOOK 2463 AT PAGE 59 OF THE OFFICIAL RECORDS, TO-WIT:

COMMENCING AT A POINT WHICH IS NORTH 89°50' WEST 667.14 FEET AND NORTH 04°54'30" WEST 24.075 FEET AND SOUTH 89°49'40" WEST 526.65 FEET FROM THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 0°10'20" EAST 450.0 FEET; THENCE SOUTH 89°49'40" WEST 200.00 FEET; THENCE SOUTH 0°10'20" EAST 45 FEET, MORE OR LESS, TO THE NORTH RIGHT OF WAY LINE OF THE COTTONWOOD DIAGONAL HIGHWAY; THENCE SOUTH 76°10'10" EAST 30.0 FEET ALONG SAID RIGHT OF WAY; THENCE NORTH 72°45' EAST 95 FEET, MORE OR LESS; THENCE NORTH 89°49'40" EAST 110.0 FEET; THENCE NORTH 0°10'20" WEST 480.0 FEET; THENCE SOUTH 89 49'40" WEST 30.00 FEET TO THE POINT OF BEGINNING.

BASIS OF BEARINGS:

BASIS OF BEARINGS IS SOUTH 04°54'30" EAST BETWEEN THE COUNTY MONUMENT LOCATED AT 4800 SOUTH 900 EAST AND ANOTHER COUNTY MONUMENT LOCATED AT APPROXIMATELY 4905 SOUTH AND 900 EAST.

I hereby certify that the above legal description is a true, exact, complete and unaltered legal description of the property located at 4800 South 900 East and 4905 South 900 East, Murray, UT.

State of Utah )  
 )§  
County of Salt Lake )



On this 23<sup>rd</sup> day of September, 2020 Justin Kimball personally appeared before me and proved on the basis of satisfactory evidence to be the person whose name is subscribe to in this document, and acknowledge that he executed the same.

Witness my hand and official seal.

Kathryn Hess  
Notary Public

